

## 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

Friday, October 28, 2016

1:00 p.m. – 4:00 p.m.

Sunriver Resort

Landmark Room 1&2

17600 Center Drive

Sunriver, OR 97701

### MEETING AGENDA

1. **Action Item:** Approval of minutes - PDSC meeting held on September 22, 2016 (*Attachment 1*) Chair Ramfjord
2. **Action Item:** PDSC 2017-19 Budget Request (*Attachment 2*) Angelique Bowers  
Nancy Cozine  
Contract Providers
3. Contractor Innovations, Programs, and System Improvements – Updates and New Efforts Nancy Cozine  
Contract Providers
4. Statewide Survey Results (*Attachment 3*) Paul Levy  
Rachel Woods
5. September Legislative Presentations – update Nancy Cozine
6. **Action Item:** Approval of Workload Study To Establish Oregon-Specific Standards Paul Levy  
Steve Hanlon
7. Rising Caseload (*Attachment 4*) Caroline Meyer
8. Review of PDSC Complaint Policy (*Attachment 5*) Paul Levy
9. Review of Draft Changes to PDSC Qualification Standards for Court-Appointed Counsel (*Attachment 6*) Paul Levy
10. **Action Item:** Approval of case manager contract (*Attachment 7*) Paul Levy

11. **Action Item:** Approval of 2017 Meeting Schedule      Chair Ramfjord  
(Attachment 8)

12. OPDS Monthly Report      OPDS Staff  
(Attachment 9)

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

***Next meeting: December 15, 2016, 10 a.m. – 2 p.m., Clackamas County, Oregon. Meeting dates, times, and locations are subject to change; future meetings dates are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>***

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

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

MEMBERS PRESENT: Per Ramfjord (Chair)  
John Potter (Vice Chair)  
Thomas Christ  
Michael De Muniz

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

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The meeting was called to order at 12:19 pm.

**Agenda Item No. 1 Approval of minutes – PDSC meeting held on July 25, 2016**

Chair Ramfjord made one correction to the minutes.

**MOTION:** Commissioner Potter moved to approve the minutes as corrected; Commissioner Christ seconded the motion; hearing no objection the motion carried: **VOTE: 4-0**

**Agenda Item No. 2 Procedural Justice & Client Satisfaction**

Professor Janet Moore, University of Cincinnati, and Dr. Chris Campbell, Portland State University, presented information on their study of procedural justice and client satisfaction. Professor Moore began the conversation by giving contextual information about the topic. She explained how public

defense began and how over the years public defense has expanded out of crisis. She described public defenders as burdened with high caseloads and low pay, but also as uniquely situated to provide services to a specific demographic of people, the poor. Professor Moore delved into the expectations placed on public defenders in terms of best practices, and contrasted those with the realities of the work. She lastly mentioned the problem of mass incarceration, and how adequately resourced public defenders can help reduce the number of people unnecessarily incarcerated.

Dr. Campbell spoke about procedural justice and client satisfaction based upon his studies as a social scientist. He explained that through his studies he identified four key elements of human behavior and thinking patterns that must exist in order for people to see the system and its agents as legitimate. The first element is that people must perceive the systems and its agents as being fair and trustworthy; as honest in their decision-making. The second element is a need for fairness in procedure and decision-making; the client needs to feel respected. The third element is the outcome of the case - fairness in distribution of outcomes over similar cases. These three elements lead to the fourth, which is the concept of legitimacy. If all three of the first elements are met, then the system will be viewed as legitimate. Dr. Campbell reviewed the results of a satisfaction survey of 156 clients and the common predictors of client satisfaction. The first is whether the public defender asked the client's opinion and listened; the second is if the public defender investigated the prosecution's evidence of the case; the third is if the public defender used client time efficiently; and the fourth is whether the public defender informed the client of the possible consequences of the case outcome. Vice-Chair Potter asked if there was a ranking to this list. Dr. Campbell replied that the two that stood out the most were asking the client's opinion and informing the client of consequences. Dr. Campbell noted that the results of his study have been replicated by other studies across the nation, and he found that indicators align with the ABA best practice standards - to communicate, advocate and investigate. Dr. Campbell spoke about a follow-up study done with clients regarding satisfaction at the conclusion of their case, where many felt a lack of trust and fairness. He noted though, that these perceptions did not fall onto their public defenders, with whom they were actually satisfied. The clients said that their public defenders did a good job, but had too many cases and too few resources. Dr. Campbell then explained the effects of increasing client satisfaction - clients are less likely to seek appeal, less likely to formally complain, more likely to cooperate with the court in terms of finds and fees, and more likely to accept the sentence and any type of rehabilitative components. He noted that taking care of criminogenic needs, or the unmet needs that tend to lead to criminal behavior, reduce crime rates; things such as education, finances, living situation, and alcohol or drug abuse problems. Lastly, he noted that the system is currently reactive, but by turning it more proactive, public defenders are in a unique place to be able to identify and

resource these unmet needs, which will in turn decrease crime and costs of incarceration.

Professor Moore briefly spoke about the Indigent Defense Research Association (IDRA) which she helped to create. Commissioner Christ asked if there was a standard form somewhere for the client bill of rights and if any public defenders use it during intake. Professor Moore answered that she has a trifold version of one, and California uses one that goes on for pages, and noted that the Bronx Defender and Harlem Public Defender Services have been using it.

### **Agenda Item No. 3 Improving Outcomes Through Social Workers; Why Children Are Constitutionally Different**

Chair Ramfjord introduced Ed Monahan, Public Advocate for the Kentucky Office of Public Advocacy. Director Monahan described the structure of their public defense system, which includes 120 counties with 33 trial offices. Chair Ramfjord asked about travel costs for lawyers. Director Monahan replied that it is expensive, and their Commission has a goal of expanding from 33 trial offices to 57 to try and reduce the logistical inefficiencies. He then talked about their alternative sentencing worker program which was evaluated independently by the University Kentucky Alcohol Drug Research Center and found to have a \$5.66 return on every dollar invested in the program. The program uses masters level social workers on cases where clients face significant jail time. To highlight the success of this program Director Monahan used a story of a client who had a heroin addiction with a probation violation, where the social worker found a treatment bed where the client could reside with her child, and the client received treatment rather than five years in prison, and she was able to care for her child. Chair Ramfjord asked if judges would agree to a treatment plan if the prosecution objects. Director Monahan replied that such a situation is more challenging, but that the program has support because it has enormous cost savings and it reduces recidivism. Commissioner Christ asked if the cost of treatment was factored into the savings of the program. Mr. Monahan replied that in Kentucky the majority of clients fall under Medicaid, so most of the treatment is federally funded.

Amy Miller asked whether social workers are used in juvenile delinquency cases. He answered that their priority in juvenile delinquency cases is blocking transfers to adult court, but noted that it would be ideal to have a social worker involved.

Chair Ramfjord asked if Mr. Monahan had any thoughts on how to apply this program in Oregon, where the public defender system is different. Mr. Monahan's suggestion was to contract with social workers, much like contracts for other providers. Chair Ramfjord asked about training. Mr.

Monahan answered that each new social worker goes through training, as does each new attorney, in addition to an annual conference that all attorneys, social workers and investigators attend. Each new attorney gets at least 6 weeks of hands on training in different practices and court room settings. They also do trainings with outside professionals giving presentations on areas such as Medicaid. They have performance agreements between the social worker and the attorney and train the social worker on the attorney-client privilege.

Nancy Cozine noted that Kentucky public defenders are on the same pay scale as state prosecutors. She also noted that Washington State has a social worker program using contracts and that OPDS has used their social worker contracting model in the PCR. Finally, she mentioned that Kentucky uses a case management system from the same company that OPDS is working with for their new case management system. Mr. Monahan said that having a statewide case management system is helpful to him when talking to the legislature. It helps him to be able to answer the big questions they ask. The data produced has helped to point out major disparities within the system that need to be addressed with policy changes. He also noted that this system has been configured to pull data from other systems, such as AOC bail information and the courts, and has offered many benefits.

Mr. Monahan then spoke briefly about Kentucky's juvenile justice system. He explained that they had independent entities evaluate their juvenile justice system and based on those findings, are working to improve in certain areas. As an example, they used to refer their juvenile cases to new attorneys. Now they have experienced attorneys handling them due to their complicated nature. He also talked about Senate Bill 200, passed in 2014, which reformed juvenile justice by requiring detention of fewer juveniles. Their legislature created a Juvenile Justice Oversight Council, chaired by two judiciary members, which includes public defenders, county attorneys, Department of Community Based Services, Administrative Office of the Courts, judges, psychologists, and behavioral mental health specialists. He said this council is creating public policy proposals to address on-going problems such as disparities in minority incarceration. Also, in an effort to improve representation, they began regional juvenile summits where attendance is required for anyone who comes in contact with a juvenile case.

Chair Ramfjord asked whether the training offered helps attract new attorneys; Mr. Monahan replied in the affirmative, and explained that they have a recruiter who visits schools, three attorneys and one administrative staff that oversee trainings, conferences, and institutes for all the attorneys. They offer trainings for new attorneys, capital attorneys, a week-long trial practice institute, new attorney training, an annual conference, administrative staff training, investigator training, and training for lawyers to effectively use investigators and social workers.

Mr. Monahan then spoke briefly about their pretrial release initiative. In 2011, with assistance from Pew, the state created a task force to help reduce the jail population. Release decisions are now based upon an objective pre-trial risk assessment created by the Arnold Foundation. The judge must consider the assessment and if the person is low to moderate risk, they have to release absent a written finding. They train lawyers on pre-trial release and have done about 100 writs of habeas corpus, and have prevailed in about two-thirds of the cases. He indicated that having a lawyer at the first appearance increased the number of pre-trial releases significantly. Mr. Monahan also noted a study done by the Arnold Foundation that found a high correlation between just a few days' time served in jail to future criminal activity. Since the program's initiation, pre-trial release rates have gone up from 65% to 73%, while failures to appear and re-arrest rates have gone down.

Lastly, Mr. Monahan talked about the National Association of Public Defense, which he helped establish. He invited Commissioners and other audience members to examine the benefits of the organization.

#### **Agenda Item No. 4 National Standards: Pre-Petition and Pre-Indictment Advocacy in Juvenile Cases**

Amy Miller, OPDS Deputy General Counsel, began the discussion of pre-petition and pre-indictment advocacy in juvenile cases, a best practice endorsed by the ABA and the NJDC, and also recommended by the US Department of Justice. Ms. Miller noted that in dependency cases, parents are asked to enter into voluntary agreements outside of court, without the guidance of counsel, where they voluntarily give up their rights. Pre-petition and pre-indictment practice includes an attorney at pre-petition interviews and safety planning meetings to ensure that families understand rights and options. She noted that this work offers an opportunity for cost savings, as demonstrated in New York City, Detroit, and Chicago. In these cities, the agency initiating the investigation must inform the parents that they can obtain free legal counsel. Lastly, Ms. Miller noted that judges, the DHS district manager and Senator Johnson, are interested in the possibility of pre-petition representation in Columbia County.

Elizabeth Levi, a long-time public defender now working in private practice, described her observations of the differences between public defense and private practice. The most significant distinction is the lack of representation in public defense cases during a law enforcement investigation or DHS assessment. She explained that by representing family members at the start of an investigation, she can properly advocate for her clients and help keep DHS on track. Ms. Levi then shared some specific instances where pre-petition or pre-indictment work helped her clients stay out of the justice system when it wasn't necessary. She also described her work with juvenile Measure 11

cases, where she heavily advocates for treatment versus incarceration, and works with families on safety plans to keep them together.

