

Members

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



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, September 22, 2016
12:00 p.m. – 4:00 p.m.
Oregon Judicial Department
1133 Chemeketa St NE
Salem, OR 97301

MEETING AGENDA

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| 1. Action Item: Approval of minutes - PDSC meeting held on July 25 and 26, 2016 (<i>Attachment 1</i>) | Chair Ramfjord |
| 2. Procedural Justice & Client Satisfaction (<i>handout</i>) | Professor Janet Moore
University of Cincinnati
College of Law

Dr. Chris Campbell
Portland State University |
| 3. Improving Outcomes Through Social Workers; Why Children Are Constitutionally Different (<i>Attachments 2a, b, c, d, and e & 3</i>) | Ed Monahan
Public Advocate
Kentucky Office of Public
Advocacy |
| 4. National Standards: Pre-Petition and Pre-Indictment Advocacy in Juvenile Cases (<i>Attachment 4</i>) | Amy Miller
Elizabeth Levi |
| 5. Action Item: Approval of PDSC Strategic Plan for 2016-21 (<i>Attachment 5</i>) | Nancy Cozine |
| 6. Annual Performance Progress Report (<i>Attachment 6</i>) | Nancy Cozine |
| 7. OPDS Monthly Report | OPDS Staff |

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

Next meeting: October 28, 2016, 12:30 p.m. – 4:30 p.m., at Sunriver Resort in Sunriver, Oregon. Meeting dates, times, and locations are subject to change; future meetings dates are posted at:

<http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Monday, July 25, 2016
12:00 pm – 4:00 pm
Best Western Plus Hood River Inn
Riverview Room
1108 E Marina Dr.
Hood River, OR 97031

MEMBERS PRESENT: Shaun McCrea (Chair)
John Potter (Vice-Chair)
Thomas Christ
Michael DeMuniz (member as of September 1, 2016)
Chip Lazenby
Per Ramfjord
Janet Stevens
Hon. Elizabeth Welch

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

The meeting was called to order at 12:30 pm.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on June 16, 2016

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

Agenda Item No. 2 National Juvenile Defender Center Self-Assessment Tool

Amy Miller, OPDS Deputy General Counsel, introduced the National Juvenile Defender Center's self-assessment tool released this Spring. Ms. Miller explained that it emphasizes juvenile defense as its own specialty requiring access to social workers, mental health resources, education advocates, and alternative sentencing experts. The tool also highlights the need for caseload monitoring because juvenile cases are more time consuming than adult misdemeanor and felony cases. Commissioner Welch noted her concern about representation of Measure 11 juveniles. Amy Miller agreed with the concern and said the issue was reviewed by the Governor's Dependency Task Force, Cross-Over Case Committee. The Task Force concluded that performance standards for delinquency and Measure 11 cases should be

treated separately, rather than under the current Oregon State Bar's Performance Standards, which combine criminal and delinquency cases without specific reference to Measure 11 cases for juveniles. Chair McCrea requested that Ms. Miller come to the Commission later with further suggestions for implementation of an assessment tool. Commissioner Lazenby asked about potential follow-up to Governor's task force recommendations. Amy explained that the representation issues would be the main focus; specifically a PCR model of representation for parents and children, and a block grant model for DHS representation. She said that next steps involve legislative approval and formation of a work group to focus on implementation strategies.

Agenda Item No. 3 September Commission Meeting Update

Nancy Cozine, OPDS Executive Director, updated the Commission on the September meeting date and CLE to the Legislature. The Commission will meet on September 22nd from 12:00 pm until 4:00 pm and the CLE to the Legislature will be on the 23rd from 11:30 am until 1:30 pm. Commissioners Stevens and Christ noted they may not be in attendance and Commissioner Welch noted she would not be in attendance. Chair McCrea said to go ahead with the schedule as planned.

Chair McCrea asked who the CLE is intended to target. Ms. Cozine said the target is the entire legislature with particular emphasis on the Ways and Means and Judiciary Committees, and also noted that it is open to all interested attendees.

Agenda Item No. 4 Customer Satisfaction Pilot Survey Project

Nancy Cozine pointed the Commission to two reports included as attachments 3 and 4 in the materials. The first was produced by Janet Moore, a professor at the University of Cincinnati, and Chris Campbell, a professor at Portland State University, both of whom will be presenting at the September CLE. They completed a pilot survey project and found that client satisfaction can be greatly improved by building trusting relationships with clients, by treating clients with respect, and giving them attention and a voice during the process.

Ms. Cozine offered a synopsis of the NLADA's "Basic Data Every Defender Program Needs to Track". She mentioned that implementation of a statewide case management system would help capture some of the necessary data, and noted that court data can also be helpful. She explained that data entry inconsistencies and other uniformity issues are being addressed so court data can be better used to evaluate provider performance. Commissioner Ramfjord relayed that in some reports he had read on other public defender offices an interesting metric being used was the percentage of cases where the initial charges were reduced between the time of the initial charge and disposition. Commissioner Lazenby followed by saying another way to look at it is in terms of racial disparities in case outcomes. Ms. Cozine responded with a mention of the McArthur Foundation evaluation of Multnomah County, which demonstrated that there are disproportionate outcomes for minority individuals. Commissioners Potter and Ramfjord both suggested that any new measurements and recommendations would need to be rolled out strategically in order to be received well.

Agenda Item No. 5 Commission Best Practices

Chair McCrea reviewed the list of Best Practices for boards and commissions, and how OPDS and PDSC have met those goals. There was some discussion, particularly around the mission statement. Nancy Cozine reminded Commission members that this would be a topic of discussion during the retreat. Commissioner Potter echoed Commissioner Lazenby's comment that the word "quality" should be included. Nancy then read the proposed mission statement – "The Commission ensures that eligible individuals have immediate access to quality legal services for all proceedings in which there is a statutory or constitutional right to counsel" and all agreed to suspend the discussion until review of the strategic plan.

Commissioner Welch asked for specification on item twelve, Board members act in accordance with their roles as public representatives. Nancy Cozine explained that it calls for being clear on your role at the time and not mixing Commissioner duties with other roles the Commissioners engage in, and if this does happen to make it part of the public record. Commissioner Welch suggested adding the language “to avoid conflicts of interest” to make it more clear.

MOTION: Commissioner Welch moved to add the language “to avoid conflicts of interest” to the Commission Best Practices; Commissioner Stevens seconded the motion; hearing no objection the motion carried: **VOTE:** 8-0

Agenda Item No. 6

Policy Option Packages

OPDS staff provided an overview of agency policy option package requests. Commission members questioned whether any of the POPs would be funded given the potentially lean budget cycle for the next biennium. Commissioner Potter reminded everyone that in order to meet their mission as set forth by statute, they are obligated to inform the legislature of what they need in order to maintain a system that is fair and just.

There was then considerable discussion around the proposed PCRCP Expansion, the extra value it offers, and the likelihood that it would reduce the cost of the pay parity POP. Amy Miller provided additional details, and explained that the Governor’s task force suggested proposing a three-stage roll-out. Ms. Miller demonstrated how a roll-out plan could be structured, but reiterated that, for now, the Commission is being asked to approve the full amount. She indicated that the rollout process would be discussed in further detail by an implementation task force and the Commission at future meetings.

MOTION: Commissioner Potter moved to approve the PCRCP policy option package; Commissioner Welch seconded the motion; hearing no objection the motion carried: **VOTE:** 7-0.

Nancy Cozine spoke about the Policy Option Package for public defense contractor parity. She noted that if the PCRCP expansion passed, some parity costs would be avoided. She noted that the pay parity package only addresses salary, not other benefits.

Angelique Bowers, Budget and Finance Manager for OPDS, reviewed the proposed hourly rate increases. Commissioner Stevens asked for clarification on capital attorney rates. Ms. Bowers replied they would be increasing from \$100 to \$175. Commissioner Welch asked how often private, non-contract counsel was used for public defense cases. Ms. Cozine replied that approximately 2.5% of the caseload is covered by private hourly attorneys, excluding death penalty cases, and this is mostly for conflict cases. Caroline Meyer, Contracts Manager for OPDS, stressed the difficulty of finding private attorneys for these conflict cases at the current hourly rate.

Caroline Meyer explained the graphs that helped demonstrate levels of disparity around the state, and explained how counties without public defender offices were compared to determine level of need. Ms. Meyer mentioned that her team reviewed this information with all contractors so that they know where they stand, and to give them an opportunity to provide feedback.

MOTION: Chair Ramfjord moved to approve the policy option package for public defense provider pay parity; Commissioner Welch seconded the motion; hearing no objection the motion carried: **VOTE:** 7-0

The next policy option package discussed was on the statewide case management system. Ms. Cozine informed the Commission that this policy option package would allow OPDS to offer all public defense providers a case management system that would be configured to meet OPDS's reporting requirements. She noted that there are challenges with getting a system configured and available at an affordable rate, and explained that about half of Oregon's providers have shown interest in a uniform case management system.

Commissioner Potter asked if the reports generated from other systems provide adequate data. Ms. Cozine replied that those systems may require additional configuration to capture the kind of demographic and case information needed. Commissioner Potter noted his concerns about the projected cost, that it would likely end up costing more than the number proposed, and asked if the current number included everything needed to get the entire state on board. Cecily Warren, Research and IT Director for OPDS, replied that a software licensing price will hopefully be set with the statewide contract, which would include data migration costs and IT support. Commissioner Potter then asked about roll-out dates. Ms. Warren said that no dates have been set and that, with data migration involved, rollouts would have to be staged strategically. Ms. Warren also noted that part of their bargaining with Journal Technologies included asking for integration with Oregon's new eCourt system.

Commissioner Ramfjord suggested that, to get more people on board with using the statewide system, the way it is marketed would have to display the benefits and include the ultimate goal of the system which is uniform reporting that would lead to reduced costs and improved quality representation. Mark McKechnie, from Youth Rights and Justice, then spoke about the potential benefits of having this system, which included the potential to have it pull data from the eCourt system thereby reducing the amount of time spent doing it manually, and the built in data migration piece. He also noted that this system is a small investment compared to the eCourt system but with big benefits if approved.

MOTION: Vice-Chair Potter moved to approve the case management system package; Commissioner Welch seconded the motion; hearing no objection the motion carried: **VOTE:** 7-0

Angelique Bowers spoke to the Commission about the POP for the Professional Services Account Budget Shortfall. She said this account has historically been three to four million dollars short by the end of the biennium. Ms. Cozine explained that it hasn't been built into the base budget because the gap funding is often provided late in the biennium, and are therefore not automatically built into the base budget for the next cycle.

MOTION: Commissioner Welch moved to approve the Professional Services Account Budget Shortfall POP; Commissioner Potter seconded the motion; hearing no objection the motion carried: **VOTE:** 7-0

Nancy Cozine told the Commission about the OPDS Policy Option Package, which aims to reach pay parity for OPDS attorneys and office staff. Ms. Cozine explained that the current gap is 14% to 34% gap for OPDS lawyers. Commissioner Potter noted that this means they are not in compliance with the statute and that it puts them in a position of liability. Ms. Cozine noted the support for this received during the May Legislative Days by House Speaker Kotek and Senator Steiner Hayward, and said the agency would approach the legislature again during September Legislative Days.

MOTION: Commissioner Ramfjord moved to approve the policy option package for OPDS Employee Compensation; Commissioner Potter seconded the motion; hearing no objection the motion carried: **VOTE:** 7-0

Ms. Cozine reviewed the policy option package for the PCRCP Staffing and Quality Assurance, which entails a half a position for PCRCP staffing, a half a position for a research analyst and

one full position for a deputy general counsel. Ms. Cozine explained the deputy general counsel position will be primarily responsible for doing what Amy Miller does for the juvenile representation, but for criminal representation. She explained that this would greatly improve the agency's ability to connect with providers at the trial level and manage better quality assurance practices to keep in line with the mission of the agency. She also noted that this package includes a position for a juvenile delinquency appellate attorney, not only because the projected caseload for that has gone up, but also to be able to provide the support to contractors who do that work.

MOTION: Commissioner Welch moved to approve the PCRCP Staffing and Quality Assurance POP; Commissioner Lazenby seconded the motion; hearing no objection the motion carried: **VOTE:** 7-0

Agenda Item No. 7

Update Guideline Rates

Angelique Bowers informed the Commission of changes to the guideline rates for providers. Ms. Bowers noted that the changes were made to more specifically target specific provider types. She also explained that parking receipts will only be required for expenditures of over \$25, and that lodging is now consistent with federal rates for both in and out of state travel. Discovery rates are at cost because each county sets the rates for those. Ms. Bowers noted that if approved, they will become effective August 1st.

MOTION: Commissioner Stevens moved to approve the updated guideline rates; Commissioner Lazenby seconded the motion; hearing no objection the motion carried: **VOTE:** 8-0

Agenda Item No. 8

Caseload Projections

Caroline Meyer explained that this conversation is a continuation from the Commission's last meeting, where members requested more detail related to expenditures in pending death penalty caseloads, as well as additional data for the month of April. Ms. Cozine informed the Commission that caseloads are increasing statewide, which affects the base budget, making it important to build the increases into next year's budget. She explained that OPDS analysts investigated factors causing the increases and found that in many jurisdictions additional deputy district attorneys are being hired, and that there have been some changes in charging practices. Ms. Cozine also noted that this is the first projected caseload in three biennia.

Agenda Item No. 9

OPDS Monthly Report

OPDS staff provided updates. Caroline Meyer mentioned the customer service survey results, which will be reviewed at a future meeting, and mentioned that OPDS launched the first CLE survey, structured to gather information relevant to the agency's key performance measure for attorney CLE credits. Ms. Cozine informed the Commission of the launch of the first OPDS Newsletter, disseminated in mid-July, and noted that the Dependency Task Force Report has been finalized and a link will be circulated by email. Ms. Cozine also mentioned that a link to sign up for the ABA's weekly newsletter was embedded in the OPDS Newsletter, and that the ABA is considering a revision to the Ten Principles for Public Defense. Mr. Levy noted that the recommended changes had been discussed at the last PDSC meeting and they will also be discussed again during the retreat. Angelique Bowers informed the Commission of personnel changes in the financial services section. Mr. Levy quickly noted that the annual public defense survey results will be discussed at a future meeting. Shannon Storey, Chief Defender for the Juvenile Appellate Section, updated the Commission about the three cases they have in the Supreme Court and a general update of issues being briefed by JAS lawyers. Ernie Lannet, Chief Defender of the Criminal Appellate Section, noted personnel changes in his section, including the retirement of the long-time legal assistant supervisor. He went on to mention that five CAS attorneys have six arguments at the Supreme Court in September, and

that they received a number of favorable opinions from the Supreme Court. Lastly, Mr. Lannet mentioned that the Appellate Division continues to work on reducing the median filing date, which is now down to 209 days. Mr. Lannet concluded by mentioning that he is participating in the Oregon Law Commission's revision of ORS Chapter 138, concerning criminal appeals.

Commissioner Potter congratulated Chair McCrea on her 16 years of service to the Commission and presented her with a plaque to commemorate her dedication to the Commission. Commissioner Welch put on the record her amazement at the dedication and hard work of the staff of OPDS and the PDSC.

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

Meeting Adjourned.

On Tuesday, July 26, 2016, the Commission retreat began at 9:00am. Commission members engaged in an extensive review of the proposed 2016-2021 PDSC Strategic Plan, and offered both substantive suggestions and theoretical perspectives regarding the plan itself and the work of the Commission. After a short lunch break, Commission members resumed discussion of each proposed strategy, and OPDS staff presented information about potential tasks that would be undertaken in order to achieve the goals targeted by each strategy. The retreat concluded at 4:00pm.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Monday, July 25, 2016
12:00 pm – 4:00 pm
Best Western Hood River Inn
Riverview Room
1108 E Marina Dr
Hood River, OR 97031

MEMBERS PRESENT: Shaun McCrea (Chair)
John Potter (Vice Chair)
Thomas Christ
Michael De Muniz (member as of September 1, 2016)
Chip Lazenby
Per Ramfjord
Janet Stevens
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Angelique Bowers
Cynthia Gregory
Ernie Lannet
Paul Levy
Caroline Meyer
Amy Miller
Shannon Storey
Cecily Warren

The meeting was called to order at 12:30 pm.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on June 16, 2016

0:08 Chair McCrea Welcome to the Commission meeting, July 25, 2016. We will start with the first item on the agenda, the approval of the minutes of our meeting on June 16, 2016. Does anyone have any additions, corrections or comments regarding the minutes? Not hearing any, I would entertain a motion. **MOTION:** Commissioner Potter moved to approve the minutes; Commissioner Stevens seconded the motion; hearing no objection the motion carried: **VOTE: 8-0**

Agenda Item No. 2 National Juvenile Defender Center Self-Assessment Tool

0:44 Chair McCrea Amy, would you like to talk to us about the National Juvenile Defender Self-Assessment Tool?

0:55 A. Miller Thank you Chair McCrea, Vice Chair Potter and members of the Commission. This was actually different from the main Commission meeting.

- 1:06 Chair McCrea We want to make sure we get you on the record.
- 1:20 A. Miller This is a holdover from the main meeting. Last summer I shared with you the ABA's Self-assessment Tool for Quality Representation in Juvenile Dependency Proceedings and this tool, which has been developed by the National Juvenile Defender Center and the National Association for Public Defense, was released this spring and it is similar. It is a way for us to look at defense in juvenile cases and evaluate those processes in light of best practices and it is included in your materials. A couple of key points are that it really emphasizes that juvenile defense is a specialty unto its own and it needs to be treated on par with adult cases in terms of recourse and it really calls out that juvenile defense representation is a bit different. In fact, representation often requires access to social workers, mental health, education advocates, alternative sentencing experts, because there are needs to access protections that aren't available to adults. It recommends specialized procedures for children prosecuted in adult court. There are competency issues, mitigating evidence and difficulty in communicating with child clients. One of the big things that it emphasizes is that caseload needs to be monitored and I know you are going to be hearing more about that. It points back to the NLADA standards but it talks about a juvenile case being twice as consuming as a misdemeanor and about three fourths as consuming time wise as a felony. It talks about client contact being even more important in juvenile cases than in adult defense cases. It specifically says 'the meeting in juvenile client rate report is not sufficient.' Then, it talks about the need for post-disposition representation and an emphasis on quality appellate representation. I read this with a critical eye thinking about our system and what I know about it and what I have learned in the past couple of years being here and I think there are some things that we do really well and I think there are some great opportunities to improve based on the information that is in this self-assessment tool. I am happy to answer questions but I just wanted to call this to your attention because it is distributed from a national organization and it really looks at how best practices should look.
- 3:30 J. Welch I was particularly intrigued in the discussion of representing what we would call Measure 11 juveniles and was wondering if, because it was like a 'oh yeah' it never entered my mind to be honest and I was just wondering if it has entered anybody else's mind around here?
- 3:51 A. Miller Chair McCrea, Commissioner Welch, the question was about representation of juveniles who are being treated as adults and how that is yet another specialized niche area because it is a combination of both and it is funny I sat on the Governor's task force on dependency representation cross-over case committee and Judge Waller chaired the committee. We were looking at representation between dependency and delinquency but this issue came up about needing specialized procedures in Measure 11 types of cases. So, I went back and reviewed the Oregon State Bar performance standards where it talks about representation and you may know that criminal and delinquency are lumped together and there is a specific call out to delinquency but nothing specific to Measure 11. I think that is a recommendation that came out of that group as well and it is something I think people are starting to talk about in particular in light of Miller and Montgomery and some of the other changes to the law. It is certainly on my radar and I think it is something we need to look into.
- 4:51 Chair McCrea Any other comments or questions for Amy? Are you suggesting that we incorporate anything from here at the present time or is it just that you have said there are things we do really well and there are some things we can improve, is this just more information and you are going to come back to the Commission down the line with some further suggestions for implementation?
- 5:13 A. Miller I think that probably makes the most sense. I would like to think through it a little more and certainly I can identify some issues off the top of my head but I would like to consolidate and see what Paul and other's in the office think and come back with a bit of a plan including some of the things that Judge Welch mentioned.

- 5:26 C. Lazenby So, what is happening with the Governor's recommendations out of the task force? Is it just a nice task force report?
- 5:34 A. Miller Nancy, are you going to talk about that?
- 5:37 N. Cozine You can.
- 5:40 A. Miller I was going to talk about it in the OPDS updates section as well but the task force had its last meeting last week on Thursday and that group voted and of course Nancy is a member of the task force, but that group voted out a final report and recommendations and endorsed, the focus was really about juvenile dependency representation models. Among other things, there were a number of subcommittees but after about ten meetings an unbelievable amount of research and thought went into figuring out what models make the most sense and that report that you can read endorsed the PCR model for representation of parents and children and it endorsed a block grant type of model of representation of the agency of DHS. I think there is going to be some work strategy going forward in figuring out how that is going to work with the legislative session coming up and following on that task force is the implementation work group to look at putting the pieces in place to make that happen. It was a long a windy road.
- 6:45 Chair McCrea Questions? Okay, thank you Amy.
- Agenda Item No. 3 September Commission Meeting Update**
- 6:50 Chair McCrea Nancy, you are going to take us to the September Commission meeting update.
- 7:01 N. Cozine Thank you Chair McCrea, members of the Commission. At the last meeting we talked about moving our September meeting date so that it would coincide with out a CLE that we have been asked to present to the legislature. The CLE is going to be focusing on procedural justice and the defense role in creating procedural justice and on holistic defense. I have met a few times now with judiciary counsel who is helping to organize it on the legislative end and a representative from the Oregon State Bar. The plan is to proceed with the CLE to the legislature on September 23rd. When we talked at our last meeting we talked about moving our meeting to September 22nd and if we move it to the 22nd the meeting time would need to be from noon to four because in the morning we will likely have a hearing before the legislature. I put this on the agenda so that we can discuss it and confirm that it works for everyone. Not everyone was at the last meeting and I am aware that some people may have some conflicts but I wanted to get it out there and make sure that this is what the Commission wants.
- 8:17 J. Potter Does the seminar itself on Friday the 23rd begin at one o'clock?
- 8:22 N. Cozine The seminar will begin at 11:30 am and run through 1:30 pm.
- 8:33 Chair McCrea So, the seminar is Friday the 23rd and our proposed Commission meeting for September is Thursday from 12 to 4?
- 8:46 N. Cozine Correct.
- 8:54 Chair McCrea I am available although I won't be on the Commission anymore at that point. So, I guess it doesn't really matter.
- 9:03 P. Ramfjord That works for me.
- 9:07 Chair McCrea Other commissioners?
- 9:08 J. Welch It doesn't work for me.

9:10 C. Lazenby The 23rd works for me.

9:12 J. Welch I can't come either day.

9:13 Chair McCrea You can't come either day?

9:17 J. Welch I don't expect anything to change, I am just reporting it.

9:24 C. Lazenby I can do the 22nd as well.

9:27 P. Ramfjord Both days work for me.

9:31 T. Christ I happen to be sitting as a pro-tem judge on the 22nd which you may know from my appointment is the one day that I am not a Commissioner. But, I think I can get that appointment moved probably easier than you can move the Commission meeting.

9:51 Chair McCrea And Mike, are you available on the 22nd?

9:53 M. De Muniz I am.

9:54 J. Stevens I am a maybe. Maybe if I didn't have (inaudible)

10:13 Chair McCrea Then I suggest that we go with that schedule Nancy, yes.

Agenda Item No. 4 Customer Satisfaction Pilot Survey Project Report, Basic Data Every Defender Program Needs to Track

10:21 N. Cozine Okay, thank you. The next agenda item, if I may go on Chair, actually relates to the September Commission meeting. There are two reports, attachment three and four. Attachment three is a report of a pilot survey project that was completed by Janet Moore who is a professor at the University of Cincinnati College of Law and Professor Chris Campbell who was then working out of Washington but has since relocated to Portland State University. Those are two of the people who will be presenting at the September CLE and the report that is attached is actually a draft report and I have a final that I will include with our September materials. They, specifically, were looking at how client satisfaction relates to outcomes and the way that public defenders interact with the client. It is an interesting report and it describes sort of the historical context of public defense at the outset referencing old reports from the Spangenberg Group which used to be responsible for assessing public defense systems across the country. As they looked at client satisfaction they developed a tool that they are actually hoping to use here in Oregon at some point in time with a willing public defender office. Some of the conclusions that they drew were that when the client perceives the relationship with the public defender as a trusting relationship, when they feel that they are treated fairly, it increases their perception of the legitimacy of the system and they are willing to accept the outcome of the case. Even if the court's order isn't what they would've hoped for at the start of the case, the degree to which they are given respect and attention and a voice during the process affects the way they accept that outcome. It is an important part of our system and an important part of helping us identify ourselves not only as a constitutional mandate but also as a benefit to the system as a whole and to communities. It is an interesting report and as I said I will have another one available to you next month. At the CLE they will also be joined by Robin Steinburg from New York who runs the Bronx Defender Center and she will talk a little bit about holistic defense which Alex Bassos talked to you about at our last meeting. And, I know that Robin has actually been out here before with OCDLA and she has talked to public defense providers at different CLEs. This will be a great opportunity for the legislature to hear a little bit more about that work. Alex Bassos will also present to talk about what he has been doing on the holistic defense side and then Amy Miller will talk about the Parent Child Representation Program tying in some of those pieces of procedural justice and holistic

defense in our own Oregon model where we have social workers involved and lawyers spending more significant amounts of time with their clients. That was report one. Any questions on that one?

- 13:39 Chair McCrea Remind me who the CLE is targeted for. Is it the entire legislature? Are there invited parties?
- 13:49 N. Cozine It is the entire legislature and we will probably be focusing heavily on trying to get members of the ways and means committee there as well as judiciary committees. We have talked about potentially stewing a presentation to the judiciary committee but there has been an effort to take any concepts that aren't related to a particular bill and put them into a CLE format so that legislators can come and get CLE credit so that if they want a wider audience than just the judiciary committee this is a concept that Senator Prozanski is really emphasizing. So, it has been tried a few times before. My understanding was that there was a presentation during the last legislative days and it was fairly successful. We are trying it and we hope that it works well. I will be working with the Oregon State Bar to help advertise and create awareness about this opportunity. Going onto the next attachment which is not necessarily related to the CLE but it is another report that is a piece on how we capture the work of public defenders so that we can better describe the benefits that we bring to the system and the work that we do. This is a product from the National Legal Aide and Defender Association and some of the components are drawn from the research and data advisory committee that I participated on a few years ago. Specifically, on page seven is *What to Measure, a Sophisticated Uniform Approach*, they talk about the different data points that we really ought to be trying to collect. This is what we are really moving toward and trying to work with the courts so that we can collect some of this data. We are finding that as Odyssey rolls out state wide there are some inconsistencies or at least lack of uniformity in the way data is entered. We are working with them on that so that we can get better verification of our own reports. These are things like caseload that are associated to a bar number, the bar number has to be entered and has to be entered correctly. There are little things like that. We are working on it. Really, I wanted to include it because it is another good reference point for the idea of collecting data in a way that allow us to better evaluate performance but also to better explain the work that we do.
- 16:24 P. Ramfjord One comment on that. I was reading some strategic plans and other documents related to other public defender offices around the country and one of the metrics I saw measured, I think it was in New Mexico, was the percentage of cases in which the charges were reduced from the initial charge by the time they reached disposition. I thought that was an interesting statistic to keep track of. We have tried at various points of time to think about how could we actually measure something that shows the success of the representation. To some extent that struck me as an interesting metric to think about as we are thinking about this process. I just wanted to throw that out for consideration.
- 17:10 Chair McCrea That is a good point Per.
- 17:13 C. Lazenby I think it would be interesting if this data could be collected in such a way that we could pivot and not only see the things that Per is talking about in terms of effectiveness of counsel but also look at it in terms of racial disparities that occur inside the system as well. There is an apocryphal sense that there are better breaks for not, people of color don't get the kind of breaks that everybody else gets in terms of negotiation and the degree to which cases (inaudible).
- 17:46 N. Cozine Commissioner Lazenby, Chair McCrea, members of the Commission, you may have seen the red report that came out from Multnomah County. It was a McArthur Foundations study and it did demonstrate that in fact there are disproportionate outcomes for minority clients and I think there is no doubt that a healthy percentage of those are in our public defense system and it does warrant looking at. It is interesting, in our discussions with contract providers the idea of collecting personal information is sometimes met with discomfort because as part of

building a trusting relationship you don't want to necessarily go in with an inquiry about every detail of someone's life but that is something that we will have to work through on the defense side. As people build their own systems that are case management systems, the degree to which they want to collect that kind of personal information it would help for those kinds of things to be a recommendation from this body but it has been something that in discussions has been on subject for a long time.

- 18:54 J. Potter It strikes me that we may have some reluctance with collecting information generally when we are also going to have at the conference the caseload workload study on timekeeping collection and selling that to providers as valuable along with this as bit of a challenge when there is no money to pay for it. I think we are going to have to be pretty strategic in both asking and getting the information that we need, both in caseload and workload and all the data that is suggested here.
- 19:32 N. Cozine Chair McCrea, Vice Chair Potter, members of the Commission I think you are right that caseload studies that require time documentation, especially if we try to do that statewide as a mandatory thing, would be met with incredible resistance. In the conversations that we have had there have been several entities that have expressed interest so ideally and hopefully we will have enough entities that are interested in pursuing it that it will make sense and that we can get further down the road without too much concern. But I hear what you are saying and I agree that we should be careful about how we approach that.
- 20:13 P. Ramfjord I just want to point out, that to some extent hopefully when we roll this kind of a program out we roll it out by saying that one of the goals here is to provide documentation that will ultimately lead to a more appropriate workload level and funding level for the services that people are providing.
- 20:32 N. Cozine Chair McCrea, Commissioner Ramfjord, members of the Commission, that is an excellent point and in Missouri at least they have said that the caseload study done there brought in the biggest single increase to public defense funding in history because they were able to demonstrate the workload and the need.
- 20:54 Chair McCrea Other comments? Thank you Nancy.

Agenda Item No. 5 Commission Best Practices

- 21:05 Chair McCrea I am going to ask Nancy to stay there to assist me with the next item which is action item five, our Commission Best Practices which is attachment five as of June 2016. I have an initial question; is this what we usual see which has the boxes that have been checked yes or no in the past?
- 21:30 N. Cozine Chair McCrea, members of the Commission, in the past we have had a more checklist style format. The last few, I think last year we included something like this because this is what was, this really kind of gets to the check boxes in the substantive way and it was we use to assess our compliance with KPM number two which is commission best practices.
- 22:00 Chair McCrea Okay, I just wanted to make sure I was tracking. So, my suggestion is let's just work through this and if any commissioner or anyone else has a comment on any of these we can discuss it and we can always mark it for further discussion for the retreat tomorrow if we need to. So number one is Executive Director's performance expectations are current and as of the ED position description was last updated in April 2011 and it is still current. Number Two; Executive Director receives annual performance feedback. Nancy's evaluation began in December 2015 and it was completed in March 2016. Number three; the agency's mission and high level goals are current and applicable. The mission and high level goals are reviewed annually for the Annual Performance Progress Report and the agency adopted new KPM's as of July of last year 2015. Commission members also received the Executive Director's 2015

Annual Report which addresses the current goals of the agency and includes a progress report on efforts to achieve those goals. The PDSC is concluding an extensive strategic planning process that began in October 2015 and will conclude in July 2016. What is our final target goal for the completion of that?

23:34 N. Cozine

Chair McCrea, members of the Commission, the target is July which is this month to review the draft that is in your materials and to make any last changes. I suppose we will probably have it on the October meeting or September for final approval.

23:54 Chair McCrea

Number four; the board reviews the Annual Performance Progress Report. The Annual Performance Progress Report is due in September each year. The Commission reviewed the 2015 report in September 2015 and will review the 2016 at the September 2016 meeting. Number five; the board is appropriately involved in review in agencies key communications. The Commission is asked to review and approve key agency documents, the agency's biannual budget proposal, Emergency Board submissions, request for proposals, proposed contracts, and rule and policy changes. Number six; the board is appropriately involved in policy making activities. The Commission is a policy making body for the agency. Its policy making responsibilities are set forth in statute. The strategic plan enables the goals and strategies the agency follows in pursuing its mission. So far, we are doing well. Number seven; the agency's policy option packages are aligned with their mission and goals. PDSC's mission is to establish and maintain a public defense system that ensures the provision of public defense services in the most cost efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice. All of the agency's policy option packages have been directed at achieving that mission. Number eight; the board reviews all proposed budgets. The Commission reviewed the agency's proposed 2015-17 policy option packages at the June 19, 2014 meeting, approved the 2015-17 agency budget request at the September 2014 meeting. The Commission will review proposed policy option packages for 2017-19 in June 2016 and approve the final budget proposal in the fall of 2016.

25:58 J. Potter

So what meeting will that take place, the final budget proposal?

26:06 N. Cozine

Chair McCrea, Vice Chair Potter, members of the Commission, the final budget package is due to the legislature in October. It is usually September or October, so we will have it ready for you in September.

26:33 Chair McCrea

Number nine, the board periodically reviews key financial information and audit findings. Throughout the course of the year the Commission receives periodic updates on budget developments and the agency's expenditure of funds. The results of all reviews are presented to the Commission when they occur. Number ten; the board is appropriately accounting for resources. The Commission approves the budget proposal for the agency that is then presented to the legislative assembly. The legislative assembly ultimately passes budgets for CBS, AD and the Public Defense Services Account. Funds are expended in accordance with budget requirements and in some biennia interim reports are prepared for the Emergency Board and the Interim Ways and Means Committee. Copies of these documents are provided to the Commission. During the course of the biennium, OPDS management reports to the Commission regarding use of budgeted funds. Number 11; the agency adheres to accounting rules and other relevant financial controls. The agency has been awarded the State Controller's Gold Star Certificate for achieving statewide accounting goals and excellence in financial reporting for each fiscal year since the agency was created. Twelve; board members act in accordance with their roles as public representatives. The Commission meets 8-10 times a year. The attendance and involvement in Commission business demonstrated by the Commissioners shows their strong commitment to public service. Meetings held around the state in conjunction with service delivery reviews often provide stakeholders their first contact with the agency. Commission members are careful to make a distinction between their roles as Commissioners and their other roles. Number thirteen; the board coordinates with others

where responsibilities and interests overlap. The Chief Justice's role on the commission and in selecting other members of the commission permits coordination with the Oregon Judicial Department. Public defense providers are consulted on a regular basis through the Public Defense Advisory Group, and the Commission has made them welcome at all of its meetings, has invited them to participate actively in those meetings and to provide input on a regular basis to the decisions made by the PDSC. The Commission coordinates with OCDLA to provide training, to receive feedback, and to research insurance and health care coverage for providers. Number fourteen; the board members identify and attend appropriate training sessions. The agency's General Counsel provides periodic training sessions for Commission members, related to changes in criminal or juvenile law, public meetings laws, and public records laws. In 2015, Commission members received a Commission member handbook, which compiles training and practical information for Commission members in one centralized location. Fifteen; The board reviews its management practices to ensure best practices are utilized. This self-assessment is the Commission's review of its practices, and sixteen; Others. The Commission may wish to define additional best practices for itself but to date has not added any additional standards. I know it seems time consuming to actually go through this out loud, but I feel that this is very important and it makes a difference to actually say it out loud as opposed to reading it. I think we are doing a good job for meeting our best practices. Chip?

- 30:15 C. Lazenby The only that I ask is that in number seven that you add the word 'quality' so that it reads 'public defense systems that ensures the provision of quality public defense services in the most cost efficient manner,' etc. so that cost efficient and quality balance.
- 30:34 J. Potter It is not in the statute.
- 30:36 C. Lazenby Yep, you're right.
- 30:38 P. Levy If I may, it has been pointed out in the past that this statutory mission statement is brilliant and I think was pointed out by Barnes who probably had a hand in writing it, but its cost efficient consistent with state and national standards of justice which call for quality representation. So, the quality is tempered and balanced by the...
- 31:07 C. Lazenby So are you lodging a legal objection to this sir, to my comment?
- 31:10 P. Levy I am saying that what you are wishing for has already been granted in the language that follows cost efficient.
- 31:19 N. Cozine If I may, Commissioner Lazenby and members of the Commission, interestingly when we get to the strategic planning discussion tomorrow, the mission was actually rephrased slightly to make it a little more precise and not a direct tracking of the statutory language. I looked back at past strategic plans and in the past, our mission statement was not a direct quote of the statute. That was a decision we made in our last strategic plan and I have proposed something different this time that does try to capture that quality piece as you suggest. So, that will be tomorrow's discussion. For right now though, I used the language in the adopted strategic plan because we are not in the stage in our strategic planning process to approve the new language. And you may want to have that adjusted too. This just tracks with what we currently have.
- 32:17 J. Potter I happen to agree with Commissioner Lazenby that the word should be in there in some form a little clear. When we were working on the statutory language the Commission was, and you are correct the Barnes was a leader in that, it was suggested that we put the word 'quality' in there and we decided not to because of the qualifiers following that Paul outlined even though I thought that the word should go in there. Then, I was challenged as to what the word 'quality' means and how do we define in. But, I still think we need to keep harping on the notion of quality regardless of what the statute may not say.

33:00 N. Cozine Commissioner Potter, members of the Commission, if I may just reed to you briefly the revised mission statement in the new strategic plan. The way it is phrased in the new strategic plan is 'The Commission ensures that eligible individuals have immediate access to quality legal services for all proceedings in which there is a statutory or constitutional right to counsel.' So, it kind of takes the same concept and put it into something that is a little more accessible to the lay reader and trying to put that quality concept into a single word. So, when we come to this discussion tomorrow I hope that...

33:40 J. Potter We can talk about 'quality' and we can talk about 'immediate.'

33:43 N. Cozine Yes. Throughout all of the discussions that we have had in the last almost five years now that I have been here, we talk a lot about quality and yet it is not in our mission statement and I tend to agree that it should be. I understand the historical reason that it is not but for your consideration tomorrow was can adopt it or disclaim it as you wish.

34:14 P. Levy Can I say another word about the best practices that you just went through. It is a good time to do this, it seems a little preemptory to be patting ourselves on the back but it is important to remember that, and I think I included this in the Commissioner's handbook that you have, that a governor's review of boards and commissions several years ago found that the majority of state boards and commissions could not answer yes to virtually any of these questions and this commission really can say that you satisfy all of these.

34:55 J. Potter It seems like we should be getting a platinum star rather than a gold star.

35:00 J. Welch I have a question. On item twelve, the last sentence, what does that mean?

35:12 N. Cozine Judge Welch, members of the Commission, I think it means that if you are, I know you are no longer doing Plan B work, but if you were in your Plan B work you would not assert yourself while you were sitting on the bench as a member of the commission capable of taking some commission type action when you were serving in your role as judge. It's calling for being clear in what your role is at the time and not confusing your Commission work with other activities that you engage in.

35:56 J. Welch How do we know that we do that?

36:00 N. Cozine I watch you very closely.

36:03 J. Welch I am not saying anybody is doing anything wrong I am just saying it is kind of mushy and I am not sure what it conveys. I am not against it.

36:13 N. Cozine Judge Welch, members of the Commission, I would say it certainly warrants discussion and this is the opportunity to identify that if there are times where it isn't happening, then we can make that part of the public record.

36:29 J. Potter It strikes me that my role is the one that is closest to mushy and how you determine whether or not I am separating my role is in part determined in how the audience and the providers are seeing my role and there has been some confusion in the past by those that do not understand that I am not OCDLA, OCDLA does not have a seat here and that I am a public member of the Commission. Having that reiterated periodically and having somebody call me or call the judge or call the newspaper on the fact that they are mushing those roles would be appropriate.

37:10 J. Welch I do mush them because I remind you on occasion that if we do have an open meeting that I can't come.

37:22 Chair McCrea Does that satisfy you?

37:23 J. Welch No, but I don't think a bleed and die type of issue. I just think that if this is for other people to read that they are not going to have the slightest idea what its talking about. Commission members avoid conflicts of interest, that is the point that needs to be made.

37:55 J. Potter Do you try hard?

37:58 Chair McCrea Judge Welch, would you like to make a motion to amend this?

38:03 J. Welch If people think there is a need to do so. I am not sure what it should say. Nancy, what about the idea of saying to avoid the conflicts of interest? Because I think that is really straightforward and everybody understands it pretty much.

38:22 N. Cozine I would be happy to add that.

38:24 J. Welch Then, I will move to do that. **MOTION:** Commissioner Welch moved to add language to the Commission Best Practices; Commissioner Stevens seconded the motion; hearing no objection the motion carried: **VOTE:** 8-0

38:29 (???) What was the motion?

38:31 J. Potter To add the language to say 'to strive to avoid conflicts of interest.' To change the last sentence to say that.

38:41 J. Stevens Commission members are careful to avoid conflicts of interest.

38:44 Chair McCrea So the motion is to delete the last sentence of number twelve and to replace it with language that says 'Commission members strive to avoid conflicts of interest?'

38:58 P. Ramfjord 'are careful to' to avoid conflicts of interest.

39:01 Chair McCrea 'are careful to avoid conflicts of interest.' Do I have that right? And Janet, you seconded that. Is there other discussion?

39:09 P. Ramfjord I would add between their roles the same ending language. 'Commission members are careful to avoid conflicts of interest between their role as commissioner and their other roles.' Or, 'when acting in their role as commissioner and in their other roles.'

39:27 J. Welch The friendly amendment is accepted.

39:35 Chair McCrea Is there further discussion? All in favor? Any other discussion about changes of language, concerns or questions? I just want to echo what you said Paul, because I don't know about other boards and commissions but I will say, since this really is my last meeting as chair, that having been on this Commission since the beginning, everybody that I have worked with on this commission has worked very hard and has taken our charge and responsibility very seriously and I know that from the very beginning in the first executive director we chose through the following executive directors there has been a dedication and a care for the citizens of the State of Oregon, for the attorneys who advocate for accused citizens and I am just very proud of the people on this commission and the work that we have done and the effort that we have made. So, I am going to give us a pat on the back, and not because we are just good people but because the Commission has earned it. There is my two cents. Now, do we need a formal motion?

41:33 J. Welch I am sorry madam chair but I have another issue. I don't know where performance measures are defined. I have been able to avoid that my entire career very carefully. Competence of

counsel is a very important element for the work of this office and therefore there must be some part of the work of the Commission. While I am not suggesting at this point that there is some deficiency there, it seems to me that that's an issue that needs to be identified. Whether it belongs or not I am not sure so I am qualified in my comment. There are certainly references to the word quality for instance but the watch dog is more of a watch dog. Qualification there sounds to me more like who you hire or who you pair with a defendant but then there's the issue of the Commission's and the Office's responsibility to identify and deal with lawyers who are not performing very well. If it doesn't belong here, that is fine.

42:56 N. Cozine

Judge Welch, members of the Commission, I think what you are hinting at is that perhaps in the future we should consider a key performance measure that does a better job of assessing the quality of services around the state. Is that right?

43:15 J. Welch

I said what I meant but the question is whether it is pertinent to this, I didn't know. We are not necessarily changing anything at this point. I think it is important.

43:34 N. Cozine

Judge Welch, members of the Commission, it certainly is important that we have a way to identify and react to situations where there isn't quality counsel and I think we do strive for that. We have our complaint system. Paul Levy and Amy Miller regularly investigate complaints that come into our office and take action. The action in our compliant policy, our compliant policy outlines the action that they need to take and they regularly follow that compliant policy and there are times when people are no longer allowed to provide services because of deficiencies in their representation. We don't right now have a measure for that that allows you to review the frequency for which that happens or the way that we go about it or the way that we investigate it. If that is something that the Commission wishes to see in the future that is certainly something that we can talk more about. I do think that the data direction we are heading in will give us more of a window into that and certainly the PCRCP gives us a little bit of a window into that because we are looking at the way lawyers spend their time in terms of meeting with clients and preparing for court hearings. Whether it fits into the Commission Best Practices, how it dovetails with this assessment of this Commission's work, that part I am not entirely certain of unless it was an addition. On number sixteen it says 'others, the Commission may wish to define additional best practices,' but I can think more of how that might fit in to assessing the Commission's performance. But, I am not certain off the top of my head that it would work.

45:30 Chair McCrea

The word 'competency' is of course a term of art because one of the things that we have been striving for, how do I phrase this? Let me step back. One of the issues that is going on in the federal system right now is what the criminal justice act should guarantee someone who needs a court appointed attorney. Part of the discussion that is happening is, are people entitled to a Cadillac defense or should they just get a Volkswagen defense? I, of course, tend toward the Cadillac defense because of the quality issues and because just what you talked about, Nancy, in the study that was recently done saying that when a person is listened to, when they can talk to their lawyer, when they understand what is happening, when they can ask the questions, then even if they don't like the result they feel like they are a part of it and they are not just a component of the system but that they are part of what is happening. I have concern about having a particular policy regarding competency per se because I don't want to see it become a one size fits all and be a lower standard than what we really want. I am talking off the top of my head now so this is not something I have been able to think out carefully to be able to express eloquently. What I would say is that from the beginning of this Commission is that we have sought to improve quality including competency in a number of ways such as creating a more transparent system, quoting Peter Ozanne our first Executive Director, so that providers knew what was going on, between different providers, between providers and CBS so it was not secret anymore. We have changed the contracting process. We have set up more and different standards. We have taken affirmative steps to go out into the field, as it were, to be able to not only see what is happening but to hear from different stake holders about what is happening in particular areas all with an eye to improving quality and competency. When I

say I am giving us a pat on the back, Judge Welch, I am not saying 'hey we are there, it's all good,' I just want to admit that we have come a long way and competency certainly is an important issue. I don't have a good way of phrasing it in a way that would capture it as I feel it should be captured in really encapsulating quality.

48:50 P. Ramfjord Let me just add one thing. As I read the third goal, 'the agency's mission and high level goals are current and applicable,' I think that that coupled with the fact that we are engaging in the strategic planning process and as part of that process we are actually talking about incorporating an idea of excellence or quality into the representation that the people who are funded through our office provides is an indication of trying to do just that. It is not written in in the same way but I do think of us as having that responsibility and that responsibility is built into the mission that we are trying to serve.

49:37 Chair McCrea Other comments or suggestions? Do we need a motion?

49:46 N. Cozine It is an action item Chair.

49:53 Chair McCrea I would entertain a motion either to amend or approve. **MOTION:** John Potter moved to approve the compliance standards as amended in number twelve.

50:06 N. Cozine Just to clarify, Commissioner Potter, I think what you are being asked to do is confirm that the Commission has met all of the standards, so the non bolded language are the Commission Best Practice. The bolded language is the explanation of how the Commission has met it or at least met it in pieces that meet that Commission Best Practice. I probably should have started with that. The non-bolded language are Commission best practices that are not established by this Commission but that are used to weigh the effectiveness of commissions statewide. In my view this Commission does do an excellent job.

50:58 J. Potter So the motion is to adopt the assessment that we are meeting the standards and best practices of the Commission. So moved. **MOTION:** Commissioner Potter moved to approve the Commission Best Practices document; Commissioner Welch seconded the motion; hearing not objection the motion carried; **VOTE:** 8-0

Agenda Item No. 6 Policy Option Packages

51:21 Chair McCrea Alright, Nancy and staff are going to move to the policy option packages, attachment number six.

51:30 N. Cozine Thank you Chair McCrea, members of the Commission, I would ask two people to come up at different junctures to assist with this conversation. The first policy option package is the Parent and Child Representation Program expansion, so Amy Miller.

51:48 J. Stevens Can I ask a question before we get into this? We see these and the amount of money is always just staggering to me. I don't want to sound awful but do we really expect this to happen?

52:10 N. Cozine Chair McCrea, Commissioner Stevens, members of the Commission...

52:16 J. Stevens Or is this an in a perfect world we would?

52:19 N. Cozine This is in a perfect world we would. I don't think it is realistic to expect, especially in this coming budget cycle, that we would be able to secure the amount of funding that is listed in these packages. Some other overview of information that I should probably note is that some of them are interrelated. There is a public defense contractor parity package, the number needed for parity there on contractor rate increases which is just over 19 and a half million, that number would go down if the PCR expansion were funded because the PCR expansion addresses both compensation and caseload. So, on the juvenile side it would actually resolve

some of those parity issues thereby reducing that 19 million number. There is a correlation there. It is not one that we could easily split out to demonstrate to you because there are several counties in that PCRCP expansion program broken into three separate categories. As we will talk about, our hope is that in this biennium we get one of those phases through the legislature.

53:37 J. Welch I am not an executive director, it is awfully warm today. It seems to me that in recognizing and acknowledging the potential savings, the PCRCP is a very important element of the proposal. That was something on my list of things to raise. I don't have a big speech about it but obviously if you take a court and you say 'we are not going to use these people any more, we are going to use these people and this additional money completely substitutes that sum of money,' the legislature might be more mildly interested in that.

54:21 N. Cozine Yes, and Commission members, the dependency task force report that the governor's office produced was finalized last Thursday and it will soon be on the governor's website. It does discuss exactly those savings and that will be a very big part of the discussion as we talk about why this should be a priority funding package. For today, this Commission doesn't have to prioritize these packages. At some point we will need to prioritize them and that will be part of the discussion. There is a lot of legislative interest around the PCRCP expansion because of the savings it creates downstream in the system. They aren't public defense savings, they are foster care bed savings and they are significant. Certainly, I agree that it is an important piece of dialogue.

55:09 J. Welch But they are public defense savings. You are not paying the lawyers who are doing the work now, unless, even if you are it is out of a different fund of money, a different pocket.

55:22 N. Cozine Right, for us there is an increased expenditure in the outset. So, we are investing more that is why there is a significant number there but it is the downstream costs that go down and in our two pilot counties, as you probably recall, we were actually able to eliminate an attorney position in both Linn and Yamhill counties because the caseload declined after we launched the program which we think is in part because of the program.

55:53 J. Potter I had just one other comment regarding Commissioner Stevens question, whether or not we think we will get this money and the answer always has been and I believe you are right this time, no we don't expect it but we do have an obligation to tell the legislature what is required to have a system that is fair and just and what is required to meet our mission statement in accordance with state and federal rules and regulations of constitutional statute. That is our obligation and I think that is what the policy option packages do. The legislature may and probably will not fund to the full extent and in that sense then we have not met our goals as outlined in the mission statement by not funding these policy option packages.

56:44 J. Stevens It is something beyond our control.

56:54 J. Potter It is beyond our control but we have an obligation.

56:56 A. Miller Chair McCrea, Vice Chair Potter, members of the Commission I am here to talk a little bit about the way a roll out of the Parent Child Representation Program could look. At the last Commission meeting several of you asked for a better description of what was contained in the policy option package and just wanted to know a little bit about how implementation could look. As part of our work on the governor's task force we were asked to both estimate the cost of a full and staged PCRCP roll out and what you see in the POP request is a request for full funding for the PCRCP program but contemplated through a three stage roll out. Included in your materials is just a document prepared which describes one way that a roll out could occur. As you can see I have taken the state and divided it into three quadrants roughly equally by caseload. Then I took each little rollout group and tried to apply some objective criteria to try and figure out where the deficiencies were and maybe the potential for making

some differences. I looked at the rollout groups based on readiness, based on need, and based on impact. The first rollout group, if you are looking at the graphs the bigger bars are the ones you want to be looking for. The first rollout group has a high need where the second rollout group has a high readiness and really a high impact score because it is the metro area. I don't want to put too much into this at this point. I just wanted to talk a little about how it would look. The way I built this was just with a spreadsheet so counties can be moved around and substituted and I don't think that today we are asking you to endorse any specific plan other than to think about how it might be able to look and how we might be able to apply some objecting measures to identify the best places to look first. One thing that I do think is important though is that at this point for the Commission to endorse the entire PCRCP request that is in the POP. I think later on we will have more information from the governor's office and from the legislature and really about the political climate. The funding that is available, we might need to look out a (inaudible) rollout, more staged approach at this point, I think it is too soon really to make that determination. As Nancy said at this point there is a lot of support for the PCRCP in part based upon the cost savings that Judge Welch pointed out. That was brought up throughout really since October of last year, talking about this model. I think the one thing that we hope for is to continue to support the program and even if the funding isn't available, as Commissioner Stevens pointed out, the idea that the legislature commits to some sort of a rollout every time so that even if the money isn't there this time that hopefully over time it will follow. I would be happy to answer some questions if you have them, knowing that in September we will be talking more about this.

- 59:55 J. Potter So, did I hear you say that you want this Commission to approve this concept of PCRCP and the rollout that is outlined here?
- 1:00:05 A. Miller I think at this point it is too soon to tell whether it is going to be a roll out or over three sections or four sections. Like I said this is one way that it has been contemplated. But, I think what would be helpful is for the Commission to endorse the whole funding amount that is in this policy option package at this point and we should have some more information about whether a rollout and what it looks like if it was realistic.
- 1:00:28 J. Potter So, you would be arguing that we should have a motion that says that we support the full rollout amount of \$34 million, as a PCRCP? \$35 million?
- 1:00:46 N. Cozine Commissioner Potter, members of the Commission, I think that for today what we are asking the Commission to do is approve all of the policy option packages as drafted in their total amounts. This is similar to what we did at the last biennium. We approved the actual need. As we approached legislative session we were asked by LFO to take that full amount and prioritize and so that will likely be January when we have a much better sense of what things are looking like.
- 1:01:20 J. Potter That clarifies it for me. I thought we were going to through a prioritization process early on here.
- 1:01:27 N. Cozine Not today. One of the reasons it is in three phases is because that was part of the work done for the governor's task force. We were asked to break it into chunks so that if it isn't fully funded in the first biennium that we have a path forward that is pretty clearly identified.
- 1:01:47 J. Potter And those are your phases?
- 1:01:48 N. Cozine Correct.
- 1:01:50 C. Lazenby What criteria did you use to figure out the groups, the lumps and what did you use?
- 1:02:00 A. Miller Commissioner Lazenby, like I said I tried to use some objective measures because I really wanted to look at where the need was the greatest, where this program would have the

greatest impact, and what counties were in a better position to move forward. Something I have learned from doing this the past couple of years is that it is really essential that there is a collaborative process already established within the county that is endorsed and supported through the juvenile court improvement program, for example. So, one of the things I looked at are which counties have functioning juvenile court improvement teams so that there was a place to talk about how to improve the quality of work that is done. So, I tried to identify those three areas, need, impact and readiness. I also looked a little bit at disproportionality, that is top of page two where I talked about that, that was one other thing I wanted to consider. Unfortunately, that data is not available for all counties so that made it a bit difficult but I thought it was important information for the Commission to be aware of. I looked at both disproportionality for African-American children and for American- Indian and Alaska Native children.

- 1:03:10 C. Lazenby Some of those final numbers, is it African American children in Klamath lead the list at 5.16. I mean, that's a pretty small sample compared to Multnomah County at 1.8, right? If you are looking at impactfulness around those issues, that is kind of a misleading guide, isn't it?
- 1:03:30 A. Miller It is. I don't want to say anything misleading, this is just the data that is available, but it is one data point to consider. But, when you are talking about impact you are talking about Multnomah, so when I assessed the counties where the impact would be greatest I was looking at where the largest number of children in foster care is. One of the things that has come out of this program is that there have been fewer children in foster care in the counties where this program is operating. When we look at impact I was considering things like size of the county and numbers in care.
- 1:04:00 P. Ramfjord Just one other question on that. When you, I understand you looked at the need of the county, the readiness of the county, and the potential impact being the beneficial impact. When you calculated numbers for each of those elements did you then weight them identically or did you put some judgement into that like for the reasons that Commissioner Lazenby is suggesting, or how do you, I am just trying to get a better sense of how you worked that out.
- 1:04:28 A. Miller Did I weight them or put independent judgement into them?
- 1:04:31 J. Potter I mean, in other words did you just run the numbers on a spreadsheet and see okay, this ranks highest here, this ranks highest there, this ranks highest here, and just weight them that way, or did you actually say 'okay this ranks highest here but the sample size for the population is small, I don't really know that the impact will be that big,' or things like that. That is what I am getting after.
- 1:04:53 A. Miller Commissioner Ramfjord, to answer your question, when I first tried to put the counties into buckets I used a bit of independent judgement because I thought about what I could manage, what made sense and I wanted to put geographically close counties together and I didn't want to put all the big ones in one bucket and all the tiny ones in another. So, I used some independent judgement at the beginning. The data that you are looking at as not weighted in any way, it is just actual data. I think one thing, I played fun with numbers a bit, and one thing I looked at was what if you look at the counties where the scores are the highest overall. The highest need, the highest impact, the highest readiness, what does that group versus a very lower group. I didn't present that to you today, but I think I can play around with that and look at it. So, there are other ways to go about doing it, this is just one initial snap shot of how I pieced it together.
- 1:05:41 P. Ramfjord I just anticipate that we may well have to make these kinds of decisions and I think that it would be beneficial for the Commission to have a better sense exactly how that is done. I think you should exercise some judgement. I am not suggesting that it should be purely numbers, but I would want to understand what the judgement was that was being exercised if we are asked to make those decisions down the road.

1:06:09 A. Miller Sure, that makes absolute sense and I can do some of that and get back to you.

1:06:14 Chair McCrea Other questions for Amy? Thank you. I assume, Nancy, that we are going to go through all of these?

1:06:23 N. Cozine Yes, it is pretty lengthy and if anyone needs a break.

1:06:27 T. Christ I am new to this budget request process, so forgive me is this is a stupid question, but I understand these policy option packages for additional funding requests are on top of our general budget.

1:06:42 N. Cozine Correct.

1:06:44 T. Christ Okay, how is it that something ends up here and not in the general budget, for example the public defense parity? Why don't we put that in the regular budget request because it seems to me if you identify it as a wish list that the natural reaction to someone who has the money and is doling out is 'well this is only a wish list, I am not going to give it to you.' Whereas if it was in the regular budget, it would be harder for them to say no. That is to my naive thinking. Why is it here and not elsewhere?

1:07:20 N. Cozine Commissioner Christ, the way that we calculate the base budget is a formula, essentially, that the legislative fiscal office has approved. So, there is one formula that builds the base budget for OPDS, the office, and there is another formula that builds the base budget for the Public Defense Services Account or the Professional Services Account, as it is now called. There isn't flexibility there to add new money and LFO does that intentionally because otherwise agencies would build in new funding for projects that they wanted to launch. The idea for the Legislative Fiscal Office is that they will fund you for what you are currently doing. So, your base budget will allow you to proceed as you have been with some inflationary adjustment, but it won't allow you to do more than that. To get the overlay for additional funding for a particular program you have to ask, make the request and get an appropriation for that purpose.

1:08:25 T. Christ So, then it becomes part of the base budget going forward? You can't quibble with that formula as you were describing, you have to accept that and get something as an option and then it becomes routine and then you search for additional options, so you are moving from this pile to that pile over time?

1:08:46 N. Cozine Correct, so the PCRCP counties that have already launched are now part of our base budget and those will get built in. We can continue with the PCRCP in the counties that are currently funded. To add new counties requires additional funding and the legislature would have to make that appropriation. But, you asked another question which was can you quibble with the way that this base budget is built. There is a way, there is a process to go through to adjust the way that mandated caseload, which is the big piece of base budget, the way that that is built. But, that is a long process. But, it is one that we may engage in with LFO. Of course, whatever it is, no matter how you adjust that the intention is that not fund anything new, that it still be a formula that provides funding for just what you are currently doing.

1:09:39 J. Potter Can I give an editorialized answer to Commissioner Christ's question? From day one, public defense was underfunded in large measure to the great lobbying efforts to the Oregon Association of Counties; they passed county public defense services off to the State. They told the state 'what this is going to cost you state,' and they underestimated that cost dramatically. That became the base from day one when they added up all the costs it was a low number to begin with and we have never caught up. We have never caught up with the DAs, with the AGs and that is what we have been doing for the last, ever, trying to catch up. The only way

you can do it under the State's budget structure is to get these policy option packages engrained into the base budget and that is a tall order.

- 1:10:40 C. Lazenby But, if I hear you right though, with these groupings A, B and C, if the legislature decides they only have money for group A, then we have got to come back with a new pop to do the B roll out and to do the C roll out next year. So, theoretically, if you do it in order, then group C might not get rolled out until 2021.
- 1:11:07 N. Cozine Commissioner Lazenby, that is exactly correct. There is discussion, at least among the dependency task force group that legislation will be created that would potentially call for a particularized roll out schedule. So, we are still working with the governor's office on that and we will have more to present to you as we learn more about how that might work. We will be a part of the legislative drafting process. We will be a voice in the midst of voices but there is a chance that in addition to our policy option package there will actually be a separate legislative concept issued by this dependency task force that would complement or even supplant this policy option package.
- 1:12:00 C. Lazenby My concern is, I like the Parent Child Representation Program model, but I would hate to see a reality of the map I see in front of me which is that A only gets adopted and then we go through the process of doing implementation there and then when you get to the largest counties in group B where the need really is effecting more people with the need to do this program people say 'it doesn't scale up, it should have been in a pilot piece so we could do some things to show how it could work in the most populace areas of the state.' So, I am wondering how we avoid that by putting the three most populace counties in group B.
- 1:12:57 N. Cozine I would just say that there is flexibility built in here. It doesn't have to be group A as listed, group B as listed, and group C as listed and I will let Amy explain a little bit more about how those groupings came about, but there is still flexibility to move that or some of those pieces and switch in one county for another county and this Commission's input will be important as we move through that decision making process. If we do have to make some adjustments we will want to work closely with this Commission and the legislature in making a determination about what makes sense.
- 1:13:42 A. Miller Thank you. Commissioner Lazenby, if I understand your question, you asked partially about scalability and partially about the delay. I am mindful of the lessons that, I work closely with folks in Washington and they administered their program very similarly to this, so I talk to them pretty regularly and I am mindful of some of the lessons that they have learned. When they began 15 years as a pilot too and we talked about over the biennia getting bits and pieces and that is what they have done. They are at 80% of the counties in the state at this point. They rolled out King County out just last summer. I am mindful of that because when they first launched the program they picked a relatively small county and a bigger one recognizing it was a pilot they were going to try it and see how it would work. Slowly but surely they grew in terms of population size, recognizing for them that King County was the most complicated, granted I don't think the need was as significant there either. I am mindful though of that because the counties in group two, Multnomah and Washington for sure, have a much larger number of providers so recognizing that is going to be administratively complicated to handle. The counties in group A, however, Lane County which has a high need and high impact and a relatively high readiness doesn't have the complexity in terms of the provider groups. However, both Land and Deschutes counties have more than one provider, more than one contract provider and that is different that the three counties that we are in now where there is just one contract. So, I keep an eye on these three contracts with nearly 20 lawyers and that is about it. I think it is important to think about scalability and making sure that it works well and taking sort of the next baby step makes some sense in that. I am not endorsing these three groups necessarily, like I mentioned before. I picked them because they are about equal in terms of caseload and they are close together. But, I think it is important to know that there are some other factors to consider and when that time comes to

have that conversation I would like to do a little bit more of that. Does that answer your question?

1:15:58 C. Lazenby

Yes, it did.

1:15:59 J. Welch

What is remarkable about this is that the cost in group A and group B is the same, or for discussion it is very close. It surprises me. You're saying that for the same amount of money you are going to have more impact if you do B, so it is hard to understand why you are not doing b, why B is not A. Because you said there will be more impact from the program if we hit these big counties.

1:16:34 A. Miller

Judge Welch, thank you for the comment. I don't know if I am picking one over the other, first group, second group, third group. I am just putting them into three groups at this point instead of one versus the other. I think in the first group, roll out group A, the thing to keep in mind is that the outcomes aren't as good. So, Tillamook is spending a lot of time in care, they have a higher caseload in those counties, so that is something to consider. In the second group the impact, meaning these are the counties where they have a large number of children in foster care and the largest caseload in those counties, that number is great but their outcomes are actually pretty good in those counties partially because their caseloads aren't quite as high. Does that answer your question?

1:17:25 N. Cozine

I think one further clarification is that although these are listed as phase one, two and three they're not in priority order. This Commission may actually be the ones making the determination about which one is one, which one is two, which one is three. We are just not there yet. We have broken it into those chunks for purposes of illustration and for purposes of administrative ease but there is flexibility here still. More to come on that.

1:17:57 Chair McCrea

Anything else on the PCRCP?

1:18:00 A. Miller

If I can just make one comment. Unfortunately I was not at the last Commission meeting. I did of course read the minutes and what I understood was that you had questions could possibly work, how these three groups could work and what it could do and this is one way to make that happen. I've got some feedback from you about exercising some independent judgement and about looking at the places where the biggest impact could take place and I think it makes sense to try and go back and try to massage these a little bit and it is easy for me to do that. This is a way to show you how this could possibly manifest itself which I understood to be some of the questions that you had in the last meeting.

1:18:38 J. Potter

It looks to me like it's almost one third, one third, one third in terms of caseload and that is what you have done. You have grouped them, however you arrived at that, you ended up with impacts of one third, one third, one third and so it really is going to be up to the Commission and for whatever reasons, big count small county, big geography, small geography, we are still going to be talking about the same number of people in each one of these. The same number of kids served in each one of these groups. Is that accurate?

1:19:07 A. Miller

I think that is accurate at least if you keep them in these same buckets.

1:19:13 C. Lazenby

I think the complexion of those thirds is going to be different and I use that word purposefully.

1:19:20 J. Potter

Sure, I understand that.

1:19:24 N. Cozine

I think it is fair to note too that almost every provider in Multnomah County where we have the largest amount of diversity would love to see this there first and you are probably going to hear about that when it comes time to rethink these. One thing that Amy talked about, the readiness factor, is there a juvenile court improvement program where people are regularly

going to get together and talk about how it is going to improve their system, that helps us in our conversations with system changes that need to be made in order to accommodate some of the program goals. Another factor of readiness is whether or not our contract providers are ready, willing and able to take on this new model. So, that will be another piece of the conversation when it comes time to prioritizing. Of course, if the legislature decides that during this legislative session they can give us about 36 million dollars to do the whole thing then we will just rolling out and we will talk to you even then about what the priorities ought to be in terms of finding out funding which counties first. So, we will be having that discussion either way. But, for the purposes of today we are hoping that you will approve the entirety of the package knowing that there is some potentially hard work to be done in terms of prioritizing as we move forward.

- 1:20:51 J. Potter I am prepared to move to that, that we adopt this 35 million dollar budget as a policy option package knowing that there is no particular priority order that we are agreeing to, we are just agreeing that that number would allow for the implementation of these programs in all counties and that is all we are doing for today. That would be my motion.
- 1:21:19 P. Ramfjord Do we want to have a motion on a single item or do we want to move on all of them?
- 1:21:26 Chair McCrea I thought we were going to go through all of them and then have the motion but if you want to take them separately Commissioner Potter, we can do that.
- 1:21:33 J. Potter I am only suggesting that in that we are getting them presented to us in little chunks and we can bite them off in little chunks.
- 1:21:41 Chair McCrea Is there a second? **MOTION:** Commissioner Potter moved to approve the PCRCP policy option package; Commissioner Welch seconded the motion; hearing no objection the motion carried: **VOTE:** 8-0
- 1:21:54 Chair McCrea Okay, so that one has passed. I now suggest we take a ten minute break since I have been getting kicked from the spirit of our former chair, Mr. Barnes, and come back and we will go on with the rest of them.

Back From Recess

- 0:13 Chair McCrea Okay, we are back. Let's go onto the second POP, Public Defense Contractor Parity.
- 0:21 N. Cozine Members of the Commission, on the Public Defense Contractor Parity Angelique and Caroline worked to put that one together. There are a few items that I want to highlight; again noting that the number for the contractor rate increases would be reduced if the PCRCP expansion were to pass. The other thing I wanted to quickly draw your attention to was on the next page. Caroline will talk about the Oregon demographics. There was some discussion on this little handy chart last time. The other piece is the 2016 salary comparison for DAs and PD. These are not management positions. So, we got this information most commonly from bargaining agreements at the county level, some of them weren't bargaining agreements. Something that I want to highlight quickly is that we have actually made some progress since the last biennium on this. You will see that Jackson County is no longer on the list. I want to be clear that while by the numbers they are at relative salary parity, this chart only compares salary and no other compensation and no other resources. We have also in looking at parity have only looked at salary and I just want to note that the highest priorities are those entities that are still so far apart on the salary scale. I think this Commission has endorsed that concept historically but I want to call it out in case you have some concerns with that approach. Caroline and Angelique will talk a little more about the details of the parity package and how it all is configured in the dollar amount.

2:39 C. Meyer Good afternoon Chair McCrea, members of the Commission. What Nancy is handing out is a document included in the June materials. Nothing has changed but we thought it would be helpful for you to have it in front of you as we are talking about the different pieces. The other charts are in your current materials.

3:03 A. Bowers We are going to skip down to the increased hourly rate portion of the parity POP. The combination, I have this listed out as each type of provider, but the total portion of this POP for the hourly is 14.7 million for this request. What we did this time was look at market rates and also DOJ and their available hourly rate for attorney and investigators and try to get our providers to the same or as close as we could get and that is where those rates are coming from.

3:48 P. Ramfjord One question, is the DOJ billable rate agency clients for services?

3:55 A. Bowers Yes. That is the 175 that we are trying to get the capitol contract attorneys too, that is the DOJ billable rate.

4:05 J. Stevens So if you read capitol contract attorneys 100 to 175, you're trying to raise from 100 to 175 or you're talking about a range of raises, some of which will be 100 and some of which will be 175?

4:19 A. Bowers Their current rate is 100, so we would increase it to 175.

4:21 J. Stevens So, you're going to 175. Can I make a suggestion for clarity that next time you write to say 'to 175 from 100?'

4:30 A. Bowers Yes.

4:31 J. Stevens So you put the lower numbers second.

4:34 A. Bowers Okay, and each one of these that is what it is; the first rate is the current rate and the second rate is the rate we would move to.

4:41 J. Stevens That's a mix of my two jobs, just so you know. Do you see what I am saying, Nancy?

4:52 N. Cozine I do and I also wanted to note that there were some areas that we simply could not build in a number that equaled the DOJ rate. For example, DOJ investigators are billing agencies at 97 an hour. 96 per hour is the DOJ billable rate for investigators. It's just too hard for us to climb to that amount in one fell swoop. These amounts were while we did look at what DOJ was charging, we also looked at what was happening in the private sector and so some of the increases aren't as significant. But, again, I think that is something worth noting. When you look at private sector, we found most of the billing rates for investigators to be in that 40 to 50 dollar range. So, that is where we landed. Again, this is one where the Commission told us it need to be higher to try and match the DOJ rate we would take that instruction, but this is our recommendation when you look at all the factors that we looked at and considered for your consideration. Any questions on the hourly rates?

6:18 J. Welch Yes, I do. A nice round number is all I am looking for here. To what degree are individual private counsel the source of criminal defense in Oregon? What percentage of the total? My sense is that it has steadily decreased over the years, but what are we talking about here and in any way that you can answer that, it is not a trick question, I just want to have a sense of that.

6:56 N. Cozine Right, only about 2.5% of the caseload is covered by hourly attorneys. Most of it switched into the contract model that does not involve an hourly rate. That statement excluded death penalty cases.

7:10 J. Welch Is there anything about the people that you pay in this category geographically, are we talking about very small towns?

7:25 N. Cozine Mostly it's conflicts. In most instances it is, and Caroline speaks of this, it's where the contract providers all of them have conflicts and we have to find someone else to do the work.

7:39 C. Meyer That is certainly accurate. Commissioner Welch, it does tend to be in many of the smaller counties where when there is a conflict there isn't someone close by and you have to pull. What we are finding is that in order to get these attorneys to take these cases we have to offer them, it is difficult to say. We have to pay them to do the work. Sometimes it is other contractors and we give them additional contract credits as a way to compensate them, but with hourly providers it is becoming more and more difficult to get attorneys to work for this hourly rate. It really is to cover those conflict cases where we must have someone there. We get calls at 11 o'clock in the morning routinely for a case that they are going to arraign in the afternoon and we have got to diligently find someone. It is much easier to find someone when we can offer them a reasonable rate.

8:43 Chair McCrea Other questions?

8:45 T. Christ Yeah, I assume that this request for parity is perennial and is there, what objection to you get to it? Is there some philosophical objection to paying the same amount to lawyers who are trying to keep people out of prison as the ones who are trying to put them in, or is it simply that it is too much money and they aren't going to pay? Is there some philosophical objection to this?

9:16 N. Cozine Commissioner Christ, members of the Commission, I think that we have heard in recent years that it is very important that parity be reached but that there simply isn't funding. I think that perhaps other members of the Commission can talk more about historically what the various positions have been. My understanding is that it has been a long and tortured dialogue.

9:45 J. Potter One of the problems, I believe, is that the state funds public defense and the prosecutors are funded by individual counties. If the state funded the prosecution chunk in total and they funded the defense in total and they funded the judiciary in total, which they do, then I think the argument would be much clearer to legislators and something would be done about it. You would have such disparities that they could not avoid doing something about it. Now they can.

10:20 C. Lazenby And there has been, I mean we can talk off line and away from the microphones about the tortured history of this but there has been a breakthrough I think in the last four or five years and in a bipartisan way in the legislature looking at those disparities where I think the data that was presented last time or the time before last showed that an entry level prosecutor was making more than the most experienced public defender that was out there and everybody could see that it was unjust. We actually got money earmarked for public defender salary increases to try and remedy that and we still have the battle of the budget. But, at least it is not the uphill steep cliff face that we have to climb up 20 years ago.

11:15 T. Christ It sounds to me like it's all money driven. Nobody is suggesting to you that, in this fight between the prosecutor and the defense we are going to handicap one side.

11:29 N. Cozine That has not been the over discussion. I would say that in recent years, the real tendency is to express the value for the public defense function and a recognition that when it is underfunded that people do spend more time in prison than they ought to be and there are wrongful convictions and there are more children in foster care than there should be. But...

11:57 T. Christ All of which has costs too.

- 11:59 N. Cozine Right. So, our ability to connect those dots in a real time fashion like with the Parent Child Representation Program, it's really helpful. It's helpful for us to be able to say 'here's a county and this was their use of foster care beds before the program and here it is after the program' and then to have stakeholders from the community talk about what changes they have seen. It helps illustrate the value in a way that I think hasn't been done in this state previously. I know there have been a lot of discussions about the value of public defense but that makes it very concrete.
- 12:34 C. Lazenby I think credit goes to Peter Ozanne when he was executive director it really started us generating a lot of quality metrics within the system so that we could point out things like the cost savings that you are pointing out. So, there has been kind of a seed change there.
- 12:52 N. Cozine I would also add that nationally there has also been a lot of discussion around the value which is very helpful to us as well.
- 12:59 P. Ramfjord I would say that nationally there has been a discussion that the federal system has cleaned up its act a bit but if you still look at the state level compensation, you can go online to the National Association of Criminal Defense Lawyers and they have a listing of the average wage from state to state and they still are not where they should be. So, there is a cultural bias that we are overcoming and I think we have done a really good job overcoming it here and are continuing to do that but I don't think you can say that there isn't such a cultural bias, unfortunately.
- 13:44 C. Meyer If there are no more questions on that piece then we will talk about the contractor parity with DAs. In June we talked briefly about this. Obviously, we didn't have a number and we do now have a number. We did go back and update our demographics chart on the backside of the POP document. We added a column for the median household income. We felt that was an important factor to include. Then, in response to some of the questions that you had, Chair McCrea, about the non-management DA's salaries and how we came up with our parity number, we included it. In June we just had the elected DA column, so on the far right we included the management which is essentially their chief DA position and then the non-management salary scale and that is what drove the chart that you see for parity on the 2016 salary comparison for DAs and PDs. I am happy to answer any questions you have about the demographics but it is essentially the same chart as last time but with those updates. Again, this is largely what drove our comparisons. The groupings that Nancy provided you is just for context when we talk about who was compared to who, those were the groupings. I will give you a minute to look at that. And, although we obviously needed to compare all of our counties, for this particular document we included those counties that have a public defender. Questions on that? Surprises? Conclusions?
- 15:57 Chair McCrea The graphics are graphic, Caroline.
- 16:04 C. Meyer I think the salary comparison graph might be more telling when you then take those numbers and put it into a graph and see what it actually looks like, how far behind some of these counties are. I wanted to point on that on the 2016 salary comparison, they are in alphabetical order. So, if you are wondering why we started at 11% and then we have a 3% in there, they are simply in alphabetical order. The further you get to the right, the larger the disparity is.
- 16:43 J. Potter And this is good information for prosecutors. If I am in Deschutes County and a prosecutor and I am seeing the median house price is about the same as Portland and I am being paid considerably less than Portland as a Deschutes county prosecutor, this is good information.
- 16:57 J. Stevens I want to point out once again that Zillow says its one number and the number that we are using in the newspaper is about \$20,000 higher.
- 17:05 J. Potter Even higher.