Commissioner Christ asked about the line between public defense work and legal aid, and whether something like this work would blur that line. Chair Ramfjord asked if there were any circumstances where we provide pre-indictment representation. Ms. Miller answered that is typically done only in particular types of capital cases; Mr. Levy indicated that there are limited instances specified in PDSC contracts. Chair Ramfjord expressed support for the idea.

**Agenda Item No. 5 Approval of PDSC Strategic Plan for 2016-21**

Nancy Cozine pointed Commission members to the revised strategic plan, updated with suggestions made at the previous PDSC meeting. Ms. Cozine said that once it is approved, the executive team will begin working on tasks to accomplish the strategies and goals outlined in the plan. She also reminded Commission members that some of the items may require policy option packages which would require legislative approval. She noted that the plan is flexible enough to include topics discussed earlier in the meeting, such as the use of social workers and pre-petition representation, if the Commission wishes to move in that direction.

**MOTION:** Commissioner Potter moved to adopt the strategic plan for 2016-2021; Commissioner Christ seconded the motion; hearing no objection the motion carried: **VOTE: 4-0**

**Agenda Item No. 6 Annual Performance Progress Report**

Nancy Cozine reviewed results of the Annual Performance Progress Report.

Commissioner Christ asked about KPM #1 – time to filing of the opening brief – and asked whether the office tracked the overall time to case resolution, as well as information on criminal appellate section processes. Ms. Cozine suggested that Ernest Lannet, Chief Defender for the Criminal Appellate Section, could provide an overview at the December PDSC meeting.

**Agenda Item No. 7 OPDS Monthly Report**

Shannon Storey indicated that the Appellate Division is arguing six Supreme Court cases this week. She gave a brief update regarding development of the unit's new case management system. OPDS staff provided an update on agency personnel changes.

Nancy Cozine shared that the Multnomah County Courthouse, which includes the Public Defense Resource Center, has a ground-breaking ceremony scheduled for October 4<sup>th</sup>. She also described a listening session, hosted by judges, to get feedback from community members. Feedback included comments about public defenders and their caseloads. Ms. Cozine also said that September meetings with legislators are going well and she plans to return in December with a renewed request for funding that will allow adoption of a compensation plan for OPDS employees that is commensurate with other state agencies. She also mentioned she will be presenting to the judiciary committee, with Justice Brewer and others, to provide a report on the Governor's Task Force on Dependency Representation Final Report, which includes an endorsement and requested expansion of the PCR model. She also noted that the budget narrative would be submitted for the PDSC's approval in October.

**MOTION:** Commissioner Potter moved to adjourn the meeting; Commissioner Christ seconded the motion; hearing no objection the motion carried: **VOTE: 4-0**

**Meeting Adjourned.**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

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

MEMBERS PRESENT: Per Ramfjord (Chair)  
John Potter (Vice Chair)  
Thomas Christ  
Michael De Muniz

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

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The meeting was called to order at 12:19 pm.

**Agenda Item No. 1 Approval of minutes – PDSC meeting held on July 25, 2016**

0:14 Chair Ramfjord Okay everybody, why don't we get started. We have a full agenda today so it would be great to get moving. This is the Public Defense Services Commission meeting for September 22<sup>nd</sup>. Welcome everybody. The first action item is the approval of the minutes for the meetings on July 25 and 26, 2016. I noted one small error. I was prematurely identified as the chair at the bottom of page three. Other than that, I didn't have anything. Did anybody else have anything? With that one correction, do I have a motion to approve the minutes? **MOTION:** Commissioner Potter moved to approve the minutes; Commissioner Christ seconded the motion; hearing no objection the motion carried: **VOTE: 4-0**

**Agenda Item No. 2 Procedural Justice & Client Satisfaction**

0:59 Chair Ramfjord Alright, thank you. That is taken care of. We have the privilege today of having some guest presentations. The first is on Procedural Justice and Client Satisfaction with Professor Janet Moore from the University of Cincinnati and Dr. Chris Campbell from Portland State. If you want to come up and get started, that would be great. Welcome.

1:23 J. Moore Thank you, we are delighted to be here. I was asked to kick things off by providing some contextual information, a little history doctrine and a little rah, rah. That is what I am about to try to do. When we think about critical components in public defense I want to begin by reframing this to emphasize the real importance of this. My argument is that public defense is a critical component of democracy and I think it is extremely important at this moment when

we are thinking about carceral policy reform and criminal legal system reform that we name it, claim it, and frame it. This mission of public defense is a definitive mission and I will try to explain why I think that is true. We have here a quotation from Chief Justice Roberts dissenting in a decision that restricted of attorney choice, of folks who can hire their own lawyers. In dissenting in that case, the majority denied an expansion of that right and Chief Justice Roberts said, 'Prosecutors, when they arise in court represent the people of the United States...' he was referring to federal prosecutors in this instance but the adage is often used across the country in different state and local contexts as well. Here is where the other shoe drops, 'but so do defense lawyers represent the people, one person at a time.' That is one component of the democratic function of the defense lawyer and of the public defense lawyer in particular for poor people and people of color. One of the points that we are beginning to recognize, at least from the perspective of legal scholarship is something that public defenders have known for a very long time, is that public defenders are uniquely situated to be able to help move people and systems away from re-entry and toward to no-entry by connecting people up to the kinds of programs that help them to develop their own capacities for personal and communal self-governance. They can help people to keep out of systems particularly as generational poverty begins to get broken and we begin to see more success of folks living out their lives in community. As we name and frame and claim this idea of the public defense function as being a democracy enhancing function by helping people connect up with what they need to be able to function well in society we also need to ask the question of whether this is just a chimera, because if we think about the role of a typical public defender often it something like this; completely overwhelmed by a swamp of cases, hanging on and clinging to the client by the fingernails trying to just rest the best possible outcome out of an almost hopeless situation. In addition to that, we have got these folks weighed down by a number of pretty predictable factors. There are four of them that I will outline very quickly. The first one is the history of the doctrine, the right to a public defender was born in crisis and it has remained in crisis. If you think about the history of it, it started out in the 1930's when they were using the case of the Scottsborough Boys as an international organizing rallying call to point up how capitalist democracy was a failure. We have legal lynching happening, was the communist's claim and they had people marching around the world in protest about this. It was about that time then that the Supreme Court in *Powell vs Alabama* that folks that can't afford a lawyer and need one in a capital case needs to have government counsel available. Similarly, fast forward another 30 years. We have got the march on Washington, we have got Martin Luther King in the Birmingham City jail; we have got Gideon extending the right to counsel to felonies for folks that can't afford a lawyer. Fast forward to the late 20<sup>th</sup> early 21<sup>st</sup> century, we have an explosion in what has been called mass incarceration. We have internationalized and highly politicized attention to this fact. Once again, we see the Supreme Court beginning to expand the right to appointed counsel in different contexts in different parts of appeal. You need to have lawyer communicate with you about potential collateral consequences such as deportation under Padilla. We begin to see expansions of the right at the same time that we have once again renewed a tension to systematic problems with the interaction of criminal legal systems with folks who can't afford lawyers. The point here is that this right was developed out of crisis and it has remained that way and if you think about it from the structure of the constitution it is not surprising. The right to an appointed public defender is an idiosyncratic positive constitutional mandate. Our constitution is structured in terms of negative rights, the right basically to be left alone, the right to have liberty, but the actual right to have a transfer of resources from haves to have-nots, there is not another one in the constitution. This is it. Its swimming upstream, this right has been swimming upstream in terms of constitutional structure for some time. That is then also played out in terms of the doctrine regarding the substantive meaning of the right and *Strickland vs Washington* is the primary case here where we have the Supreme Court basically defining what does it mean to have a lawyer, it is whatever the reasonable standards of performance are that are happening out there in the field at the time the performance is provided. That allows for tremendous disparity. Historically, it has allowed for lawyers who have been asleep, who have been drunk, who have not investigated and used evidence of actual innocence including in capital cases, to have passed muster under that Strickland test. So, it is a low standard of

enforcement. Again, that is fitting in with another constitutional structure that is backed into our system, federalism, deference on the parts of federal courts to states and local governments. You get to run your system how you think best to run your system with a lot of deference to that. With respect to what happens in terms of these folks and the stress that they're under, the crisis continues because if you don't have a strong enforcement mechanism constitutionally then there is not a lot of impetus for states to raise the standard of performance. That is another weight on the system. We then have other structural issues such as the lack of enforcement of what we know from the ABA are best practices. Parity of resources with the prosecution, pay equity, access to investigators and social workers, the kinds of things that the ABA says are best standards of practice. Work load, the Delphi studies are showing us the tremendous disparity between what experts in public defense know to be good practice. They are saying, for example, it should take at least 11 or 12 hours to investigate and litigate a misdemeanor case in a certain jurisdiction. What is actually happening in the field based on time keeping of the folks who have these massive workloads is more like about 1.3 hours. So, we are seeing these disparities between what is and what should be. We have got these problems that are preventing us from moving from re-entry to no-entry. The last one is this big pictures problem that I talked about moments ago, what is called mass incarceration. That is a phrase I think we should eliminate. If it were mass incarceration it wouldn't be happening. It is hyper-incarceration. It focusses primarily on poor people who are disproportionately people of color. These are also folks who are least likely to exercise political voice in changing the laws that govern these systems. We have, in essence, a democracy deficit and the problem is that these mass incarceration systems reinforce that democracy deficit by disenfranchising people and that National Academy of Scientists did a massive study that came out just a year ago and really demonstrated that, how when you get folks into these systems, when you are in this re-entry or this recidivism system without connecting people up with services that can help them stay out of these systems then they lose their capacity to participate in government. They lose their capacity to help be self-governing people, to help change policies themselves. These are some pretty major problems. We can say this idea about naming, claiming and framing public defense as a democracy enhancing function, as something that can strengthen democracy, might seem like a pipe dream, but in my experience I will tell you that despair is always presumptuous. I am a capital defense lawyer by training. I have learned that, or as one of my bosses used to say 'you ain't through being surprised until you are dead.' There are all kinds of reasons to be really optimistic about claiming this narrative of public defense as a democracy enhancing function, of empowering people to be self-governing through this function. We have new politics forming and we have new data to support those politics. On that point, I want to turn it over to my colleague, Dr. Campbell.