17:07 C. Meyer

It is true. The numbers do change and I had a contractor challenge that and it's true. We may agree that the Zillow numbers are not the best numbers but at least they are all from Zillow. So, if someone believes that their county is not fairly represented it's that all of the counties came from the same source. I did want to point out that Douglas County is the only county on here listed at, your chart doesn't have a percentage but you can see the disparity is not as high. Our focus is on those that are above 5% behind and so every other county on this list is more than 5% behind and as I mentioned the further right you go you get into the high 40% disparities. So, we show Marion County as almost at 50% behind and then Multnomah and Washington are both, well 46% for Multnomah and 44% for Washington. So significant disparities still exist and our priority is trying to close those gaps to the extent that we can. So Douglas County is not included in the parity POP although they are included in this slide. We do believe that those that are under 5% that we can help with other increases at the current service level that Nancy talked about earlier. We have made this very clear, we have had conversations with all of the counties that are not included in the parity POP to explain to them why, that when we have done the comparison that they are close enough to their DA that we can't in good conscience include them in a policy option package where we need to reach parity for counties that are 50% behind. That doesn't mean that they won't likely get any increase, it is just for this particular piece of the budget that they are not being included in. They seem to understand that. Some have acknowledged that they are at parity and some have acknowledged they are at parity but the DAs are going to get an increase. We recognize that and we have told them that we will continue to evaluate this going forward. One of the things you will notice on the bottom of the back of the POP summary, the list of counties that are not included has grown which means we have made some progress with the funds the legislature gave us. We have more counties at parity this time than last time which is a good thing. We also may have counties, for example Lincoln County; they were at parity last biennium and are no longer at parity. I am happy to point out the counties; I can tell you which are the new counties if that would be helpful. We almost doubled; I think it went from 9 counties listed last time and we are at 18 counties this time that are listed as being at parity. I am happy to answer any questions about that. This is getting into the weeds but we certainly want to answer any questions you might have.

20:37 J. Potter

Can you talk about Marion County a little bit and the disparity there? The disparity is huge, but also the difference that where somebody starts to where somebody ends in Marion County is the smallest of all the graphs.

20:52 C. Meyer

Yes. I had a conversation with Jessica Kampfe following the last Commission meeting and you will likely recall that Jennifer Nash went on the record at the last meeting asking about the possibility of being compare to Multnomah County. We did that, Angelique and Nancy and I spent a lot of time going back through the demographics to make sure we were making as accurate a comparison as possible. It became pretty clear that Multnomah, Washington and Clackamas really are in a league of their own. I mean that not only in the sense of how far behind they are but also in terms of their demographics. When you look at the demographic chart, there is no comparison between Salem's numbers and Portland. However, the conversation I had with Jessica was about her concern with recruiting and retention and I asked her if she would document her challenges because I felt it would be really helpful to the Commission. I know the Commission hears from some of our providers if they are having difficulty with recruitment and retention. My sense from what I have heard from all of you is that it would be more helpful to actually have that document, the document that says 'we are posting and not getting enough applicants, we are interviewing and at last minute they take a job in Portland,' because those are her challenges. They are losing attorneys to Portland because they want to live I Portland. We have that challenge in our office and the conversation that she and I had was that one would expect that if the Marion County DA was having that problem that then they might pay higher rates. But, really we can only compare the Marion County PD with the Marion County DA. However, in further grouping we tried to further condense counties where it made sense to. So, this time around we grouped Benton

County and Marion County with Lane County which actually provided an additional increase of about three or four percent for both Benton and Marion County. So even though Marion County can't be compared to Multnomah County at this point, they are going to see an increase by being bumped into the valley county with Lane County.

- 23:17 J. Potter I am still back on Marion County though. How is Jessica recruiting anybody if she is starting just under \$50,000 and topping out at \$65,000 and the DA's office is topping out at \$125,000? How does she recruit anybody?
- 23:42 C. Meyer I would have to say that she is pretty new in her position. I know that Billy Strehlow, the analyst for Marion County, has spoken to her. One of the things that we have learned through this process is that it makes a huge difference if you have a lot of lawyers at the bottom of your scale or more lawyers at the top of your scale and I am not really clear on where her lawyers are at. I think that is her concern is that it is going to become more of an issue for her as she goes to recruit new lawyers.
- 24:20 J. Potter They are all at the bottom is the answer.
- 24:23 N. Cozine Right, they are all at the bottom because we did our service delivery review about a year ago and all the lawyers but one or two were brand new to the office and many of them brand new lawyers, so her lawyers are at the bottom of the pay scale generally speaking, but in the future it sounds like she will have a bigger problem as they gain experience she won't be able to keep them unless she is able to fix that top end of the pay scale.
- 24:50 C. Lazenby I think there's also, John knows it well, there are people who are doing defense work not because of the money but because they believe in it and that has always been an inhibiting factor in trying to get more money into the system because in some corners there is a recognition to people that are going to do criminal defense are going to do it anyway because they believe in it so therefore you don't have to compete with dollars. I think that is becoming different. I think another aspect of this pay parity issue for us to consider going forward is it can help us solve this greying of the bar that we keep wrestling with. If we can end up with greater resources and more comparisons, equitable comparisons, to Multnomah County and other places I think we might find more people places outside of Multnomah County and younger people that start to get that experience too because the pay will support it. So I think that pay parity is a part of that attacking the greying of the bar that we wrestle with from time to time too.
- 26:04 P. Ramfjord One other question about the data, Douglas County is interesting and I am wondering if the other counties where there is a smaller gap are similar in that it's both true that the pay for the public defenders is higher than in any other county but the pay for DAs in lower. Is it typically that kind of combination or is it typically you get the parity primarily because the pay for prosecutors is lower and a little bit because public defender pay is higher. I am just kind of curious about that, if you know.
- 26:48 N. Cozine I would say that is very true and if you look at the counties that are excluded, many of them are eastern counties where the pay for prosecution isn't terribly high and where there are actually very few lawyers and the contract administrators ability to stretch that contract dollar to get to parity is just much easier when you have three to eight lawyers than when you have 40. It is those counties where the DAs have a more, I hate to use the word 'reasonable' because I don't think that's the right term, but reasonable in the economic sense not in the rightness wrongness sense. If the pay scale is lower it is easier to match and if there are fewer lawyers then it's easier to match. So I think that's what it is when you see our rates, we have regional rates but they don't differ so wildly between the regions that they are still relatively similar and one dollar in Douglas County goes much farther than one dollar in Multnomah, Washington and Clackamas. And, I do think that as we move forward with this pay parity conversation, one of the things that you heard during the last meeting from Tom Crabtree was

that if the Commission was given parity dollars and not the complete package, this Commission should adopt a strategy of getting everyone 50% closer to parity. What that would do is that it would make it such that Washington and Multnomah are still 20% behind while Coos and Deschutes made it to about 10%. If we get some funding on the parity side, this is what will be the struggle for the Commission. Last time we made the decision to try and get everyone up to a baseline of parity. So, we are going to try and make it such that no one is more that 25% behind. What is the right prioritization? Again, we don't have to decide that today. We may never have to decide it but if the legislature does fund a parity package but only partially that will be a question we have to wrestle with.

- 29:08 C. Lazenby Isn't part of the thing in Douglas County is their lack of ONC funds that not only where their DA is a state official but all the deputies are county employees so it is the county budget that has to pay for them and Douglas County has been one of those counties that has been hit very hard by the lack of ONC funds and so rather than this rising up to parity, it looks to me what happened is they just lowered what they paid their DAs.
- 29:33 N. Cozine Everyone is being held back.
- 29:34 C. Lazenby Everybody is being held back so it looks like parity is being achieved but really they are just cutting DAs salaries. Am I wrong with that or?
- 29:43 N. Cozine I haven't looked at the Commission meeting minutes in Douglas County to determine whether or not there's been a discussion about adequate pay for the prosecution. That is certainly something we could look at.
- 30:00 C. Meyer I was just going to add that I did have a recent conversation with Dan Bouck from the Umpqua Valley Public Defender as a result of this document coming out and he acknowledged that they were reaching parity and he believes the DA may have just received another like 10% increase was his comment; we don't have numbers to verify that. I can't tell you what would've caused that particular increase because that is not necessarily the increases we are seeing from other DA's offices. Other questions?
- 30:39 Chair McCrea I would entertain a motion on this pop. **MOTION:** Commissioner Ramfjord moved to approve the policy option package for trial level public defense provider pay increases; Commissioner Welch seconded the motion; hearing no objection the motion carried: **VOTE:** 8-0
- 31:01 Chair McCrea Number three, the statewide case management system.
- 31:14 N. Cozine Policy option package number three is for a statewide case management system. This policy option package would allow us to offer to all public defense providers a case management system that would be configured to meet our reporting requirements. I will say two things about this package: one is that we are still working on the eDefender configuration for our office and for the pilot program and it is moving more slowly than we would like and so hopefully by next biennium we will have something that we can offer to providers but I do want to note that the configuration process is time consuming. The second thing I want to note is that there are providers who like what they are currently using and would not want to switch over. This package contemplates being able to offer it to all of our public defense providers if they want it.
- 32:08 Chair McCrea But they wouldn't have to accept it?
- 32:10 N. Cozine As of this time I don't think we see it as something they would have to accept. I think as a starting point we would want to say it is available to you. At some point in time it may be that this Commission will want to say that this is the case management system that we want all public defense providers using, but I don't think we are in a good position to say that now

when we don't yet have the system configured and we haven't been able to test the functionality of the system as it is embedded in a public defender office, contract or consortium provider.

- 32:42 Chair McCrea Does this number contemplate everybody using it?
- 32:46 N. Cozine I believe that it does, so this is the number that we would need if everyone wants it.
- 32:54 J. Potter This is a strangely un-compelling argument for a legislator I would hate to say. 'Give us 1.4 million dollars, maybe some people will use it, some people won't.'
- 33:05 N. Cozine Right, we'd have to track and so what we would have to do is to the extent that people didn't want the system, we would be obligated to return that money to the legislature so they could repurpose it. We put in the full amount because we don't know at this point how many people would say 'yes, we want to be a part of it.' In our current contract we have given people the option to have a stipend toward it, but this would allow us to actually say that we will cover the cost. So, we know we have approximately...so at this point our list of interested entities includes about 475 lawyers. That's about half the state.
- 34:21 J. Potter So, are you saying that the folks that are using something besides eDefender wouldn't be able to provide consistent data reports and everything else that is here?
- 34:35 N. Cozine They may have to do some configuration on their system. As we move forward if we want things like demographic information about our individual clients that isn't captured in their system, they are either going to need to modify their system or move to a system that has it. Ideally, we want a system configured to do whatever it is that we are requiring and ideally we would like to provide it so it is not onerous for public defense providers.
- 35:09 J. Potter I am just thinking out loud here but it seems like that if we are going to have a case management system and we are going to ask for 1.4 million dollars, that it should be a required system that we provide to the provider.
- 35:26 N. Cozine That is certainly something that we could make part of the contract term.
- 35:29 J. Potter But the money would have to be there before I would feel comfortable in doing that.
- 35:35 N. Cozine There are also data migration costs. So, if I am a provider and I have a very well developed case management system and there are some that are still using paper. That is the sort of range that we have. For those who have really well developed systems, it may be more efficient for them to simply modify the system that they currently have that it will generate the right reports in the right format. But, we won't know until we get closer.
- 36:06 J. Potter Okay, the ask to the legislature seems mushy to me.
- 36:12 Chair McCrea You should use a technical term.
- 36:15 J. Potter If I've got a system in my office and it is working great and I say 'for an extra \$5,000 I can get this thing to be in compliance with your eDefender system,' and legislators will buy off on that and they know that they will save money of this 1.4 million that you are going to return the money, maybe as a legislator I am buying into it. But you don't have a uniform system still. You end up with a system that providers are providing you information that hopefully is consistent with the one that you have adopted.
- 36:49 N. Cozine Ultimately it would have to be in order to give us the report. They would have to be able to report to us that information so that we would have the statewide dashboard information that is consistent.

- 37:04 P. Ramfjord Maybe it is a question of how it is marketed. If it's marketed as a system which is going to improve the overall quality of services, potentially reduce the cost of services and to achieve a greater level of consistency and we are working for the goal of getting uniform reports throughout all the office and all of the lawyers who are providers, but we are going to start with the ones that are most interested. We take advantage of their interest and then we would refund the money. I think it is a really important piece and a really important thing to get, I just think it is just a question of how we portray it.
- 37:59 N. Cozine And I gave you the shortcomings because I don't want you to be unaware of them and then later say 'wait a minute, this is supposed to achieve all of this wonderful good' and I think it really can and the benefit of offering a product to people that we know internally at OPDS is that we can then help provide assistance. We have public defense providers that all have to pay for their own IT support. If we can be part of that support then it is efficient and it does create long term benefits. It's just that we are at the front end of that transition and it would be easier if we had a fully configured product and I could tell that it will do everything, we are still in the configuration process. I don't want to over promise if we are not there yet, and at the same time keep in mind that if this funding is approved it is not until July of next year that we actually have it. Part of the challenge is that we are building these packages so far in advance of when the funding is actually approved.
- 39:18 M. McKechnie If I may make a comment, Mark McKechnie of Youth Rights and Justice. I wanted to point out one thing that hasn't been mentioned that I see as a substantial benefit of the database which is that the roll out of Oregon eCourt has frankly been a nightmare for us in the field for having to accommodate our practice and commit more of our staff time to simply filing out eCourt and figure out all the notices and figure out how to file documents and how to sign up for the thousands of cases we have to sign up for, eService and things like that that we have to do manually. I think one of the promises of this system if it were rolled out statewide would be to engineer ways for this system to talk to Oregon eCourt and have some automatic functions to sync calendars so that court calendars can sink with the firm and the attorney calendar so that when documents are filed they can be transferred from one system to the other without a cumbersome manual process that staff have to go through to do that. Certainly, we have a good database already but the potential for that to happen by having one statewide platform talk to another statewide platform and the economies of scale of making that happen versus the cost of prohibition of trying to engineer our one system for 17 attorneys to work with this live system on the statewide level is just not practical. I would say there's a definite incentive for us to change if the system is half as good as it sounds, and frankly it's more cost effective for us to transfer our data from our current database where you can simply map the data fields from one database to another versus other firms, frankly the ones who are keeping paper or more rudimentary systems in excel or more basic databases, it's going to be more difficult for them and those costs will have to be figured out. But, I think there are many reasons and certainly I think something that legislators would understand if we could point out to them that we as a state have invested a lot of money in the state judicial eCourt system and frankly this is a small amount of money to invest to get the defense side to catch up with the direction the court has gone.
- 41:57 Chair McCrea Thanks Mark.
- 42:00 J. Welch I guess I don't understand what the downside is simply saying this is what we need; this is our goal, end of discussion. What's the harm in that?
- 42:12 N. Cozine There isn't a harm in that, I just want this Commission to know where we are in the process and you consider the package because I think if you talk to some of our providers, some of the them would say they wanted the program yesterday and it's still not here. There is a tension there that we are approving a package and we don't yet have a configured system and I just don't want you to be unaware. It's really that I am just trying to put everything out there as

opposed to trying to convince you not to approve the package. We are asking you to approve it because we think there is value in it for all the reasons Mark said and for the efficiency of the system as a whole. That said, we just may run into some barriers down the line.

- 43:00 T. Christ I know we are going to prioritize these requests later but is there any disadvantage now in requesting something that is not quite ready to fly? Doesn't it detract from the other requests just having it approved to this extent?
- 43:17 N. Cozine I don't see a downside to having it approved to this extent. It gets built into our budget package and it's there. We are moving forward with configuration and Cecily is here. She is the sort of front line person talking with eDefender and working through the configuration process. She could talk to you a little about the timeline. I don't think there is a disadvantage to including it because again, the funding is so far out from our discussion today, it's a year away. We are trying to anticipate as best we can the position that we will be in in a year. It's hard to enter into, for example right now one of the things we are doing is negotiating a statewide contract with the eDefender Journals Technology entity. It would be easier to negotiate that contract if we knew we had the funding and we knew how many people we had who were willing to go on the system. There are enough variables with the price point that we can't be certain that we are going to have all 465 users. If we had the funding and we were the ones who were going to be able to power it, we would be in a better position to do our negotiations with Journal Technologies. Does that make sense?
- 44:35 Chair McCrea Yes.
- 44:39 J. Potter I don't want to belabor this, it's really a small budget item in terms of raw dollars. Have you liberally adjusted the numbers so that they are at the high end of all the projections? And I say that having gone through an AMS system that the budget cost versus the actual cost were almost double and when you talk to lots of people that implement database systems or AMS systems, often times it pushes double what everybody thought it was going to be.
- 45:10 N. Cozine Let me ask Cecily to come up because I think she and Angelique put the numbers together and I think they can answer that.
- 45:16 J. Potter Because that is the real downside when you are talking about downsides is coming in with a number and it turns out to be 3 million when you thought it was going to be 1.5.
- 45:25 C. Warren Vice Chair Potter, Chair McCrea and members of the Commission, my name is Cecily Warren and I am the research and IT director for the Office of Public Defense. Hopefully with the statewide contract we set a software licensing price so that it is set regardless of the number of users. It is usually on a range or a scale. One to one hundred is x amount and if you get more than 250 it's the next amount, so it's a tiered scale. It would be set in contract so you have some level of assurance of the fixed price and what I am trying to achieve in the statewide price agreement is also a fixed price for data migration. That is generally where the variable costs come in. Also, because it's a statewide system there is really only one configuration rather than the 120 individual contractor offices configurations, again that is where the variable pricing comes in. we will try to control it as much as we can and get to a fixed price that is accurate and reliable.
- 46:36 J. Potter Training costs are built into this budget as well?
- 46:39 C. Warren Yes, of course.
- 46:41 J. Potter Guaranteed roll out dates, are they built in?
- 46:44 C. Warren Not yet. We are still trying to get through the terms and pricing before we then really start working on rollout. Rollout is going to be a little challenging because data migrating for each

office will have to be staged correctly. Again, that depends on the number of offices that choose to come over.

47:08 C. Lazenby Is the eCourt integration that Mark brought up part of this too?

47:14 C. Warren We have asked for it as part of our work with them. Again, we are just kind of waiting for them to come back. They have said that they are willing to work with Tyler. Tyler is also a little behind as well so that is part of the challenge.

47:35 Chair McCrea Anything else Commissioner Potter?

47:37 J. Potter It's going to cost more than 1.4, ten dollars.

47:44 J. Stevens Ten dollars more?

47:46 J. Potter No, I am betting ten dollars.

47:48 N. Cozine Commissioner Potter, maybe the answer is that we need to do some modification on the way that we explain this and maybe it's not a state wide case management system. Maybe we modify it to say case management system and we explain that it isn't going to be statewide at this juncture.

48:08 J. Potter It's almost a super pilot program.

48:13 N. Cozine We can work on the, with the Commission's permission, we can work on the title of that policy option package.

48:24 C. Lazenby Are you really anticipating serious pushback from some of the providers on adopting this?

48:29 N. Cozine We know that there are providers who really have invested significant time and money.

48:40 C. Warren Oedipus is another provider.

48:47 N. Cozine I don't think I would ask this Commission to compel the use of a system that we have not yet had a chance to test. Do you [C. Warren] want to talk about the anticipated rollout in the juvenile appellate section and then the pilot program?

49:00 C. Warren We are currently working on a configuration for a juvenile appellate section. We anticipate a rollout of mid-September to end of September at this point and time. We have already worked through the juvenile trial configuration. We are working with Journals Technology who is the maker of eDefender on the start of that actual configuration. We give them all of our documentation for business processes, what we need to have happen and we are waiting for a team to be assigned so that we can start configuration on that. We hope, so far juvenile has taken about 8 months so we can kind of roll it to that, although I think we can be a little ahead of the game now that we know a little bit more and Journals knows a little more about our processes and practices. It should go a lot quicker for the juvenile trial.

50:00 Chair McCrea Okay, I want to get this moved on so let's have a motion. **MOTION:** Commissioner Ramfjord moved to approve the statewide case management system pop; Commissioner Welch seconded the motion; hearing no objection the motion carried: **VOTE 8-0**

50:13 Chair McCrea Number four, the Professional Services Account Budget shortfall policy option package.

50:18 N. Cozine Can I ask for one quick clarification? Do we have permission to adjust the title if need be on the statewide case management system?

50:24 Chair McCrea Yes.

50:33 A. Bowers Number four, this is an addition from last time when you saw this list of policy option packages. Historically, the Professional Services Account has been about three to four million underfunded and so, I have been working with Steven Bender our LFO analyst to figure out a way of building in a policy option package like this that will just help shore up our budget so that we won't have to be worse off and then it would be other requests would be things like additional caseload that is outside of what we budgeted for that biennium. So, that is what that policy option package is.

51:12 J. Potter So these are bills that come in for the prior fiscal year that you see in the next year and you have to pay them and then they become a liability against the prior year?

51:25 A. Bowers This really truly is that when you look at the 24 months and the amount that we have to spend, all the bills coming through versus the budget that we have we are just historically three to four million not enough.

51:39 J. Potter I kept saying prior fiscal, I mean prior biennium.

51:43 N. Cozine It's not necessarily the prior biennium. What happens, and this kind of relates to Commissioner Christ's question from earlier, when we are chronically underfunded and we have a 3.5 million dollar liability that we've recognized that we are not going to be able to cover, what usually happens is we are coming toward the end of the biennium and we see this little budget hole, we spend about 10 million a month, so the reality is that if you are 3.5 million dollars short you don't need it until the end of the biennium but you are going to run out of money in the last two weeks of that biennium. But, we see it coming and so we tell the legislature that we see it coming and we need the funding, they give it to us often times in February as a budget adjustment. But, what happens is let's say its February of 2017 and this is what is happening, that little 3.5 million dollars is added to the budget but it never got built in to that certain service level. So, we have a trailing gap and it grows a little each year but because it never gets built into base budget because whatever you're funded in that last quarter doesn't get built in. Anything that is funded after right now does not get built into our base budget.

53:02 J. Potter Would any e-board adjustment, that's an e-board adjustment?

53:03 N. Cozine Yes.

53:04 J. Potter Any e-board adjustment doesn't get built in?

53:06 N. Cozine Right, if it's after July. If we had an e-board adjustment in February of this year 2016 it would get built in. But, our projections become more and more certain as the biennium continues and in fact we will have a shortfall this biennium as well and it is actually quite large. We can talk about that during the OPDS update.

53:32 C. Lazenby So is it going to be the kind of thing where they give you the money upfront because they know this happens all the time, but as you get to the end of the biennium your costs are not as great as that, that just goes back into the general fund right? It's like being held in escrow, right?

53:51 N. Cozine As its built as a policy option package, it would go into our base budget so moving forward it would fix that little gap that we've got. If it turned out that we didn't need that money, the legislature can always take it back, if that's what you are asking. If they are overfunding us, they can always...

54:14 C. Lazenby Doing it this way you are reversing the process in anticipation of the cost which is now part of your CSL.

54:23 N. Cozine Right.

54:24 A. Bowers When Steve and I were working through this that 3.5 is a really conservative amount so we anticipate that we wouldn't have to give any of that back.

54:34 N. Cozine In fact we would still probably have a little bit of a gap. For the legislature it creates more certainty. It's really not good for them to have this liability that its every year that it is unaccounted for. They would rather have that budgeting done up front with more certainty and we want to be providing them with certainty, it's just that it is difficult and the reason that the gap is much larger this year is because there have been significant increases in caseload.

55:04 J. Welch I move to endorse, or is it too soon madam?

55:09 Chair McCrea No, I was just getting a motion from both sides so I was waiting to see. **MOTION:** Commissioner Welch moved to approve the Professional Services Account Budget Shortfall POP; Commissioner Potter seconded the motion; hearing no objection the motion carried: **VOTE:** 8-0

55:24 Chair McCrea Number five, now we are to the OPDS policy option packages, employee compensation ORS 151.216.

55:34 N. Cozine Commission members, this is pay parity for OPDS employees that we have been pursuing throughout this biennium and we will be returning again in September with a request to the legislature to try and get OPDS to parity prior to the legislative session starting. If that request is not funded, then we would need to proceed with a policy option package. We have talked to the Legislative Fiscal Office about this and there is still no certainty regarding September so, of course we need to build it as a policy option package now anticipating that it may be a needed request when we get to the 2017 Legislative Session.

56:18 J. Potter Do we have a chart showing this differential between the AGs and your office?

56:23 N. Cozine We could provide that to you. Right now it is a range.

56:28 J. Potter A range would be nice.

56:29 N. Cozine We can tell you what the range is. It depends on what step you are looking at and Steve used the figures...depends on how you are looking at it. The way we did this is if you look at every single step and all the comparator classifications, there was one step that was as low as 14% and this is just the lawyer positions, with other steps as high as 34%. I think Steve took an average and included it in his letter and I would have to look back and see what his percentages indicated as an average, but it is in that 14-34%.

57:28 J. Potter So, we are in non-compliance with the statute, right?

57:34 N. Cozine I think that some people would say that because the statute indicates that you have adopt a compensation plan that is commensurate with other state agencies that in January of 2017 that's when their next bump is that we will be at that 14-34% that we will be that much out of compliance. Right now, because DOJ was having rolling adjustments throughout the biennium, we are not quite to that 14-34% but we know that we are behind. Counsel is reminding me that part of this effort is a result of our bargaining with the union that we would go to the Emergency Board and that we would request funding that would get us to parity. And, like everyone else, every time we have an employee leave and another one comes that

number changes. We are constantly tracking that as well. I am even thinking that this number might have gone down from last time.

58:36 A. Bowers This policy option package is for the entire office.

58:42 J. Potter More than just the lawyers.

58:43 N. Cozine Right, and what we said to the legislature is that we want to get the lawyers to parity but really we want to get everyone to parity.

58:50 J. Potter And the statute doesn't say lawyers, it says compensation package and I would think its broad enough to suggest it includes all employees.

58:58 N. Cozine Correct, it certainly is.

59:02 J. Potter If we can't get parity when we have a statute behind us, we are not going to get parity at the trial level. That just seems like one that has got to happen or someone is going to sue us.

59:15 N. Cozine I will say that at the May legislative hearings we have Representative Kotek and Senator Steiner Hayward both making very strong statements of support in saying that it had to happen in September. So, there is a part of me that thinks this will happen in September, but you know you just can't count on these things. We are very hopeful. We will do everything we can to protect you from being sued.

59:47 P. Ramfjord I would move to approve: **MOTION:** Commissioner Ramfjord moved to approve the OPDS Employee Compensation under ORS 151.216; Commissioner Potter seconded the motion; hearing no objection the motion carried: **VOTE:** 8-0

59:58 Chair McCrea Okay, moving on to number six, PCRCP Staffing and Quality Assurance.

1:00:13 N. Cozine The PCRCP staffing and quality assurance package has the research component of the PCRCP program. It is separated out because we think the research component of the PCRCP is about half of a position. We think the other half ought to be used for quality assurance on the statewide level for all of our providers but we did want to split one position into two separate packages. If you look at the PCRCP staffing and quality assurance you see PCRCP staffing at .5 research analyst and then under quality assurance .5 research analyst. We also have then under the quality assurance one deputy general counsel for criminal. That position contemplates having another individual to help with the work that is currently General Counsel Levy's desk. Paul is here and he could speak to this if you would like, but we rely on Paul for an awful lot. He does all of our general counsel advice which spans everything from contracts to employment law, public meetings, public records, public defense practices, all of our complaint investigations, all of our inquiries that have a public record component to them, all of the complicated NRE requests, these things really take up a tremendous amount of time and what we have seen by creating the juvenile specialization on the deputy general counsel is that we can really improve our capacity to make those system improvements statewide if we have more people to do the work. This really creates sort of an Amy Miller like position on the criminal side. The criminal caseload is significant across the state and if we had someone that could take over the pieces that were the complaints and the quality oversight pieces, it would really improve our ability to connect with providers at the trial level and to do those quality assurance efforts that are so important to our mission. The third component is the juvenile delinquency appeal. We are asking for one position to handle juvenile delinquency appeals in our office. This is an area where right now we have the criminal appellate section that handles all the criminal work and then we have the juvenile appellate section which handles the dependency work. While our criminal caseload is relatively flat, the juvenile dependency has been increasing dramatically. Shannon Storey will talk about this more during the retreat, but what we see is that not having that delinquency expertise in our office

makes us less valuable to the contractors who are doing this work. We would like to be able to provide more assistance to the delinquency providers similar to our juvenile dependency appellate program and try and use that to increase the quality of representation statewide, and we see it in our statewide surveys that we have a lot of work still to do in the delinquency arena statewide.

1:03:56 P. Ramfjord And it is fair to say that that type of position can actually have some benefits in terms of costs too because you have an ability to consult with somebody who can get you information more quickly that you could on your own. So, there are some benefits to that perspective too.

1:04:17 N. Cozine Yes, and right now we do have Youth Rights and Justice that does a lot of that work but we find that there are sometimes conflicts. What is really helpful on the dependency side with having both Youth Rights and Justice and our office providing support is that when there are conflicts we have two sources of support for people doing this work. When there are conflicts of interest if you need to consult with an appellate lawyer but the main provider has a conflict you've got to be able to go to someone else. So, we really see it as bolstering our ability to provide that kind of support statewide and there are efficiencies and you see it all the time on both the criminal and juvenile side when a trial level provider needs information there is a lawyer in our office to help answer those questions.

1:05:11 J. Welch **MOTION:** Commissioner Welch moved to approve policy option package six; Commissioner Lazenby seconded the motion; hearing no objection the motion carried:
VOTE: 8-0

Agenda Item No. 7 Updated Guideline Rates

1:05:24 Chair McCrea We got through all the policy option packages. Angelique, take us through the updated guideline rates please.

1:05:35 A. Bowers Last time we had updated the guideline rates we had just done an update to the mileage and we said that we would look at these further. We have now gone through trying to make sure the different provider rates are more in line with what we are currently paying and making adjustments where we have found were areas of concern that were not enough to be able to cover like travel. On this sheet, the shaded rates are where we have made changes. I just want to point out the significant ones; we do for the other experts now we have it bearing on types of service because it is such a broad category where before it was one rate for that many different types of providers. We have also made a change where receipts for things like parking aren't required unless it is over \$25. We hoped that would be more helpful for the providers as well. The most significant change is with the lodging. Before, we had lodging rates that had included taxes and fees in the rate and how we are going to follow the federal GSA rates and the amounts here are just for room costs so that should be much easier for everybody to actually figure out what the amount is that we will approve for those different counties. Same with out of state, we did not have a rate before and now we are going to do the same and follow the federal GSA rates. Those will be updated more frequently when the mileage rate is updated. What we would like to do is have you approve this today and have them go into effect August 1st and we will update the rates on the website and to all of our providers.

1:07:33 Chair McCrea Questions or discussion?

1:07:35 C. Lazenby All of the experts, what is that? Who is generally in that category?

1:07:42 A. Bowers We have handwriting experts, doctors, language experts, any doctor or specialist in any area. We have a range from \$30, it is a very big span.

1:08:09 Chair McCrea Other questions or comments?

1:08:12 J. Potter We had a discussion, I think it was the last meeting or the meeting before, on discovery rates that are variable from county to county and what DAs are charging for discovery, some of them are pushing usury rates. You've got discovery rates as actual cost. We haven't made any progress with anybody with trying to get DAs to have a uniform rate or rates that are reasonable?

1:08:37 A. Bowers We still have in there that we will pay actual cost for providers like it was before but that is one area that is very high on my list that we are hoping to work on.

1:08:55 N. Cozine Commissioner Potter, members of the Commission, the challenge with discovery rates as I think you probably know is that the discovery rates that are often set by the county and so it is the County Commission and we have very little ability to control those costs when they set these discovery rates at a particular price per disk. We have talked about this at even some of our service delivery reviews where we see that the costs are increasing and so we have been looking at it by county and also by the way that they charge. Whether or not we will be able to make progress right now, I don't know. I think the costs projected this biennium are at about 5 million. If you look back last biennium they were just about at 3.5 or 4. The percent increase is so radically different from other types of costs that it is, when you look at is an aggregate you expect some amount of inflation. Four to five million is the biggest increase we have ever seen in a single biennium. It is certainly worth talking about whether or not we are going to actually be able to rein it in. In this next biennium I think it's guaranteed partially because the mechanics around it are pretty complicated.

1:10:24 J. Stevens **MOTION:** Commissioner Stevens moved to approved the guideline amounts; Commissioner Lazenby seconded the motion; hearing no objection the motion carried: **VOTE: 8-0**

Agenda Item No. 8 Caseload Projections

1:10:33 Chair McCrea Caroline, you're back up with caseload projections.

1:10:53 C. Meyer Chair McCrea, members of the Commission, this is a carryover item from the June meeting. We went over these same slides and Commissioner Lazenby had asked for the pending caseload on the death penalty expenditures so we added that. I believe that is the only slide that was in your hard copy materials so we provided the rest of them to you just now. The only other change to the non-death penalty slides is that we added April data in follow up to Commissioner Potter's request. We actually have most of our May data at this point as well and it is on track with April. Again, having the additional data is good but it doesn't change our overall projection statement. I would be happy to answer any questions or if Nancy would like me to add anything.

1:12:05 N. Cozine I just wanted to note that we mentioned that the overage this biennium, right now the projections are indicating that there is a significant overage and that is very much in part due to increasing caseloads statewide. So, it is important that we do look at this projection and we anticipate that the caseloads are going to be higher than they were this biennium because that is part of building our base budget. When we project a flat caseload and then it increases, that is money that we don't have. If we see the increase coming and we can build it in that helps with that offset in the next biennium. So, we have been looking at this very closely and we've been looking at the individual factors county by county that are driving the caseload up and we have been able to document that as we have our discussions with legislative fiscal office; we are showing them where there are changes and to the best of our ability we are also identifying where there are changes in the county. I think that Caroline in working with all the analysts feels confident that in this next biennium we are going to see this existing trend of more cases being filed. We haven't increased our projected caseload in three biennia.

1:13:21 J. Welch Wow.

1:13:21 J. Potter Wow.

1:13:24 N. Cozine With the economic recovery we see more district attorneys filing more charges, as sort of the short story, and there are also some changes in charging practice.

1:13:39 J. Potter So, you were flat lined as of last biennium or very, very close.

1:13:43 N. Cozine Flat lined completely.

1:13:45 J. Potter What are you anticipating in percentage now with this new information? One percent, point five percent?

1:13:54 C. Meyer one percent.

1:14:04 Chair McCrea Is there anything we need to do at this point except be aware and kind of keep this in the back of our minds for the future?

1:14:15 C. Meyer No decision at this point. It really is just making you aware and because this is a big part of our mandated caseload, this is what we are projecting for mandated caseload so we wanted you to be aware of that. We will certainly update you if that changes at all.

1:14:28 J. Potter And, probably more important than us is the Legislative Fiscal Office. It sounds like you are doing that and you are working with no surprises.

Agenda Item No. 9 OPDS Monthly Report

1:14:38 Chair McCrea Thank you Caroline. Nancy, how do you want to handle the monthly report?

1:14:47 N. Cozine I think we can just head straight into it.

1:14:50 C. Meyer I just want to give you a quick update. I know in June we had mentioned that launched our customer service survey and it had just been launched and we now have the results of that and we will be telling those results and will be talking amongst our individual office teams of those results in terms of the payment policy, non-routine expense requests. We didn't see quite as much improvement as we had hoped but we do have improvement in some areas but we will get back to you with the details of that, I believe, at our September meeting. Then, just last week we launched yet another survey. I was telling our team that it seems like the season for surveys, but we launched our first CLE survey. As you may recall, the legislature passed a new key performance measure last year for CLE credits for providers to make sure that they are getting the requisite number of CLE credits for their area of practice. We also have a contract term around that. This is the first time we have asked them to report on those CLE credits for all types. We have had a CLE credit form that contractors had completed but it was just for juvenile credits in the past. So, this is a bit of a shift. We did get some questions back but we are seeing some pretty good response to that already and we will have the details of that in September as well. Just wanted to give you a quick update.

1:16:20 N. Cozine I had a few updates as well. One is that we launched our first newsletter. I hope all of you received the link. We are pretty excited about it. We will be issuing it about three times a year. At least that is what we anticipate. We will get provider input, if it is not something that is helpful to them then we may modify that. We are hoping that it gives us a more consistent and regular way of interacting and providing information. I just today received an email indicating that the dependency task force report is finalized, so I will start dealing with that by email so that you all can take a look before our next meeting. As we discussed earlier there is more work to be done in terms of drafting legislation and creating other follow-up steps based on the recommendations from the task force so we will be reporting on that regularly I

anticipate. The other thing I wanted to mention was that we have been working closely with the ABA not only on the Parent Child Representation Program pieces but also Paul has been working a bit on caseload study information and also they have been on contact with us as they are doing some work in defining public defense systems across the state. In my conversations with them, they asked us to circulate information that they put out weekly that highlights different public defense issues happening around the country. That was included in the newsletter, so if you go to the newsletter you can click on the email address and get yourself signed up if you want to be a part of that weekly newsletter. It has very interesting information. But, they also have let us know that they are thinking about revising the ABA Ten Principles for Public Defense. So, this is a conversation where I think we will engage with them to the extent that they really are thinking about making revisions to those and also talking with you about your ideas about whether or not there are any provisions necessary to the ten principles. We can provide those to you at a future meeting. Paul, did you want to talk about caseload?

- 1:18:45 P. Levy I will talk about the caseload study tomorrow. You did have an article about the recommended updates to the Ten Principles at the last meeting and I will be talking a little bit about that tomorrow as well.
- 1:19:11 A. Bowers Nancy and I will be meeting with Steve Bender at the Legislative Fiscal Officer talking about the September E-board for compensation which we talked about earlier, as well as the Professional Services Account budget shortfall. The piece that we are typically working on is policy option package as well as caseload changes. We are hoping to meet with him next week. Also, in my group in financial services we hired a new employee and he actually started this morning. I got him settled before we came over today. His name is Luke Pallett and he was working as a temporary employee for the Department of Revenue before this. We are happy to have him on our AP staff.
- 1:19:55 J. Potter What was the name again?
- 1:19:57 A. Bowers Luke Pallett. He is very interested in the work that we do so we are excited about that.
- 1:20:07 Chair McCrea Good. Thank you.
- 1:20:16 P. Levy I think I can do mine really quickly. At last meeting I said that we would have an updated report to you about our statewide public defense survey and we are delaying that to September when we can have the analyst who could not join us today who has done some great statistical analysis of the results. She can show it to you and even though I am fully conversive with standard deviations and mean, median and mode, she will be able to explain those concepts and how they apply to our survey even better than I can at the next meeting.
- 1:21:03 Chair McCrea Okay, thank you Paul.
- 1:21:17 S. Storey Chair McCrea, Vice Chair Potter, we have had a quite month at the Court of Appeals. There are no arguments in July, so we have spent a lot of time retreating and regrouping. One of the things we are working on in my team is how to give effect to the Supreme Court opinion in TL which I spoke to you about before, which sort of imposes upon us as appellate attorneys the duty of raising ineffective assistance of counsel on direct appeal. So, we are trying to come up with some well-reasoned criteria on how to do that so that we are not raising it on an ad hoc basis so that we have principal criteria for raising and we are struggling with that but I think we are making progress. Additionally, we have three cases in the Supreme Court right now with meritorious PFR's pending. The first is a state's PFR on KAH and the issue on that case is whether the juvenile court has any discretion to allow an expert to testify telephonically where the expert's opinion is outcome determinate. That is the case that we won in the Court of Appeals. Our client was alleged to have physically abused a child and the department had one medical expert that they were offering to prove their case and the trial

court allowed over the parent's objection that the expert didn't testify telephonically. We won in a Court of Appeals ruling that it was an error of law that the court has no discretion when the expert's testimony is outcome determinate. The second is the ICWA case that we lost at the Court of Appeals and this is the case where the juvenile court was involved for several years and had reason to know that the children were Indian children and yet didn't comply with ICWA and under ICWA you can raise a challenge and invalidation asking any court to invalidate the proceedings. So, we raised that the Court of Appeals did not prevail. The third was a case that involves the appeal ability of a judgement in the juvenile court and whether the concept of status quo applies to juvenile court judgements. This is a case where there had been multiple judgements; the department had made reasonable reunification efforts. We appealed from the latest judgement and the Court of Appeals ruled that it wasn't appealable because the ruling on reasonable efforts was merely continuing the status quo and our argument was that these are ongoing cases and at each juncture the juvenile court is required to make rulings anew. This concept doesn't apply.

1:24:09 Chair McCrea

Thank you.

1:24:12 E. Lannet

Hello Chair McCrea, members of the Commission, Ernest Lannet. One of the biggest things that is going on right now for us is we have had a very stable support staff personnel for a long time. With the exception of the paralegal that the juvenile appellate section brought on within just the last couple months I don't think we've hired one in the last eight years. We recently had announced some retirement dates that we are going to be planning for. Genny Goodness has been in our office as a legal secretary for about 20 years, it will be 20 years when she is leaving. She is leaving at the end of August. At the end of November, Laura Anson who some of you may know from when she was a little more active on the Commission with notes and minutes, and Margie Stueve are both in support staff positions. I won't say how long they have been with the office but if you add in Genny's 20 years they average about 32 years. They have been with our office for a very long time. It will be impossible to replace Laura Anson in the position that she has had, she has been the legal assistant supervisor for a number of years. We are looking at filling that position and working on a valid description. The other thing is I think last time I talked to you we were at the end of a hiring cycle and we did make an offer that was accepted and Stacy Du Clos who works for MPD will be joining us after Labor Day in September. September will be very busy for us. On the same week of the Commission meeting we have six arguments at the Oregon Supreme Court with five different attorneys doing that. There are actually two alum that will be arguing. Jed Pederson and Andy Simrin both have arguments. I think if you add in those two we are about half the docket. I am active right now with the Oregon Law Commission who is doing a rewrite of chapter 138 which is the chapter on criminal appeals. Jim Nass is the reporter on that. Judge Bushong is the chair on that. I am pretty active in that because it is most applicable to our office. It affects the DOJ quite a bit but there is still plenty for us to look at and make sure it gets clarified but not changed. Finally, we had a number of Supreme Court opinions that came out since we met last. They were all very favorable and thanks to a lot of hard work by the attorney Anne Munsey, she is one of our senior attorneys, she convinced the Supreme Court that the police officer who had alleged rape victims send texts to person who committed the rape, 'why did you do this to me?' and there was no answer. The Supreme Court said that shouldn't have come in because that wasn't enough dock of admission; there had to be a necessary showing. If it wasn't being allowed in for that reason it didn't have any relevance whatsoever. That will be going back for new trial. Emily Seltzer, one of our newer attorneys a deputy one, got a decision regarding restitution about shoplifting and whether restitution is based on wholesale or retail value and was able to convince the court that it should be wholesale value unless there is proof of lost profits. Finally, just last week Dan Bennet, another one of our senior attorneys, was able to convince the court that the computer crime statute in regard to using a computer system without authorization didn't include violating a personal use policy. In that case, someone worked at a deli where they had lottery games and one of the workers there was printing out Keno tickets for himself and winning sometimes. The argument there was that while that person had permission to use the

system they weren't allowed to steal and so they were using it without authorization. I think the Supreme Court saw that it would be a very far reaching decision, anyone who has played Mine Sweeper on their work computer could be charged with a felony and I think they understood that probably wasn't what was meant.

- 1:29:00 P. Levy The justice has been settled. That was one of their questions.
- 1:29:04 E. Lannet That was one of their questions, whether they could check the baseball scores. The state's attorney with a lot of candor said 'well yeah that probably would violate it but we probably wouldn't charge you.' It was a very good decision and we are very pleased with it. The final thing, our median case filing date is something that we always pay attention to and I think at the end of the last fiscal year it was at 223 days to file an opening brief which had not met the goal that we set in 2009 for 210 and in 2014 we reduced it down to 180, so six months just to file a brief. We have gone down from 223 to 209. If we were in 2014 we would really be celebrating, but given that we are looking at 180 we still have a ways to go but we are very happy with the progress we've made. Thank you.
- 1:30:11 Chair McCrea Thanks.
- 1:30:18 N. Cozine If I may Chair, Ernie's mention of the Oregon Law Commission reminded me that I should mention that I was appointed to the Oregon Law Commission this month and I am very excited to be joining that group. It was an appointment of the Oregon State Bar's Board of Governors and I am just looking forward to do that work. One of the vacancies was created by the departure of Julie MacFarlane who had been a long time appointee and really had offered some voice for the public defense function and I am pleased to able to step into that role. I wanted to let you know.
- 1:30:53 Chair McCrea Good.
- 1:30:56 N. Cozine Then, I wonder Vice Chair Potter, if you have anything to say?
- 1:30:59 J. Potter Well at the risk of dragging us into tomorrow's retreat agenda topic which is on the PDSC composition changes, I think we should take a moment to thank Shaun McCrea for her 16 years of service on this Commission. This is her last meeting and she also served on the Study Commissioner preceding that. She served on the old Public Defender Commission and she served on the Lane Public Defender Board of Directors. So, she has had a vast experience and incredible dedication to public defense in this state. The Office of Public Defense Services and the Commission want to present her with a plaque, something she can hang on her new wall, presented to Shaun McCrea in recognition of your exceptional service and commitment to the Public Defense Services Commission from 2000 to 2016. So, thank you and there will be dinner this evening that is after...[applause]...after the dinner, we are not on the state time but I will buy anybody an aperitif that would like following the Commission dinner. If there is anything anybody would like to add, the microphone is still on.
- 1:32:29 Chair McCrea Or, if you want to do it after drinks that is probably better. Do we need a motion to adjourn today or do we just informally adjourn and take up tomorrow?
- 1:32:42 N. Cozine We probably need a motion to adjourn today and then we will take up again tomorrow.
- 1:32:49 J. Welch One little thing, I never ceased to be amazed at the dedication, hard work, smarts and everything else of the staff of this organization. I was particularly impressed today and I wanted to mention that.
- 1:33:09 Chair McCrea Anyone else have any comments or things they need to say? Otherwise, I will entertain a motion to adjourn.

MOTION: Commissioner Potter moved to adjourn the meeting; Commissioner Ramfjord seconded the motion; hearing no objection the motion carried: **VOTE:** 8-0

Meeting Adjourned

The handout for agenda item #2 cannot be distributed electronically.
If you would like a copy, please contact Ashley Kinney at the Office of
Public Defense Services.

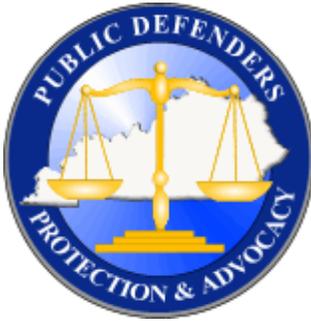
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Attachment 2

SFY 2014 EVALUATION REPORT

KENTUCKY DEPARTMENT OF PUBLIC ADVOCACY
**ALTERNATIVE SENTENCING
WORKER PROGRAM**

MAY 2016



COMMONWEALTH OF KENTUCKY

DEPARTMENT OF PUBLIC ADVOCACY

5 Mill Creek Park • FRANKFORT, KENTUCKY 40601 • 502-564-8006 • FAX: 502-695-6766

May 2, 2016

John Tilley
Secretary, Kentucky Justice & Public Safety Cabinet
Office of the Secretary
125 Holmes Street
Frankfort, KY 40601-2108

Dear Secretary Tilley,

This independent Report documents the effects of the Department of Public Advocacy's Alternative Sentencing Worker Program (ASW Program). The Report summarizes Findings from the evaluation of the program regarding clients served during state Fiscal Year 2014. For the clients offered services in FY 2014, follow-up data collection from clients and official state data sources was conducted to examine program effects 12 months after the courts had accepted alternative sentencing plans.

The Report found program gains for the criminal justice system and in particular for the Justice and Public Safety Cabinet in two important ways: 1) 324 clients received badly needed services, thus providing a more humanitarian service than merely incarcerating them; and 2) Substantial returns on program investment were realized by greatly reducing incarceration costs for the year following court acceptance of the alternative sentencing plans.

The ASW Program is a strategic way the policy of 2011's HB 463, designed to reduce incarceration costs safely, is being realized. The ASW Program has worked to maximize the use of community-based services in lieu of incarceration. The reduced incarceration goals envisioned by HB 463 have been affected by very minimal growth of community-based services to provide alternatives to incarceration. The ASW Program has struggled with that problem, but has also found ways to navigate clients into these services to place our part achieving in the state's goals.

This evaluation was done by the University of Kentucky Center on Drug and Alcohol Research using data collected by our ASW Program staff and administrators. All analyses and conclusions represent the independent views of the evaluator.

Although DPA represents but a small part of the Cabinet's budget, the ASW Program has demonstrated an important role in not only meeting a mandate to provide quality legal representation to our clients suffering from substance abuse or a mental illness, but also to help meet key Cabinet goals regarding safely reducing the cost of incarceration.

Should you have any questions about this program or this Report, please feel free to contact me.

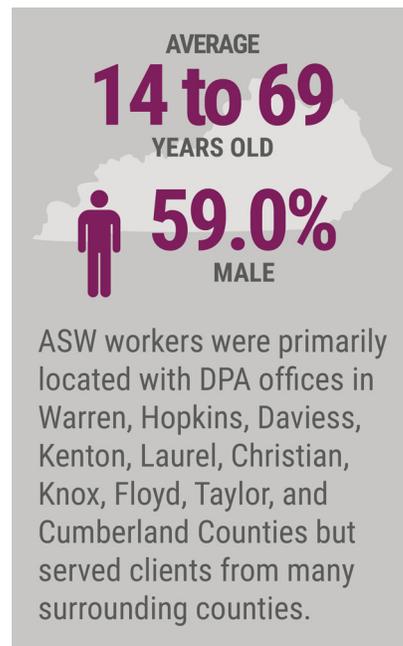
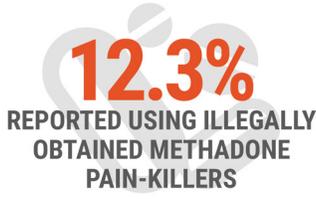
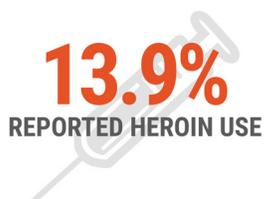
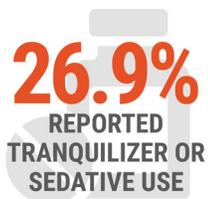
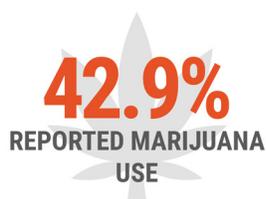
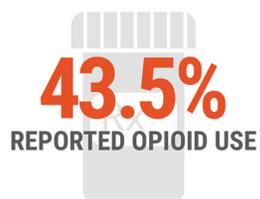
Sincerely,

Edward C. Monahan
Public Advocate



Executive Summary

In SFY 2014, The Department of Public Advocacy Alternative Sentencing Worker (ASW) Program served 324 clients charged with felonies and misdemeanors in eight districts in the state.



- » **79%** had been unemployed at the time of their arrest on current charges.
- » **18.5%** reported having had brain injury.
- » Almost half (**46.9%**) had been diagnosed at some time with a Depression Disorder.
- » **39.5%** had been diagnosed with an Anxiety Disorder.
- » **23.5%** had been diagnosed with Bipolar Disorder.
- » The clients had a lifetime average of **8.4** previous incarceration episodes.
- » **86.1%** of the clients were referred to substance abuse treatment.
- » **32.4%** were referred for mental health treatment.

Clients only ended up serving 1,595 days incarcerated out of the 11,292 days they would have served in the 12 months of the project follow-up – **a reduction of over 85%.**

85%
REDUCTION IN DAYS
INCARCERATED

\$5.66
RETURN ON
INVESTMENT

For every dollar spent on the ASW Program, there was a **\$5.66 return on investment** from incarceration costs that were avoided due to interventions.

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Kentucky Department of Public
 Advocacy
 Alternative Sentencing Worker
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SFY 2014 Evaluation Report
 May 2016

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Introduction

The Kentucky Department of Public Advocacy continues to provide a wide range of defense services for individuals in the Kentucky Criminal Justice System. Beginning with a small grant project, the DPA has placed continuing emphasis on the importance of a version of holistic defense that brings a multidisciplinary team into the defense idea with the task of providing alternatives to traditional incarceration sentences. In Kentucky, the passage of legislation designed to reduce excessive incarceration dovetails with defense interests in preserving individuals' liberty wherever possible. The singular value of the Alternative Sentencing Worker Program is that it achieves client buy-in to engage in rehabilitation, treatment, and other services in lieu of incarceration. The engagement with these services also aims at longer term reduction of problems such as substance abuse that often lead to arrest.

The Context of the Alternative Sentencing Worker Program

Alternative Sentencing was developed in the context of rising rates of incarceration and increased use of plea bargaining in the criminal justice system. "Plea bargaining is a defining, if not the defining, feature of the federal criminal justice system" (Brown and Bunnell, 2006:1063) and it has likewise become a defining characteristic of the state systems as well. Among the concerns with plea bargaining is the degree to which the process is top-down with prosecutors using potentially long sentences to leverage rapid case clearing. Pretrial detention can have a strong effect on defendant decision to accept pleas – even those that might be overly strict. Defendants who are taken into custody are more likely to accept a plea and thus are less likely to have their charges dropped even though at trial they might have been found not guilty (Kellough and Wortley, 2002).

During the period for this study, the pretrial release rate was 68% (Administrative Office of the Court, as reported in DPA's Annual Report, 2014). Thus, a high number of individuals remain in custody and vulnerable to the conditions surrounding plea bargaining. More generally, legal characteristics such as a history of repeated offenses, increase the likelihood of accepting a plea although such a history might narrow plea outcomes. An estimated 90% - 95% of all federal cases, and likely more state cases are resolved through plea bargaining (Devers, 2011).

Devers (2011) reviews literature suggesting great need for reforming how plea bargaining is carried out in the United States. Greater participation of judges and defense counsel early in the process might result in greater balance of power among the key players in plea bargaining (Bibas, 2004). In addition, a focus on certain nonviolent crimes might be a wise area for more productive use of plea bargaining. One likely target for a relaxing of plea bargaining positions is in the area of substance abuse-related crimes. It is in this context that the Alternative Sentencing Worker Program assumes an important role. The goal of the Alternative Sentencing Worker Program is to maximize clients' liberty interest while at the same time attaining client engagement in constructive use of probation or diversion sentences in lieu of incarceration. This project offers a different way to defend clients while at the same time joining with state government objectives in reducing unnecessary incarceration.

The Alternative Sentencing Worker Program

What the Workers Do

For several decades court systems have made use of community alternatives to incarceration for drug offenders. The prevailing models of court-mandated treatment make use of the heavy hand of the law to direct individuals into treatment. One common vehicle for using alternatives to incarceration has been through Drug Courts, which, while being voluntary in the sense of individuals agreeing to participate, still carry a quality of mandates that originate with court action. While these forms of treatment have shown effectiveness, they have traditionally been under the purview of prosecution and have been used with an interest in maintaining control over offender behavior (Farabee & Leukefeld, 2001).

By contrast, the process by which Alternative Sentencing Workers develop alternative sentencing plans is different. It originates with defense initiatives. And, as part of the defense, clients play an active role in determining their degree of interest in seeking help through community services. Thus, the alternative sentencing plans include thinking of community-based services as part of the client's defense—but in a unique way. Defense teams are typically tasked with advocating on behalf of clients' liberty interests. What is different about this approach is that it takes a longer view of client liberty interests. That is, the attorney wants to work to help keep clients from incarceration, but also to be less likely to be re-arrested or fall back into state custody. The solution involves alternative sentencing plans built around careful assessment of needs for rehabilitating the individuals who are facing incarceration.

The fact that these alternative sentencing plans are developed as part of defense rather than being just a response to prosecution ideas means that client participation is typically much more robust. Instead of simply being directed to a program, the client and Alternative Sentencing Worker first work out what the person needs, then locate a program, then present a plan to the court.

After plans are accepted by the courts, Alternative Sentencing Workers assist in getting clients into the proposed programs. In addition, ASW Program staff complete follow-ups on clients 12 months after the court acceptance of the plan to see how they are doing.

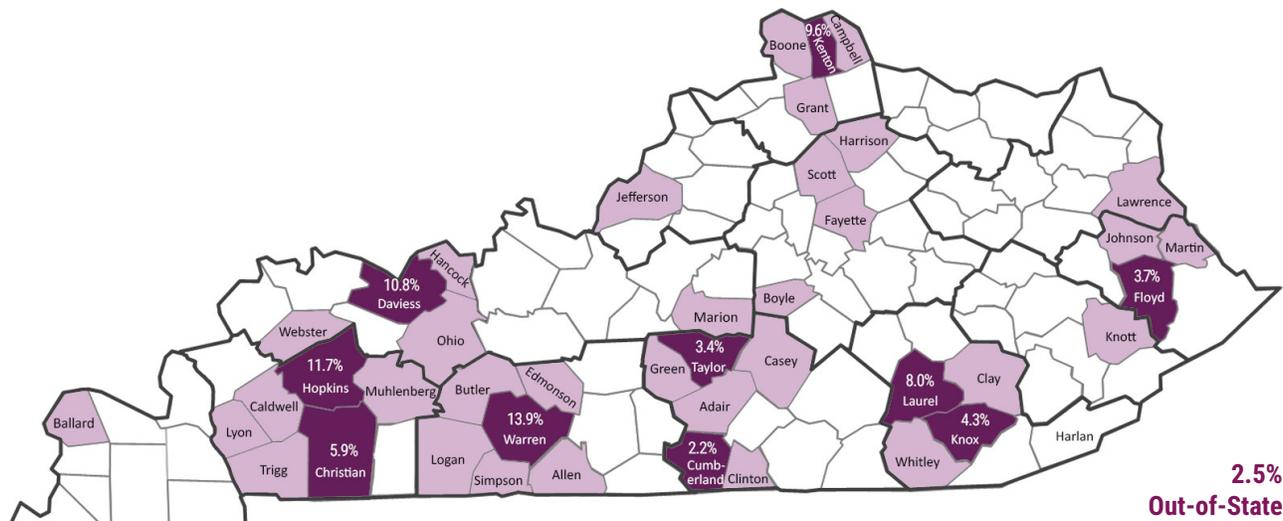
Alternative Sentencing Workers also spend time with community programs developing closer working relationships and referral procedures to enhance cooperation among service providers and the court system.

Districts with DPA ASW Program Staff in SFY 2104

There were eight DPA field offices with Alternative Sentencing Workers assigned to the defense teams during SFY 2014. Those field offices were Owensboro, London, Prestonsburg, Covington, Madisonville, Columbia, Hopkinsville, and Bowling Green. The cost of the ASW Program in SFY 2014 was \$551,265, including all salaries (\$311,603), fringe benefits (\$167,758), and overhead costs (\$71,904). This program represents but 1.2% of the SFY 2014 DPA budget of \$44,992,300.

As shown in Figure 1, in SFY 2014, the eight Alternative Sentencing Workers served 324 clients who lived in 34 counties and three neighboring states at the time of their arrests. The county with the highest percentage of client residents was Warren County with 13.9% of all ASW clients in SFY 2014. Hopkins, Daviess and Kenton were close behind. Just over one-fourth (26.5%) of the ASW clients were from other counties and 8 were from out-of-state.

FIGURE 1. COUNTY OF CLIENT RESIDENCE AT TIME OF ARREST (N=324)



The Specific Functions of the Worker

All cases for the DPA ASWs are referred by the client’s defense attorney. Essentially, the attorney believes that the client is in need of a rehabilitation or social service and needs a specialist to work up a plan for those services. ASW Program staff do not provide clinical services – a function left to the many organizations to which they refer clients. However, the ASWs assess service needs in order to make appropriate referrals to treatment and rehabilitation providers. ASW clients need to complete service needs assessments and service plans for presentation to the court by the DPA attorney. In these cases, the ASW interviews clients, assesses needs based on social history data collection, and, when indicated, consults with community providers to assess suitability for referral. At the time of initial interviews, 76.9% of the clients were incarcerated and 1.9% were on home incarceration. All others were released on a variety of conditions - some on their own recognizance and others on financial bail.

Alternative Sentencing Worker Approaches

Evidence-based practices (EBPs) for substance use disorders (SUDs) are now required in most substance abuse treatment settings such as outpatient, intensive outpatient, short and long-term residential, inpatient, and corrections-based approaches (Torrey, Lynde, & Gorman, 2005; Riekman, Kovas, Cassidy, & McCarty, 2011). However, government programs have an increasing interest in the use of EBPs in all phases of intervention with substance abusers. The Alternative Sentencing Worker Program has incorporated evidence-based practices. All of the DPA ASW have been trained in the most relevant evidence-based practice for this kind of service – Motivational Interviewing (Carroll et al., 2006; Miller & Rollnick, 1991; 2002; Vader, Walters, Prabhu, Houck, & Field, 2010). The association of Motivational Interviewing with change-talk and open-endedness has been well established and it is an approach best conceived as a communication style, not a specific treatment protocol or fixed set of topics (Miller & Rollnick, 2009; Morgenstern, et al., 2012). This approach allows for a gentle eliciting of client desire for services and change rather than direct confrontation. It is very consistent in style with the entire philosophy of defense work as it hinges directly on client commitment to change processes and a willingness to participate in services. The technique facilitates rather than directs change processes. All eight of DPA ASWs in SFY 2014 held master’s degrees in social work.

Cost for the Alternative Sentencing Worker Program

The Kentucky Department of Public Advocacy's annual budget made up but 3.29% of the total criminal justice system expenditures in SFY 2014. The Alternative Sentencing Worker Program represented 1.2% of the overall DPA budget for SFY 2014. The cost of the staff and operating expenses for the 8 ASW Program staff for SFY 2014 was \$551,265. During the same fiscal year, there were 324 ASW cases, for an average per-case cost of \$1,701 independent of attorney costs. The average per client legal defense cost for new trial cases in SFY 2014 was \$245, however this cost would be present with each ASW case irrespective of the ASW services.

The ASW Program staff ended up allocating time to community outreach, mitigation efforts, alternative planning for involuntary hospitalization cases, and consultation with their attorneys on client needs and approaches. All of these functions had the result of lowering caseload expectations to only a little over 50% of expected cases served for the year. One region in particular was absorbed by duties regarding involuntary hospitalization (over 880 cases referred for that alone). Overall, a total of 2,254 cases were presented to the ASW Program staff for some level of assistance with either mitigation, consultation, or hospitalization review. Of these, 1,374 were various cases in district or circuit court other than involuntary hospitalization cases. From the pool of referred cases, 324 become active ASW cases with plans accepted by the courts.

Method

This evaluation study uses data collected by the Kentucky Department of Public Advocacy and is a secondary data analysis study.

Materials - Data Sources for This Report

The Department of Public Advocacy has developed a case management data system called JustWare that manages all data related to DPA cases, including the ASW activities. ASW Program staff members collect data from clients during their interviews and then enter the data into JustWare. All the client-level data presented in this evaluation are derived from completed records that were entered into JustWare by the ASWs between 1 July 2013 and 30 June 2014. The data are principally client self-reports except the data on their charges, and actual sentences, which are from attorney/ASW data entries in JustWare.

The data on time spent in jails and prisons items are taken from court records and other data available to the DPA attorneys and DPA administrative staff. The DPA Supervisor for the ASW Program checked all incarceration data for each of the sampled clients for the 12 month period following alternative sentencing plan acceptance by the courts. The follow-up data on nights spent in jail were taken from independent data sources, including the Kentucky court's informational system, ("CourtNet"), the Kentucky Offender Management System (KOMS), and local jail data.

Human Subjects Protections

All data for this report that were collected by DPA were transmitted to the University of Kentucky in de-identified form. Thus, this secondary data analysis evaluation study received approval from the University of Kentucky Medical Institutional Review Board.

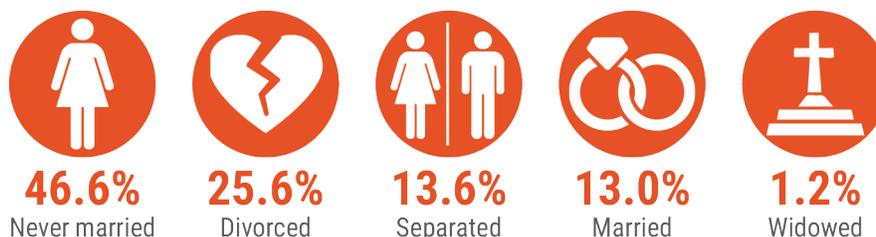
Findings

ASW Client Characteristics During Assessment of Needs by ASW Program Staff

MARITAL STATUS

The average age of ASW clients in SFY 2014 was 33.6 years with a range of age 14 to age 69 and 59% (n=191) were male. As shown in Figure 2, very few of the clients were married (13%), almost half (46.6%) have never been married, while 25.6% were divorced and 13.6% were separated.

FIGURE 2. MARITAL STATUS (N=324)



RACE/ETHNICITY

Table 1 below shows that the overwhelming number (n=287, or 88.6%) of ASW clients reported their race/ethnicity as white or Caucasian. A little over ten percent (n=33) reported being Black or African-America and the remaining four clients were Asian (n=1), Hispanic (n=1), or multi-racial (n=2).

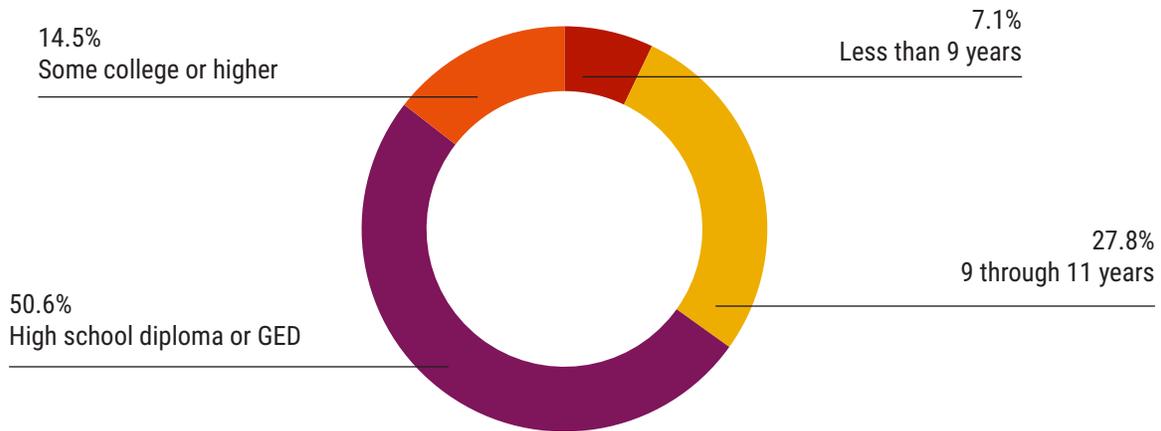
TABLE 1. SELF-REPORTED RACE/ETHNICITY (N=324)

Race or ethnicity	Number
White/Caucasian	287
Black/African American	33
Multiracial	2
Hispanic	1
Asian/Pacific Islander	1

EDUCATION

Figure 3 shows the distribution of educational attainment as measured by number of years of schooling completed. Just over half (50.6%) had a high school diploma and almost 15 % had some college education. Importantly, almost 35% had less than a high school diploma or a GED and 7.1% had even less than 9 years education, thus suggesting limited employment potential.

FIGURE 3. EDUCATIONAL ATTAINMENT (N=324)



EMPLOYMENT

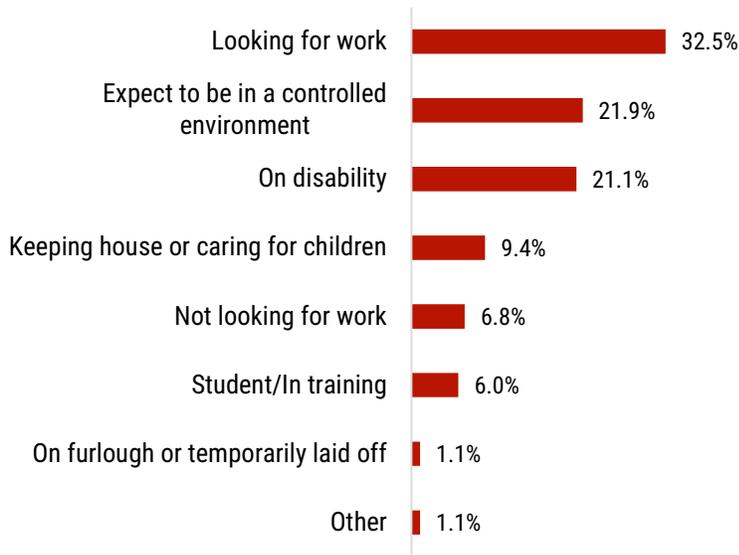
Table 2 shows the ASW clients’ employment status at the time of assessment of social service needs. Almost 80% were unemployed at the time of assessment but only 30.9% had been generally unemployed in the 12 months before assessment. During the 12 months before ASW assessment, 30.9% reported having been unemployed and 16% had been on disability. Interestingly, only 2.2% report having been in a controlled environment (residential facility, jail, prison, hospital) for most of the past 12 months and thus, being unable to work. Among the 42.2% who had some form of employment during the 12 months before the ASW assessment, almost half (19.4%) had held full time jobs.

TABLE 2. CURRENT EMPLOYMENT AND EMPLOYMENT IN THE PAST 12 MONTHS BEFORE ASSESSMENT (N=324)

Current employment	
Unemployed	79.0%
Full-Time	8.0%
Part-Time	7.7%
Irregular, seasonal	5.2%
Usual employment in past 12 months	
Unemployed	30.9%
Full-Time	19.4%
Part-Time	15.1%
Irregular, seasonal	7.7%
Homemaker or caregiver	4.9%
Student	3.7%
On Disability	16.0%
In a controlled environment	2.2%

Figure 4 shows that among the ASW clients who were unemployed for most of the past 12 months, 32.5% are currently seeking employment and only 6.8% are in situations where they are available to work and yet are not seeking employment. Also among those not in a position to seek employment were the 21.1% who were on disability and the 21.9% of clients who were in some form of controlled environment.

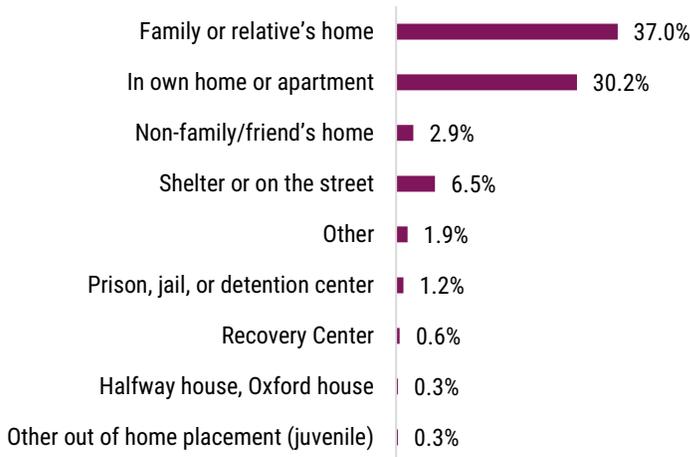
FIGURE 4. CURRENT EMPLOYMENT EXPECTATIONS AMONG THOSE WHO WERE NOT EMPLOYED AT THE TIME OF THE ASW ASSESSMENT (N=265)



LIVING ARRANGEMENTS

Figure 5 below shows that in the 12 months before their latest incarceration 37% of ASW clients lived in family or relatives’ homes while 30.2% lived in their own homes or apartments. Looking forward, 34.9% of clients also reported that they would likely be homeless once released from jail unless they had an alternative sentencing plan in place.

FIGURE 5. LIVING SITUATION IN THE 12 MONTHS PRIOR TO THIS INCARCERATION (N = 324)



34.9%
At risk for being homeless
if no ASW plan in place

HEALTH AND BEHAVIORAL HEALTH

Figure 6 shows the self-reported physical health problems of ASW clients at the time of assessment of service needs. The high percent of clients reporting a history of head injury is noteworthy as a possible contributing factor to employment problems and other behaviors that can affect criminal involvement. Over one-third (36.7%) also reported some chronic health problem and 21% reported having chronic non-malignant pain.

FIGURE 6. SELF-REPORTED PHYSICAL HEALTH PROBLEMS AT ASSESSMENT (N=324)

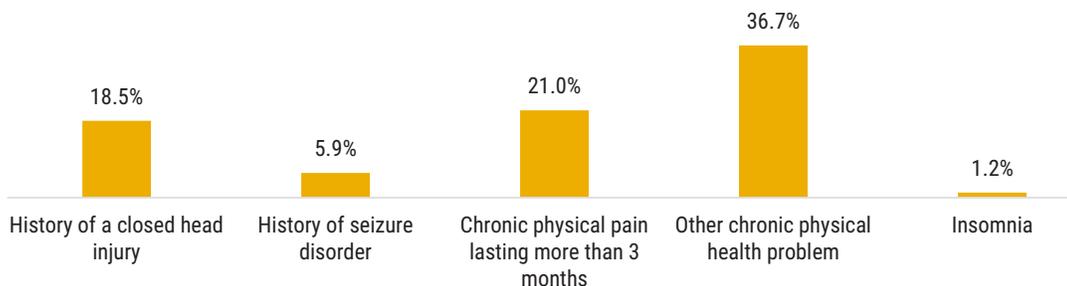
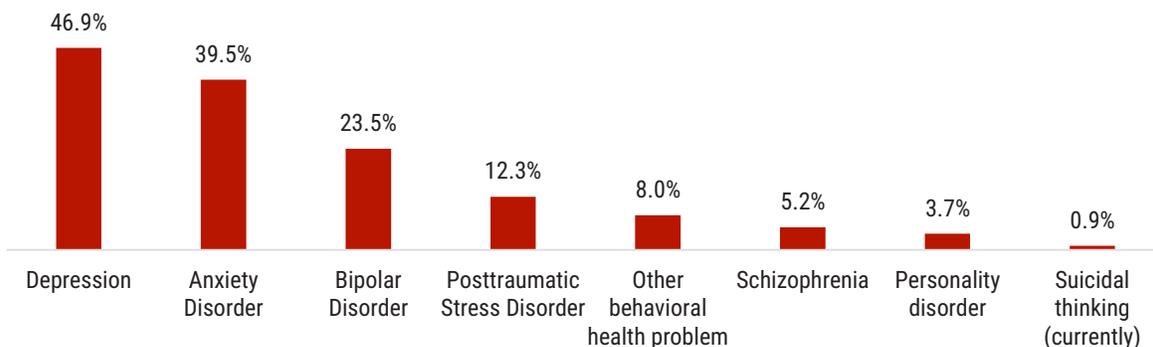


Figure 7 shows that nearly half (46.9%) of the clients reported having been told by a professional that they have depression and nearly the same percent reported having an Anxiety Disorder (39.5%). Surprisingly, almost one-fourth (23.5%) also reported having Bipolar Disorder - a diagnosis that is over-applied in many clinical settings. Only 5.2% reported having Schizophrenia and even fewer had been told they have a Personality Disorder (3.7%). Over ten percent (12.3%) reported having been told they had Posttraumatic Stress Disorder (PTSD) and 8.0% reported having some other behavioral health problem. Less than one percent reported currently having suicidal thoughts.

FIGURE 7. SELF-REPORTS OF DIAGNOSED BEHAVIORAL HEALTH DISORDERS (N=324)



Individuals are screened for self-reported disabilities and Figure 8 below shows that only 2.5% of the SFY 2014 clients reported having physical disabilities, although 22% reported various types of learning disabilities. Almost 8% reported having intellectual disabilities.