11:38 C. Campbell

My role as a social scientist, as Janet has already mentioned, is to focus on what data that we do have. I have been looking into procedural justice related topics for about ten years now and right now we can say that for some certainty that we know quite a bit about the concepts that are surrounding procedural justice. Dating from the 1970's, its stemming from organizational justice, a lot of revolves around what we understand as the adversarial system, pitting two sides against one another with an objective third party. We see this as fair. We have been brought up in the United States as understanding this as fair and we expect the procedures through that adversarial system to be fair in their agents and all of the systemic steps that we would expect. The problem is not a lot of people understand and know the systemic steps. From the 1970's it stems away from this adversarial system to understanding organizational justice. You can look into the work of Greenburg and organizational psychology that stems a lot in that direction but it is not necessarily specific, you won't find the term procedural justice there it is organizational justice. It is paralleling exactly what Tom Tyler does in social psychology looking at the criminal justice system. Through that work we know that there are certain components that arise again and again. People expect to see certain things when they want to view a system and its agents as legitimate figures, as authoritative figures. It is important to keep in mind that my statements here while they don't on the slides have any percentages or statistics or things like that, they carry the weight of decades of research in

procedural justice and what we know about human behavior. I can't speak to the case law per se from my experiences as a public defender because I am not that. I can speak to what we know about the data and the empirical evidence. With regard to procedural justice there are four key elements that we know exist in terms of general concepts. It is important to note that these are not end-all be-all concepts about how people will comply with law but they are good antecedents to what we know about human behavior and thinking patterns. The first of which is that people must perceive the systems and its agents as being trustworthy. This boiled down is essentially, are they honest in their decision making? Do we know that they are honest in their decision making? Essentially, in procedural justice, perception is everything. This is essential foundation for any type of communication or cooperation and this is been reverberated, there is a whole branch of psychology that looks at cooperation and we see this again and again. The next expectation is the fairness element. Most people will talk about fairness in procedure but this is also the fairness in decision making. How are the agents going through that procedure and how do I know that each part of that is being fair, how do I know that I am getting a shot? One of the biggest proportions of that is of course fair treatment. Do I feel like I am being respected; do I feel like I am being treated fairly? The other aspect of that is, am I given a voice? Am I able to voice my side of the story with regard especially to criminal procedures? The other element there that is often overlooked is, am I given adequate time? When we think about the public defender and when we think about attorney-client relationships, 'are we focusing on my case and do I get to voice my side of the story' are very much core elements when we think about fair procedures. The third and what we tend to focus on a lot is the outcome of the case. Typically, what we see in procedural justice literature is that the outcome has to do with its fairness in its distribution. Is it fair across similar cases that a similar outcome is going to be found? Is it interchangeable? Non-discriminatory decisions should be apparent in this process. One thing that we know and we should keep in mind about the outcomes with relation to the procedure is that it often doesn't matter if the outcome is favorable or unfavorable to the individual experiencing it, what really matters in their acceptance of that outcome is whether or not the process in getting there was actually fair. So, if I see it as fair in getting to that outcome regardless of whether or not it is unfavorable to me in my case, I am more likely to accept it. These three elements lead to the largest one which is this concept of legitimacy. Legitimacy is the essential underpinning for much of what we understand as authority in our criminal justice system for any agent in any spot in the system, it is all about legitimacy. Perceptions of legitimacy essentially boil down to how much the person experiencing it is willing to accept those decisions that are going in to it. You can see how trustworthiness, perceptions of fairness in procedure, perceptions of fairness in outcome all bleed into this. What is very important is that when we understand those three antecedents to legitimacy and we think about how we perceive them either negatively or positively, the negative perception of procedural justice elements is going to lead to a break down in legitimacy. What does that mean exactly? Right now, across the United States, we are witnessing a breakdown in legitimacy for the police force and its agents. This is exactly what it looks like in terms of how it manifests in citizenship. When we put it to the public defense we are not going to expect riots. We are not going to expect people to be demonstrating in the streets necessarily, though that could be one manifestation. For public defenders, it is largely a breakdown in how the public defender is able to represent the client and it is a breakdown in how they are able to maintain a relationship with that client, which directly connects their ability to represent him or her. From that, I would like to highlight a little bit of the empirical evidence that surrounds procedural justice, one of which is the study that Professor Moore and I conducted in Hamilton County in Cincinnati Ohio. Now I mentioned that procedural justice had gone from organizational justice and understand the adversarial system to Tom Tyler's view of the system. Tom Tyler and his colleagues have also pushed the idea of procedural justice and how we understand policing. That is where it essentially stopped. There is very little evidence out there, at least very few studies that have looked at how procedural justice manifests in the courtroom which is very odd considering that is the essence of the adversarial system where it essentially grew. What we found in a survey of 156 clients in Hamilton County is that there are certain elements that are predictors of client's satisfaction. Among them are whether or not the public defender actually asked the client what their opinion was

about the case and did they listen to that opinion once asked about it. Was it perceived that the public defender looked into the prosecutor's evidence towards the case? When they met, did they use the time efficiently; did they actually focus on the case or did they blow past the details that the client wanted to relay to defender? Was the client actually informed of the consequences; what is going to happen next? 'If I take this plea deal, what will happen to me down the road?' All of these findings that we uncovered in our investigation in Hamilton County have been replicated or at least found very similar in terms of their ability to predict client satisfaction with their cases in a couple different cities, states and jurisdictions. That is part of the key concept. We are seeing all these concepts of procedural justice repeat itself again and again in their ability to predict satisfaction and compliance in that regard, although we didn't look at compliance here necessarily.

21:08 J. Potter

Is there any order to those five points? That is, did you find that clients through your survey or lawyers through your survey said, 'no, we never asked client's opinions?' What might have appeared has the most egregious of your five? Is there an order to your five?

21:33 C. Campbell

Probably the two that stood out the most were ask clients opinion and informed of consequences. Those were the two that stood out the most amongst our sample. Now, these five were scaled together in what we understood as a client centered measure or a client centered scale, client centered representation scale is what we called it. To answer your question, those two would be the largest ones that stood out. When taking these as a group, they are essentially client centered measures and they do very much reflect what we see in the ABA standards; communicate, investigate and advocate for your client. This has particularly been replicated in Indiana with Dr. Marla Sandys and her colleague in their study of pre-post examination, so a bit stronger methodology but they found very similar findings. When taken together, the client centered representation and those three elements really emphasize a focus on the client and the client's characteristics and the client's needs over the case specifics and the case outcome. That's really the large take home message from at least our survey element. Continuing with that empirical evidence we did a qualitative portion as well. We conducted a focus group of previous clients and one that was quite evident was the lack of trust that they experienced, the lack of fairness that they received and I highlighted a couple of quotes from our participant's that really embody this. For instance, 'I feel like I was sold by the judge.' 'They basically put a piece of paper in front of me and said 'sign this' which says no contest.' Many found frustration in this because they didn't have a voice in the process. When they are placed in front of that judge and 'I have to sign that paper, how do I know what I am signing, how do I know what is going to happen beyond this, you are not listening to my needs and my concerns.' These two are particularly; I will refer you to the publication to see the rest of very similar quotations that go right along the client centered scale lines. Now, when taking this to public defenders when we first started speaking to public defenders the initial thought was 'what is the point of this, I could've told you that they don't like us, I could've told you that they are not happy because their outcome is not going in their direction; it is not favorable to them.' 'They don't understand our position; they don't understand what we have to deal with.' Well, actually it was nice to be able take this back to them and say that it wasn't the case for any of those concerns. In fact, even though many clients of Hamilton County lacked a positive procedural justice perspective, most of them claimed to be satisfied with their public defender and most of them had convictions in their past after dealing with public defenders. And, it's not necessarily because the public defenders were inadequate, in fact this was never mentioned by the folks taking our survey or in the focus groups. This was largely attributed to workload/caseload and a lack of resources. We can make that connection largely because it was identified by two sources. First of all, two different organizations identified Hamilton County as having a severe lack of resources and having also severely high caseloads and low pay. Actually, in both cases deemed them unconstitutional in several aspects. The other area that identified caseloads and workloads as an issue was the clients themselves. They directly blamed that they had too many cases, there are not enough public defenders to go around and they are not paid enough. That is where they laid the blame. They didn't lay the blame on the public defender, though they highlighted the issues that they weren't being heard. When

thinking about the need for client centered representation, and I mentioned that procedural justice is just budding into the courtroom right now, we have to think about what is to be gained from actually focusing on the clients, right? First of all, obviously we can increase client satisfaction but what does that mean? That can actually lead to clients less likely to seek appeal when it is not necessarily substantiated. Also, they are less likely to formally complain both of which can essentially be seen as systemic outcomes, if we want to think of it more aggregate. They are more likely to cooperate in the court's decisions thinking in terms of finds and fees and restitution, they are more likely to accept the sentence itself and perhaps any of its rehabilitative components. If I see this entire system and process as being fair and I have accepted the outcome, I am more likely to accept those therapeutic components that go along with it that we know might reduce recidivism. Now, while the systemic connections can be easily tied to potential savings in cost for the tax payer and the state, the reduction in recidivism has not yet been connected in the research. So, how can I actually make this conclusion myself? We have a lot of research in community corrections. We know what things actually reduce the likelihood of somebody to reoffend later. Many people, we can argue, are very much poor. We are trying to find what reduces crime. The focus here is on criminogenic needs. Many states use risk assessments. Many of them are static in their nature. They use static factors such as your criminal history, your age at first arrest and so on. These are things that cannot change over time. Criminogenic needs are also known as dynamic risk factors have also been directly connected to causes of crime or strong correlates of crime and they can change with the proper intervention. We find this in corrections all the time. The most common domains, of course, look at education, finances, family and marital, living situation such as whether or not you're homeless, alcohol and drug problems in the past six months and in the past year and so on. Have you ever had a mental health diagnosis, or maybe there is an untreated mental health problem and your criminogenic attitudes; your pro-social or anti-social attitudes, are you a pathological liar? These are the main eight domains that you will find across risk/needs assessments across the United States. There are many of them. Very few of them actually put these domains into what we understand as a risk score, most of them just focus on the status. But, we know that by reducing these needs we will reduce someone's likelihood to reoffend later. The question is how do this relate to the public defender? Instead of focusing on how the system is currently reactive, which means we will wait, we won't identify anybody's needs, we are going to address the case specifics and deal with the case outcome. Okay, this person is now convicted and we are either going to send them to supervision or we are going to send them through incarceration first. It is not until the end of those two processes that we actually try to identify the needs. Now, if given the proper resources or allowed to grow, there is a possibility that we can identify certain needs, particularly the ones highlighted here, at the very beginning of that process when they first meet with the public defender. We can start talking about other avenues that will decrease crime and decrease the social costs of incarceration as well as certain types of convictions if not necessary and decrease the fiscal expenses of incarceration and supervision afterwards. With that, I will turn it back over to Professor Moore.

30:24 J. Moore

We have some data, we just started with this work. We have got some daunting challenges to meet the kinds of needs that Dr. Campbell laid out we know is not going to be easy. Nevertheless, this is a wonderful time to start thinking in these terms and start pushing policy matter towards this sort of fulfilment of the public defender function. I want to just highlight a couple of developments that make it, particularly in my view, an opportune time for this. We have got the kind of work that is being done to focus really for the first time on empirical analysis of public defense, what works. I have helped to create an organization called the Indigent Defense Research Association. I understand that Oregon is already ahead of the curve on a lot of this examination of what we are doing with our criminal legal systems. Are we getting the outcomes that we want? Are our investments paying off the way we think that they should? Shifting that focus and advancing that focus in the public defense context is a really promising endeavor. We can start to tease out some of these cause-and-effect relationships and try to target resources in optimal ways to get optimal outcomes.