FIGURE 8. TYPES OF DISABILITIES (N=324)



VICTIMIZATION EXPERIENCES

Figure 9 below shows the percent of clients reporting some form of victimization. A surprisingly high percent (39.6%) reported having been the victim of physical violence in the past and 29.6% reported having been subjected to sexual violence and 41.1% reported having been psychologically abused.

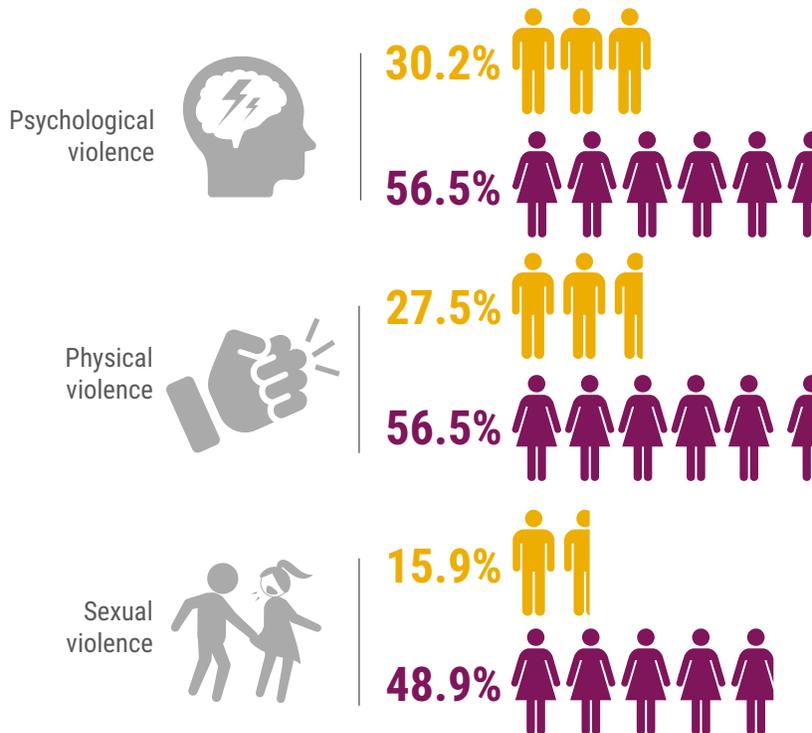
FIGURE 9. PERCENT OF CLIENTS WITH SELF-REPORTED VICTIMIZATION EXPERIENCES (N=321)¹



¹Three clients had missing data for these variables

When victimization experiences are examined by gender, important differences emerge. Figure 10 shows the difference is most evident with sexual violence victimization where 48.9% of women but only 15.9% of men reported having been victims of sexual violence. However, consistent with other research findings, women clients report more victimization experiences across all types.

FIGURE 10. SELF-REPORTED VICTIMIZATION BY GENDER (N=321)¹



¹Three clients had missing data for these variables

SUBSTANCE USE

One of the key target programs for the Alternative Sentencing Worker Program is substance use. Table 3 shows that among the clients, heavy reports of substance use were the norm. Clients were interviewed about their use of substances during the 30 days prior to their last incarceration. Almost half reported using alcohol in that 30-day period and 31.5% used alcohol to intoxication. Consistent with other substance abuse research in Kentucky, almost the same percent of clients (43.5%) reported using opioid in the same 30-day period – even greater than the 42.9% percent who reported marijuana use. While heroin use has been reported as increasing in certain areas of the state, in SFY 2014, the percent of clients reporting heroin use was comparatively low at 13.9%. Also, consistent with other research on drug use in Kentucky, very few

clients reported using hallucinogens (2.8%), inhalants (1.9%), barbiturates (3.1%), and designer drugs (such as bath salts) (3.7%).

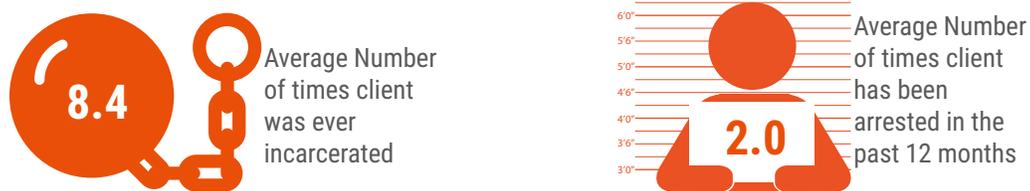
TABLE 3. SELF-REPORTED SUBSTANCE USE IN THE LAST 30 DAYS ON THE STREET (N=324)

Type of substance use	Percent
Alcohol	46.0%
Alcohol to Intoxication	31.5%
Opioids (prescription analgesics)	43.5%
Marijuana	42.9%
Stimulants (including methamphetamine and amphetamine)	35.2%
Sedatives, Hypnotics, Tranquilizers	26.9%
Cocaine/crack	15.4%
Heroin	13.9%
Methadone	12.3%
Designer Drugs (bath salts)	3.7%
Barbiturates	3.1%
Hallucinogens/Psychedelics	2.8%
Inhalants	1.9%

INVOLVEMENT WITH THE CRIMINAL JUSTICE SYSTEM

One of the other target problems of the Alternative Sentencing Worker Program is chronicity of involvement in the criminal justice system. Figure 6 shows that clients self-reported an average of 8.4 lifetime incarcerations, thus suggesting a very high rate of recidivism risk. In addition, they reported an average of two incarceration episodes in the past 12 months. Not shown in Figure 11 is the additional finding that only 4.3% had any history of sex offenses and none were deemed violent offenders.

FIGURE 11. NUMBER OF TIMES CLIENTS HAVE BEEN INCARCERATED (N=324)



To assess, in detail, the charges at the time of assessment and at the one-year follow-up on what happened following a court acceptance of an alternative sentencing plan, we examined a random sample of 50 clients. For the follow-up sample of 50 individuals, we found that they were before the court on a total of 140 charges. Figure 12 shows that the individuals were charged with 66 felony offenses (of which 42 were Class D felony charges), 48 misdemeanors, 7 violations (to determine if fine should be imposed), and 19 revocation (to determine if suspended time should be imposed) charges.

FIGURE 12. SUMMARY OF CHARGE BEFORE THE COURT AT THE TIME OF ASSESSMENT (N=50)



Addendum B should be consulted to examine the complete list of charges for the 50 clients in the SFY 2014 follow-up sample.

Service Recommendations to the Courts

SERVICE NEEDS RECOMMENDED TO THE COURT

Table 4 shows the distribution of the most pressing service needs for the 324 ASW clients at the time of plan submission to the courts. To arrive at an estimate of client needs for services to include in the recommendations to the court, the needs assessment process identified a primary target for most immediate attention and then secondary targets for further attention once the problems in the primary area have been addressed. A primary program target is one recommended to the court as a pressing need that would be the focus of the first array of services for clients following court approval of alternative sentencing plans. The secondary suggestions were ones that would follow after the first service needs had been addressed. Consistent with the problems that were self-reported by the clients, substance abuse treatment was the overwhelmingly most identified primary service need with 86.1% of cases getting this recommendation. In addition, substance abuse treatment was also identified as a secondary service need for another 5.6% of clients. The second most cited primary service need was mental health care with 32.4% of clients needing that service as a primary concern given the likelihood of co-occurring mental health and substance use disorders.

TABLE 4. PRIMARY AND SECONDARY SERVICE NEEDS (N=324)

Target needs	Primary	Secondary
Education	1.5%	19.1%
Employment assistance (vocational rehab)	2.8%	41.7%
Housing assistance	8.6%	26.9%
Mental health treatment	32.4%	28.4%
Substance abuse treatment	86.1%	5.6%
SNAP (food stamps)	0.7%	8.0%
Getting social services or disability	0.9%	2.2%
Sex offender treatment	1.9%	0.3%
Intellectual disabilities and developmental disabilities services	0.9%	0.6%
Disability	1.2%	4.9%
Social services (nutritionist)	0.0%	0.6%
Social services (community agencies)	2.5%	18.8%
VA hospital	0.3%	0.9%
Committed to Cabinet - Permanency and protection (guardianship)	0.9%	0.3%
Other	5.6%	6.2%

Program Costs and Cost Offsets

Return on Investment Method

The evaluation of cost/benefit remains central to the overall evaluation of the effects of public policies. Central to the ASW Program's success is its return to the public in the form of cost savings. At least since 2011, Kentucky policy makers have been examining ways to reduce the costs of unessential incarceration of individuals whose crimes were mostly a result of substance abuse or mental illness. A variety of steps have been taken to lower the number of persons in state and local facilities and the ASW Program plays a role in achieving this state objective. The ASW Program arose during the policy debates around incarceration costs and it responds to the perceived need for diverting individuals into community services rather than merely warehousing them in correctional facilities – particularly when their primary problems are substance abuse and mental illness. Thus, while the ASW Program gets people to the services they need, it also results in reducing incarceration costs.

The method used for estimating the cost savings evaluated the effects of the ASW Program on incarceration time for the individuals who were clients in the ASW Program. The target for the ASW was two-fold: (1) to reduce the cost of unessential incarceration (i.e., not incarcerating nonviolent offenders with drug or related charges); and (2) to engage individuals in community-based services that might reduce their likelihood for future incarceration.

The basic method for this evaluation of return on investment was to examine the likely incarceration costs of sentences in the absence of the ASW Program and then to examine the actual days the ASW clients were incarcerated during the program year.

Sentencing and Incarceration in the 12 Months Following Alternative Sentencing Plan Acceptance

For examining charges and incarceration, a random sample of 50 clients (15.4%) was taken from the 324 ASW clients from SFY 2014. Of the 50 clients, 28 were sentenced to prison terms, 21 faced jail terms, and one client was a 14-year old minor who was referred back to the Court Designated Worker by the court with no time sentenced. Another client's case was dismissed, thus 48 of the 50 faced likely incarceration time for much if not all of the 12 months post adjudication.

Table 11 shows the actual sentences handed down by the courts for the ASW clients during SFY 2014. These sentences reflect the likely time ASW clients would serve in jail or prison in the absence of an alternative sentencing plan.

The sentences included prison terms either expressed in years or months or jail terms but, for analysis, all sentences were converted to incarceration days. Combined, sentencing for the random sample of 50 ASW clients added up to a total of 44,400 days in jail or prison for a per client average of 888 days or 2.4 years.

To estimate the cost of incarceration, a conservative per diem amount was used based on a recommendation by the Governor's Office of the State Budget Director. Since most individuals sentenced to prison for low-level felonies serve their time in local jails (See 501 KAR 2:040, 501 KAR 2:060, and KRS 532.100), the standard jail per diem rates were used instead of the state institution rate. An average jail per diem rate of \$37.42 was developed from the average of two county jail CTI per diem rates (\$32.92 for jails without a Substance Abuse Program (SAP) and \$41.92 for jails with a SAP) for SFY 2014 (Department of Corrections, Cost to Incarcerate – FY14). This lower-end rate was considerably less than the average state institution rate of over \$60.

Figure 13 reflects the likely cost of incarceration for full terms (an average of 2.4 years) had the clients not been granted alternative sentencing plans. Thus, if the 50 clients in this follow-up sample had served the terms for which they were sentenced, the total cost over time would be \$1,661,448 or an average of \$33,229 for each client.

FIGURE 13. SENTENCING AMOUNTS AND COST OF INCARCERATION BY TYPE OF INCARCERATION (N=50)



Since this project examines ASW clients for a one-year follow-up period to estimate the near-term savings reductions for the state and county governments, all costs were adjusted to the 12-month period following plan acceptance by the courts. Thus, the examination of incarceration costs must be focused on the amount of time that could be served during the 12 months from the date of the alternative sentencing plan being accepted by the courts.

Figure 14 summarizes the costs of incarceration within the 12 months of follow-up from the date of alternative sentencing plan acceptance. Under this analysis, the 50 clients would have cost the state or county governments \$561,450 for the year, or \$11,229 per person, had an alternative sentencing plan not been approved. *These are costs over the 12-month period that the state and local governments would have incurred in the absence of the Alternative Sentencing Worker Program.*

FIGURE 14. SENTENCING AMOUNTS AND COST OF LIKELY INCARCERATION BY TYPE OF INCARCERATION ADJUSTED TO THE 12 MONTHS POST ALTERNATIVE SENTENCING PLAN ACCEPTANCE BY THE COURTS (N=50)



Figure 15 shows the number of days actually incarcerated by the follow-up random sample. The total cost of incarceration 12 months after the alternative sentencing plan acceptance was \$79,742. Of the 2,131 incarceration days, 137 were due to clients having to wait in jail for a bed in a community residential facility. The average per-client cost of actual incarceration for the 50 randomly selected clients for the 12 months following plan acceptance by the courts was \$1,595.

FIGURE 15. NUMBER OF DAYS ACTUALLY INCARCERATED IN THE 12 MONTHS SINCE PLAN ACCEPTANCE BY THE COURTS (N=50)



Return on Investment

The public policy driving the development of the Alternative Sentencing Worker Program is embedded in the spirit of 2011's HB 463 and its call for reduced incarceration costs. This project accepted that call and incorporated it into public defender actions on behalf of individuals charged with crimes that can be best addressed by community services instead of incarceration. This report examines all the costs of the program in relation to the likely costs to state and local governments in the absence of the program.

Figure 16 shows the average costs per client for what the 12 months' worth of incarceration sentenced time would have cost the state and local governments (\$11,229) in the absence of an alternative sentencing plan. Next, the table shows the average per client cost of actual time served (\$1,595). This means that the courts' approval of the alternative sentencing plans resulted in an average savings of \$9,634 per client in the ASW Program for SFY 2014. When the program cost is shown in relation to the cost savings from reduced incarceration time, the result can be expressed as a 1 to 5.66 ratio. In other words, there is a return on investment of \$5.66 for each \$1.00 spent on the ASW Program.

FIGURE 16. INCARCERATION COSTS AS AVERAGES PER CLIENT (N=50)



Other Costs

The ASW Program is grounded in 2011's HB 463 which set forth a mandate to reduce the costs of incarceration. The entire mission of the ASW Program is, therefore, aimed at using community-based services in lieu of correctional facilities. This evaluation clearly shows that the program does in fact greatly reduce incarceration costs. Some may be concerned that the program involves other costs due to the use of those community-based services. The kinds of costs for community-based services are typically supported by the state's Substance Abuse Prevention and Treatment (SAPT) Block Grant from the Federal Substance Abuse and Mental Health Services Administration (SAMHSA). In addition, under the Affordable Care Act and companion changes in Federal Medicaid Guidelines, many of the community treatment services are now covered by Medicaid at a 90% Federal cost-share basis. Thus, to the extent that some costs are shifted from incarceration to community services, the burden for those costs shifts mostly from state to federal sources. The burden on Kentucky taxpayers is greatly reduced.

Conclusion

Overall Effectiveness

While this evaluation has highlighted the cost incentives for continuation or even expansion of the ASW Program, there are other reasons for supporting the program. First, it has long been known that incarceration does nothing to change people's substance use disorders. Substance use disorders are acquired diseases like Type 2 Diabetes and there is nothing about incarceration that addresses the fundamental features of addiction. Thus, the use of community-based services is far more likely to result in changes in the management of addictive disorders than will jail or prison time. Second, it is a more humanitarian way of dealing with a complex social-psychological-economic problem. Third, it adds a useful component to what is now the predominant approach to clearing cases – the use of plea deals. The ASW adds more value to the plea process for clients and the state.

Thus the ASW Program results in significant cost-savings for the state and better outcomes for persons arrested on drug related charges or charges arising due to mental health problems. The program in SFY 2014 returned \$5.66 in savings for every \$1.00 in program cost. Thus, viewed as a return on investment, the program has achieved one of the major aims of the Justice and Public Safety Cabinet.

Limitations

This report on the outcomes of the Alternative Sentencing Worker Program was developed from data collected by the Kentucky Department of Advocacy staff using interview data from clients and data from the Kentucky Department of Corrections and the Kentucky Administrative Office of the Courts. Client self-reports may be biased, although previous research suggests bias is least evident when information is revealed in confidential relationships. In addition, this report is dependent on the accuracy of the official incarceration data from the Kentucky Department of Corrections, Kentucky Administrative Office of the Courts, and data from local jails. However, both client self-reports and official incarceration data have been widely used to analyze criminal justice policy outcomes.

Recommendations

The return on investment that is suggested by this study supports the idea of continued expansion of the Alternative Sentencing Worker Program into all districts in the state. In SFY 2016, several new positions were funded, bringing the number of ASW positions to 45, thus greatly expanding availability of these services to many more judicial districts. Policy makers should examine ways to foster greater development of community-based services that can be used as alternatives to incarceration. The seventeen Recovery Kentucky Centers certainly represent an important step in the right direction, but more services are needed. The successful reduction of persons serving time in jails and prisons will require some further investment in community services.

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Addendum A

Client Vignettes

“WILLIAM”

William is a 25 year old, separated male. The DPA ASW interviewed William in the county jail. He was charged with Trafficking in Controlled Substance and Trafficking in Marijuana. He was not from the local area and had no support. He was homeless and had been kicked out of the local shelter for substance use. During the interview William expressed how much he had hoped to return to his home town, which was very far away. He had only limited opportunities there but he thought familiarity with the area would help him get on the right path. He was very forthcoming about his addiction, and expressed much gratitude having the opportunity to have his story heard. William had hopes of getting the much needed help that he had never been offered. He had very specific goals for himself, all of which he felt were attainable if given the opportunities. He asked for long-term treatment so he could be well prepared upon leaving the facility. The Judge agreed to the alternative sentencing plan and Roger entered a short-term treatment facility first. He completed this program successfully and then went directly into long-term treatment. He remains in long-term treatment where he holds a job, is furthering his education, and has independent housing. He hopes to continue being successful upon leaving the long-term facility as he has been given the skills and resources to do so.

“DARIN”

Darin is a 25-year-old male who was incarcerated at the Adair Regional Jail for charges of Burglary 2nd Degree and Persistent Felony Offender. He was likely facing 8 years prison time (although he could have received a 20 year sentence). Darin had lived in his home county all of his life. He was raised by both of his parents and they were still married. He reported trauma that he had experienced through car wrecks. The highest grade that Darin reported to have completed was the 8th grade. He was married and had 2 daughters (age 2 & 7). Darin was a hard worker and when not incarcerated he always had a job. He did not report having any medical or mental health issues. But Darin was addicted to methamphetamine and it had taken control of his life. He smoked 1 gram of methamphetamine daily. He would also abused opioids and marijuana on a regular basis. Darin accepted a plea to serve 180 days and then complete a long term recovery program. On March 2, 2015 Darin went to The Healing Place in Campbellsville, Kentucky and completed the program.

“ANDREW”

Andrew is a 24-year-old male who was incarcerated in a county detention center. He had violated his probation from a circuit court in a nearby county. Andrew grew up living with his mother, but he had no relationship with his father. The highest grade he had completed was the 8th grade. He was attending GED classes at the time of the ASW assessment. Andrew had previously been diagnosed with Attention Deficit Hyperactivity Disorder as a child. He did not report any other mental health problems. His only medical issues were pain from a series of accidents. Andrew had a history of intravenous drug use and he was addicted to OxyContin, Suboxone, methamphetamine, and marijuana. He was only 15 years old when he first took a Suboxone. Andrew said, “I have been battling the needle for 7 years”. He had not been to any type of substance abuse treatment before. He had dreams of getting clean, getting out of his home town, and hopefully joining the U.S. Marines. On December 23, 2014 Andrew entered treatment at Addiction Recovery Care.

Addendum B

All Charges for the Follow-up Sample (n=50)

Charge	Misdemeanor	Felony	Violation	Revocation
1110 – Disregarding a stop sign			1 (2.0%)	
1080 – Failure to or improper signal			1 (2.0%)	
3800 – No operators/moped license	1 (2.0%)			
4030 – Operating on suspended/revoked license	2 (4.0%)			
4350 – License to be in possession	1 (2.0%)			
4810 – Failure of owner to maintain required insurance (second offence)	1 (2.0%)			
5060 – Failure to use child restraint device in vehicle			2 (4.0%)	
5190 – Failure to produce insurance card			1 (2.0%)	
7950 – Assault 4th degree (no visible injury)	1 (2.0%)			
7960 – Assault 4th degree (minor injury)	3 (6.0%)			
8030 – Menacing	1 (2.0%)			
8200 – Terroristic threatening, 1st degree		3 (6.0%)		
8220 – Terroristic threatening 3rd degree	1 (2.0%)			
14010 – Criminal mischief 1st degree		6 (12.0%)		
14130 – Violating graves		1 (2.0%)		
16050 – Loitering for prostitution purposes (second offence)	1 (2.0%)			
16060 – Loitering for prostitution purposes (first offence)			1 (2.0%)	
17090 – Sexual abuse, 3rd degree	2 (4.0%)			
17540 – Indecent exposure 2nd degree	1 (2.0%)			
21110 – Operate motor vehicle under influence of alcohol/drugs, .08, aggravator, second offence	1 (2.0%)			
21120 – Operate motor vehicle under influence of alcohol/drugs, .08, third offence	1 (2.0%)			
21130 – Operate motor vehicle under influence of alcohol/drugs, .08, aggravator, 3rd	1 (2.0%)			
23010 – Alcohol intoxication in public place, third offence or within 12 months	1 (2.0%)			
23030 – Public intoxication in public place, third offence or within 12 months	2 (4.0%)			
23040 – Alcohol intoxication in a public place, 1st and 2nd offence			1 (2.0%)	
23710 – Disorderly conduct, 2nd degree	1 (2.0%)			
26280 – Driving on DUI suspended license, first offence	2 (4.0%)			
26680 – Probation violation (for felony offence)				6 (12.0%)
26800 – Probation violation (for misdemeanor offense)				3 (6.0%)
26910 – Probation violate (for technical violation)				10 (20.0%)
27630 – Violation of KY EPO/DVO	1 (2.0%)			

112210 – Sexual abuse, 1st degree, victim under 12 years of age		2 (4.0%)		
131200 – Assault, 3rd degree (EMS, fire, rescue squad)		1 (2.0%)		
214410 – False statement, misrepresentation to receive benefits > \$100		1 (2.0%)		
220610 – Burglary, 2nd degree		2 (4.0%)		
220620 – Burglary, 3rd degree		1 (2.0%)		
230390 – Theft by unlawful taking, shoplifting	2 (4.0%)			
232900 – Theft by unlawful taking		2 (4.0%)		
232990 – Theft by unlawful taking, all others	1 (2.0%)			
233010 – Theft by deception, incl. cold checks under \$10,000		1 (2.0%)		
233100 – Theft of identity of another without consent		1 (2.0%)		
250190 – Forgery, 2nd degree		7 (14.0%)		
250620 – Criminal possession of a forged instrument, 2nd degree		1 (2.0%)		
280310 – Receiving stolen property under \$500	1 (2.0%)			
280320 – Receiving stolen property under \$10,000		3 (6.0%)		
381130 – Unlawful transaction with minor, 1st degree, illegal controlled substance, under 16		1 (2.0%)		
418200 – Unlawful possession of meth precursor, 1st offence		4 (8.0%)		
420090 – Illegal possession of legend drug	3 (6.0%)			
420550 – Controlled substance prescription not in original container, 1st	2 (4.0%)			
420810 – Drug paraphernalia	7 (14.0%)			
422010 – Possession of a controlled substance, 1st degree, first offence (drug unspecified)		2 (4.0%)		
422030 – Possession of a controlled substance, 1st degree, first offence, cocaine		1 (2.0%)		
422050 – Possession of a controlled substance, 1st degree, first offence, heroin		2 (4.0%)		
422090 – Possession of a controlled substance, 1st degree, first offence, opiates		1 (2.0%)		
422150 – Possession of a controlled substance, 1st degree, first offence, methamphetamine		2 (4.0%)		
422450 – Possession of a controlled substance, 2nd degree, drug unspecified	3 (6.0%)			
422630 – Possession of a controlled substance, 3rd degree, drug unspecified	3 (6.0%)			
422990 – Manufacturing methamphetamine, 1st offence		1 (2.0%)		
422995 – Comp manufacturing methamphetamine, 1st offence		1 (2.0%)		
423300 – Possession of marijuana	3 (6.0%)			
423650 – Trafficking in illicit substances, 1st degree, first offence (>= 2 gms methamphetamine)		1 (2.0%)		

423660 – Trafficking in illicit substances, 1st degree, 1st offence (< 2 gms methamphetamine)		3 (6.0%)		
423700 – Trafficking in illicit substances, 1st degree, 1st offence (<4 gms cocaine)		4 (8.0%)		
423720 – Trafficking in illicit substances, 1st degree, 1st offence (>= 10 du opiates)		1 (2.0%)		
490100 – Driving motor vehicle while license suspended for DUI, 3rd or greater offense		1 (2.0%)		
702400 – Engaging in organized crime – criminal syndicate		3 (6.0%)		
731010 – Persistent felony offender, 1st degree		4 (8.0%)		
731020 – Persistent felony offender, 2nd degree		2 (4.0%)		
Total	48	66	7	19

Kentucky Department of Public Advocacy

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Edward C. Monahan

Public Advocate

Damon Preston

Deputy Public Advocate

Brad Holajter

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Attachment 2a

**SUPPLEMENT TO THE SFY 2014 OUTCOME REPORT ON
THE DEPARTMENT OF PUBLIC ADVOCACY
ALTERNATIVE SENTENCING WORKER PROGRAM**

June 30, 2016

Robert Walker, M.S.W., L.C.S.W.

In response to questions from the Office of the Secretary of the Justice and Public Safety Cabinet, a further step was taken in the analysis of DPA ASW data. This step involved examining whether there was any difference in the cost outcomes for the state between those individuals whose ASW plans were accepted versus those whose plans were denied. A random sample of 50 individuals was taken from the ASW plan denied group. Using the same data extraction from KOMS and CourtNet as was used for the ASW sample, a list of charges before the court at the time the plan was filed, along with the sentences and days served in the 12 months following court disposition regarding ASW plans was developed.

In order to keep the comparison structured along similar lines, the adjusted jail per diem rate was applied to the comparison sample as it was with the ASW sample.

Table 1 shows the basic demographics of the two groups. There were no statistical differences in age between the two groups, however gender was statistically different with far more females in the ASW group. The distribution of males in the comparison group is more consistent with the general correctional population and arrest data. Nothing in the data collection can fully clarify why this great a gender difference would exist between the two groups.

Table 1. Comparison of the ASW sample with the comparison sample of individuals whose ASW plans were denied by the court (n=100)

	ASW sample (n = 50)	Comparison Group (n = 50)
Demographics		
Average age (in years)	34.4	34.9
Gender*		
Male	56.0%	76.0%
Female	44.0%	24.0%
Race		
White	82.0%	86.0%
Black/African American	16.0%	14.0%
Hispanic	2.0%	0.0%

*p<.05

Table 2 shows the comparison of sentences and actual time served for the ASW clients whose plans were accepted and those whose plans were denied. The ASW clients had average sentences of 798 days (2.2 years) whereas the individuals whose plans were denied had average sentences of 1,773.8 days (4.9 years). The group whose plans were denied also had a statistically significantly greater concentration of felony offenses (111 versus 48) and revocations and a statistically greater number of overall charges (140 for the ASWs, 216 for the comparison group). These differences may be due to the greater number

of males in the comparison group or may reflect a higher degree of criminality among those whose plans were denied by the court.

Table 2. Comparison of sentences imposed by the courts and actual days served in the 12 months following disposition (n=100)

	ASW sample (n = 50)	Comparison Group (n = 50)
Average sentence (in days)***	798.0	1773.8
Average number of days incarcerated in the 12 months after court disposition***	43.49	260.88
Total misdemeanors before the court at the time plan was presented	48	57
Total felonies before the court at the time plan was presented **	66	111
Total violations before the court at the time plan was presented	7	7
Total revocations before the court at the time plan was presented **	19	41
Total all charges before the court at the time plan was presented ****	140	216

** p<.01, ***p<.001, ****p<.0001

Table 3 shows the differences in cost for the ASW clients by comparison to those whose plans were denied by the court. To calculate the cost differences, the total number of days actually served in the 12 months post disposition was summed for both groups. Then, in order to arrive at the most conservative estimate of cost of incarceration time, the same per diem rate was used for both groups even though more of the comparison group likely served time in prison rather than jails. The rate used for this calculation is the same one that was used in the full annual report on the SFY 2014 sample. The total cost of incarceration days for the ASW sample was \$79,742 and the per client average was \$1,595. For the comparison sample, the total cost of incarceration days was \$488,106 with an average per client cost of \$9,762. This suggests an overall cost difference of \$408,364 and a per client average cost difference of \$8,167.

Table 3. Comparison of the costs of incarceration for ASW clients and individuals whose plans were denied by the court

Actual incarceration within the 12-month period	Number of Days	Per diem rate	Total cost (Days X Per diem)	Average per client cost of incarceration
ASW Client Sample	2,131	\$37.42	\$79,742	\$1,595
Comparison Sample – ASW plans denied by the court	13,044	\$37.42	\$488,106	\$9,762

This supplement to the SFY 2014 report on the outcomes of the Alternative Sentencing Worker Program suggests that individuals whose plans are accepted by the courts incur significantly less cost than those whose plans are denied by the courts. The data available for this supplemental report do not explain why these differences are present. While the sample for the comparison group in this analysis contained significantly more males than females, it is unclear whether the crime pattern differences are a function of gender or other factors. In the next annual report, this examination of differences between the two groups will be examined in more detail to see if there are other factors affecting judicial decisions about accepting ASW plans.

Attachment 2b



Department of Public Advocacy

Alternative Sentencing Worker Program

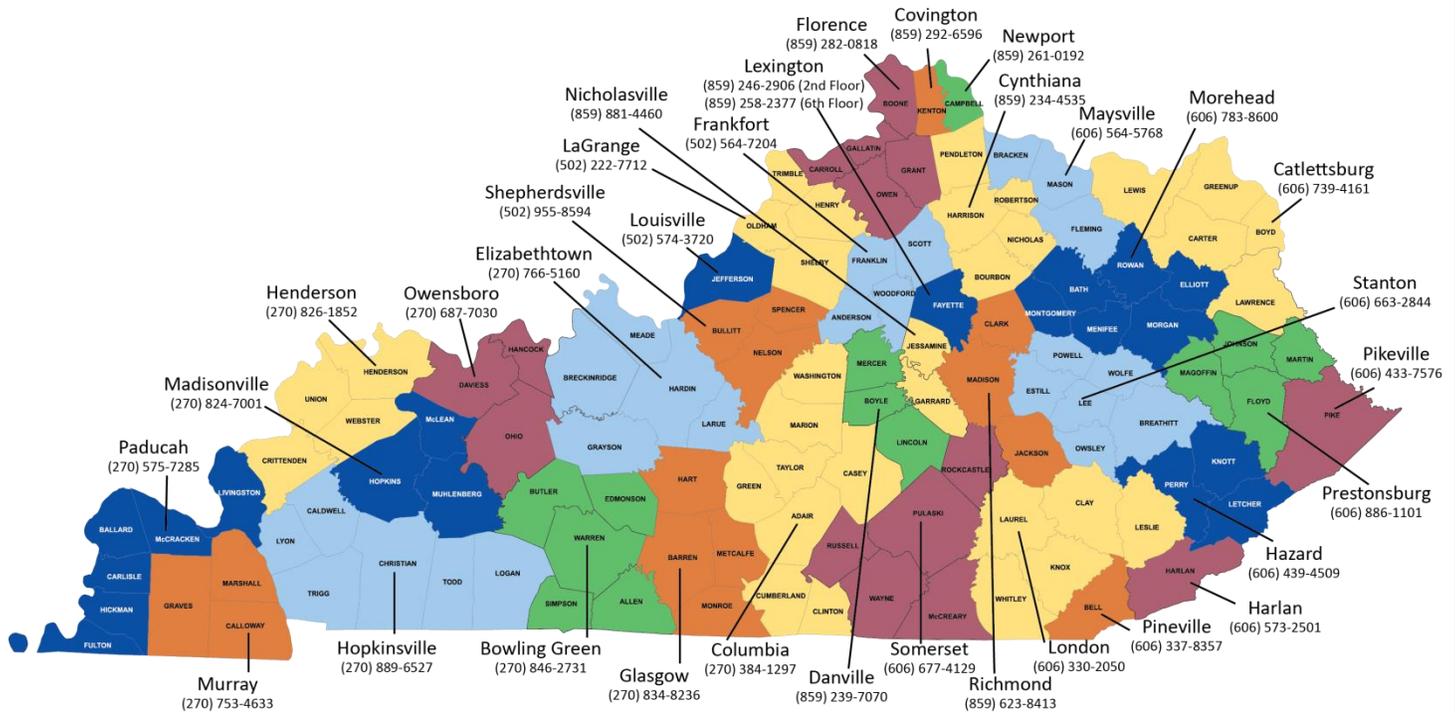
Alternative Sentencing Worker Program

- Started in 2006 as a pilot project with 3 Social Workers
- Program has expanded to include 45 positions at 35 locations across the state
- SFY 2014 Alternative Sentencing Worker Program Evaluation conducted by University of Kentucky Center for Drug and Alcohol Research found:
 - 8 ASWs served 324 clients
 - Clients served 1,595 days out of the 11,292 days they would have served in the 12 months following initial plan approval, for a reduction on 85%
 - For every \$1 spent on the ASW Program, there was a \$5.66 return on investment
 - 86.1% of clients served had substance abuse treatment as their primary service need, with another 5.6% having it as a secondary service need
 - 34.4% of clients served had mental health treatment as their primary service need, with another 28.4% having it as a secondary service need
 - 79% were unemployed at the time of their arrest on current charges
 - 18.5% reported having a brain injury
 - The clients had a lifetime average of 8.4 previous incarceration episodes
 - Almost 35% of clients had less than a high school diploma or GED and 7.1% had even less than 9 years of education
 - 34.9% were at risk for being homeless if no alternative sentencing plan was in place
 - 39.6% were victims of physical abuse, 29.6% were victims of sexual abuse, and 41.1% were victims of psychological abuse

Alternative Sentencing Workers' Role

- Works as an agent of the defense attorney to assist clients charged with criminal offenses, specifically those with substance use disorders and/or mental health conditions
- Conducts comprehensive assessments of clients to identify clients' individualized needs
- Makes referrals and appropriate arrangements for treatment, services, and resources
- Assists clients with preparing Alternative Sentencing Plans to submit to the Court as an alternative to incarceration
- Uses Evidence-Based Motivational Interviewing to facilitate clients' readiness to start the treatment process
- Builds rapport and gains clients' active decisions to participate in rehabilitative interventions
- Provides crisis intervention strategies to clients and their families
- Educates families about the criminal justice system
- Enters data into the case management system and performs all other documentation processes needed to serve clients
- Conducts baseline and 12 month follow up interviews for program monitoring and evaluation
- Facilitates collaboration between agencies within the criminal justice system to support rehabilitation, reduce recidivism, and promote public safety
- Creates and updates community resource guides
- Provides more detailed information about community resources, services, and programs, including eligibility guidelines and process to obtain services

Alternative Sentencing Worker Program Office Locations



Contact Information



Sarah G. Johnson returned to the DPA Alternative Sentencing Program she helped create. Sarah holds a BSW from Morehead State University and a Masters of Social Work with a mental health concentration from the University of Kentucky. Mrs. Johnson started her career as a mental health and substance abuse treatment provider. She

was one of the three original social workers hired for the DPA Social Work Pilot Project in 2006 and worked five years in that capacity. During her previous time with DPA, Sarah was instrumental in establishing our social work program. Sarah excelled in leadership by helping to show the value of the program. In August 2011, Mrs. Johnson was appointed to the Kentucky Parole Board. She returned to DPA in December 2015 and is excited to be back to help lead our program as the Defender Services Branch Manager.

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Cara Lane Cape is the Alternative Sentencing Program Supervisor. Ms. Cape received both a BSW and a Masters of Social Work from Campbellsville University. Ms. Cape began her career at Protection and Permanency in Grayson County, where she was chief investigator. In 2010, Ms. Cape began working at DPA, where she held an administrative position in the Bowling Green Trial Office while completing her graduate degree. In 2011,

Ms. Cape transferred to DPA's main Frankfort Office, where she held positions in the Appeals Branch and Post-Trial Division Director's Office, until finally ending up in the Office of Public Advocate in 2013 as a policy analyst. While working in the Office of Public Advocate, Ms. Cape was an instrumental part of the JustWare Case Management Team. Through this role, Ms. Cape was directly involved in the implementation, customizing, and maintaining of DPA's case management system – JustWare, as well as provided training to all employees state-wide. Ms. Cape assisted in streamlining data points within JustWare to be used in the Kentucky DPA Outcome Study through the Center for Drug and Alcohol Research at the University of Kentucky, in addition to providing ongoing data validation for the study.

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Attachment 2c



Department of Public Advocacy

www.dpa.ky.gov

June 2016

DPA's Defender Services Branch Alternative Sentencing Worker Program

Available Statewide, from Pikeville to Paducah



Alternative Sentencing Workers will be there.



"Mrs. Clement has built an excellent track record on finding treatment options for defendants that had exhausted all traditional avenues. Her work has provided all parties and the Court another viable option to appropriately address the issues of defendants."

Chris Cohron, Commonwealth Attorney
Bowling Green

"I love the DPA Alternative Sentencing Social Worker, Joanne Sizemore. If we had more Joanne Sizemores we could do so much more about drugs and other problems that plague those on court dockets. Having a social worker involved is making a difference, leading to genuine reform in people's lives, which is what we want."



John Paul Chappell, Chief Judge
Knox and Laurel District Court

National Center for State Courts Sentencing Attitudes Survey Findings

Finding

Americans think rehabilitation is a more important priority than punishment and overwhelmingly believe that many offenders can, in fact, be successfully rehabilitated. But most see America's prisons as unsuccessful at rehabilitation.

Finding

High levels of public support are found for alternatives to a prison sentence like probation, restitution, and mandatory participation in job training, counseling, or treatment programs, at least for non-violent offenders. The public is particularly receptive to using such alternatives in sentencing younger offenders and the mentally ill.

Sentencing Attitudes Survey (2006 National Poll of 1,502 randomly selected adults)

For Full Report: <http://www.ncsc.org/~media/Microsites/Files/CSI/The%20NCSC%20Sentencing%20Attitudes%20Survey.ashx>



"The DPA alternative sentencing social workers provide much needed individualized sentencing options to prosecutors and judges. The DPA program is a proven way to help defendants change behavior and not reoffend, saving the state significant incarceration costs. If the program is expanded, more defendants would be helped and more savings would result."

Van Ingram, Executive Director
Kentucky Office of Drug Control Policy

Why DPA?

A common thread spreading through most departments in the Cabinet for Justice and Public Safety is a vested interest in reducing incarceration. While the Department of Corrections, judges, prosecutors, and parole officers can all set up compulsory participation in community-based interventions; the defense can provide a unique role in doing this.

- Given a relationship built on trust, the defense's Alternative Sentencing Workers (ASWs) can gain the clients' active decisions to participate in rehabilitative interventions.
- Our ASWs use this defense advantage to get client buy-in rather than mere compliance with court orders.
- ASWs use Motivational Interviewing, an evidence-based practice, to facilitate the client's readiness to start the treatment process.
- With an ASW's involvement the court can mandate some form of supervised release following a defense motion rather than a governmental punishment.



Enhances the Criminal Justice System by...

- Facilitating collaboration among agencies within the criminal justice system to support rehabilitation, reduced recidivism, and promote public safety
- Providing relevant mitigating information about the defendant's physical health, mental history, and social history
- Conducting comprehensive assessments and making referrals to address all the defendant's multiple needs beyond those apparent on the surface
- Providing additional alternatives to incarceration
- Creating individualized plans to address the defendant's unique characteristics and needs
- Providing more detailed information about community resources, services, and programs including eligibility guidelines and process to obtain services



Kita Clement of the Bowling Green Trial Office is the DPA's ASW Specialist. In addition to maintaining a caseload, Kita provides assistance to other ASWs including job shadowing and training in the field. Kita is also a liaison for ASWs with questions regarding medical insurance. Kita assists program leadership, by attending meetings and conferences at both the state and national level, presenting at training events, and is currently our lead ASW participating in the National Center for State Courts' Holistic Study of Defense.



Elizabeth Young-Ortiz of the Louisville-Jefferson County Public Defender's Office provides supervision to five other ASWs in Louisville, in addition to maintaining her caseload. As a liaison for her office, Elizabeth builds and maintains relationships with service providers in the community. She also tracks the data regarding office caseloads and provides the DPA with caseload data as requested.

DPA Alternative Sentencing Workers are focused on creating positive lasting changes by...

- Breaking the cycle of substance abuse and jail.
- Diverting adults and juveniles with addiction and mental illness, to community-based treatment which in turn saves incarceration costs.
- Connecting clients to services and treatment to successfully transition into their communities and become productive citizens.
- Increasing clients' economic self-sufficiency so they may work, pay taxes, provide child support, pay restitution, and pay court costs.
- Reducing recidivism and promoting public safety.
- Changing lives by investing in human capital.

Alternative

Advancing Public Safety

Sentencing

Saving Counties and State Incarceration Costs

Worker

Working with Community Partners

Program

Promoting Rehabilitation

Contact Information



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Attachment 2d

KENTUCKY DEPARTMENT OF PUBLIC ADVOCACY ALTERNATIVE SENTENCING WORKER PROGRAM

At least since 2011, Kentucky policy makers have been examining ways to reduce the costs of unessential incarceration of individuals whose crimes were mostly a result of substance abuse or mental illness. The Alternative Sentencing Worker (ASW) Program arose during the policy debates around incarceration costs and it responds to the perceived need for diverting those individuals into community services rather than merely warehousing them in correctional facilities. Thus, while the ASW Program gets people to the services they need, it also results in reducing incarceration costs.

COST AND INCARCERATION OPTIONS

IF THE ASW PROGRAM HAD NOT BEEN APPROVED



15,004

Total days likely incarcerated within the 12-month period



\$37.42

Per diem rate



\$561,450

Total cost (number of days incarcerated X per diem)



\$11,229

Average per client cost of all incarceration days for full sentences (n=50)

WITH THE ASW PROGRAM



2,131

Total days actually incarcerated within the 12-month period



\$37.42

Per diem rate



\$79,742

Total cost (number of days incarcerated X per diem)



\$1,595

Average per client cost of all incarceration days for full sentences (n=50)

STUDY METHOD

The basic method for this evaluation of return on investment was to examine the likely incarceration costs of sentences in the absence of the ASW Program and then to examine the actual days the ASW clients were incarcerated during the program year.

For examining charges and incarceration, a random sample of 50 clients (15.4%) was taken from the 324 ASW clients from SFY 2014. Of the 50 clients:

- 28 were sentenced to prison terms,
- 21 faced jail terms,
- One client was a 14-year old minor who was referred back to the Court Designated Worker by the court with no time sentenced
- Another client's case was dismissed

Since most individuals sentenced to prison for low-level felonies serve their time in local jails, To estimate the cost of incarceration, a conservative per diem amount was developed from the average of two county jail CTI per diem rates (\$32.92 for jails without a Substance Abuse Program (SAP) and \$41.92 for jails with a SAP) for SFY 2014.

RETURN ON INVESTMENT



\$9,634

Amount of incarceration cost saved per average ASW client



\$1,701

Average cost of the ASW program per client



Return investment of **\$5.66** for every **\$1** spent on the ASW Program

Attachment 3



5⁶

5⁰

4⁶

4⁰

3⁶

3⁰

2⁶

JV 01512

CHILDREN ARE CONSTITUTIONALLY DIFFERENT:

Neuroscience Developments Bring Smart Changes

By Ed Monahan

Are children in the justice system merely small adults who should be treated based on their behavior without regard to their cognitive and emotional capacities? Do young offenders act with deliberation and full knowledge of the consequences of their decision making? Or are kids different from adults in profound ways?

Scientific Evidence: Children Are Different

The facts are stubbornly straightforward. Children (usually defined as people under the age of eight) are different from adults developmentally and morally. Children often do not think things through. They behave impulsively. They do not have the same capacity as adults to comprehend the consequences of their actions. And, in general, the younger the child, the greater the incapacity.

Young juveniles are less competent to assist their attorneys in preparing a defense. In particular, studies show that children under the age of 16 are considerably less competent to assist defense counsel than those 16 and older.¹

Competency for juveniles is often more complex than for adults

because of “three broad reasons underlying incompetence when it is encountered in juvenile cases: mental illness, intellectual disability, and developmental immaturity.”²

As children reach adolescence, they may understand the justice system, but they still lack an adult’s capacity to evaluate risk and resist the impulse to act. The brain, especially the frontal lobes, where reflection and reasoning take place, is not fully developed in teenagers and even those in their early twenties. The American Academy of Child and Adolescent Psychiatry has noted that, based on the stage of brain development “adolescents are more likely to: act on impulse, misread or misinterpret social cues and emotions, get into accidents of all kinds, get involved in fights, [and] engage in dangerous or risky behavior.”³ Similarly, “[a]dolescents are less likely to: think before they act, pause to consider the potential consequences of their actions, [or] modify their dangerous or inappropriate behaviors.”⁴ These youth “mature intellectually before they mature socially or emotionally, a fact that helps explain why teenagers who are so smart in some respects sometimes do surprisingly dumb things.”⁵

Substantial research demonstrates that neuropsychological development continues into the mid-20s.⁶

The law should reflect these neuroscience facts but it doesn’t always do so. Very young delinquent offenders (i.e., children under 12) often have significant developmental issues that require prompt intervention. Responses traditionally employed by the juvenile justice system, such as detention, are often ineffective and usually increases recidivism.⁷

Case Law: Courts’ View of Children

Fortunately, the law does treat children differently, and the age of a person legally defined as a child continues to increase due to growing awareness of the science of the brain.

Under common law, children

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younger than seven were considered incapable of forming criminal intent. It was presumed that children aged seven to 14 could not form intent, but that presumption could be rebutted, resulting in the prosecution of some very young children in the adult criminal justice system. The distinction between adults and children seven and over began to evolve at the end of the 19th century.

In 1967, the U.S. Supreme Court in *In re Gault* provided some historical underpinnings for an enlightened approach.

The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was "guilty" or "innocent," but "What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." The child — essentially good, as they saw it — was to be made "to feel that he is the object of (the state's) care and solicitude," not that he was under arrest or on trial.⁸

Tribunals using this progressive approach, however, too often ignored procedural fairness. This had the result of inaccurate findings and arbitrary consequences for children.

In re Gault made a constitutional correction to the benevolent-absence-of-procedure juvenile system that had, as its ultimate consequence, the taking of a child's liberty. Finding that "unbridled discretion, however benevolently motivated, is frequently a poor



substitute for principle and procedure,"⁹ the Supreme Court held that a juvenile was entitled to notice of the charges, counsel, right to confrontation and cross-examination, privilege against self-incrimination, right to a transcript of the proceedings, and appellate review. All of these changes were based on the belief that a fair process is essential to valid outcomes, greater acceptance by the juvenile, and an increased chance for rehabilitation.¹⁰

Over the last decade, the Court made additional corrections in the application of the law based on neuroscience. In 2005, the Supreme Court in *Roper v. Simmons* found that the Eighth and 14th Amendments prohibited sentencing juveniles to death because of their "lack of maturity and an underdeveloped sense of responsibility"; they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure," and their characters are "not as well formed."¹¹

In 2010, *Graham v. Florida* held that the Eighth Amendment prohibited sentences of life without parole for juveniles under the age of 18 at the time of their crime who did not commit a homicide because that sentence was grossly disproportionate in view of the fact that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior

control continue to mature through late adolescence."¹²

In 2012, in *Miller v. Alabama*, the Court held that a mandatory life sentence for those under 18 could not be imposed as it was disproportionate under the Eighth Amendment, violating the prohibition on "cruel and unusual punishments."¹³ "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features — among them, immaturity, impetuosity, and failure to appreciate risks and consequences."¹⁴ Life without parole is excessive for all but "the rare juvenile offender whose crime reflects irreparable corruption."¹⁵

This series of "decisions rested not only on common sense — on what 'any parent knows' — but on science and social science as well"¹⁶ and made clear that "children are constitutionally different from adults for purposes of sentencing."¹⁷ The Court readily accounted for the findings of neuroscience: "transient rashness, proclivity for risk, and inability to assess consequences — both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'"¹⁸

Together, "these three opinions craft a compelling argument. They insist that the justice system acknowledge that children differ from adults in ways that bear directly on the question of their culpability and their capacity for change."¹⁹

In 2016, the Court decided in *Montgomery v. Louisiana* that *Miller* was retroactive because it "announced a substantive rule of constitutional law."²⁰ It was not merely a procedural ruling. "Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant's sentence."²¹ The Court concluded that it was up to the states to determine the mechanisms

for remedying unconstitutional sentences of juveniles. A state may comply with *Miller* by permitting defendants to relitigate sentences or convictions or by providing juvenile defendants the opportunity to be considered for parole to demonstrate the transience of their immaturity and subsequent maturation.²²

States have begun to apply these changes in the law. For instance, two years after being convicted of murder and rape and being sentenced to life without parole for crimes committed when he was 17½ years old, Robert Veal requested a new sentencing hearing on the basis that his sentence was unconstitutional under *Miller*. The trial judge denied his claim as untimely and having no merit. On March 21, 2016, the Georgia Supreme Court in *Veal v. State* reversed the trial judge and decided that Veal is entitled to challenge his life without parole sentence under *Montgomery* even though the claim was procedurally defaulted because it is a substantive rule of constitutional law that such sentences are disproportionate under the Eighth Amendment for the vast majority of juveniles.²³ *Veal* explained that *Montgomery* determined that a constitutional life without parole sentence would be “exceptionally rare” and requires a finding that the juvenile is “irreparably corrupt.”²⁴ Merely considering the juvenile’s age, associated characteristics and facts of the crime is not sufficient. The case was remanded to give Veal the opportunity to show that he was not “irreparably corrupt or permanently incorrigible” and was not in the “narrow class of juvenile murderers for whom an LWOP sentence is proportional under the Eighth Amendment as interpreted in *Miller* as refined by *Montgomery*.”²⁵

The law requires more than the possibility of parole at some time in the future. On May 26, 2016, the Florida Supreme Court determined that a 16-year-old who in 1990 was sentenced to life with the possibility for parole after 25 years but who had a parole eligibility date well beyond

Some jurisdictions have created a young adult category of criminal sentencing in addition to that for juveniles and adults.

25 years had a sentence that is the functional equivalent of a mandatory life sentence that required individualized *Miller-Montgomery* resentencing.²⁶

The Iowa Supreme Court determined that the sentence of a 17-year-old commuted to a life sentence with the possibility of parole after 60 years was unconstitutional since it was the “practical equivalent to life without parole.”²⁷ “The spirit of the constitutional mandates of *Miller* and *Graham* instruct that much more is at stake in the sentencing of juveniles than merely making sure that parole is possible.”²⁸ Iowa has also applied this reasoning to a “lengthy term-of-years. sentence”²⁹

Iowa also found that “juvenile offenders cannot be mandatorily sentenced under a mandatory minimum sentencing scheme” under its state constitution.³⁰ Andre Lyle was 17 and convicted of second degree robbery and sentenced to a term not to exceed 10 years with a requirement to serve at least 70 percent before parole eligibility. The Court said that all “mandatory minimum sentences of imprisonment for youthful offenders are unconstitutional under the cruel and unusual punishment clause in Article I, Section 17 of our constitution. Mandatory minimum sentences for juveniles are simply too punitive for what we know about juveniles.”³¹

Proceedings in which juveniles face the harshest penalties must now

have a process ensuring that the sentencer considers all evidence relevant to the developmental level of the child, any factors that would render the juvenile less culpable, and evidence that the crime does not “reflect irreparable corruption.”³² Defense counsel must now conduct mitigation investigation in the same manner as is done in death penalty litigation to make sure that the sentencer has the evidence that is now constitutionally relevant to the sentencing decision.³³

Developments in the Law

Sentencing Reforms

The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice’s study of the actual and perceived culpability (the criminal responsibility or blameworthiness) of adolescents accused of illegal activity led to the following conclusions: the minimum age of delinquency jurisdiction should be no lower than 12, and the minimum age of criminal court jurisdiction should be no lower than 14.³⁴

Beyond minimum ages, though, some jurisdictions have created a young adult category of criminal sentencing in addition to that for juveniles and adults. This change more accurately reflects what science is revealing about the limited capacities of people up to 25 years of age.

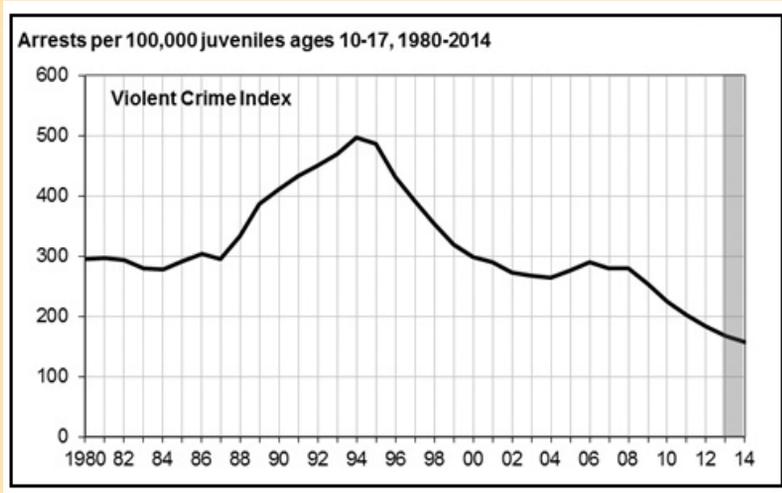
Several states have revised their sentencing procedures. Georgia has a youthful offender category for a person who is 17 but less than 25.³⁵

Colorado defines a young adult offender as a “person who is at least 18 years of age but under 20 years of age when the crime is committed and under 21 years of age at the time of sentencing.”³⁶

To account for the advances of neuroscience, a Wisconsin prosecutor is calling for

a change in sentencing options that primarily targets offenders between the ages of 17 and 24. People in this age range

Juvenile Arrest Rates for Violent Crime Index Offenses, 1980-2014



Source: OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION INTERNET CITATION: OJJDP STATISTICAL BRIEFING BOOK (Dec. 13, 2015), available at www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201.

Data source: Arrest estimates for 1980-2012 were developed by the Bureau of Justice Statistics and disseminated through "Arrest Data Analysis Tool," available on the BJS website.

Arrest estimates for 2013 and 2014 were developed by the National Center for Juvenile Justice based on data published in the FBI's *Crime in the United States* reports [Tables 29, 39, and 40].

These are preliminary estimates that will be updated upon release of final estimates on the Bureau of Justice Statistics' Arrest Data Analysis Tool.

fall into a gap between Wisconsin's juvenile justice policy, which focuses on accountability and rehabilitation, and Wisconsin's truth-in-sentencing statute, which refuses any consideration of rehabilitation in enforcing its strict requirements for serving 100 percent of ordered confinement time.³⁷

Options within these new categories include easier access to diversion than that allowed for older adult offenders; the option of keeping convictions confidential; greater leniency at sentencing with a preference for probation; confinement in facilities structured to meet the young adults need for education and vocational training with mentors and counselors; and a reduction in years of confinement with earlier consideration for parole.³⁸

Incarceration-Related Reforms

A growing body of research "demonstrates that for many juvenile

offenders, lengthy out-of-home placements in secure corrections or other residential facilities fail to produce better outcomes than alternative sanctions. In certain instances, they can be counterproductive."³⁹

This research has led some states to enact reforms that "limit which youth can be committed to these facilities and moderates the length of time they can spend there. These changes prioritize the use of costly facilities and intensive programming for serious offenders who present a higher risk of reoffending, while supporting effective community-based programs for others."⁴⁰

In recent years, many states have increased the age for transfer to adult court, reduced mandatory minimums, prohibited detaining juveniles with adults, and raised the age for mandatory transfers.⁴¹ These improvements are proving smarter with better outcomes that are more sustainable with lower costs.⁴² Taxpayers are the beneficiaries.

The Public Demand for Less Incarceration, More Rehabilitation

How do the developments taking place in the law compare to what the public wants? Support across the country for juvenile justice reform is strong. A recent national survey of the voting public indicates that people strongly support improvement of the juvenile system with 65 percent believing that juveniles should be treated differently than adults. This support is "across political parties, regions, and age, gender, and racial-ethnic groups."⁴³

Because the public sees juveniles as "fundamentally different from adults," people "want policymakers to invest in programs that help prevent youth from re-offending."⁴⁴ They want low-level offenders rehabilitated rather than incarcerated. Some 89 percent surveyed said that "[s]chools should be expected to address offenses that occur at school, such as damaging property or acting out, and only involve the juvenile justice system in extreme cases."⁴⁵

The Decline of Violent Juvenile Crime Rate and Juvenile Incarceration

As the law has evolved due to a growing awareness of neuroscience and what works to change behavior, the juvenile arrest rate for violent crimes and the commitment rate continue to decline.⁴⁶

In 2012, less than one-fifth of 1 percent of all juveniles ages 10 to 17 living in the country were arrested for a violent crime.⁴⁷ This is less than half of what it was in the mid-1990s, when fears of "super-predators" dominated the discussion of juvenile law.

The Department of Justice's Office of Juvenile Justice and Delinquency Prevention reports that from 2001 to 2013, the U.S. juvenile commitment rate declined 53 percent.⁴⁸

Remarkably, over half of the states in this same time period experienced a decline in juvenile incarceration of 50 percent or more, and the decline was across 49 states.

“The nationwide reduction reflects a 42 percent drop in juvenile violent-crime arrest rates from 2001 to 2012 and comes as a growing number of states are adopting policies that prioritize costly space in residential facilities for higher-risk youth adjudicated for serious crimes.”⁴⁹

Conclusion

Increasingly, what we intuitively understand about kids is being confirmed by science and practical, evidenced-based interventions. It is therefore reasonable to conclude that children are “constitutionally different from adults for purposes of sentencing.”⁵⁰ After all, “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for

a greater possibility exists that a minor’s character deficiencies will be reformed.”⁵¹ States are choosing the smarter, safer, less costly approach. Yes, taxpayers benefit — but, more importantly, our children are better off. ■

Endnotes

1. Thomas Grisso, et al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 L. & Hum. Behav., 333, 356 (Aug. 2003), available at http://stopyouthviolence.ucr.edu/pubs_by_topic/5.Juveniles%20competence%20to%20stand%20trial.pdf, (“Our results indicate that juveniles aged 15 and younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to

serve as competent defendants in a criminal proceeding.”)

2. Kimberly Larson, Ph.D., J.D., & Thomas Grisso, Ph.D., *DEVELOPING STATUTES FOR COMPETENCE TO STAND TRIAL IN JUVENILE DELINQUENCY PROCEEDINGS: A GUIDE FOR LAWMAKERS 10* (2011).

3. Am. Acad. of Child & Adolescent Psychiatry, *The Teen Brain: Behavior, Problem Solving, and Decision Making*, 95 FACTS FOR FAMILIES GUIDE (Dec. 2011), www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx.

4. *Id.*

5. Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 28 ISSUES IN SCI.& TECH. (Spring 2012), <http://issues.org/28-3/steinberg>.

6. See NAT’L INST. OF MENTAL HEALTH, *THE TEEN BRAIN: STILL UNDER CONSTRUCTION* (2011), available at www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/index.shtml.

7. See ROLF LOEBER & DAVID P. FARRINGTON, *CHILD DELINQUENTS: DEVELOPMENT, INTERVENTION, AND SERVICE*, xxvii (SAGE 2001):

There is no evidence to date that incarceration of serious child delinquents results in a substantial reduction in recidivism or the prevention of serious or violent offending behavior. Also, there are concerns that correctional placement of child delinquencies usually leads to exposure to and victimization by older serious delinquent offenders and further fuels criminogenic propensities in child delinquents.

8. 387 U.S. 1, 15 (1967) (internal citations omitted).

9. *Id.* at 18.

10. “Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.” *Id.* at 26.

11. 543 U.S. 551, 553, 569-70 (2005).

12. 560 U.S. 48, 68 (2010).

Reforms in Juvenile Justice: The ABA Criminal Justice Section

The Criminal Justice Section (CJS), founded in 1920, has long supported reform in juvenile justice. In 1973, the section became a partner of the Institute of Judicial Administration (IJA)-American Bar Association (ABA) Joint Commission on Juvenile Justice Standards project, which consisted of judges, lawyers and specialists in fields such as law enforcement, corrections, and health and behavioral sciences. The project’s efforts culminated in the IJA-ABA Juvenile Justice Standards, which can be accessed at www.americanbar.org/groups/criminal_justice/pages/JuvenileJusticeStandards.html. The section’s substantive work continues through its Standards Committee and its Juvenile Justice Committee, created over 30 years ago.

The Juvenile Justice Committee develops programs for juvenile justice practitioners and policies to advance reform. The committee also collaborates with other youth advocate entities within the ABA as well as with external organizations. Led by co-chairs Judge Earnestine Gray, Michael Pope and Terrence Wiley, the committee is currently developing policy-recommending measures aimed at curbing the school-to-prison pipeline, working together with the Commission on Youth at Risk to host a program in honor of the 50th anniversary of *In re Gault*, and re-establishing the section’s website on juvenile justice collateral consequences. Furthermore, the committee has been an annual contributor to *The State of Criminal Justice*, covering juvenile justice issues.

In addition to its substantive work, the CJS recognizes active members of the bar who devote a significant portion of their legal practice to youth and children, and it makes positive contributions to the field both inside and outside the courtroom with its Livingston Hall Juvenile Justice Award. Livingston Hall was a leader in the juvenile justice field and professor emeritus at Harvard Law School. As an early chair of the CJS Juvenile Justice Committee, Hall was instrumental in securing ABA approval of the aforementioned comprehensive Juvenile Justice Standards.

continued on page 20

Children are Constitutionally Different from page 11

13. 132 S. Ct. 2455 (2012).
14. *Id.* at 2468.
15. *Id.* at 2469.
16. *Id.* at 2464.
17. *Id.*
18. *Id.* at 2464-65 (internal citations omitted).
19. Kim Taylor-Thompson, *Minority Rule: Redefining the Age of Criminality*, 38 N.Y.U. REV. L. & SOC. CHANGE 101, 120 (2014).
20. 136 S. Ct. 718, 734 (2016).
21. *Id.* at 732-33.
22. *Id.* at 736. The incarcerated “must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored.” *Id.* at 736-37.
23. *Veal v. State*, ___ S.E.2d ___ (2016), No. S15A1721, 2016 WL 1085360, at *7-8.
24. *Id.* at *9.
25. *Id.*
26. *Atwell v. State*, ___ So. 3d ___ (Fla. 2016), 2016 WL 3010795, at *10.
27. *State v. Ragland*, 836 N.W.2d 107, 110-111 (Iowa 2013).
28. *Id.* at 121.
29. *State v. Null*, 836 N.W.2d 41, 72 (Iowa 2013) (eligibility for parole at 52.5 years of 75-year sentence for second-degree murder and first-degree robbery).
30. *State v. Lyle*, 854 N.W.2d 378, 381, 401 (Iowa 2014).
31. *Id.* at 401.
32. *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016).
33. See Betsy Wilson & Amanda Myers, *Accepting Miller’s Invitation: Conducting a Capital-Style Mitigation Investigation in Juvenile-Life-Without-Parole Cases*, CHAMPION, Apr. 2014, at 18.
34. See MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV., DEVELOPMENT AND CRIMINAL BLAMEWORTHINESS 48, www.adjj.org/downloads/3030PPT-%20Adolescent%20Development%20and%20Criminal%20Blameworthiness.pdf (last visited May 3, 2016).
35. GA. CODE ANN. § 42-7-2(7) (2013).
36. COLO. REV. STAT. ANN. § 18-1.3-407(2)(a)(III)(B) (2013).
37. Kenneth M. Streit & John T. Chisholm, *Expand Sentencing Options for Young Adults*, 86 WIS. LAW. 38 (May 2013).
38. Rebecca Ballard DiLoreto, *Shared Responsibility: The Young Adult Offender*, 41 N. KY. L. REV. 253, 254 (2014).
39. PEW CHARITABLE TRUSTS, RE-EXAMINING JUVENILE INCARCERATION: HIGH COST, POOR OUTCOMES SPARK SHIFT TO ALTERNATIVES (Apr. 20, 2015), available at www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration; see also Edmund F. McGarrell, *Restorative Justice Conferences As an Early Response to Young Offenders*, OJJDP JUV. JUST. BULL. (NCJ 187769) (Aug. 2001), available at www.ncjrs.gov/pdffiles1/ojdp/187769.pdf; EDWARD P. MULVEY, OFFICE OF JUSTICE PROGRAMS, U.S. DEP’T OF JUSTICE, HIGHLIGHTS FROM PATHWAYS TO DESISTANCE: A LONGITUDINAL STUDY OF SERIOUS ADOLESCENT OFFENDERS 3 (Mar. 2011) (available at www.pathwaysstudy.pitt.edu/documents/OJJDP%20Fact%20Sheet_Pathways.pdf, (“Longer stays in juvenile facilities did not reduce reoffending; institutional placement even raised offending levels in those with the lowest level of offending.”))
40. PEW CHARITABLE TRUSTS, *supra* note 39.
41. Taylor-Thompson, *supra* note 19, at 157–58:

In the past eight years, twenty-three states have made substantive legislative changes to reduce the prosecution of youth in adult court and to halt the practice of housing adolescents in adult correctional facilities. Twelve states (Arizona, Colorado, Connecticut, Delaware, Illinois, Indiana, Maryland, Nevada, Ohio, Utah, Virginia, and Washington) changed their transfer laws making it more likely that youth will remain in the juvenile justice system. Eight states (California, Colorado, Georgia, Indiana, Texas, Missouri, Ohio, and Washington) have revised their mandatory minimum sentencing laws to take developmental differences into account. Four states

(Connecticut, Illinois, Mississippi, and Massachusetts) have extended their juvenile court jurisdiction, raising the age at which a state can automatically try a teenager as an adult in criminal court. And eleven states (Colorado, Idaho, Indiana, Maine, Nevada, Hawaii, Virginia, Pennsylvania, Texas, Oregon, and Ohio) have enacted laws limiting the ability of their state corrections to house youth in adult jails and prisons. Mandating a minority rule against adult prosecution for offenders under seventeen years of age is the next logical step.

42. See also COUNCIL OF STATE GOV’TS, 50 STATE TEAMS GATHER TO DEVELOP PLANS FOR IMPROVING YOUTH OUTCOMES IN EACH STATE JUVENILE JUSTICE SYSTEM (Nov. 10, 2015), <https://csgjusticecenter.org/youth/posts/juvenile-justice-forum>.

43. PEW CHARITABLE TRUSTS, PUBLIC OPINION ON JUVENILE JUSTICE IN AMERICA 1 (Nov. 2014), available at www.pewtrusts.org/~media/assets/2015/08/pspp_juvenile_poll_web.pdf?la=en.

44. *Id.*

45. *Id.* at 10.

46. OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, STATISTICAL BRIEFING BOOK, www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201 (last visited May 3, 2016). The Violent Crime Index includes the offenses of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault.

47. *Id.*

48. PEW CHARITABLE TRUSTS, JUVENILE COMMITMENT RATE DROPS 53 PERCENT (Nov. 9, 2015), available at www.pewtrusts.org/en/multimedia/data-visualizations/2015/juvenile-commitment-rate-drops-53-percent.

49. *Id.*

50. *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012).

51. *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

Attachment 4

Pre-petition representation portfolio

August 2016

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

What is pre-petition representation?

In Oregon and across the country, child welfare professionals have turned their focus to practices which engage families outside of the courtroom. Differential response, which began implementation in 2014, is the central component of DHS' efforts to preserve families, keep children at home, and prevent the need for foster care.

In some cases, lawyers are also able to prevent a child from entering foster care. Children may unnecessarily enter foster care because their parents are unable to resolve legal issues or other barriers which affect child safety in the home.¹

Parents face child protective services investigations alone and can be expected to consent to draconian "safety plans" on their own, without counsel. By providing legal advice to parents, attorneys can help parents advocate for services they need to keep children safely in-home, inform parents about their rights and options during the DHS investigation, negotiate realistic safety plans, and identify relative resources and other options for safe placement.² And, providing parents access to counsel before the filing of court petitions protects the due process rights of parents and children.³

Pre-petition legal representation is the representation of parents prior to the filing of a juvenile court petition. Attorneys are assigned to represent parents when the child welfare agency begins its involvement with the family by assessing the risk of harm to the child(ren) in the home. Attorneys provide legal advocacy

¹ Sankaran, *Using Preventative Legal Advocacy to Keep Children from Entering Foster Care*, Wm. Mitchell L. Rev. 40, no.3 (2014).

² Bech, Briggs, Bruzzo, Green and Marra, *The Importance of Early Attorney Involvement in Child Welfare Cases*, presented at the American Bar Association Conference on Children and The Law (2011), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/ImportanceofEarlyAttorneyInvolvement.doc.

³ The Supreme Court of the United States has frequently emphasized "the importance of the family," and the "integrity of the family unit has found protection" in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment. *Stanley v. Illinois*, 405 U.S. 645 (1972).

throughout the investigation and assessment phase including attending investigative interviews and safety planning meetings.

Pre-petition representation is a national best practice. The American Bar Association Standards of practice for representation of parents in juvenile dependency cases recommends pre-petition representation.⁴ The U.S. Department of Justice recommends early appointment of counsel for both parents and children.⁵

In Oregon, the Governor’s Task Force on Dependency Representation endorsed pre-petition representation as a “promising new practice that is gaining national attention” and “worthy of further exploration.”⁶

Why focus on early involvement of counsel?

- To prevent unnecessary use of foster care.
- To address legal and non-legal barriers while maintaining the family unit.
- To promote accurate decision-making.
- To ensure proper enforcement of the law. (whether reasonable efforts were made to prevent removal, whether reasonable services could prevent the need for removal, whether removal is in the child’s best interests, efforts made to place with a relative or caregiver)
- To promote collaborative problem-solving.
- To protect the substantive rights of parents, children and the family unit.
- To allow parents—especially individuals who are relatively uneducated and/or inarticulate—to effectively present legal arguments and issues that would work in their favor.

⁴ American Bar Association, *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* 2006), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf.

⁵ U.S. Department of Justice, ABA Center on Children and the Law, *Court Performance Measures in Child Abuse and Neglect Cases Technical Guide* (December 2008), <https://www.ncjrs.gov/pdffiles1/ojjdp/223570.pdf>.

⁶ *Oregon Task Force on Dependency Representation Report* (July 2016), https://www.oregon.gov/gov/policy/Documents/LRCD/Oregon_Dependency_Representation_TaskForce_Final_Report_072516.pdf.

Results of pre-petition representation

- Center For Family Representation of New York:
 - 50% of client's children kept out of foster care.
 - Length of foster care stay in the CFR program average 5 months, citywide average is 11.5 months.
 - Cost to keep a child in foster care is a minimum of \$30,000/year, CFR spends \$6500/family regardless of the number of children.
 - Saves \$9 million/year.⁷
- Detroit Center for Family Advocacy of Wayne County, Michigan
 - In 98% of cases with substantiated abuse or neglect findings, children were not removed from parents. (110 children served with the goal of preventing removal and not one child entered foster care).
 - The cost avoided by the Michigan child welfare system is \$1.3 million.⁸

Pre-petition representation models

- Vermont Parent Representation Center: Provides multidisciplinary social work-lawyer child protection model of pre-petition representation intended to represent and support parents at risk of experience the placement of their children into state custody and/or out-of-home care.
- Center For Family Representation of New York: Provides team based representation (lawyer, social worker and parent advocate) to parents while they are under investigation by child welfare authorities.
- Detroit Center for Family Advocacy of Wayne County, Michigan: CFA's work focuses on removing the legal barriers that either cause children to enter foster care or forces them to remain there. Often, legal remedies like obtaining a custody or personal protection order, resolving criminal warrants or getting a divorce will allow children to remain with their family and avoid placement in foster care. Similarly, CFA addresses legal barriers that can

⁷ Center for Family Representation 2014 Annual Report, <https://www.cfrny.org/wp-content/uploads/2012/12/Annual-Report-2014-FINAL.pdf>.

⁸ Vloet, *Detroit Center for Family Advocacy: Review Finds High Success Rate in Keeping Kids with Families* (May 13, 2013), <http://www.law.umich.edu/newsandinfo/features/Pages/CFAstudy051313.aspx>.

prevent children from achieving a legally permanent status with a caring and committed adult. CFA's multidisciplinary team seeks to overcome these obstacles by providing families with the assistance of an attorney, a social worker and a family advocate. Nearly 90% of case referrals come directly from the Michigan Department of Human Services.

- Family Defense Center of Chicago: Provides representation in cases where DCFS is investigating abuse or neglect, participates in safety plan negotiations, and represents parents in administrative appeals of DCFS investigation findings.

Resources included

- American Bar Association, *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases* (2006), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf
- Bech, Briggs, Bruzzo, Green and Marra, *The Importance of Early Attorney Involvement in Child Welfare Cases*, presented at the American Bar Association Conference on Children and The Law (2011), http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/ImportanceofEarlyAttorneyInvolvement.doc
- Center for Family Representation Pre-petition representation success story: Juan's Story, <http://www.cfrny.org/stories/juans-story/>
- The Family Defense Center, *Understanding and Responding to Department of Children and Family Services' Abuse and Neglect Investigations in Illinois* (April 2016), <http://www.familydefensecenter.net/wp-content/uploads/2016/04/Responding-to-Investigations-Manual-FINAL.pdf>, selected sections
- Fassler and Gethaiga, *Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies*, American Bar Association Child Law Practice (April 2011), http://www.americanbar.org/publications/child_law_practice/vol30/april_2011/representing_parents_during_child_welfare_investigations_precourt_adv.html

- Sankaran, *Using Preventative Legal Advocacy to Keep Children from Entering Foster Care*, Wm. Mitchell L. Rev. 40, no.3 (2014), <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1946&context=articles>.

American Bar Association

Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases

Introduction

These standards promote quality representation and uniformity of practice throughout the country for parents' attorneys in child abuse and neglect cases. These standards became official ABA Policy when approved by the ABA House of Delegates in 2006. The standards were written with the help of a committee of practicing parents' attorneys and child welfare professionals from different jurisdictions in the country. With their help, the standards were written with the difficulties of day-to-day practice in mind, but also with the goal of raising the quality of representation. While local adjustments may be necessary to apply these standards in practice, jurisdictions should strive to meet their fundamental principles and spirit.

The standards are divided into the following categories:

1. Summary of the Standards
2. Basic Obligations of Parents' Attorneys
3. Obligations of Attorney Manager
4. The Role of the Court

The standards include "black letter" requirements written in bold. Following the black letter standards are "actions." These actions further discuss how to fulfill the standard; implementing each standard requires the accompanying action. After the action is "commentary" or a discussion of why the standard is necessary and how it should be applied. When a standard does not need further explanation, no action or commentary appears. Several standards relate to specific sections of the Model Rules of Professional Conduct, and the Model Rules are referenced in these standards. The terms "parent" and "client" are used interchangeably throughout the document. These standards apply to all attorneys who represent parents in child abuse and neglect cases, whether they work for an agency or privately.

As was done in the *Standards of Practice for Attorneys Representing Child Welfare Agencies*, ABA 2004, a group of standards for attorney managers is included in these standards. These standards primarily apply to parents' attorneys who work for an agency or law firm – an institutional model of representation. Solo practitioners, or attorneys who individually receive appointments from the court, may wish to review this part of the standards, but may find some do not apply. However, some standards in this section, such as those about training and caseload, are relevant for all parents' attorneys.

As was done in the *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, ABA 1996, a section of the standards concerns the Role of the Court in implementing these *Standards*. The ABA and the National Council of Juvenile and Family Court

Judges have policies concerning the importance of the court in ensuring that all parties in abuse and neglect cases have competent representation.

Representing a parent in an abuse and neglect case is a difficult and emotional job. There are many responsibilities. These standards are intended to help the attorney prioritize duties and manage the practice in a way that will benefit each parent on the attorney's caseload.

has decision-making opportunities. This may include seeking court orders when the parent has been left out of important decisions about the child's life.