- 31:38 P. Ramfjord      Along those lines, we are as a part of our strategic planning process focusing on gathering more data about individual cases and the like. What kinds of data do you think would be most fruitful for an organization like us to gather that would be useful in focusing our efforts moving forward?
- 31:57 J. Moore      That is such a wonderful question. Let me answer it from sort of an IDRA organizational perspective and then I will defer to Dr. Campbell who is the quantitative guy. What we have gathered together in this community are people who are embedded in public defender systems as trained researches. One thing to do is to connect folks up from your system with IDRA and then they can connect with those folks that have been doing this work for a number of years and are really just now beginning to bear the fruits and its some really fascinating qualitative and quantitative analysis of which factors do we want to examine and how do we use those data? We will take care of that park of connecting you up and Chris you may have specific thoughts about types of performance indicators essentially that folks want to be looking at.
- 32:48 C. Campbell      There are a number of things that people can collect and one of the reasons why, I want to kind of contextualize this with where research with relation to courts and the court's outcome. A lot of our research in social sciences and criminology research is quite old actually. The last time there was a massive data collection it had to be all qualitative and it was largely done in the 60's and 70's and maybe some in the 80's. So, many of our conclusions about the courts are based in them. We are just not starting to go through and do ethnographies again. The reason why it's so difficult and it takes so long is because there are a lot of informal processes in the court decision making. You have a lot of plea bargaining, you have a lot of chambers discussions. There are a number of things that can't be captured in just what we think of as quantitative large scale aggregate data. That being said, there are some examples of how you can encapsulate some of those decisions and maybe their justifications in things like what Multnomah County has which is DSSJ. DSSJ is a database that essentially connects all the major decision points in the system from the many different actors in there to help try to follow someone through the process of arrest to re-entry. It's very informative. We can actually go in there and try to find some level of performance measure to some extent, but before we are actually defining if it's a performance measure we have to think about what exactly you are looking for in terms of performance. What does performance mean? Along with those major decision points, that is one example of a place you could go, is of course collecting information from the client. For so long we have neglected the idea that clients know anything, so long as we are able to get them the outcome that they want, what does it matter? There was an exact parallel to that argument in the medical field. In the medical field doctors would constantly say, 'what does it matter what the patient thinks of me? What does it matter what they think about their experience? I was able to rightfully diagnose them. So, that interaction doesn't matter.' When, in fact after researching that for quite some time we realized that bed side manner does matter. It matters for a whole host of reasons. They are less likely to come back to complain about other ailments because they're able to take care of it themselves or they are able to connect with their doctor after the fact or call them up. All these smaller things led to a much better practice in medicine and we have accepted them now as something that we need, but it started with actually talking to the client, someone going through and asking what your experience was and why it was meaningful. That is where the procedural justice stuff can actually help us.
- 35:42 J. Moore      To give some concrete ideas, for example in North Carolina Margaret Gressens has been running the research wing of North Carolina's Indigent Defense Services for about 15 years now. She has created an entire set of key performance indicators that they are now going through and evaluating their system based on that. That is all available online. The entire process of developing that system is online and the key performance indicators are available. It can range from how many motions to dismiss have been filed in a particular kind of case to what is the amount of time that is spent from intake to disposition. What is the effect of different types of lawyering on different types of outcomes? The universe is yours essentially but getting guidance from those folks about what problems you want to solve; there may be

help there in identifying that data and where to get them. The last thing that I would mention in terms of hope, we've got these meta-data that are available in a new way also. We have got this development of electronic accessing of information. You are going to be able to crunch big numbers to give you big pictures as well as a new burst of energy around ethnographies embedded research where you are observing the more subtle interactions of what is happening and drawing conclusions from those. We also have a new kind of politics that are forming. These folks are members of the participatory defense movement. These are folks whose loved ones were facing charges and they did go out and march in the streets because they were unhappy with the service that their local public defender was able to provide. They weren't mad at the public defender. They were concerned that the funding entity didn't grasp what was required in order to provide what they viewed as necessary performance. This kind of political movement married with new data and analysis and a vision of the real potential of public defense to help move us from re-entry to no-entry, we view it as a package like three legs of a stool and that is what makes this such an opportune and exciting time to be engaged in this work.

38:01 Chair Ramfjord

Thank you.

38:03 N. Cozine

Could I ask you to talk about one thing really quickly? There are two tools that you have talked about in other settings. One is sort of a client bill of rights - the client's rights documentation and the other one is the client satisfaction survey. Could you talk a little bit about using those tools and how people are using them and how that affects the case?

38:32 J. Moore

It's incipient. It's frankly, I am not a social scientist, but I can tell you I would get my head whacked by the social scientist if I tried to claim any connection between those specific instruments, the client satisfaction surveys, that tap the voice of the folks who are being represented to get their views on what is working and what is not working and an outcome, even with a respect to satisfaction. We don't know the answer to that question yet. Those tools are still being developed and implemented. Similarly, with respect to the client rights component, ideally what would happen is that you would inform folks right up front that this is what your lawyer should be doing and if isn't happening what can be done about it. That would be a really important empowerment tool that you can then feed into your empirical analysis of what is happening with this satisfaction assessment at the back end along with observation about what is actually happening with the case. It is linking these three things together. The answer to the question right now is we don't know because the work has yet to be done. Any questions?

39:54 J. Kampfe

Yes, I have a question. In our office we do use client surveys and we send those out to all our clients, but when we get them back we largely just use them as training tools for the lawyers. Do you have suggestions about what we should be doing with that information when we get it back?

40:11 C. Campbell

If you know who it's coming from and you are just using it for in-house information there is a good chance that you can connect it with more specifics about that case and maybe you can ask them more nuanced information about their trust levels. So, there is a researcher who has long since moved from this field but his last name is Bochachini, but he and his colleagues had developed a congruent trust scale where it essentially measures how much trust the client had with their attorney, now he interviewed incarcerated individuals to get this so it was well long after the fact. But, if you are thinking about trust in terms of your clientele, they might be able to answer a lot of those items on that scale and then also talk about how much they were willingly engaged. That is the other aspect that we haven't been about to capture much which is if I have this trust or this distrust with my attorney but I haven't really tried to engage at all or wasn't really interested in engaging, then that trust kind of hangs out in limbo if no body tries to bridge any gaps there in the concerns of perceptions of procedural justice and the fairness element. Does that make sense? All of these items that Bochachini had as well as some of the other client satisfaction surveys that are out there; they can all be essentially tied

directly to some element of training that I think some other jurisdictions have actually tried to capture.

- 41:47 J. Moore I will just piggy back with another thought. We did a really interesting study with Mississippi Public Defenders to try to detect what their top empirical research priorities were and it was fascinating to see how those mapped onto the concerns that the clients expressed in terms of communicating better and how to make that happen. Diving into that question might be another opportunity as well. But, viewing all these folks who are part of the process as sources of information about what we should be looking at and what the pivot points where we can truly try to improve things, they are enormously helpful sources of information on that point too. So, as you are thinking about both the instruments that you use to gather that information and then what you do with that information, just keeping a tight partnership with those folks is really important and then connecting up with researchers who can help you brainstorm what to do with the data and how to put it into effect at the back end. You can build a really rich and productive partnership that way.
- 42:54 T. Christ The client bill of rights that you referred to, is there a standard form for that somewhere?
- 43:02 J. Moore I have another article where I have a trifold pocket example of one. There is a much bigger one being developed in California that goes on for pages. Personally in my view, hitting the high points of ‘you are entitled to communication, investigation and advocacy and here is some of what that means...’ is something that is immediate, concrete and manageable. I am happy to provide a copy of that article that has a sample of that if it would be of interest.
- 43:33 T. Christ Is any public defender anywhere using such a thing? Like at intake, ‘here by the way are your rights going forward?’
- 43:42 J. Moore When we mentioned the bill of rights and the client satisfaction forms being used in connection with each other, the Bronx Defender has been exploring this kind of thing as has another major New York Office, Harlem Public Defender Services I think is the other one. But, Bronx has kind of been out front on this work.
- 44:10 N. Cozine And didn’t Marla Sandys do one in...
- 44:16 J. Moore She didn’t use the client rights information, she was doing the front end, the pre where you just got your lawyer and at the back end you now have your case out and what do you expect, what made it work well and how do you feel about it now. It’s a pre and post comparison. That paper is going to be coming out shortly. She said that I could circulate it so if you would like a copy let me know. It’s terrific.
- 44:45 P. Levy I just wanted to add an asterisk to one of your other points and I am sure you know this but talked about some of the systemic imbalances and challenges and one being that Strickland standard is such a low bar for performance. One of the ways in which change can happen is by changing that standard which is going on now away from a very difficult burden in post-conviction to pre-conviction systemic challenges on due process and sixth amendment right. It’s changing the standard in the way we view it and in evaluating the adequacy of the system is the key way to changing it.
- 45:30 J. Moore Right, and having data about system failings is absolutely critical to successful reform. Hurrell-Haring is a great example of that, the New York law student.
- 45:50 P. Levy And our Commission is I think by now quite familiar with that litigation.
- 45:47 J. Moore Right, well taken. Thank you.

**Agenda Item No. 3**

**Improving Outcomes Through Social Workers**

45:50 Chair Ramfjord Well, thank you very much. It was very, very interesting. Next up we have Ed Monahan who is the public advocate for the Kentucky Office of Public Advocacy; Improving Outcomes through Social Workers and Why Children are Constitutionally Different.

46:15 E. Monahan Thank you, it's good to be here.

46:17 Chair Ramfjord Good to have you.

46:22 E. Monahan I am delighted to be here and I appreciate the invitation from Nancy to come and present to you and tomorrow. I am Ed Monahan. I am the chief public defender from Kentucky, I have been the chief public defender for eight years. We have a statewide public defender program that is a little different than the one here in Oregon as I understand it. We are delivering our services primarily through a full time public defender with 33 trial offices. We contract with private attorneys for conflict cases and we have one non-profit that we provide most of the funding for. The other 119 counties, we have lawyers in offices that are employees of the statewide public defender program. We are a full service public defender. We do trial work, misdemeanor, felony, capital offense, appeals, post-conviction, capital post-conviction, and capital federal habeas. We are providing a full range of services. I want you to know a little bit about me as you evaluate what I say to you. I began as a public defender in '76. I did many appeals, capital trial work, capital public work, capital post-conviction work in the state federal court and was also in charge of our statewide education. In 1996 I became the deputy public advocate of the statewide system. In 2008 I left to become the person representing the four Catholic Bishops in Kentucky as their public policy person and then I returned in 2008 as the chief defender. I probably mentioned as I talked about driving over here that I feel a little bit vulnerable here today in the sense that I don't know Oregon. I don't know the Oregon public defense system, I don't know you all. But that is a familiar place for us lawyers to be in many contexts. So, I want to be careful to start at the beginning to tell you that I am not here to tell you to do A or B. As I talk about our social worker program, our juvenile representation and also a little about our pretrial release initiative, I am here to rather describe what we are doing and it is there for you to do with it as you please. At the same time though, if there is something that I say that you like that is different than what you are doing here I am highly confident that if we can do it in Kentucky you can do it here. I want to talk about the social worker program. This is our organizational structure. We have a Commission, four program divisions, trial and post-trial. We have attached to us an independent division called Protection Advocacy; they do developmental disability work and intellectual disability work. They are not public defenders. They are primarily federally funded but they are attached to us because they sue other state agencies quite a bit. Then we have an administrative division. These are our 120 counties. We have 33 trial offices. A couple of our offices have representation responsibility for a single county, but most of them have responsibility for multiple counties in some cases up to six or eight counties, as we are predominately a rural state, although most of our cases are coming out of our major urban areas.

50:40 Chair Ramfjord One question about that, how do you deal with the travel issue? We have been trying to deal with that ourselves as we have some situations where you've got people having to travel an awful long way to see their clients in the county jail.

50:54 E. Monahan It's an enormous waste of money. We have our most expensive asset, the lawyer with their salary and benefits and all the associated costs, in a car in some cases driving an hour to a court house and back for a two hour round trip. It's a poor way to run our operation. Part of what our Commission has done is to say, you know in Kentucky we have 120 county offices. They do work in district court like with misdemeanors. We have 57 commonwealth attorneys, they do the work in circuit court for felonies. We have 33 organizational units at the trial level competing against 177. So, a county attorney can walk across the street for the misdemeanor cases when we often are driving there and driving to multiples of these counties. So, our Commission has an important strategic goal to getting us from 33 trial offices to 57 to try and

reduce the logistical inefficiencies. Beyond that, we are pretty handcuffed in addressing the highly inefficient travel that we are reduced to.

I want to begin here with the end of the story. We have had our alternative sentencing worker program evaluated independently by the University Kentucky Alcohol Drug Research Center and they have found that for every dollar invested in our program we are getting a five dollar and sixty six cent return on our investment. As you will hear, most of the cases we have been handling we are applying this growing but limited resource of alternative sentencing workers, most of whom are masters level social workers. We are applying them to cases where from our professional experience these would be cases that the person would be normally headed off to a long county jail sentence on a misdemeanor charge or to state prison. We are not applying these resources to cases that normally would receive, because of the nature of the case, probation. The decision that we have made with the money that we have received from the general assembly is that we are going to show you that the money you give us to invest in these alternative sentencing workers is going to provide you, the state, with a high return on investment by reducing incarceration costs and the county level and at the state level. In Kentucky, the county jails are the financial responsibility of the counties and the state prisoners are the responsibility of the state. In most of our counties, the county jail costs are the highest cost for the county and in many counties its costs are greater than all other county costs combined. Our program has resonated with people at the state level and at the county level because our incarceration has been on this kind of line and to provide alternatives to that cost that are safe in terms of public safety has resonated. So, I go to the general assembly and my ask is 'give us more money to reduce our caseloads, give us more money to raise our attorney salaries, give us more money to expand this program, give us more money to expand to 57 offices...' and while I have been getting help on all of those, the real help has been through this program. This is where the general assembly as they have primarily in Kentucky been repeatedly, as in 10, 15, 20 times cutting back appropriations to state agencies, has given us substantial additional money to expand this program. I believe that is because this program has integrity and is resonating with them on several levels, one of which is the financial level. These are our case assignments. As I said, we are focused on cases that but for our intervention and our professional opinion there would be an incarceration outcome. And, the primary one is a felony that normally the person would be going to state prison. It is an award winning program. So, I am not standing here talking to you about a concept that hasn't been tested in the harsh market place of financial funding from the general assembly, judicial evaluation, prosecutorial evaluation, and we have received good national recognition on this. I want to begin with a little story. This is a good in Lexington, a county where the commonwealth attorney is highly aggressive. His little phrase is, 'we just catch and release prisoners.' So, he is not a friend, not a person easy to persuade to give people a second chance. This is a lady who had a heroin addiction. She violated her probation and those are in a lot of ways a bit of hopeless cases. You have been given a chance, you have violated, this is heroin. This was one case though where believed that instead of getting the default outcome on the probation revocation hearing of just going back to prison we thought this would've provided opportunity for a different outcome. So, our alternative sentencing social worker intervened and found out that this was a woman who with a heroin addiction had a couple children, a history of trauma through her life, had a mental illness on top of the substance abuse problem. He worked out before a judge who was a former hardnosed prosecutor, an alternative sentencing plan to put her in residential treatment. Now, the case was further complicated because this woman had other charges in another county. These are not the kind of cases where our Kentucky judges would be giving people a second chance. But, through cooperation the other charges in the other county were worked out with the other prosecutor. Because that delayed the resolution of this, our social worker had through his relationship through this residential treatment facility had secured a bed when there weren't many around and convinced the provider to hold the bed open while the associated charges in the other county were also resolved. The value of this social worker is that he had a relationship with the treatment provider. Now, us lawyers could do that too but with our high caseloads and this being a different discipline, we don't really excel at this end of it. The social workers have

this network. The social worker had the ability to see that there wasn't just a substance abuse problem but a mental health problem so the treatment could be individualized. If you take a substance abuse problem person with mental illness and get them substance abuse help is a fascinating approach but it is not enough. This is an example of a success story. When you step back from this, this is just kind of common sense stuff. We don't have some secret here that we have developed or are revealing. This is just a common sense application of people who have a different discipline to direct problems more realistically. So, what is the essence? This is evidence based policies and practices where we are doing individualized sentencing options. So, we are presenting to a court most often on a plea of guilty a request for probation or request not to revoke probation on a violation, here is an option judge, here is an option prosecutor. It is fully developed. It is individualized and it is not theoretical because we have the social worker who has done an assessment and who has worked with somebody who is willing to provide treatment for this person with these problems.

- 1:00:26 Chair Ramfjord Along those lines, what does the experience in your office of getting, you may have a situation where you present the claim and the prosecutor is against it, how often do you get the judge to give it because you've got it all...
- 1:00:38 E. Monahan Great question. Well, if the prosecutor is against it, it is a much steeper hill. But, I am going to show you a little bit later, as we have rolled this out we have received substantial support from jailers, prosecutors, the drug czar in Kentucky, the judges, they are allowing us and I will show you their public endorsement of this. When we place a social worker in a county where we haven't had one before with a prosecutor, you know we have to work our way through it. But, our experience is that this has broad public support by people for who we are adversaries. It advances public safety because really everybody we represent except for a small percentage is going to get out. We are proposing an individualized plan with individualized treatment where so far, and our data is in the beginning stages, our recidivism rate is lower than if they just went off to prison. That is actually contributing to improved public safety. It has enormous returns, \$5.66 to a dollar. Would anybody here not take that return?
- 1:02:07 T. Christ No, but can I ask you about that? Because, when I was reading the materials I was very impressed about the savings on incarceration costs when you send someone to treatment as opposed to jailing them. And then I got to wondering about the cost of the treatment. In the materials here I didn't see how that had been factored in. There is an expense to rehab. How is that being paid for and is there some study that shows you the net cost to government when you take the reduced incarceration costs but then factor in the cost of treatment?
- 1:02:51 E. Monahan Great question. There really would be two different ways to do an evaluation on return on investment. One is, you include the treatment cost and the other is you don't. Those would be two different numbers. The great situation that we are in now is most of these guys that we are representing are now covered under Medicaid where they weren't before, so most of the treatment that we are offering is Medicaid funded treatment and that is mostly federal dollars. If you step back and think about it, we are taking a lot of these guys that normally would've went off to the county jail or prison where our prison costs are about \$22,000 a year to house somebody and we are shifting that cost over to a community based Medicaid funded treatment program.
- 1:03:48 T. Christ So, for state legislature you are shifting state dollars on incarceration to federal money in treatment? And, if I recall, Kentucky turned down Medicaid expansion?
- 1:04:02 E. Monahan No, Kentucky had the broadest Medicaid expansion of any state in the nation. We had massive increases.
- 1:04:12 T. Christ And the new governor vowed to repeal it, from what I recall.

1:04:15 E. Monahan The new governor is now proposing a Medicaid, he vowed to repeal it, he is instead proposing a Medicaid waiver. It would roll back some of the benefits but it would not take single males at 138% poverty off.

1:04:36 T. Christ So, you assume that even if he succeeds in that goal that you would still be coming out ahead, the state coffers would be coming out ahead on the savings of incarceration costs.

1:04:48 E. Monahan Yes, the other thing we have in Kentucky, and it probably is a little different, we have the chairman of the US House of Representatives Appropriation Committee as one of our Congressmen.

1:05:00 T. Christ That is a good deal.

1:05:03 E. Monahan And we have Senator McConnell as the majority leader of the Senate so Kentucky has what is called Unite Vouchers. We are getting vouchers for treatment in situations where people aren't covered. These are federal monies that Congressman Rogers has brought to Kentucky and it is a great program because the voucher can be used with any provider. That is the other benefit we have in primarily the eastern-western part of the state.

1:05:42 T. Christ Thank you.

1:05:44 E. Monahan But, worst case scenario, let's say you are in a state where you don't have the expanded Medicaid, the cost to treat somebody in the community generally is in the \$3,000 range for treatment compared in Kentucky to a \$22,000 cost in incarceration. So, even if there were not funds in a jurisdiction that would fund the treatment, the return on investment to the state would be large, especially if it has a positive effect on recidivism. You take all those costs and the \$5.66 to a dollar is really a conservative estimate of the savings. But, even if you evaluated this without that you would still have savings of in the three dollars to a dollar cost if you had to subtract out the cost of treatment.

1:06:57 J. Moore May I just interject that I think the Washington State Institute for Public Policy has conducted, as far as I know, the best meta-studies on this type of question. I think that there are now as a respect to certain interventions has demonstrated that the cost benefit analysis works out pretty similarly to what Director Monahan is describing.

1:07:23 E. Monahan The other thing that is not in this evaluation, and this is why this a conservative estimation of the savings, is if the guy can get his job and work in the community those would be other benefits to the community. That is why this is really a conservative estimation of the return on investment.

1:07:50 T. Christ It seems to me that it is a worthwhile investment just from the standpoint of morality, that you ought to be trying to treat people rather than just lock them up. I was just wondering about the numbers here, if you get this kind of push back when we go to the legislature that yeah we are saving money here but someone else is going to ask that we outlay over here, do they question your \$5.66?

1:08:19 E. Monahan Yeah, we haven't gotten that pushback and the legislature is not shy in Kentucky in giving pushback and they are not handing out money. I will tell you a story to illustrate the remarkable agreement on this program in Kentucky. I was sitting at a legislative committee with legislators and there were a row of us talking on I forget what the topic was. A gentlemen up the row that spoke before me was Chris Choran, he is a commonwealth attorney that does the primary lobbying for the prosecutors and frankly very effective. He and I don't agree on hardly any public policy issues. We have friendly differences in points of view that we express to the general assembly very frequently. When he testified in this moment he was explaining his behavior while he was sitting in the audience. He said, 'I have been talking to Keeta about a case this morning, excuse me for my...' whatever. It came down to me and I

said. 'Gentlemen and ladies, you have just witnessed something remarkable. Chris Choran and I who disagree on so many things has just told you he spent the morning talking to Keeta about a case working out a diversion. What he failed to tell you is that Keeta is my employee. She is a social worker.' Now, when a prosecutor is talking directly to somebody who is developing a sentencing option and going with it and, when it came back around to him he endorsed our program. I got a picture of him with what he has allowed us to use publically. His not public endorsement is not unusual and it explains that we are doing something that not only no one else in the criminal justice system has don't but something that we all know is not going to do if we don't do it. That is what is being recognized by judges and prosecutors. One of our best is the social worker that has been in his jurisdiction since 2006 when the program had started, she has high credibility from judges and prosecutors which he says can be counted on and she produces fits for people that have better outcomes.

1:11:12 A. Miller

Can I ask a question? I noticed that cases for juveniles who would otherwise be incarcerated are also priority cases. How does your handling of those cases differ from the adult criminal cases where you are looking to find inpatient treatment?