Commentary: Unless and until parental rights are terminated, the parent has parental obligations and rights while a child is in foster care. Advocacy may be necessary to ensure the parent is allowed to remain involved with key aspects of the child's life. Not only should the parent's rights be protected, but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification. Often, though, a parent does not understand that he or she has the right to help make decisions for, or obtain information about, the child. Therefore, it is the parent's attorney's responsibility to counsel the client and help the parent understand his or her rights and responsibilities and try to assist the parent in carrying them out.

4. Actively represent a parent in the prepetition phase of a case, if permitted within the jurisdiction.

Action: The goal of representing a parent in the prepetition phase of the case is often to deter the agency from deciding to file a petition or to deter the agency from attempting to remove the client's child if a petition is filed. The parent's attorney should counsel the client about the client's rights in the investigation stage as well as the realistic pros and cons of cooperating with the child welfare agency (i.e., the parent's admissions could be used against the client later, but cooperating with services could eliminate a petition filing). The parent's attorney should acknowledge that the parent may be justifiably angry that the agency is involved with the client's family, and help the client develop strategies so the client does not express that anger toward the caseworker in ways that may undermine the client's goals. The attorney should discuss available services and help the client enroll in those in which the client wishes to participate. The attorney should explore conference opportunities with the agency. If it would benefit the client, the attorney should attend any conferences. There are times that an attorney's presence in a conference can shut down discussion, and the attorney should weigh that issue when deciding whether to attend. The attorney should prepare the client for issues that might arise at the conference, such as services and available kinship resources, and discuss with the client the option of bringing a support person to a conference.

Commentary: A few jurisdictions permit parents' attorneys to begin their representation before the child welfare agency files a petition with the court. When the agency becomes involved with the families, it can refer parents to attorneys so that parents will have the benefit of counsel throughout the life of the case. During the prepetition phase, the parent's attorney has the opportunity to work with the parent and help the parent fully understand the issues and the parent's chances of retaining custody of the child. The parent's attorney also has the chance to encourage the agency to make reasonable efforts to work with the family, rather than filing a petition. During this phase, the attorney should work intensively with the parent to explore all appropriate services.

5. Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.³

Second National Parents' Attorney Conference

The Importance of Early Attorney Involvement in Child Welfare Cases

Representation of Parents in Pre-Petition Proceedings

Trine Bech, Vermont Parent Representation Center
Mark Briggs, Solo Practitioner, El Paso, Texas
Elizabeth Bruzzo, Staff Attorney, Southwest Virginia Legal Aid Society
Tracy E. Green, Detroit Center for Family Advocacy
Christie Marra, Virginia Poverty Law Center

July 13-14, 2011

Washington, DC

In recent years, child welfare professionals have turned more and more to practices that attempt to engage families outside of the courtroom. Spurred in part by the drastic number of youth in the foster care system in the middle of the last decade, and new outcomes research showing that children allowed to remain at home with their parents, EVEN IF PARENTS PROVIDE “MARGINAL CARE”, have better life outcomes than children placed in foster care¹ local departments of social services throughout the country have turned to family engagement meetings, informal placement with relatives and other extrajudicial approaches to allegations of abuse and neglect. While such approaches can benefit parents involved in the child welfare system, they also highlight the inadequacy and relative ineffectiveness of waiting to provide counsel for these primarily indigent parents until they face a removal petition.

The relatively recent national emphasis on alternatives to court removals may well have grown out of the perceived failures of the present system to help children and families². According to the US Administration for Children and Families, the average number of children in foster care each year between 2002 and 2006 was over 500,000.³ Even more disturbing, many of these youth spent years waiting to be adopted after their legal ties to their parents were severed.⁴ Far too many aged out of care,⁵ suffering poor outcomes in employment, health, housing, education and other areas. For example, these youth earn 50% less on average than their peers and are four and a half times less likely to have a college degree.⁶

Most likely in response to these sobering statistics, more and more child welfare agencies across the country are attempting to find alternatives to foster care for children deemed to be at risk of abuse or neglect. Many of these alternatives are explored through the use of family engagement meetings before any petition is filed in court. Virginia for example, reduced its foster care population by 27 per cent between April 2006 and April 2011⁷. The Virginia Department of Social Services attributes this largely to what they called their Child Welfare Transformation, a shift to a practice model that relies heavily on working with families BEFORE children are removed through the use of family partnership meetings and other pre-petition processes.⁸ But the reductions in foster care do not necessarily mean that 27 per cent

¹ Doyle, Joseph Jr., “Child Protection and Child Outcomes: Measuring the Effects of Foster Care,” American Economic Review, December 2007, p. 1583

² Id.

³ US Department of Health and Human Services, Administration for Children and Families, “Trends in Foster Care and Adoption”, FY 2002-FY 2009, www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm

⁴ Id.

⁵ In 2005, 8% of ALL youth exiting foster care aged out with no permanent family connection. Id.

⁶ Courtney, M., Dworsky, A., Lee, J., & Raap, M. (2009) *Midwest evaluation of the adult functioning of former foster youth: Outcomes at age 23 and 24*. Chicago. Chapin Hall at the University of Chicago.

⁷ Virginia’s foster care population went from 7984 to 5818 during that time. Source: Virginia Department of Social Services.

⁸ Virginia Family Engagement Model, <http://vafamilyconnections.com>

more children are remaining with their birth parents. While specific data is not yet available, anecdotal data indicate that much of the reductions occurred because youth were placed “voluntarily” by parents in informal kinship arrangements. Parents often make or affirm decisions to place their children in the care of relatives at family engagement meetings.

While there is nothing in the family engagement model to prevent a parent from being represented by an attorney at a family partnership or other type of pre-petition meeting, extremely few parents involved in the child welfare system have the financial means to employ counsel to accompany them to these meetings⁹. And while almost every state guarantees an indigent parent the right to counsel before a court can terminate his or her parental rights, and many appoint counsel for indigent parents as soon as the initial petition alleging abuse or neglect has been filed,¹⁰ none have a mechanism for evaluating indigence and appointing counsel before a petition is filed in court. Thus, the vast majority of parents are left to navigate the often dangerous, though well-intentioned, family engagement meetings on their own. This is particularly treacherous because parents are often encouraged to share information and cooperate with child protective service workers because they believe it is the only way for them to keep their children. In some jurisdictions, like Vermont, parents often agree to a minor guardianship of their children by relatives as an alternative to a state child protection petition, believing that it is a safer way to keep their children. They often do not understand the long term legal consequences of such “voluntary” actions.

While the wide spread use of pre-petition meetings highlights the need to find a way to provide counsel for indigent parents before a petition is filed, it by no means created this need. For decades, parents have had to face child protective services investigations and their consequences on their own. Many states expressly direct child protective services workers to interview parents and other family members during the course of investigating a complaint of child abuse or neglect.¹¹ Child welfare workers are free to use the information obtained from a parent during the investigation of a complaint or a family engagement meeting in any way they deem necessary, including during a subsequent court hearing to remove a child from that parent’s care. Furthermore, both family engagement meetings and interviews with parents conducted as part of an investigation can lead to the creation of “safety plans”, which parents

⁹ See Symposium: Violence in the Family: Child Abuse Realities: Over-Reporting and Poverty, 8 *Va. J. Soc. Pol’y & L.* 165 Fall 2000 at page 8.

¹⁰ See Appendix A for a complete chart of state statues regarding appointment of counsel for indigent parents in abuse/neglect and termination of parental rights proceedings.

¹¹ See, e.g., Va. Code 63.2-1505(B); “Children’s Protective Services Investigation Process”, <http://www.michigan.gov>

are expected to sign without the benefit of counsel. Parents may face court petitions solely because they failed to comply with the terms of a safety plan.¹²

Providing parents with realistic access to counsel BEFORE the filing of court petitions alleging abuse or neglect can go a long way toward protecting the rights of parents and preventing unnecessary foster care and other out-of-home placements. A number of innovative programs in different states are focusing resources on representing parents at the critical, pre-petition stages. By providing advice and counsel, the attorneys in these programs can help parents advocate for the services they need to keep their children safely in their homes; inform parents about their rights and options regarding voluntary placements with relatives; advise parents of the consequences of sharing information during CPS interviews and family engagement meetings; and advocate on behalf of parents against third parties who create unsafe environments, such as abusive domestic partners or unscrupulous landlords.

The following are presently providing pre-petition legal assistance to parents: The Detroit Center for Family Advocacy (DCFA); Mark Briggs, a solo practitioner in El Paso, Texas; Southwest Virginia Legal Aid Society (SVLAS); and the Vermont Parent Representation Center (VPRC). Each takes a slightly different approach to this important work.

The three non-profits (DCFA, SVLAS, and VPRC) all receive referrals from the child welfare agencies of cases in which petitions for removal have not yet been filed. However, each receives slightly different types of cases. DCFA takes referrals only once a child protective services complaint has been substantiated at a particular level or category. DCFA's cases include those involving low to moderate risk, where child protective services must refer the family to DCFA or other prevention services, but usually closes its case immediately afterward. However, DCFA also serves families with high or intensive risk, where child protective services must refer the family for mandatory services and open a case for monitoring.¹³

VPRC, on the other hand, takes only those cases that have been referred and opened for family services and cases involving minor guardianships where the state protection agency has an open case. SVLAS, like VPRC, operates in a state that has a dual track system, one for investigations leading to formal findings and another for assessments in which services are provided but no finding is ever made. But unlike VPRC, it accepts referrals of both cases that go through the investigation track and those that go through the assessment track. All three programs provide holistic legal services to parents, representing parents at family engagement

¹² See "Discovering the Undiscoverable in Child Protective Proceedings: Safety Planning Conferences and the Abuse of Right to Counsel," *10 UC Davis J. Juv. L. & Pol'y* 429 (Summer 2006)

¹³ Michigan employs a five-category system for categorizing child abuse and neglect, with Category I resulting in the filing of a petition. DCFA serves families whose cases fall within Categories III or II, where child abuse and neglect has been substantiated by a preponderance of the evidence.

and other service planning meetings with child welfare as well as providing legal assistance in other cases that impact family stability and child safety, such as those involving landlord-tenant, probate and family law.

Solo practitioners desiring to do pre-petition work are challenged both by the limits placed upon them by parents' limited financial resources and by the lack of a formal referral collaboration with child welfare agencies. Targeted advertising and word – of - mouth can be excellent means of directing parents to solo practitioners engaged in pre-petition practice, as can community education about the importance of having legal counsel throughout the child protective services administrative process.

Regardless of how or when they become involved, attorneys who represent child welfare involved parents before removal petitions are filed have far greater opportunities to positively impact families by furnishing critical advice and assistance that can keep families together. Because many of these programs are new, no formal evaluation of their effectiveness has been done. Preliminary data, however, shows that having legal counsel pre-petition is an effective way of preventing unnecessary foster care placements.

Pre-petition representation success story

Juan's story

Source: Center for Family Representation of New York
(<http://www.cfrny.org/stories/juans-story/>)

Juan and Elena had been dating for a short time when she became pregnant. Although Juan was prepared to raise the child with Elena, after a few months of living together he realized that she had mental health problems. As the birth of their child approached, Juan had second thoughts about living with Elena, but he was still determined support his child.

When his son Jason was born, Juan visited with Elena and the baby at the hospital several times. One night after he left, Elena had a severe mental breakdown and began loudly fighting with her hospital roommate and the roommate's boyfriend. Due to concerns about the baby's safety, the nurse on duty removed him from the room and wrote a report about the incident.

The next day, a hospital social worker reviewed the nurse's notes—but the notes did not specify that the "boyfriend" mentioned was the boyfriend of the roommate. As a result, the social worker believed that Elena had gotten into a fight with her own boyfriend, Juan. Because of Elena's erratic behavior and Jason's removal, the social worker called the City's Administration for Children's Services (ACS). When Juan returned to the hospital, ACS informed him that he and Elena were being charged with neglect. Although he denied any involvement in the incident, he had to leave his son in the hospital while he went to Family Court to meet his CFR team of a lawyer and a social worker.

Because ACS had not investigated the nurse's report, they incorrectly believed Juan was at fault and wanted to place Jason in foster care. CFR was able to convince the judge to allow him to take Jason to his brother's home, where his family could help him out. CFR also helped Juan secure an order of protection against Elena to further ensure his child's safety. Although Juan agreed to do whatever services ACS asked of him, he continued to insist that he had nothing to do with Elena's fight and was being wrongfully charged.

The CFR team was able to track down the nurse who had written the report—she confirmed that Juan had not been present during the fight but had acted as a model father when he had visited several times. CFR presented this new information to the court and was soon able to get the charges against Juan dropped and his case withdrawn completely.

Today, Juan has full custody of Jason. Elena got the help she needed and is now stable, so Juan takes his son for supervised visits with her on a regular basis. Due to CFR's thorough investigation, Juan and Jason are able to live together safely and permanently.



**UNDERSTANDING AND RESPONDING TO DEPARTMENT OF
CHILDREN AND FAMILY SERVICES' ABUSE AND NEGLECT
INVESTIGATIONS IN ILLINOIS**

A Basic Guide for Illinois Parents and Other Caregivers

April 2016

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UNDERSTANDING AND RESPONDING TO DEPARTMENT OF CHILDREN AND FAMILY SERVICES' ABUSE AND NEGLECT INVESTIGATIONS IN ILLINOIS

A Basic Guide for Illinois Parents and Other Caregivers

PREFACE

The Purpose of this Guide.

This guide is meant to provide general information about the child abuse and neglect system in Illinois and some guidance for parents and other caregivers when they are involved in such investigations. These investigations, which are also called child protection investigations, are conducted by the Illinois Department of Children and Family Services (DCFS).

This guide is written with the “wrongly accused” person in mind. The Family Defense Center focuses on helping family members navigate the DCFS investigation process and exonerate them from being labeled a child abuser or child neglector when they have not harmed a child. Unfortunately, people who are targets of DCFS investigations often assume that the system will protect their rights and that justice will be done. At the same time, they may worry about how best to keep their family intact and avoid being tagged with a terrible label of “child abuser” or “child neglector.” Others may simply not know how to respond when they learn that DCFS is investigating a claim of abuse or neglect. Still others will want to use this guide to prepare for answering common questions that often come up during these investigations.

While this guide will not prevent mistakes from being made, we hope that it reduces the number of erroneous decisions by helping families and people who work with children respond to investigations.

DCFS has a legitimate interest in protecting children from abuse or neglect. But it has no interest in separating a child from loving and innocent parents, or in labeling an innocent person as guilty of an offense he or she never committed. Indeed, the Family Defense Center believes that the interests of innocent and loving parents and the interests of the child are the same. We believe in our motto, “To protect children, defend families.”

Therefore, helping families to defend themselves from a mistaken allegation of abuse or neglect *does* help children. Children need their families. Parents are generally the best advocates for children, but sometimes parents have to defend themselves first, in order to be able to protect their children.

We want to caution our readers, however, about assuming the “worst case scenario” is what DCFS is likely to do in any specific case. Just because DCFS *sometimes* removes children from parents and just because DCFS *sometimes* makes mistaken findings of abuse or neglect against innocent caregivers does not mean that DCFS always does so, or that DCFS would do so if you proceeded without regard to the information contained in this guide. Horror stories about DCFS can make parents and caregivers overly worried about what they should say to DCFS, and can have a “chilling effect” on parents who have done nothing wrong. After all, in 60-75% of all investigations, DCFS does *not* find abuse or neglect occurred. While DCFS sometimes reaches incorrect conclusions, that does not mean that good parents should worry about saying exactly the “right” thing. Finding the balance between saying too much and saying too little can be tricky, as this guide shows, and this guide is thus meant to enlighten parents’ thinking about how to approach a DCFS investigation and should not make parents fret over providing the “best” or “right” answers.

While we realize this guide may not reach everyone who needs it exactly when they need it most, we hope this guide helps to raise general awareness of the nature of these critically important investigations. Increased awareness will also help improve the quality of legal representation and advocacy available to individuals who find themselves in the position of responding to DCFS investigations. Therefore, while this guide is written for parents, it is intended for their lawyers and legal advocates too. In addition, because this guide highlights some investigative practices that may not be lawful, we hope that future challenges to some questionable practices discussed in this guide will advance justice for the wrongly accused person and further our mission of helping children by defending their families.

Warning (Disclaimer).

This guide is not intended to provide specific legal advice. Only a lawyer can give you legal advice that fits your specific case. Nor is it intended to provide information about how to respond to an investigation in another state: each state’s system, laws, policies, and practices are different. If, after reading this guide, you believe you need legal services to help you respond to a pending investigation and you reside within the direct service area for the Family Defense Center (Cook and collar counties), you may wish to proceed with

an application for services from the Family Defense Center, or seek other legal counsel. This guide is **not** a substitute for the direct legal representation a lawyer can potentially provide. The authors of this guide and the Family Defense Center expressly disclaim liability arising from the use of information contained herein. No attorney/client relationship is created as a result of this guide's posting and distribution.

Introduction to this Guide.

Whether you are facing a child abuse or neglect investigation pending in the Illinois Department of Children and Family Services ("DCFS"), you are trying to help someone who is in the middle of such an investigation, or you are simply trying to understand how child abuse or neglect investigations operate in Illinois, this guide may be a useful starting point.

This guide is organized as follows: **Section I** discusses the basics of DCFS child protection investigations, including answering many questions that come up about the steps in these investigations. **Section II** walks through one specific investigation and discusses the specific questions that were asked by an investigator and the steps she took to interview other family members. This Section contains a long discussion of the appropriateness of some of the questions and discusses approaches to answering them. **Section III** discusses the particular rights that persons who work with children have during a DCFS investigation. **Section IV** addresses the process when DCFS removes children from their parents under its power to take protective custody. **Section V** addresses safety plans and directives affecting the care and custody of children during investigations. **Section VI** discusses specific issues that come up in investigations, including interviews of children, medical testing requests, and requests for assessments and services. **Section VII** discusses remedies when investigations have violated family members' rights or otherwise been handled in an unprofessional manner. At **Appendix A** to this guide, you will find "Basic Tips for Responding to DCFS Investigations," which consolidates the recommendations of this guide into a quick reference tool. **Appendix B**, "Summary of Concerns about Safety Plans," outlines the most problematic features of DCFS "safety plans"; these issues are being actively discussed with DCFS and this section will be updated as we see improvements in policies and practices. **Appendices C-E** provide template documents that you may wish to use if they are applicable to your situation. Finally, we have also attached a collection of **Exhibits** comprised of common DCFS documents and notices applicable to the investigative process.

IN PRACTICE

Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies

by Elizabeth Fassler and Wanjiro Gethaiga

Seventeen-year-old Ana and her stepfather Roberto immigrated to the United States in early 2008. Shortly after, Ana became pregnant. When Ana was in labor, her stepfather dropped her off at a hospital and abandoned her to return to Mexico. Ana, who speaks only Spanish, and whose only nearby family members lived in an overcrowded apartment, was placed in an English-speaking foster group home for young mothers where she now lives with her son.

Several months after Ana arrived at the foster group home, the staff called in a report against her. During the investigation, an attorney and social worker met with Ana to explain the investigation process and the possible legal consequences that could arise from the investigation. During the investigation, the social worker attended conferences with Ana to work with all parties to determine the appropriate plan for Ana.

At the end of the investigation, the attorney and social worker were able to stave off a court filing so Ana and her son could remain together in the foster group home. The social worker is now working diligently with the foster group home staff to locate a Spanish-speaking foster family for Ana and her son.

This vignette is based on a case handled by the Center for Family Representation, Inc. (CFR), a nonprofit law and policy organization based in New York City. It shows how early intervention and pre-court work can secure needed supports and provide tools to families to help them stay together and avoid going to court.

Using Ana's case to illustrate, this article describes CFR's unique Community Advocacy Team approach and how the teams assist parents navigate a child welfare investigation. It also discusses the

importance of pre-court advocacy; the legal framework of an investigation; and what an attorney, social work staff member, and parent advocate can do during each investigation stage.

CFR's Community Advocacy Teams

The investigation phase of a child protective case can be stressful and confusing for parents. To support parents during a child protective case, CFR created Community Advocacy Teams (CAT). CAT aims to (1) prevent foster care whenever

possible, and (2) if foster care is unavoidable, to significantly shorten the length of foster care stays for children. CAT provides parents an attorney, social work staff member, and a parent advocate (a parent who has directly experienced the child protective and foster care systems and has successfully reunited with his/her children). Through this model, CFR has worked with families while they are under investigation by child welfare authorities before the court gets involved.

Why Precourt Advocacy is Important

In New York, when someone

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suspects child neglect or abuse and calls the state hotline, a child protective services (CPS) worker employed by children's services is supposed to investigate the parent and offer the family services. Often parents mistrust the caseworker (who has tremendous power to take their children) and so will not follow up on referrals for services.

Or, frequently parents are asked to attend meetings about their situation, but feel their voices are not heard, are too intimidated to ask questions, don't understand why they are being investigated, or simply don't know what questions to ask about the investigation, process, services, etc.

Parents may be asked to attend services that are inappropriate, not culturally sensitive, or that conflict with employment or other obligations. Parents may also be asked to produce their children for interviews with a caseworker or medical professional. This raises many questions about whether they are required to produce their children, whether CPS can speak with their children outside the parent's presence, and the consequences if a parent refuses to cooperate with these requests.

During these critical, early phases of an investigation, having a strong advocate can prevent misunderstanding and miscommunication and promote positive efforts to keep a family safe and out of the court system. Most people do not wait until they are standing before a judge to consult an attorney. In cases like Ana's, CFR has created a referral partnership with other legal services agencies and community organizations. The only requirements for the referral are that the parent is currently under investigation by children's services in New York City and wants help navigating the process.

CFR also gets referrals from partnerships with government

agencies, the New York City 311 call line, and direct calls from parents who have found CFR's information online or received CFR's phone number from former clients. Once referred, CFR assigns an interdisciplinary team to provide legal representation and advocacy. An advocate can assist the family during the investigation by:

- providing ongoing information and clear explanations regarding the social work and legal aspects of the investigation process;
- advocating for reasonable and realistic service plans that address the family's identified needs;
- thinking creatively about different ways to address the allegations; and
- identifying resources the family can use to address concerns of the child welfare agency.

Between July 2007 and November 2010, CFR represented parents in dependency cases, in addition to representing parents like Ana whose cases were not before the court. CFR's legal and social work staff successfully diverted court filings in 70% of the cases in which they met a client during the investigation. CFR also successfully diverted foster care placements in 90% of the cases in which a dependency case was filed and CFR staff had met the family during the investigation.

Legal Framework

Governing Laws

Federal and state laws generally govern what happens when child protective services (CPS) intervenes in a family's life when child abuse or neglect is suspected. These laws vary from state to state, so it is important to know your state's laws and regulations.¹ Knowing and understanding this legal framework for the investigation will make you a more effective advocate.²

The legal framework is based on laws and regulations that require child welfare agencies to exercise

reasonable efforts to prevent or eliminate the need for placing a child outside their home.³ Reasonable efforts can include holding family conferences and offering preventive services.

Reporting

In most states an investigation is prompted by a call to a central registry number/hotline that fields calls by anonymous or mandated reporters regarding alleged child abuse and neglect. The central registry is designed to "aid in investigations, treatment and prevention of child abuse cases and to maintain statistical information for staffing and funding purposes."⁴ The information received is compiled and sent to the local child protective agency's field office.

After CPS receives a report, federal law requires that it take the following investigation steps:

Safety assessment: CPS agencies conduct a safety assessment to determine the risk to the child of staying in the home. If CPS staff members feel the child cannot safely remain at home, they will remove the child immediately and a dependency case will be filed in family court against the person(s) named in the report.⁵ If the child can remain at home, the investigation will continue.

At this stage, CFR's CAT teams first get involved with a family. As stated above, either a parent calls and requests assistance or we receive a referral from one of our community-based partners. Generally this is a parent's first contact with an attorney. At this stage, an appointment is scheduled for the parent to come to CFR's office to meet with a team comprised of an attorney and a social work staff member. We prefer that a parent meet with the attorney and social work staff member together and that this meeting occur before the next investigation stage (generally a

home visit).

During the first meeting, parents are advised of their legal rights and given information on the investigative process. In addition to informing the parent of their rights, we have them sign a retainer agreement for investigation purposes only, discuss confidentiality, discuss our individual roles and how we can assist them during their investigation. Parents are given contact information in case CPS comes to their house unannounced. They then have a way to contact a team member to walk them through the visit.

Ana's case: In the vignette, after a case was called in by the group home, the CFR team met with Ana to discuss the investigation process, her rights, and how the CFR team could help her during this process. When a home visit was scheduled, Ana understood how important it was to contact CFR to inform them so they could be present during the next investigation phase.

Home visit: The local CPS agency's field office assigns a caseworker to make the initial home visit. The severity of the allegations determines how quickly a home visit is made. A severe/emergency case is usually investigated within 24 hours, and within three-to-five days for nonemergency cases.

During the home visit, the caseworker or law enforcement personnel should identify themselves, inform the person named in the report that a call has been made alleging neglect or abuse of a child, and an investigation has started. The person under investigation is under no obligation to communicate with the investigator. The investigator should explain the option not to communicate as well as the potential consequences (i.e., court intervention, removal of a child). The investigator will want to speak with all people in the home and gather information about others who have regular contact with the subject children

(friends, relatives, child care providers, school personnel, etc.) in the event they want to gather further information from collateral sources.

At this visit, the investigator may also ask about school and medical information and may ask the parent to sign releases so they can get information directly from providers.⁶ Investigators also routinely check the home for food, confirm all immunizations are current, speak to children, check children for marks and bruises and assess other safety concerns in the home. CFR's social work staff can attend this visit. Attorneys may also attend but usually the team decides to send a social work staff person.

Before the visit, the social work team member and attorney meet to discuss strategies for making the home visit successful as well as areas that may present problems. In CFR's experience, social work staff members have been extremely effective at gathering information about the investigation, supporting parents, and diverting the case from court.

Ana's case: In the vignette, Ana contacted CFR when the CPS worker scheduled a home visit. The social worker was able to attend the meeting and supported Ana. The CPS worker assigned to the case did not speak Spanish so our social worker acted as a translator. If our social worker had not been present, someone else in the home could have been asked to translate, but we have found most people do not know how to translate the child protective issues as clearly as someone who works in the field. Although this sounds like a unique case, it happens often. We have also found that parents understand the process more in their native tongue and that they listen to our social work staff members and attorneys because they take time to build a relationship and explain the details of an investigation.

Conference: The CPS team—caseworker, supervisor, manager—may call a meeting to gather more information, clarify information and/or discuss services for the family. Usually conferences are held in the CPS field office.

An attorney rarely attends conferences. In fact, in New York they are generally prohibited from attending. This is where preparation is most important for both the parent and the social work staff member of the team. A good support at this meeting can mean the difference between having a case go to court or not. During the conference, the social work staff is in contact with the attorney to inform them of decisions. If a decision is made to go to court, the attorney meets the parents at the courthouse. The parents and CFR social worker bring the documents that were prepared at the conference including any written decisions.

Ana's case: In Ana's case, the social worker attended several conferences with Ana. She was able to present documentation to the child welfare organization on the positive steps (e.g., parenting class, ESL classes) that Ana had been taking to address their and the foster group home's concerns. The social worker also helped foster a positive working relationship between Ana and the staff at the foster group home and the CPS worker. Creating a positive working relationship with all parties helped them see Ana as an individual and address her needs.

Case Closure: The CPS caseworker/team should send a closing letter stating the outcome of the investigation within 60 days from the start of the investigation.

The investigation will be closed with the case either "indicated" (some credible evidence for found) or "unfounded" (no credible evidence found).

If a case is indicated or founded but no court case is filed, the team

Preparing Your Client for a CPS Investigation

Parent clients often have many questions during a CPS investigation. Advocates can help parents prepare for the investigation and alleviate their concerns by thinking through common questions in advance.

- How is neglect defined in your state?
- What is the Child Protective Services (CPS) protocol for the length of the investigation in your state?
- Should they expect a CPS worker to do home visits school visits, etc.? If so, how often?
- Will CPS speak to other people regarding the investigation? If so, who? Babysitters? Neighbors?
- What privacy rights do parents have?
- When does CPS have the right to remove my child?
- When does CPS have to file a case in court?
- If my child is removed, what are my immediate rights?

attorney helps the parent through an administrative process where a parent can challenge the finding. This process differs in every state. In New York, it involves writing a letter to request expungement, or if that is denied then a hearing.

Ana's case: Although the team was able to stave off a family court case, Ana's case was indicated. The social worker and attorney helped Ana craft a letter to the state central registry to ask for the case to be expunged and are awaiting a reply. If denied, the team will help prepare Ana for a hearing.

Court Intervention

In many states, the legal framework allows child welfare agencies to ask the court to intervene when there is reasonable cause to believe a child's life or health may be in danger.⁷ A request for a court order gaining access to a child and a family's home is held to a higher standard than "imminent risk"⁸ and can only be made in very specific circumstances, such as when a CPS worker has been unable to gain access to a child or a home during an investigation. The inability to access the family can be for many reasons, but generally orders to gain access are sought when a family is refusing access. To protect the rights of the

family, child protective workers in some states must inform the parent or guardian that they will ask the court to intervene if the family refuses to cooperate.⁹

Legal Representation

States vary over whether a parent may have an attorney or other advocate represent them or be present for any meeting or investigative interviews during a child welfare investigation.¹⁰ Because of this ambiguity, it is important to look at your state's dependency or child welfare statute and regulations. Remember, even if you cannot attend these meetings or interviews, you can prepare your client for them.

Removal

At any point in the investigation, the investigating team can decide to file a court case and ask for the child(ren) to be removed from the home. In some states, the child welfare agency may remove a child for a specific period before asking the court to intervene.

Supporting a Family during an Investigation

During an investigation, many professionals can perform the same roles in helping a client. For

example, both an attorney and a social worker/advocate can explain the stages of an investigation to a parent. The following tips, compiled from CFR's work with precourt cases, are designed to help attorneys, social work professionals, and parent advocates think about steps each professional can take.

Practice Tips—Attorneys

■ *Research your state's child protection statutes and regulations.* This may sound basic, but you need to understand what CPS is empowered to do when investigating a family.

■ *Develop a "know your rights" checklist for parents that explains what is supposed to happen.*

■ *Learn how to explain the investigation process and keep track of frequently asked questions (see *Preparing Your Client for a CPS Investigation*).*

■ *Ask the parent about any meetings they are asked to attend.* If you can accompany the parent, find out who is convening the meeting and contact that person about coming. Be clear that you are an attorney. If you are told attorneys are not permitted, consider putting in writing (letter) that you were told this and that you have advised your client to bring another support person to the meeting (relative or community member).

■ *Determine when parents are entitled to representation.* If your state has a procedure that permits the protective service agency to seek a court order to either take children into temporary custody during an investigation OR to enter a home, learn whether parents are entitled to representation. Tell the parent to notify you if they are served with any official papers directing them to appear in court. *Even if the parent is not entitled to representation, if you*

can appear with a parent on the court date, your presence may help the court and the protective services agency be more attentive to reasonable efforts obligations owed to the family.

- *Develop a conflicts procedure for investigation clients.* Remember, even at this early stage, you cannot be sure what case may end up in court and you cannot counsel two parents or adults involved with the children.

- *Set clear boundaries* from the first discussion about confidentiality and other policies you have in your office. For instance, it is important to inform your client what types of case you are able to represent them on if the case goes to court (i.e., custody, visitation, administrative hearings regarding sealing/expunging CPS records, dependency cases).

- *Develop a referral network.* If you do not work or contract with social workers, establish connections with local community-based or social services organizations that have a track record for supporting parents. Your clients may need referrals outside of the CPS process and you want them to have quick access to these supports.

- *Be prepared to meet with the client and/or your own social work staff member to assess the likelihood of a case being filed as the investigation proceeds.* Keep track of what the agency is or is not doing so that if the case proceeds to court you have begun to develop both a theory of “reasonable efforts” and can anticipate the allegations. This early work by the attorney during the investigation can also make it more likely that if children are removed as a result of the filing of a formal neglect allegation, the attorney is prepared to proceed to an emergency hearing to get the children returned home.

- *Be prepared if a parent chooses not to cooperate.* Remember there is no requirement that a parent must cooperate with a CPS investigation. Know the legal remedies that CPS has and the legal consequences in your state if a parent refuses to allow access to the child or to their home so you can counsel your client accordingly.

Practice Tips—Social Workers and Parent Advocates

- *Inform the client about the investigation stages.* The more information the client has the more prepared he/she will be for questions that the CPS worker may ask. It helps to understand the actual (versus published) practices of the CPS agency during an investigation. Despite how you feel about investigations, it is important to know exactly how they work so you can advise parents.

- *Attend meetings with the client.* Generally social work staff, parent advocates, and other advocates may attend meetings, conferences, home visits, etc. When possible, attend as many of these meetings with clients. If you cannot attend, take time to prepare the client for the meeting, answer questions, and follow-up afterwards.

- *Learn the agenda and format of meetings* administered by the CPS agency. Look at the county Web site for information about meetings/conferences that your clients may be invited to attend. This will help you understand the process and prepare the client on what to expect during the meeting.

- *Encourage the client to organize all medical and school information* (i.e., evaluations, immunizations, report cards) for all children. Tell the client never to give original documents to the caseworker, only photocopies, and to bring any relevant documents to meetings.

- *Encourage the client to keep important numbers readily available.* For example, the number of their child’s pediatrician or health clinic, prevention agencies the family has worked with, or a relative who could support or be a resource for the child.

- *Keep an updated list of important resources for clients.* If your local child welfare agency has an ombudsman’s office or parent hotline, parents can call them directly with a complaint or question(s). For example, New York has both an Office of Advocacy and a parent hotline, Michigan has an Office of Children Ombudsman, and Arizona has a Parent Assistance Program (24-hour hotline), Family Advocate Program, and a Client Advocate’s Program.

- *If the client has a positive working relationship with any service providers,* encourage the client to ask their service providers to contact the CPS worker, attend any meetings or conferences, or send a letter about the client’s progress and compliance with services.

- *If a conference or meeting is scheduled and you cannot attend,* encourage the client to invite people to the conference who will support him/her. Remind clients to bring someone who will be supportive. Someone who is adversarial may change the tone of the meeting and unwittingly put the client in a difficult position or taint the CPS team’s view of the client.

- *Ask the client what services would benefit the family most.* The client should discuss what issues they believe led to the current situation and think about services that may help avoid the situation in the future. For example, if the parent needs help getting a special education evaluation for the child, would she be open to working with someone who could help her navigate the educa-

tional system? It is important for the client to think about what he/she will agree to regarding services. The client does not have to agree to everything that is proposed. It is important for the client to have thought about why he or she may not want certain services and be able to state that clearly to the CPS team. The client needs to be viewed as cooperative, but not overwhelmed with unnecessary services.

■ *Discuss the client's strengths.*

During an investigation, the parent is constantly bombarded with his or her negative attributes. Help the client identify his/her strengths so the client can highlight them at any meetings or conferences.

Conclusion

Regardless of whether the law allows attorneys or social workers to actively participate in an investigation or meeting, you can still prepare your client on what to expect and how to best prepare. Preparing clients to work with CPS in a successful and productive way promotes positive outcomes for families. As in Ana's case, it can also help avoid a court filing and keep the family together.

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Involved in the Child Welfare System. Plan to attend the second national conference this July 13-14, 2011 in Arlington, VA. Learn more at www.abanet.org/child/parentrepresentation/home.html.

Endnotes

¹ <www.childwelfare.gov/systemwide/laws_policies/statutes/resources.pdf>

² *E.g.*, in certain states a child can be removed from their parents for up to 48 hours (California, www.ccrwf.org) or up to 72 hours (Arizona, www.egov.azdext.gov) without court intervention.

³ See Adoption and Safe Families Act (ASFA) of 1997, 42 U.S.C. § 675; Title 18 New York Comp. Codes Rules and Regulations §§ 423.2, 423.4, 430.9 et seq.; <www.dss.state.la.us/>; La. Child Code Art. 612-615; 390 Neb. Admin. Code § 1-003; Ohio Rev. Code Ann. § 2151.421; 23 Pa. Cons. Stat. Ann. § 6373(b).

⁴ <www.childwelfare.gov/systemwide/laws_policies/statutes/centregall.pdf>

⁵ Through our research, we found that in all

states except Hawaii the children can be removed by the CPS agency. In Hawaii only law enforcement can remove a child from the home (www.hawaii.gov).

⁶ In our experience, most people will sign releases without reading them thoroughly or asking for them to be filled out completely. It is important for the person to read the petition/have someone read it to them, make sure it is filled out completely, and an expiration date is provided.

⁷ See N.Y. Fam. Ct. Act § 1034 and La. Child Code Art. 612-615; Mass. Ann. Laws ch. 199 § 51A-51F; 110 Mass. Regs. Code 4.20, 4.27, 4.32.

⁸ *E.g.*, in New York, the applicable standard for a court to enter an order requiring cooperation with entry to a home is probable cause. See N.Y. Fam. Ct. Act § 1034.

⁹ N.Y. Fam. Ct. Act § 1034.

¹⁰ See D.C. Code § 4-1301.09; Neb. Rev. Stat. § 28-710-728; 390 Neb. Admin. Code § 1-100 et seq. For example, in Hawaii an attorney can attend a child protective meeting, whereas in New York attorneys may not attend these meetings.