1:11:25 E. Monahan

When the program originally started, we had some social workers that were only working on juvenile cases but many of those were where clients were not going to be detained. So, we had a little shift in the priority. We are shifting back now to work on more juvenile cases where our emphasis is going to be on those cases where there is a transfer hearing to try and block the transfer because we know how outcomes are so much better if we can be successful in that. We had just applied for a grant and I found out sitting back here that we did not receive it from OJJDP to deploy a model where we would have a lawyer doing only juvenile cases and a social worker that was only doing all juvenile cases handled by that lawyer. That is the model we want to go to here if we can get a few more resources because we know that a juvenile legal specialist paired with a social worker who can do all those things that lawyers don't know or are not inclined to do and not trained to do that we know we can have better outcomes for juvenile clients. That is our future focus.

These are the things that social workers do. I had a friend who worked at Lexmark which was formally IBM, they did typewriters and they moved to printers in Kentucky and have a big plant there, I said, 'hey Ray, what do you do at Lexmark?' He said, 'you know what, I am a project director.' 'What is a project director, Ray?' 'Oh, well here is what you don't understand, Ed. My job is to get the printer out making profit for the company.' I said, 'Well, it's all one company and everybody is employed by...' He says, 'but, again Ed, you don't understand. We've got manufacturing, we've got design, we've got sales, and they all don't work very well together.' I said, 'but you are all one company.' He said, 'well, people Ed. When I am given the power as the project director to tell manufacturing that they need to get it out by April 1<sup>st</sup> because the company wants to make money on it, but they have a problem with that. So, we go back to engineering and we get it solved because by April 1<sup>st</sup> we are going to have this printer out and we are going to make money on it.' I said, 'oh, I am starting to understand what a project director is, Ray.' That is what our social workers are. We call this a criminal justice system but it is not a system, it is a bunch of independent actors that have their own point of view, their own lines of authority and their own responsibilities and their own scrutiny. A social worker cuts through it all and says 'here is the plan, judge. Here is the plan, prosecutor.' We've got everybody lined up if we can get the person over there. We've got funding, here is the assessment, here are the conditions, etc. You might say, well hey lawyers could do this. Yes and no. Lawyers might be able to do it but again they don't have the network, the professional discipline to cut through all this mental health stuff and substance abuse stuff. We don't have the context and background or the professional knowledge of talking to these providers. And, secondly, we don't have the time with the caseload that we've got. These social workers provide this capacity. They get to these cases quicker. We are getting a social working over to people when they are in pre-trial release way before a lawyer could start to develop any sort of assessment as to what alternative outcomes, any sort of conversation with the client about alternatives and they use motivational

interviewing. Now, motivational interviewing I have learned through this is an evidence based skill. I wish I had it. Social workers train on it, this is part of who they are and its common sense. What they do within the protection of the attorney-client privilege, they take a lot of our guys who are in denial they have a problem or they have a problem but they don't want to do anything about it, that is a lot of the people we represent, and they within the protection of the attorney-client privilege invite them to move over to where they say they have a problem and want to do something about it. That is a huge service. Now, I don't have to tell you all, we have the professional responsibility to seek the outcome the client wants so if the client doesn't want to do this then we are not going to do it. We are not a best interest kind of person. We would lose our bar license that way. But, we also have the professional responsibility to advise and counsel. So, we have a nice opportunity through this professional capacity to say, 'our advice to you is, our counsel to you is that you deal with this problem so you are not back here again, and that you commit to the treatment.' We do that through the social worker. This motivational interviewing is a fabulous skill, and evidenced based skill, that us lawyers are not trained on. We don't have it. There is more than what you can read up there, but this is a deep professional skill that we are using to the benefit of clients. Ultimately, if after this the client doesn't want the outcome then we don't seek it. Here is a former Senate Majority Leader, conservative Republican in the Kentucky Senate who was part of our program get started with some initial funding in 2006. He is a practicing criminal defense lawyer who then after he left the general assembly went back and was a felony court level judge. He is a big supporter of this program and he has allowed me to use these slides publically as I have sought to expand this program from those four or five initial social workers to what today is 45 social workers state wide. And, these are all his words; these are not my re-characterization of them. These are the words he has permitted me to use. He had a docket with heavy substance abuse cases and he put conditions on people beyond what they would've had to do and for a longer period of time than had they served the sentence in exchange for they're not going to an incarcerated outcome. Now, I want to show you this other slide that he has given me. This is a remarkable slide. These are two cases that he had where the problem was severe mental illness and these are Class B felonies. So, these are in the 10-20 year range. Some people think our social worker program is only applicable to low end stuff. This is a judge who said we can have a better outcome than letting the person languish in the county jail at the county's cost where we have an outcome where they simply go off to prison when their real problem is severe mental illness and they have this criminal behavior that is manifesting as part of this underlying behavior. He demanded that our social worker get on these cases. That is a pretty neat order from a judge and there were good outcomes for these cases. This is our state drug czar in the justice public safety cabinet. He is one our biggest proponents, former chief of police, because he knows this is an alternative that provides for potential for better outcomes for people long range. So, he has been a key part of endorsing us publically. Now, these are the public endorsements; Judge Chappel is in the bowels of Eastern Kentucky where drug abuse is large. He is a district court misdemeanor judge. He is a big proponent of us. He wants more social workers because this allows for him to have more common sense alternatives. Chris Chorán is the prosecutor I mentioned. This is something that he has allowed us to use publically. This is a Knox County jailer. One of the members of the Kentucky Public Advocacy Commission is the past president of the Kentucky Bar Association who is on the board of directors of the Kentucky Chamber of Commerce. He took me over to the Executive Director of the Kentucky Chamber of Commerce who had started things in their public priorities that they wanted to reduce the cost of waste in government. One of the five areas that they picked was the criminal justice system. So, Buzz English took me over and we educated the Chamber and the Chamber, which traditionally doesn't show up at a budget review subcommittee hearing and say 'we support additional funding for x' they usually don't do that, they did it here because they saw the value of the program. They saw the independent evaluations and to have the Kentucky Chamber of Commerce publically support this program helped us move down the road. This is the Speaker of the House who is a democrat who has been a key part of us getting, he is in Eastern Kentucky where drug problems are large and he is a big proponent of this. So, this is a summary of what the program does. Our program is not a Cadillac. It is a Chevy with some

miles on. This is a fast ball down the middle. There are other programs being run by other public defender programs that provide more services, treatment, etc. Ours is one that we are able to support financially that I think is replicable in jurisdictions that don't have a lot of funding. The other thing I haven't talked about is that our folks try to help people get a job when they have housing problems they are trying to do that. Also, within the first six months when the inevitable relapse comes our social workers are giving positive reinforcement, 'no you can do this treatment, you've got to do this treatment, this is in your best interest.' They give support as opposed to a probation parole officer who in that moment of relapse would be reporting a technical violation. Our person is helping them get along. Now, part of what I am doing publically to try and continue to have public support for this is talking to general assembly about how this fits with what people want. You know, my hand is out. Give us more money for this and I know you've got a lot of hands out but pick ours in this moment because look at the support from judges, jailers, prosecutors and chamber of commerce has for it, and look at the support the people have for it. This is a victim's survey nationwide. Victims want people to be rehabilitated. This is what they prefer the solution to be. I am trying to reinforce the public value of this program. This is our assessment form. There is a copy sitting over here. All of the data on this assessment form is then put into our case management system and then we send it on in an accumulated version to our evaluators. They don't see any names of clients or any confidential information. This is the finding of this report that I believe you all may have a copy of that was the independent evaluation. The thing I think is remarkable, well there are many remarkable things like the savings, but when they pull the sample from all the clients we represented to do this independent evaluation the average was 8.4 previous incarceration episodes. Now, absent me giving you empirical information, if I were to say to you that I had the hypothesis of we can take people with over eight prior engagements and produce more successful outcomes through this program. You would say, 'fascinating hypothesis, Ed.' You wouldn't put a lot of money on that bet. But, that is what is happening here and that shows the remarkable nature of this program. It is an indicator of the benefit of this program. So, in 2006 we had four of five and we had that independently evaluated. We got some stimulus money. We lost the stimulus money. We still work to hang on to some of the people we have under stimulus money. I made the argument as I said for our different needs. The speaker of the house gave us additional money that got put in and it stayed in and then we have had heroin rage in Kentucky and as the general assembly in non-budget years, we have budget every two years, they passed a heroin bill and they put in the heroin bill some limited funding for four or five different treatment programs, prosecutors and public defenders and that is where we got our big bump and we just got another bump real recently because they put more money into that. The other thing is, what do public defenders do? Our marvelous image is that we go to trial and we ask this key question and the prosecution's key witness crumbles and our guy walks free. That is our mythological image. A lot of time what we do is we lay the facts out to try and get the best plea. Because in Kentucky our caseloads are so high we don't really excel in Kentucky at developing an individualized plan as we are required under the solid performance guidelines put out by the NLADA. These are excellent guidelines that we have trouble meeting because of our capacity problems but these social workers help us do this. One way to think about what we are doing is this is optional luxurious wish we could have kind of thing we are doing in Kentucky. The reality is that we are finally doing a little bit better at meeting our hardcore representation responsibility by providing alternative sentencing plans that have been developed at an individual basis. These are the ABA standards, they are national standards that in Kentucky we have got to do a better job at. These alternative sentencing workers are helping us take a step closer at what our national responsibility is. This is some of the data. When researchers do research they look back and wait until you have a year, so this is hoping that in the next several years we continue with this kind of positive results and lower recidivism than just incarceration. This is a story about a lady who was on probation for three years and then she has an offense. She had five years on the shelf, so this is one where the woman was going for five years. It turned out she was pregnant. Our social worker found a residential placement where they would take pregnant women. She persuaded the woman that this was in her best interest. This was presented before a pretty hardnosed judge and he went with it and you can see this woman,

she has given us permission to use these pictures of her, has had a positive outcome. Again, this is against the odds. These are our 45 social workers. We are very proud of them. Most of them are master's levels. We started calling this an alternative sentencing worker program instead of an alternative sentencing social worker program because we had applicants who were not master's level social workers that we wanted. We had other professional disciplines so we persuaded the state of Kentucky to create a particular job specification for this classification in our system. We asked the social workers about how they felt about what they were doing. This is pretty neat. These are men and women who working with our lawyers are feeling good about what they are doing and they should. I testified once when we were reporting on our data before and there was very conservative member of leadership in the Kentucky Senate and I ended my presentation by saying that we are saving the state money. She looked at me and said, 'and Ed, you are changing people's lives.' When that kind of spontaneous reaction to this program is done in public by individuals who are very conservative about their allocation of money and their viewpoint of the criminal justice system, that is a testament to the value of this program. What we have done is we went out and purchased, with these couple of two or three million dollars that we have gotten from this program, the intellectual capital of the social worker. We have gotten their mental health perspectives and we have got their networking and this evidenced based motivational interviewing skill that I wish I had when dealing with my two daughters but I don't have it. They've got it. That is our social worker program. Now I briefly wanted to talk about juvenile representation.

- 1:32:32 Chair Ramfjord One of the differences between Oregon and Kentucky is that we don't have a trial level public defender system like you do. We have contracts with local public defender services and consortia of other public defense contractors who work on cases. So, we don't have the same kind of system. Do you have any thoughts on ways in which this kind of system could work in that different context?
- 1:33:00 E. Monahan That is a great question and I am probably not going to be your best thinker on that but just to talk out loud is if you can contract for the legal services then could you contract for these services and put conditions and standards in the contracts; once a person representing indigent clients gets a little taste of this, they are going to use these resources.
- 1:33:35 Chair Ramfjord What kind of training did you provide your own public defenders in that regard?
- 1:33:39 E. Monahan Good question. With this additional money we had gotten in later we were struggling to have appropriate oversight leadership in the beginning because we didn't have the resources for it, but now we have created a branch where we have a branch manager who is a master's level social worker. She has a data assistant who is also a social worker and we are doing training when we hire somebody on what this role is versus whatever they did before. We are having them practice developing assessments and all the skills that are associated with the reports. Some of them testify in court. We are giving them context within the criminal justice system because many of the social workers don't have that context. We are training the directing attorney of the office they are going to be placed in. we have one of these in every office, in a the large offices we have multiple. Then the branch managers are all required to put data in. they are to do a minimum of 70 cases. So we are having the program oversight of them and then each year we are doing additional training. We have an annual conference where we have our attorneys and investigators and now social workers are coming. So, we are doing really two trainings for the social workers a year and we have a distance communication process where we are doing some in between. We have contracted with social work from the University of Kentucky who is coming in and doing program review, program advice to us, he is doing first hand training, he is consulting on some problem cases. The next step we are going to take is to have more robust version of what we call case review process on juvenile cases which I will talk about in a minute. We have a good manual which I would be happy to share with you. We have the PowerPoint presentations. We are bringing lawyers and social workers in to do the training. We are bringing people from the outside in. We brought

Medicaid people in to educate us on that to try and get a better relationship there. We have worked with the department of corrections. They have dedicated treatment beds and we have tried to persuade them to allocate some of them for our clients where we can have the social worker talk to their representative and get them right into that treatment bed. There is a large private hospital group that I serve on the board with the lady who runs their community engagement. She wanted to meet with us to see how they could do a better job. So, through the capacity of having a leader through the statewide program who has the expertise in this discipline, we are trying to not only do better at working on relationships with people but then bringing that person in to train our folks about how to enhance. Master's level social workers don't understand the attorney client privilege, so we make sure they do because we want to hold onto our bar license. We want to make sure they understand they are an agent of the attorney and they are not freelancers. We have performance agreements with them and the training is mandatory. The social workers are eager for the training and I think I said this, but we are bringing the directing attorney in too because the social worker is supervised by the directing attorney. We don't there to be any disconnect there about what the expectations or rules are so we bring them all into the same room and we train them together.

1:38:13 N. Cozine

I just wanted to point out very quickly something interesting about the Kentucky system. Director Monahan shared with you that they have the 33 offices. Another interesting component is that they are on the state attorney pay scale so they are paid, I think, in direct correlation with what prosecutors are paid, and I mean prosecutors at the state level. I understand at the county level there are some differences. They use this one state attorney pay scale for all of the state level attorneys which I thought was an interesting and notable system component. The other thing that I wanted to note was that they are actually using a case management system which is the one we're working with. When we started exploring case management systems we were talking with New Dawn and their product is called JustWare. We started to go into contract negotiations with them just when they were purchased by Journals Technology and the product has now been renamed as eDefender and it has been reconfigured. But, that is what we were configuring for our Juvenile Appellate Section and that is what we are configuring for our Juvenile Pilot Program and so it's really the same entity although it has gone through enough changes that I don't think we can, I was hoping that we could take perhaps some of the components of the Kentucky system to help embed those in ours. I think what we can look at and Director Monahan has been kind enough to show me the reports that they pull out of their system. To your question about data points and what we need to have, I think that his something we can work on with Journals to make sure we embed the types of reports that we want to run that are run in Kentucky. One other thing I wanted to mention is that in Washington State where they have the Parent Representation Program that is similar to ours that we replicated ours off of, they have a social worker on staff at their central office, but like us they actually run their program through contracts. So, we do have some models that we can look at in other states.

1:40:32 Chair Ramfjord

We also have contracts with mitigation specialists and things like that, so we do similar things right now.

1:40:37 N. Cozine

And we have a contract with social workers in our Parent Child Representation Program. We do have little bits and pieces and I think there are some ways that we can learn from this about what we can build upon what we have right now. I just wanted to note those things.

1:40:52 E. Monahan

We have gone to a statewide program with JustWare and it's great because we are all on the same data system. When I get asked a question by the general assembly, if I can't answer it I am vulnerable. 'We're investing 57 million dollars in you, Ed, and you can't answer our questions?' I can answer the question now and we are, and I will talk a little about it later, we are highly aggressive on the public policy side on the juvenile disparity of disproportionate minority confinement. I am producing data now through our folks that shows what appears to be unexplainable disparities from our own data in a way that nobody else in the system has been willing to produce. So, it put me in a good position as a director of a large state agency

to not only aggressively seek a policy but to back it up with data. This data system, what we are moving to is to have our lawyers have a laptop where they can connect at any time to our system through a VPN account. They are driving an hour to court and they are sitting there for two hours waiting for their motion to be heard and we want them to be on the laptop with every piece of the case, we are moving to total electronic casefiles, everything in there and if they are working on with co-counsel with another office or an investigator they all have access to it. They are all putting it in there together. We are uploading documents to that. We have been on the system for three, four, five years. I tell people in our system, you know some of our lawyers are my age and they don't like it. I say to them that I understand but if you really don't like it you need to find a law office with a horse and buggy in front of it because this is the way of the future and we can't afford people who are willing to come along with this because there is going to be someday where these little pieces of paper aren't there. We are working with the Administrative Office if the Courts to pull their data into our system so we can reduce the work of our administrative folks. We've got access to the AOC bail information, risk assessments that are done now we have immediate access to those. I am not an IT person, I have limited skills but as an agency of 545 people with 158,000 cases, we are well down the road of going to this data system and it has proved to be of high benefit to our system. I didn't think to put it in this document, but this last fiscal year we presented 1,954 alternative sentencing plans, we have 1,235 accepted. I think that is in the 60 some percent range. This is the data they are pulling out of what our last fiscal year is. They are doing it by class, race, and veterans. With JustWare we not only go on with this system but we have had them train us on how to create our own reports, how to add or subtract data. We just found out we missed a whole thing, we have Casey's law and we weren't collecting data on that. We were able to add that into the system ourselves and educate people on putting that information in. When one of our managers wants a new report our folks write the report and do it. It has been a high benefit for us to go with this case management system.

### **Agenda Item No. 3**

#### **Why Children Are Constitutionally Different**

Representing children, just briefly. One of our struggles with having juvenile specialists is, we have a robust full time system but one of our problems is every office is handling all of the cases that come in all of the courts. They handle all misdemeanor, all felony, all juvenile, all voluntary commitment cases, etc. The county has six jurisdictions to go to, it's hard and sometimes the juvenile dockets are simultaneous. It's hard to have a single person in some of these offices that only does juvenile cases. That is what we would like and we would like them to be paired with a social worker but we are not there yet. What we have done, because of our problem, is committed to figuring out how to do better. We have had a series of evaluations done by a variety of different people that have been funded by outside sources. Each one of them has pointed out problems with the inadequacy of the way we are representing juveniles. With each one we have used the feedback to make improvements. We are still not where we want to be but each of these has allowed us to go to the general assembly and say we need additional resources, so we have gradually improved what we are doing with juvenile representation. Part of the criticism at us is that we are taking new people and putting them in juvenile cases sort of as the lowest level cases and we are not organizationally valuing having experienced people stay doing juvenile cases and promoting them to reward them for this specialization. So, we have made that adjustment. Instead of seeing juvenile cases as ones we give to the new guy because nobody wants to do them, that kind of attitude has gone by the wayside in our organization. We had the benefit in 2014 of Senate Bill 200 on Juvenile Reform that said we've got to quit detaining so many juveniles because of the adverse consequences. We have got to create what they call Fair Teams where the case comes into the criminal justice system and the players, the prosecutor, the CDWs and the public defenders come in and try to figure out a non-criminal justice next step. DCBS is in there to say that we are really dealing with a social problem and not a criminal justice problem, so a lot of the cases now are not getting into the system but we are full participants in that attempt and we are representing that person in that meeting saying 'you're right, this person doesn't need to come in to the criminal justice system.' The legislature created a

Juvenile Justice Oversight Council and its chaired by the two judiciary chairs and is meeting monthly. It has public defenders, county attorneys, department of Community Based Services, Administrative Office of the Courts, judges, psychologists, behavioral mental health all are in the room and the Chairs are calling people to the table asking for data and what is going on. People raise the problems they are having with how their organization is relating, and the chairman says 'well you have got to get together and work this out.' It is all motivated by needing to have better outcomes. It has been a venue for us as public defenders to bring our data and to promote public policy and I believe one of the handouts back there is how we are highly aggressive on our public policy recommendations. These are they and I think you have been given a copy of that. A lot of the work recently has been about stunning disparities in minority confinement and this is data coming from the Department of Juvenile Justice and another organization funded by federal money. This is obscene. This is obscene. This is what is going on in Kentucky. You take African Americans who at 26%, which is above twice the number in the current Kentucky statewide population, coming in to the system and you can see as they go through the system their outcomes are much more towards the incarceration side, whereas you take white youth and their outcomes as they go through the system are not on the detention side. This is stunning. This is the data that these chairs are required to be brought up before them so that they can address this. This is our own data. This comes from JustWare. This is not 100% of the cases but we are probably representing 97-98% of the juveniles. This is almost all the cases. You can see as the cases are charged, this is at the charging decision, if you are African American you are being charged differently than if you are white. Again, this is very tragic data. You can see it on just theft related offenses the disparity. We are in a good situation in that the chairs have invited public policy proposals. Since we have been evaluated, our training has really gradually improved. When we hire new attorneys, every attorney, we put them through four days of training that is only on juvenile cases. We are putting them through misdemeanor training for a number of days, felony training, mental health training. We send them to a week long trial practice institute where they stand up and practice, they develop a theory of the case, they practice opening and cross. They are in a small group and get feedback, they get lectures. These four days, we have a six to eight week program where we take a law school graduate and we know they don't know what a preliminary hearing is, we know they don't know what a subpoena is, we know they don't know the defenses to DUII, and they sure don't know anything about juvenile litigation and the unique laws there. We are saying that we will equip them in those six to eight weeks with this information so they can go out and be competent especially with the number of cases given to them. The juvenile manual that we have, we are in the process of updating it. We put this up on our website so if a private lawyer or a judge wants it. I have offered this to every judge. You can see there is also our training schedule there. We are in the process of updating this, but this is all electronically available. We were just asked to present to this Juvenile Justice Oversight Council. This is the Power point of the data our individual did to show all the data we have collected on juvenile cases that really shows this disproportionality for minority clients. Every year we are doing what we call regional juvenile summits. So, anybody touching a juvenile case is required to come to one of these regional trainings for updates. Now, the recent evaluation we had criticized us for failing to have dedicated social workers for juvenile litigators, criticized us because we weren't paying enough attention to transfer cases where kids can wind up in adult court. We are not set on what we call case review process where anybody that has a transfer case, a case that is subject to transfer, they are going to be required to come to what we call a case review and we have outside people both lawyers and mental health people that sign confidentiality agreements and they go through a structured review of the case. All of us good professionals are in denial about some things; we are kind of in denial over there about a statement that a witness made. We pretend it's not there because we don't want it to be, or we haven't gone and talked to a witness we need to talk to because we can't figure out how to do it in a productive way. We haven't filed a motion we are supposed to file. We have a robust case review for capital cases, no lawyer that has a capital case can take the case without doing multiple case reviews and what we call a voir dire work shop where they come in and practice voir dire on their case with feedback from outside people. We have several mental health folks and some highly experienced

outside people and we invite staff in from our other offices in on these case reviews for capital cases and we will do that on the juvenile cases. Really what it is, is its elevating the practice for everybody. I don't know about you all but when I tell somebody else they should do something, often I am not doing it myself. So, I get to have a little conversation internally with myself, 'well I just told sally she needs to go do that, I better make sure I am doing that with my own cases.' That is kind of the huge benefit. The other neat thing about case reviews is this is before they go in and do the case, so we are helping people succeed. We are not looking at something and then criticizing them after the fact, this is a very powerful tool and we are behind doing this for juvenile transfer cases so we are set on doing that. This is an example of one of the documents that we have developed and put out through our training. The new laws have complicating options that have some complexity so we created this document to help our litigators, that is just one example. Do you mind listening to me for another five minutes?