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Using Preventive Legal Advocacy to Keep Children from Entering Foster Care

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**USING PREVENTIVE LEGAL ADVOCACY TO KEEP
CHILDREN FROM ENTERING FOSTER CARE**

Vivek Sankaran[†]

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INTRODUCTION

Across the country, parents in child welfare cases receive inadequate legal representation.¹ Fortunately, increased attention

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1. See, e.g., WILLIAM BOWEN ET AL., CONN. VOICES FOR CHILDREN, GIVING FAMILIES A CHANCE: NECESSARY REFORMS FOR THE ADEQUATE REPRESENTATION OF CONNECTICUT'S CHILDREN AND FAMILIES IN CHILD ABUSE AND NEGLECT CASES, at ii (2007), available at <http://www.ctvoices.org/sites/default/files/welf07reformsforrep.pdf> ("The current model of representation in Connecticut . . . does not provide constitutionally-adequate legal representation

is being given to this issue by state and national advocacy organizations, including the American Bar Association and the National Association of Counsel for Children, among others.² Discussions created by these groups and policy makers have largely focused on strengthening a parent's right to counsel *after* children have been removed from their parents by the state.³

But a lawyer may be able to prevent a child from entering foster care in the first instance. Children may unnecessarily enter foster care because their parents are unable to resolve legal issues that affect their safety and well-being in their home. Take Travis P., a seven-year-old child whose six siblings and mother became homeless after their landlord illegally evicted them and kept both their security deposit and first month's rent. As a result, Travis and his family bounced between the homes of relatives. When the frequent moves caused Travis to miss school, he came to the attention of Child Protective Services (CPS), which became concerned that Travis's educational needs were being neglected. What Travis and his siblings needed more than anything else was a

for children and parents in abuse and neglect proceedings.”); MUSKIE SCH. OF PUB. SERV. & AM. BAR ASS'N, MICHIGAN CIP REASSESSMENT: HOW MICHIGAN COURTS HANDLE CHILD PROTECTION CASES, at x (2005), *available at* http://muskie.usm.maine.edu/Publications/cf/ML_CIPReassessment_Summary.pdf (“Based on interviews, the statewide jurist survey, and court observations, it is clear that many attorneys fail to independently investigate the facts of a case and to meet with clients to prepare for hearings. Many carry excessive caseloads and receive low compensation. Parents and youth reported speaking with their attorneys only immediately prior to hearings, or in some cases for the youth, not speaking with them at all.”); REPORT OF CHILDREN'S JUSTICE INITIATIVE PARENT LEGAL REPRESENTATION WORKGROUP TO MINNESOTA JUDICIAL COUNSEL 2 (2008), *available at* <http://www.leg.state.mn.us/docs/2009/other/090151.pdf> (observing that there is no statewide system to ensure qualified legal representation for parents); THE SPANGENBERG GRP., WESTERN MASSACHUSETTS CHILD WELFARE CASES: THE COURT-APPOINTED COUNSEL SYSTEM IN CRISIS 2 (2003), *available at* http://www.publiccounsel.net/practice_areas/cafl_pages/pdf/cafl_news/executive_summary.pdf (“There is a critical shortage of attorneys available to handle the ever-increasing volume of child welfare cases in the juvenile courts of Massachusetts.”).

2. See Am. Bar Ass'n Ctr. on Children & the Law, *Parent Representation*, A.B.A., http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html (last visited Mar. 7, 2014).

3. See Am. Bar Ass'n Ctr. on Children & the Law, *National Project to Improve Representation for Parents Involved in the Child Welfare System*, A.B.A., http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html (last visited Mar. 7, 2014) (follow “Project Description” hyperlink).

stable home. And to get that, their mother needed a lawyer to help her recover the security deposit from her former landlord and a social worker to help them find housing. Without this help, Travis and his siblings could have been removed from their mother and placed in foster care.

Yet these kinds of legal needs for poor families are rarely met. On average, poor families experience at least one civil legal need per year, but only a small portion of those needs are satisfied.⁴ For about every six thousand people in poverty, there exists only one legal aid lawyer.⁵ So legal aid programs are forced to reject close to a million cases each year.⁶ This lack of legal services threatens the well-being of children like Travis, who may enter foster care if legal issues are left unresolved.

This article describes the beginning of a movement across the country to address this problem. Multidisciplinary legal offices are emerging that provide preventive legal and social work advocacy to families at risk of losing children to foster care. These programs are new. The oldest office was formed in 2009⁷ and only initial evaluations have occurred.⁸ But preliminary data suggests that they can have an enormous impact on preventing children from entering foster care.⁹ Not only do they keep children with their families, they also have the potential to save child welfare systems significant amounts of money by reducing the need to rely on foster care, which can be very costly.¹⁰ This article details how a family's unmet legal needs can place a child at risk of entering foster care, discusses the developing model to address this need, and explores federal funding streams that can support the model.

4. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 15–16 (2009), available at <http://www.mlac.org/pdf/Documenting-the-Justice-Gap.pdf>.

5. *Id.* at 1.

6. *Id.* at 9.

7. *See infra* Part II.

8. *See infra* Part II.

9. *See infra* Part III.

10. *See infra* Part III.

I. CHILDREN MAY ENTER FOSTER CARE BECAUSE OF UNRESOLVED LEGAL ISSUES

A parent's inability to resolve legal issues may jeopardize a child's safety and well-being in the home and may increase the likelihood of a child entering foster care. For example, a domestic violence victim may be unable to secure a personal protection order and may be forced to allow her child to have contact with his abusive father. A mother seeking inpatient drug treatment may be unable to transfer her parental authority to a relative and may be forced to leave her child with a relative who has no legal ability to address the child's needs. A father may be wrongfully denied food stamps and may be unable to provide his children with a proper meal. Each of these scenarios highlights the myriad ways in which unresolved legal issues can impact a child's safety and well-being. Each, too, highlights the possibility of CPS getting involved because a child's basic needs are not being met.

That unresolved legal issues can impact outcomes for children has been recognized by other professions, most notably the medical field. In 1993, Dr. Barry Zuckerman, chief of pediatrics at Boston Medical Center, created the first medical-legal partnership (MLP) "to improve the health and well-being of vulnerable individuals, children and families by integrating legal assistance into the medical setting."¹¹ Lawyers meet with families to identify and address those issues affecting their health and advocate to resolve them.

Dr. Zuckerman recognized that legal systems held solutions for many determinants of health, such as malnourished children who need food stamps, asthmatic kids who need landlords to provide safe housing, and vision-impaired children who need Medicaid to cover the costs of glasses.¹² Dr. Zuckerman, who grew tired of

11. Rebecca L. Huston et al., *Medical-Legal Partnerships*, 13 AM. MED. ASS'N J. ETHICS (VIRTUAL MENTOR), Aug. 2011, at 555, 557, available at <http://virtualmentor.ama-assn.org/2011/08/pdf/hlaw1-1108.pdf>; see also Anna Gorman, *Law Is Good Medicine: Medical-Legal Partnerships Can Improve the Health of People in Low-Income Neighborhoods*, L.A. TIMES, Mar. 13, 2010, at 1, available at 2010 WLNR 5282977 (discussing the benefits of medical-legal partnerships); *History*, NAT'L CENTER FOR MED.-LEGAL PARTNERSHIP, <http://www.medical-legalpartnership.org/movement/history> (last visited Mar. 7, 2014) (describing the origins and history of medical-legal partnerships).

12. *History*, *supra* note 11; see also Barry Zuckerman et al., *Why Pediatricians Need Lawyers to Keep Children Healthy*, 114 PEDIATRICS 224, 224-28 (2004)

having his ability to help children limited by the medicine he could prescribe, remarked, “The model makes so much sense We can all do what we want medically but because of these problems, if changes aren’t made, nobody is going to get better The unfortunate reality is that we need lawyers.”¹³

Since Dr. Zuckerman launched the MLP model, it has grown to meet the needs of thousands of children.¹⁴ The model has been integrated into the practice of over 275 hospitals and health care centers.¹⁵ In 2010, more than 13,000 individuals received legal assistance through MLPs and more than 10,000 health care professionals received training on the model, which has been endorsed by the American Medical Association and the American Bar Association.¹⁶ Now, support for the model is coordinated by the National Center for Medical-Legal Partnership, which is housed at the George Washington University School of Public Health and Human Services.¹⁷

Yet for children like Travis P., at risk of entering foster care, legal needs are routinely ignored. Although, in most parts of the country, juvenile courts appoint lawyers to represent parents and children in child welfare proceedings, these lawyers are appointed only *after* a child has already been removed from his parents’ home and placed in foster care.¹⁸ Additionally, these lawyers are poorly compensated, lack adequate training, and only handle legal issues directly related to the ongoing child welfare case.¹⁹ Thus, collateral issues affecting the child’s safety—such as housing, domestic violence, and custody matters that, if resolved, could prevent the child from entering foster care—are rarely addressed.

(discussing doctors’ lack of understanding of Medicaid eligibility).

13. Gorman, *supra* note 11.

14. See Huston et al., *supra* note 11, at 556; *History*, *supra* note 11.

15. *History*, *supra* note 11.

16. Huston et al., *supra* note 11, at 556; *History*, *supra* note 11.

17. *History*, *supra* note 11.

18. Vivek S. Sankaran, *Protecting a Parent’s Right to Counsel in Child Welfare Cases*, 28 CHILD L. PRAC. 97, 103–04 (2009).

19. *Id.* at 101.

II. AN EMERGING MODEL TO ADDRESS THE UNRESOLVED LEGAL NEEDS OF CHILDREN AT RISK OF ENTERING FOSTER CARE

Fortunately, a new model has emerged to provide targeted legal and social work advocacy to prevent the unnecessary entry of children into the foster care system. In 2009, the University of Michigan Law School's Child Advocacy Law Clinic created the Detroit Center for Family Advocacy (CFA), which provides legal and social work advocacy to families to prevent children from entering foster care.²⁰ Since that time, similar programs have emerged in Vermont and California; others are planned in Iowa²¹ and the District of Columbia,²² among other jurisdictions.²³

The core elements of the model are similar across programs. Child welfare agencies, courts, community-based organizations, and others refer families at risk of losing children to foster care because of unresolved legal issues. Once a case is accepted, the programs provide families with the assistance of an attorney, a social worker, and a parent advocate to help resolve legal issues—of the type detailed at the outset of the article—which affect the safety of the child in the home. Lawyers may file for a restraining order, draft a power of attorney, file for a guardianship, apply for public benefits, or help with special-education entitlements.

The social worker on the team assesses the family's strengths and weaknesses and provides case management. She works with existing community partners to help the parent or caregiver access a network of services, such as transitional housing, counseling, and substance abuse treatment, and works cooperatively with the child welfare agency caseworker to create a mutually agreeable safety plan for the parent to meet his or her child's needs.

And the parent advocate—a parent who, herself, has experienced the child welfare system—provides clients with a

20. See *Detroit Center for Family Advocacy*, U. MICH. L. SCH., <http://www.law.umich.edu/centersandprograms/pcl/cfa/Pages/default.aspx> (last visited Mar. 7, 2014) (providing more information about the Detroit Center for Family Advocacy).

21. Email from Gail Barber, Director, Iowa's Children's Justice, to author (Jan. 25, 2013, 17:26 EST) (on file with author).

22. Email from Brenda Donald, Director, Child & Family Servs. Agency, Wash., D.C., to author (Jan. 24, 2013, 09:37 EST) (on file with author).

23. See *LAM Launches Parent Partner Support Program*, MARIN JUSTICE (Legal Aid of Marin), Fall 2012, at 1; VT. PARENT REPRESENTATION CENTER, INC., <http://vtprc.org> (last visited Mar. 7, 2014).

unique perspective of how to navigate the system and helps parents stay focused and motivated in the face of adversity. Through this multidisciplinary team approach, these programs work collaboratively with child welfare agencies and others in the community to resolve legal issues and keep children in their homes.

In addition to resolving legal issues affecting the families, the multidisciplinary advocacy teams serve two other important purposes. First, they educate child welfare caseworkers about the ways in which the law can be used as a preventive tool to resolve problems that affect a child's safety. The knowledge gained by caseworkers increases the likelihood they may pursue creative strategies to keep children with their families. Second, by forming trusting relationships with their clients, the multidisciplinary advocacy teams are well suited to help parents learn how to make the changes necessary for their children to remain in their home. Many of these parents have an adversarial relationship with CPS workers due to the investigative nature of the child welfare process. Far too often, a parent's distrust towards the child welfare system makes them unwilling to engage with the system to work towards keeping children in their care. The teams, by having complete loyalty to the client, may be better suited to persuade parents to access needed services like public benefits, counseling, or substance abuse treatment that will help prevent children from being removed from their homes.

III. INITIAL DATA DEMONSTRATES THAT THIS MODEL CAN KEEP CHILDREN SAFE WITH THEIR FAMILIES WHILE SAVING PUBLIC DOLLARS

Although only initial evaluations of this model have been conducted, data from two sites—the CFA and the Vermont Parent Representation Center (VPRC)—show how effective it can be to keep children safe with their families while saving public dollars. During the three-year pilot period, CFA staff served fifty-five families who were caring for 110 children.²⁴ Due to funding restrictions, the CFA only served children who had already been found by the child welfare agency to have been abused or neglected. Sixty-nine percent of the children served by the CFA

24. DETROIT CTR. FOR FAMILY ADVOCACY, U. MICH. L. SCH., PROMOTING SAFE AND STABLE FAMILIES 12 (n.d.), available at http://issuu.com/michiganlawschool/docs/cfa_report.

lived with their birth parents; thirty percent resided with relatives through an arrangement made by their parents.²⁵

The CFA staff achieved its legal objectives in 98.2% of prevention cases, resolving collateral legal issues in a wide range of matters including housing, custody, guardianships, public benefits, and domestic violence.²⁶ Most importantly, none of the children served by the CFA entered foster care.²⁷

The VPRC achieved similar success. Over a two-year period, the VPRC served eighteen families who were caring for forty-three children.²⁸ Each case involved a child who faced a significant risk of being removed from his or her home.²⁹ In seventy-eight percent of cases, the VPRC prevented children from entering foster care.³⁰ In those cases in which children entered foster care, fifty percent went home to their families expeditiously.³¹

The ability of this model to prevent children from entering foster care presents a significant opportunity for child welfare systems to save scarce public dollars while achieving good outcomes for children. For example, over a three-year period, the CFA spent \$833,000 and kept 110 children, all of whom had been found by the state to be victims of child abuse or neglect, from entering foster care.³² Typically, when children enter foster care, they remain there for an average of 21.1 months.³³ The average annual cost for a child to remain in foster care is over \$45,000.³⁴ Thus, if the model prevented a quarter of the children served by the CFA from entering foster care, the cost avoided by the child welfare agency would be over \$1.3 million, providing a net savings to the system of over \$500,000 once the costs for funding the model are included.³⁵ Similarly, the VPRC estimated saving public systems a

25. *Id.*

26. *See id.*

27. *Id.*

28. *VPRC's Performance Measures*, VT. PARENT REPRESENTATION CENTER, INC., <http://vtprc.org/performance> (last visited Jan. 16, 2014).

29. *Why VPRC Is Important to Vermont Families*, VT. PARENT REPRESENTATION CENTER, INC., <http://vtprc.org/what-we-do> (last visited Jan. 16, 2014).

30. *VPRC's Performance Measures*, *supra* note 28.

31. *Id.*

32. DETROIT CTR. FOR FAMILY ADVOCACY, *supra* note 24, at 15.

33. *Id.*

34. *Id.*

35. *Id.*

minimum of \$250,000 over a two-year period.³⁶ Although the potential cost savings of this model needs to be more fully developed, this initial data suggests an enormous potential for the model to save child welfare systems thousands of dollars.

IV. DIVERSE FEDERAL FUNDING SOURCES EXIST TO SUPPORT THIS MODEL

Current multidisciplinary advocacy teams rely upon diverse sources of funding to support their work, most of which are short term in duration. For example, the CFA is supported by private foundation grants, individual donations, and matching funds from a statewide program aimed at keeping children in their communities.³⁷ The VPRC has relied on support from state grants, foundations, and individuals.³⁸ And the California Parent Partner Support Program was launched through a short-term grant from California's Administrative Office of the Courts through its court improvement project.

To replicate and sustain this model in other places, permanent funding streams need to be identified. Funds from a number of federal programs could support the model. However, these funds flow directly from the federal government to state agencies. Thus, advocates seeking to apply funds from these sources must persuade child welfare agencies in their state that the purpose of the multidisciplinary advocacy teams falls within the scope of these federal programs.

A. *Title IV-B*

Two programs created by Title IV-B of the Social Security Act—the Stephanie Tubbs Jones Child Welfare Services Program³⁹ and Promoting Safe and Stable Families⁴⁰—provide states with federal dollars to fund services and activities to preserve and reunify families. Both programs provide states with considerable flexibility in determining how to use these funds.⁴¹ In fiscal

36. *VPRC's Performance Measures*, *supra* note 28.

37. DETROIT CTR. FOR FAMILY ADVOCACY, *supra* note 24, at 18.

38. *Donate to VPRC*, VT. PARENT REPRESENTATION CENTER, INC., <http://vtprc.org/donate> (last visited Mar. 7, 2014).

39. 42 U.S.C. §§ 621–628b (2006).

40. *Id.* §§ 629–629i.

41. KERRY DEVOOGHT & HOPE COOPER, STATE POLICY ADVOCACY & REFORM

year 2012, Title IV-B funding represented nine percent of federal funds used by states for child welfare services.⁴²

B. TANF

The Temporary Assistance for Needy Families (TANF) program, a federal block grant that, among other purposes, supports programs that prevent out-of-home placements for needy children, is another flexible federal funding stream that can be used by state child welfare agencies.⁴³ The states can use TANF funds to support any service designed to further this goal.⁴⁴ In fiscal year 2010, TANF accounted for twenty-two percent of all federal funds spent on child welfare.⁴⁵

C. Medicaid

Most children at risk of entering foster care are eligible for Medicaid, an open-ended entitlement providing access to medical care for needy children.⁴⁶ Through the program, child welfare agencies can be reimbursed for case management activities designed to help beneficiaries of the program gain access to needed medical, social, educational, or other services.⁴⁷ In fiscal year 2010, Medicaid accounted for seven percent of all federal funds spent on child welfare.⁴⁸

D. Social Services Block Grant

The Social Services Block Grant, a capped entitlement program, provides states with funding to prevent or remedy child abuse and neglect, to reduce the number of children entering

CTR., CHILD WELFARE FINANCING IN THE UNITED STATES 4 (2012), *available at* <http://childwelfaresparc.files.wordpress.com/2013/02/child-welfare-financing-in-the-united-states-final.pdf>.

42. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-170, CHILD WELFARE: STATES USE FLEXIBLE FEDERAL FUNDS, BUT STRUGGLE TO MEET SERVICE NEEDS 8 (2013), *available at* <http://www.gao.gov/assets/660/651667.pdf>.

43. DEVOOGHT & COOPER, *supra* note 41, at 11.

44. *Id.*

45. *Id.*

46. *See id.* at 13–14.

47. *See id.* at 13.

48. *Id.*

institutional care, and to help families become self-sufficient.⁴⁹ In fiscal year 2010, the Block Grant accounted for twelve percent of all federal funds spent on child welfare.⁵⁰

E. Title IV-E Waiver

Title IV-E of the Social Security Act, “an open-ended entitlement to support the costs of caring for eligible children in foster care,” represents nearly ninety percent of federal funding dedicated to child welfare.⁵¹ Funds from the program are primarily available for specific foster care and adoption expenses, but cannot be used to support services to families.⁵²

In 2011, Congress authorized the Department of Health and Human Services to waive funding restrictions tied to the program so that states with approved demonstration projects can spend those funds more flexibly.⁵³ To be granted a waiver, states must demonstrate that their projects are cost neutral to the federal government, among other requirements.⁵⁴ As of October 2012, fourteen states had waiver demonstration projects, many of which focused on innovative strategies to prevent children from entering foster care.⁵⁵ The Department of Health and Human Services can approve up to thirty projects through 2014.⁵⁶

Funds from any of these programs could be used to support the emerging multidisciplinary advocacy model. But advocates must work collaboratively with child welfare agencies to convince them to do so.

49. DEVOOGHT & COOPER, *supra* note 41, at 12; KAREN E. LYNCH, CONG. RESEARCH SERV., 94-953, SOCIAL SERVICES BLOCK GRANT 2 (2012).

50. DEVOOGHT & COOPER, *supra* note 41, at 12.

51. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 42, at 9–10.

52. *Id.* at 9.

53. *Id.* at 10–11.

54. *Id.* at 11. The Department of Health and Human Services was able to waive the fees prior to 2011. That authority “lapsed in 2006 but was renewed by Congress in 2011.” *Id.*

55. *Id.* at 20–21.

56. Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, § 201(1), 125 Stat. 369, 378 (2011).

CONCLUSION

Although the multidisciplinary advocacy model is new, it has the potential of preventing significant numbers of children from entering foster care while saving scarce public dollars. Undoubtedly, more research must be done to evaluate the effectiveness of the model. But the preliminary data demonstrates that providing families with a multidisciplinary team can help keep children safe with their families by resolving those legal issues that are destabilizing the family unit.

Attachment 5

Public Defense Services Commission

Strategic Plan 2016 – 2021

August 2016

Background

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

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

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

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

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

Mission

The Commission ensures that eligible individuals have timely access to legal services, consistent with Oregon and national standards of justice.

Vision

The Public Defense Services Commission (PDSC) will maintain a sustainable statewide public defense system that provides quality representation to eligible clients in trial and appellate court proceedings. To that end, the PDSC is a

- guardian of the legal rights and interests of public defense clients and the public's interest in equal justice and due process of law.
- champion for the effective delivery of public defense services and administration of justice, and for funding that ensures the continuing availability of competent and dedicated public defense counsel.
- responsive and cooperative policy maker in the state's justice system.
- responsible steward of taxpayer dollars devoted to public defense.

Values

Leadership – PDSC is a responsible leader and partner with other state and local agencies and public defense practitioners in the provision of public defense services and the administration of justice in Oregon.

Accountability – PDSC is a results-based organization with employees and managers who hold themselves accountable by establishing performance standards and outcome-based benchmarks and who implement those measures through regular performance evaluations and day-to-day best practices. PDSC and OPDS award and administer public defense services contracts in an open, even-handed and business-like manner ensuring fair and rational treatment of all affected parties and interests. The PDSC is accountable to the Oregon Legislature, the public, and itself.

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

Legislative Advocacy

The PDSC views its role in appearing before the Oregon Legislative Assembly and committees of the Assembly to be primarily for the purpose of

- advocating for a state budget sufficient to ensure (a) the delivery of quality public defense services, and (b) the continuing availability of competent and dedicated public defense counsel.
- promoting legislative and policy changes that advance efficiencies, fairness, and compliance with Oregon and national standards of justice.
- providing information in response to requests from legislators or legislative staff.
- informing legislators of (a) the fiscal impact on the public defense system of proposed legislation or existing laws relevant to public defense, and (b) any potential constitutional or other problems that might occur as the result of the enactment, implementation, or amendment of legislation.

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

Standards of Service

The PDSC embraces the following standards for all OPDS employees:

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

2016-2021 Goals and Strategies

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

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

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

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

Strategy 3: Increase OPDS presence across the state to provide training, support, and monitoring of contract providers, better coordinate services between trial and appellate practitioners, and improve coordination with system stakeholders at local levels.

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

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

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

Strategy 7: Preserve, enhance, and recognize excellence.

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

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

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

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

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

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

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

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

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

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

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

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

DRAFT

Attachment 6

2016 -17 KPM #	2016 -2017 Approved Key Performance Measures (KPMs)
1	APPELLATE CASE PROCESSING – Median number of days to filing 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
4	TRIAL LEVEL REPRESENTATION – Percentage of attorneys who obtain at least 12 CLE credits annually
5	PARENT CHILD REPRESENTATION PROGRAM (PCRP) – Percent of PCRP attorneys spending 1/3 of their time meeting with clients.

PUBLIC DEFENSE SERVICES COMMISSION

Agency Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

Contact: Nancy Cozine

Alternate: Angelique Bowers

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 happy to report significant improvement in one of our existing Key Performance Measures in 2016. We have described in greater detail below measures that will be taken to further improve the availability of information within the Financial Services Division, as well as continuing to reduce the median filing date of appellate briefs. With these improvements, we would expect to see continued progress in these measures in 2017. Key Performance Measures 4 and 5 are new in 2016 and this is the first report for each.

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 has steadily declined. Although the 2007 Legislature provided funding to increase that rate to \$45 per hour, and the 2013 Legislature provided a one dollar increase to \$46, this still represents a decline in real dollars based on the Consumer Price Index increases over this 24-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. Contract rates were improved for non-profit public defender offices in the 2014 contracting process, and for consortium and law firm providers during the 2016 contract cycle, but the rates remain well below what is available to privately funded lawyers. This combination of being either over-worked or under-paid, and in most cases both, prevents attorneys 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. Additional funding is needed to allow the agency to execute contracts that provide lawyers with the resources necessary to reduce caseloads and retain talented lawyers.

5. RESOURCES AND EFFICIENCY

The agency's 2015-17 Legislatively Approved Budget was \$279,319,880. 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. 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.

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, Ernest G. Lannet, (503) 378-3479

1. OUR STRATEGY

Criminal appeals often take many months to resolve, because—when the defense attorney, state attorney, or judge could begin researching and writing the brief or opinion for a new case—the attorney or judge has any number of older cases to complete. The Criminal Section of the Appellate Division is directly responsible for any delay between record settlement and filing the opening brief. Strategies to minimize that delay include assigning incoming cases based on attorney experience and case complexity; adjusting attorney caseloads on a quarterly basis to ensure that, collectively, the attorneys are working on the oldest unbriefed cases; and undertaking regular performance evaluations that recognize and encourage proficiency in issue selection, legal research, and brief writing.

2. ABOUT THE TARGET

In 2004 the Appellate Division first identified seven months (210 days) past record settlement as a target date to have filed the opening brief. The Oregon Court of Appeals, the Oregon Department of Justice, and the Appellate Division entered into an agreement that set a 210-day brief due date (post record settlement for opening briefs, post opening brief for answering briefs). In 2009 the Appellate Division ceased measuring its progress by reporting the number of cases that remained unbriefed seven months after record settlement (“Appellate Case Backlog”) and began reporting the median filing date of briefs for each fiscal year (“Appellate Case Processing”). In February 2014, the Legislature approved the Appellate Division’s request to reduce the target date to have filed the opening brief to 180 days of record settlement. The 180-day target addresses several considerations. First, the agency considers it intolerable that an individual would have to wait more than six months before an appellate attorney has reviewed a transcript, researched potential issues for appeal, and either presented the most meritorious issues in a brief or competently advised the client of the viability of any appellate challenge. Second, the Attorney General’s Office consistently files its answering briefs at or near the 210-day brief due date, which means that, until the court and state agree to a more expedited briefing schedule, any reduction in delay must come from the Appellate Division. Third, federal courts have intervened when a state appellate system routinely takes two years to resolve

criminal appeals. The 180-day target represents a reasonable attempt to meet various systemic considerations in a criminal justice system that is fair, responsible, and well administered.

3. HOW WE ARE DOING

The Appellate Division has made significant progress over the past ten years and is on track for further improvements. In 2006, the median number of days to file the opening brief was 328; by 2009 that number was reduced to 236 days. During the next six years, the number fluctuated between a low of 223 (2013, 2015) and a high of 234 (2011, 2012). For fiscal year 2016, the median date fell to 209 days. The fluctuations and latest progress is primarily attributable to two causes. First, appellate practice is a specialty area. It generally takes about three to five years to develop into a proficient attorney able to manage confidently and efficiently a caseload of moderately complex appeals. Since 2010, the Criminal Section lost 11 attorneys with, on average, more than 10 years of experience. Currently, 13 of the 34 non-managing attorneys in the Criminal Section (more than one-third) have less than 5 years of appellate experience. Second, in 2012 the Criminal Section ceased contracting to outside attorneys caseload “overflow” (non-conflict cases that the Criminal Section could not retain while maintaining progress made into the backlog), which had grown to more than 200 cases per year. Assuming adequate resources, the continued development of attorneys with less than 5 years of appellate experience, and the retention of attorneys with 5 or more years of experience, the agency anticipates making significant strides toward its 180-day goal.

4. HOW WE COMPARE

Appellate Division attorneys have significant workloads. Nationally, an appellate public defender’s workload ranges from 25 to 50 cases annually. For example, Florida and Louisiana set the maximum annual appellate caseload at 50 cases per attorney; Nebraska sets the maximum appellate caseload at 40 cases; and Georgia, Indiana, and Washington set the maximum annual appellate caseload at 25 cases per attorney. US Department of Justice, *Compendium of Standards for Indigent Defense Systems*, vol. IV, C 1-5 (2000). On average, an Appellate Division attorney in the Criminal Section was assigned 46 cases in the fiscal year ending in 2016, which exceeds most practices.

5. FACTORS AFFECTING RESULTS

The ability to meet and exceed the goal correlates positively to the number of experienced attorneys and negatively to the number of cases. The agency does not control the number of referred cases. Attracting, training, and retaining competent attorneys affect progress toward the goal.

6. WHAT NEEDS TO BE DONE

Approximately forty percent (40%) of the attorney group has less than five years of appellate experience. As the attorneys gain appellate experience, the office efficiency will improve. The agency continues to meet regularly and work cooperatively with the appellate courts and the Appellate Division of the Department of Justice to promote systemic efficiencies. The agency has made significant progress over the past several years to reduce the median brief filing date for its criminal cases (from 328 days in 2006 to 209 days in 2017), but the agency aspires to reduce that number over the coming fiscal year. Barring significant and unforeseen events, such as a significant increase in case referrals, the issuance of watershed court decisions that impact hundreds of open cases, or an excessive loss of experienced attorneys, the agency expects to continue to make significant progress in fiscal year 2018 toward its target of filing briefs in criminal cases within 180 days of record settlement.

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.

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 Survey Monkey).

Owner: Contract Services, Caroline Meyer, (503) 378-2508

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 2015-16 have been set at 95% of respondents rating the agency as good or excellent.

3. HOW WE ARE DOING

The most recent survey was conducted in June 2016. The survey results indicated a high level of customer satisfaction with the agency. The overall service provided by OPDS was rated as good or excellent by more than 90% of the respondents. The standard reporting measure for state agencies groups both “good” and “excellent” into one category. In the categories of helpfulness of OPDS employees, over 94% of respondents rated the agency’s service as “good” or “excellent”. The lowest rating was in the category of availability of information, where 87% of the respondents rated the agency’s service as “good” or “excellent”.

4. HOW WE COMPARE

Services and customers differ greatly among state agencies, so a direct comparison to other state agencies is not feasible. Similarly, comparisons to public defense systems in other jurisdictions have not been 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, the agency would likely compare favorably were such a comparison possible.

5. FACTORS AFFECTING RESULTS

The ratings in three categories were somewhat higher in 2016 than the most recent survey in 2014. The agency believes the ratings would have been higher in all categories but for the considerable turnover of longtime staff in the Accounts Payable Section. Between 2013 and 2015, the agency lost more than half of its staff to retirements and resignations. This change naturally required considerable training and mentoring of five new staff members which resulted in some processing delays. The change also meant that phone calls and other requests for information that had been routed through employees with years of experience were now being handled by new employees with less experience and authority to respond. The agency believes this resulted in providers feeling that their questions were not always being fully answered and information being less available to them.

6. WHAT NEEDS TO BE DONE

The agency will need to focus on improving the availability of information, and timely payment processing. Providers commented that although the agency still processes payments much more quickly and efficiently than other agencies, they saw a noticeable decrease in processing time as a result of the staff changes mentioned above. Agency management and staff have met and discussed specific steps that can be taken to ensure information continues to be readily accessible to providers, and payments get processed in a timely manner. The agency will continue to evaluate workloads, provide education, and implement process improvements.

7. ABOUT THE DATA

A total of 1,180 contract attorneys, private bar attorneys, and service providers were invited to complete the agency's Customer Service Survey. The survey was administered in June 2016. There was a 32% response rate (382 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 2018.

KPM #3 – BEST PRACTICES FOR BOARDS AND COMMISSIONS – Percentage of total best practices met by Commission

Goal: For the PDSC to meet all best practices for Oregon boards and commissions.

Oregon Context: Requires KPM for all Oregon boards and commissions.

Data Source: Commission agendas and minutes.

Owner: Office of Public Defense Services, Nancy Cozine, (503) 378-2515.

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

At the Commission's July 25, 2016 meeting, commission members reviewed the self-assessment in detail and confirmed 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 should 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.

KPM #4 – TRIAL LEVEL REPRESENTATION – Percentage of attorneys who obtain at least 12 CLE credits annually.

Goal: For all attorneys providing public defense representation to be sufficiently trained in their areas of legal practice.

Oregon Context: To ensure public defense attorneys under contract with the PDSC receive sufficient training in their areas of public defense practice.

Data Source: Contract compliance documentation.

Owner: Contract Services, Caroline Meyer, (503) 378-2508

1. OUR STRATEGY

The agency have added a contract provision requiring 12 CLE credits annually in the areas of legal practice, but that provision was not added until January 2016 (the start of the 2016 contract cycle), and was therefore not in effect during the time period covered by this survey. Future survey results should demonstrate a higher level of compliance.

2. ABOUT THE TARGETS

Targets for 2015-16 have been set at 100% of respondents obtaining at least 12 CLE credits each year that are related to their areas of public defense practice.

3. HOW WE ARE DOING

The survey was sent to 630 attorneys, with an 86% response rate. Of the 541 respondents, 74% report obtaining at least 12 CLE credits annually.

4. HOW WE COMPARE

While the Oregon State Bar regulates and enforces a requirement that all lawyers licensed by the Bar earn a minimum number of credits during a three-year time period, there is no publicly available information indicating the number of credits lawyers earn related to their specific practice areas. Lawyers in private practice, who are competing for clients, have a natural incentive to obtain as much training as possible. Public defense lawyers, who often carry high caseloads and work at rates far below market rates, have less economic incentive to spend time and resources obtaining education. This measure creates an incentive that will help ensure that public defense lawyers have an economic incentive similar to that of privately funded lawyers.

5. FACTORS AFFECTING RESULTS

This was the first time this agency requested all public defense lawyers across the state to report CLE information. Because attorneys are accustomed to reporting to the Oregon State Bar every three years, this request was outside of their normal reporting period, and required them to take additional steps to report CLE activities. Additionally, the contract provision requiring lawyers to earn at least 12 CLE hours each year in their areas of public defense practice didn't go into effect until January 2016. This survey was structured to collect information from 2015, when there may have been less incentive to obtain credits.

6. WHAT NEEDS TO BE DONE

The agency will need to monitor and enforce the new contract provision requiring public defense lawyers to obtain at least 12 CLE credits in their areas of public defense practice. OPDS will continue to work with OCDLA and other partner agencies to ensure that affordable educational opportunities are available to attorneys practicing in public defense.

7. ABOUT THE DATA

The agency utilized Survey Monkey to send the survey to 630 participants. The results were extrapolated into Excel for comparison. Attorneys are on a three-year CLE reporting cycle with the Oregon State Bar and if necessary the agency will compare the CLE report produced by the Bar with the survey data we receive to ensure accuracy.

KPM #5 – PARENT CHILD REPRESENTATION PROGRAM (PCRCP) – Percent of PCRCP attorneys spending 1/3 of their time meeting with clients.

Goal: To improve the quality of representation of parents, children and youth in juvenile dependency and delinquency cases in the PCRCP counties by ensuring attorneys spend sufficient time meeting with their parent clients or child clients with decision-making capacity.

Oregon Context: The Oregon State Bar standards of representation in both dependency and delinquency cases emphasize the importance of consistent client communication.

Data Source: Contract compliance documentation.

Owner: Office of Public Defense Services, Amy Miller, (503) 378-3495.

1. OUR STRATEGY

The Parent Child Representation Program was developed by the Oregon State Legislature and the Office of Public Defense Services to enhance the quality of legal representation for parents and children in juvenile dependency and termination of parental rights cases. The program aims to ensure competent, effective legal representation throughout the life of the case, to ensure meaningful representation of parents and children at all proceedings and to influence positive outcomes for children and families through the reduction of the use of foster care and reduced time to permanency for children.

2. ABOUT THE TARGETS

This Key Performance Measure separates representation of clients with decision-making capacity from representation of clients with diminished capacity (typically young children). However, data gathered by the PCRCP program does not distinguish based on decision-making capacity. Therefore, the data reported for this KPM includes time spent with all clients.

3. HOW WE ARE DOING

From July 2015-June 2016, an average of 25% of the PCRCP attorneys report spending at least one-third of their time meeting with clients. During this time period, the 21 PCRCP attorneys spent an average of 27% of their time meeting with clients.

4. HOW WE COMPARE

The PCRCP was launched in August 2014 in Linn and Yamhill counties and in Columbia County in January 2016. Initial results of the program are promising: the 2014-2015 PCRCP Annual Report identifies three themes arising from PCRCP data.¹ First, the quality of legal representation has improved as a result of practice changes. Second, families are preserved through the use of reunification and guardianship and third, the use of foster care has declined.

5. FACTORS AFFECTING RESULTS

The Parent Child Representation Program includes case managers, social service professionals who are part of the legal representation team, in 12% of cases. The use of case managers who work with attorneys to address non-legal barriers to sensible case resolution is a best practice and a critical component of the success of the PCRCP. The PCRCP case managers are required to spend at least 85% of their time in direct service work. If the time case managers spend in direct service is added to the time attorneys spend with clients, an average of 48% of the time invested by the defense team from July 2015-June 2016 is spent with clients or in direct client service.

Other factors include the complexity of the case, the age and capacity of the client, and the direction of the client with respect to case objectives.

6. WHAT NEEDS TO BE DONE

The agency needs to continue to monitor the quality of work provided by lawyers in the Parent Child Representation Program. Because the program is in its infancy, additional consideration should be given to which metrics are most sensible to measure and which are indicative of quality effective legal representation.

7. ABOUT THE DATA

The data that informs this KPM is provided by attorneys who represent parents, children and youth in the Parent Child Representation Program. Each attorney tracks caseload, time and activities and provides a report to OPDS each month. OPDS audits the attorney reports for contract compliance.

¹ Annual Report 2014-2015, Parent Child Representation Program. http://www.oregon.gov/OPDS/docs/Reports/PCRCP_report_PDSC_Jan_2016.pdf

1. INCLUSIVITY

***Staff:** The agency's Management Team drafted initial performance measures.

***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.

***Stakeholders:** Input was received from the agency's Public Defense Advisory Group comprised of public defense service providers.

***Citizens:** The agency developed, discussed and revised its performance measures during two public meetings.

2. MANAGING FOR RESULTS

The agency's lowest customer service rating in 2016 (87% good or excellent) regarding availability of information has caused us to explore ways to improve our website and other improvements in our communication with providers. We are in the process of implementing these improvements and would expect to see a corresponding increase in this rating in the next survey.

3. STAFF TRAINING

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.

4. COMMUNICATING RESULTS

***Staff:** The Annual Performance Progress Reports are available to staff online. The results and future plans are discussed at staff meetings.

***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.

***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.