1:56:24 Chair Ramfjord While you are loading that stuff up, I am kind of interested in all of the training that you do. I am interested in your ability to attract and retain lawyers in some of the far flung offices we have around the state. From what I understand, you think the training actually contributes to your ability to attract those lawyers, also an element of salary being at parity with the state. If you have just a couple of comments while you are loading up, that would be great.

1:56:50 E. Monahan Yeah, could somebody help me get this off the flash drive? It's on this flash drive right here, but I don't know how to pull it up here. Our training we know for a fact is an attraction to folks because we have a recruiter. She is not a lawyer but she has developed a relationship with all the law schools because, unfortunately we have about 11% turnover. So we are losing 30 plus lawyers a year for a variety of reasons like salary, caseloads and other opportunities. So, we have to have a robust training program to just meet our responsibilities. So, we have three lawyers and one administrative person who are our training branch. We do robust training, annual conference, capital training, new attorney training, week-long trial practice institute. We do a week long investigator attorney program because we feel our lawyers need to learn how to use investigators and social workers, etc. We are getting ready to do a two day administrative specialist training. My belief is that when I go to a doctor and I have a choice to go to two doctors, one is up to date on the latest medical procedures, educated and gone to trainings, or this one that is back where they were when they came out of medical school, it's a no brainer. With what we ask our folks to do work load wise, travelling, the complexity of working with some of our clients, the prosecutors and the law, we owe them the best thinking that we can give them. We know we get people coming to us because of our training because they tell us that. We are getting people nationally and the word is out on us. If you want to get excellent training as opposed to just coming into a public defender office and being faced with a bunch of cases without adequate training, Kentucky has got the training. You asked another question there.

1:59:33 Chair Ramfjord In terms of recruiting for you far flung places, I think you answered that with the idea of having a recruiter. That is a pretty big step.

1:59:44 E. Monahan We have some challenging places in Kentucky, very poor areas with poor school systems. Not a lot of social life for young people, not a lot of reasonably priced decent housing. So, we are trying to attract people that want to do public defender work, that want to be supported with the training and the supervision that we provide. When we introduce, we had somebody from Colorado come in and train us on case review and they called it pre-trial review. Case review is something that I don't think is a predominant practice in many public defender programs, but legal services are doing it all the time. My wife is a physical therapist, its common practice in other professional disciplines. When we initially rolled out case review we did it for capital cases and a lot of our public defenders are going, 'ah, I don't want anybody looking at what I am doing, somebody is going to yell at me.' Once we got over that we are helping people succeed on cases that are extremely complex that have a very bad potential outcome and our point of view is the complexity of hat is too much for just the lawyers on the

case. They deserve this outside supportive help that does at points confront them on why they haven't gone along with A or B. It's been a way to professionally help each other where there is this added dimension of what your work is. I asked Nancy if you wanted to hear a little bit about our pre-trial release initiative. Now, this may not be as helpful to you because you all may be far advanced than us, but I will just go briefly through this. In 2011 we had a Pew come in and Pew was not focused on pre-trial release, we were one of the reinvestment states in 2010 and 2011. They were much more focused on the drug possession stuff, but they created a task force and one of the members of the task force was what we call the County Judge Executive or the chief administrator of the county. Now remember, the counties have the exclusive responsibility for the county jail costs. Despite the fact that Pew wasn't interested, this county judge executive wanted there to be something to get some of these guys out of their jails that didn't belong there that the county judge executive knew but judges and prosecutors were keeping in. So, there were changes to say in out statute, these are good solid changes and you all may have them already, but that there shall be a validated evidence based pre-trial risk assessment. We now have one that has been done by the Arnold Foundation that they have put out publically. It is an excellent risk assessment document and the judge has to consider it and if the person is low to moderate risk the judge has to release him absent of written finding, a written finding so we can challenge it on appeal that the person is a flight risk or at risk for re-offending.

2:03:17 Chair Ramfjord Kind of like the federal standard.

2:03:22 E. Monahan So, these were good statutory changes. I was giving a presentation in one of the Carolina's about our alternative sentencing social worker program back in 2010 and I walked into the room and there was a panel of us and there was a moderator and I shook the gentleman's hand and his name is Tim Murry, some of you all may know him. He worked for the Pre-Trial Justice Institute at the time and he says we had met before but I don't remember it. I shook his hand and I am walking in happy to be there to brag about our social worker program and he looked at me and he said 'oh, you are the public defender that doesn't care about getting clients out on pre-trial release.' I went I don't know you and you are saying that to me? But, he was enraged about public defenders who weren't paying enough attention to the pre-trial release decisions. So, I got furious, but I internalized it. Went on and did the presentation and I went on back to the airport and I was just fuming about 'don't you understand whoever you are that we've got caseloads and we've got turnover and we've got laws and prosecutors and judges. Don't you understand, how dare you say that to me.' And, then I am coming back to the airport and I was hungry and I turn into this restaurant and I go down an aisle of which there was not outlet and who was sitting at the table eating a hamburger but Tim Murry. I said to myself, 'well, hellfire.' I asked to join him, because I didn't really have much of another option. So, I sat down and I made a decision of my mind and not my emotions and I said, 'Tim, explain to me where you are coming from.' And, we had a marvelous conversation and what he did is he was a good coach for me the second time around and he helped me renew our emphasis in Kentucky on what we now see as the most important hearing, the pre-trial release hearing. So, we have had an initiative to train our folks on pre-trial release, this new law, this risk assessment. We have done about 100 appeals of writs of habeas corpus where we were not doing hardly any and challenging the failure of judges to apply the law properly. This is a remarkable statistic, you can check me out if you don't believe me, we lost a third of them, we won a third of them outright and the other third the judge or prosecutor came back with an offer that was too good to refuse. We prevailed on two thirds of those and the other benefit of those was it changed the practice in the jurisdiction and I want to show you some of the results of this. The other thing that happened is they had a citation only provision that when you step back from it is you get automatic pre-trial release. In 2011 the NLADA, I was chair of the American Council of Chief Defenders, and with this renewed focus thanks to Tim Murry we put out a document that is up on their website. It's a great document and many people contributed to it including staff for Tim Murry about why public defenders, this is what it called public defenders to do, to do a better job of. It was really a vehicle for me to talk to other public defenders about what we in Kentucky needed to do. We have developed a

marvelous relationship, I have a project director who is a top notch, he is general counsel but also highly experienced litigator, highly respected in our system who in our pre-trial release initiative is doing training, developed a relationship with the administrative office of the court's pre-trial release coordinator. We are sharing data, we are going over training our pretrial release officers, and they come over and training our new lawyers. We weren't at all first appearances and when we were we weren't asking the judge to make the appointment decision before the judge made the pre-trial release decision. The problem with that is in a lot of rural counties the judge wouldn't come around for another week so the guy was in jail for a week even though we had been appointed and we either weren't there or we didn't do anything. We had to change this and we did. Be at first appearance. Ask the judge to make is appointment decision before he makes the pre-trial release decision and then at once, start advocating. We put together an extensive manual that we have put up online. We want judges to have this. It is the best collection of pre-trial release litigation. We handed it out to private criminal defense lawyers too because we need partners. Here is what we learned; empirical data says that if you have a lawyer at first appearance then pre-trial release is increased. That would be common sense, wouldn't it? We are all lawyers and we know a lawyer adds value to representation of a client. The other great thing is we know if a guy gets out that the outcome is almost automatically better. What I had impressed on me is you take a guy that gets out, often that is a plea to time serve and it is a week less than if you waited until the next week to start getting him out or to get a plea worked out. The Arnold Foundation has done a study, now this is stunning. You take a low risk guy and you put him in jail for as few as two to three days and there is a high correlation between that and future criminal activity. So, if we go out here on the street and stop a tax payer and say, 'hey, guess what we are doing with your money in Kentucky, we are putting low risk people in jail for a couple days, teach them a lesson that we are angry at them. Guess what you get as a tax payer as a return on that investment? Higher crime in this community.' They would look at us and say, 'well, you're nuts using my money that way.' Except, that is what we are doing in Kentucky and what we've been doing. It's a stupid way to use money unless you just want to be angry at people. This is empirical data, this is not theory. When this initiative started in 2011 our pre-trial release rate was 65%. We have excellent data because administrative office of the courts collects it. In 2015 our release rate went up to 73%. That's lots of clients getting out, over 460,000 a year. This is what the risk assessment has shown in terms of low moderate and high and these are the outcomes. So, 89% evaluated at low are being released in Kentucky and 56% of those high are being released, of course they are being released with conditions. This is the failure to appear rate and the re-arrest rate. With the increase in release in Kentucky, the failure to appear and the re-arrest rates have actually improved a bit and you can see it's even very high for high risk people. This is data, not our data but AOC's data. I am proud to have, you know the law changed and it had good ideas in it but good ideas don't implement themselves, they take lawyers who are going to fight for it because there are a lot of judges that don't agree with the change in the law and they have the discretion to act in contrary to the law. So, I am very proud of that and it has saved millions of dollars. The last thing I want to talk about, these are three things that we are doing in Kentucky and I want to say we are doing it and I am not here to tell you to do anything but if you want to do them here I know by God, you can do them here if we are doing them in Kentucky. The last thing is an ask I want to make of you. I was part of a small group that founded the National Association for Public Defense and we are a national organization and my ask is simple of you, would you consider joining for one year to see whether or not it is of value to you? I want to briefly describe it. It is \$25 for a public defender member and for an organization the maximum is \$5,000. So, we have 14,000 members nationally. We have three part time staff. We are a low cost operation. We are going to remain a low cost operation. We are not pouring our money into bricks and mortars or a staff salary, we are pouring it into programming and we are doing a couple of things that I think could be attractive to you. We are doing three or four webinars a month that are free to any member and we are recording those and storing them in an electronic library called My Gideon along with other hard copy documents. So, at any time of the day or night you can access these as a member. Think about it. We have 14,000 people. We have the greatest amassing of intellectual public defender capitol of anybody in the nation and we have

marvelous experts on narrow topics within this organization who are willing to do webinars and allow people to look at them any time of the day or night all for \$25 for a member or \$5,000 as a maximum for an organization. We are starting leadership education. We have done it at Valparaiso Law School a couple of times. It is the best leadership education for a public defender nationally. We are bringing practicing public defender leaders; this is not a theoretical stuff. We are doing it on a presentation of a topic. We break out into small groups. We have coaches. Last year we did it for the manager level just under the chief defender. Next year is going to be focused on the chief defender, so you are in a room with chief defenders. We are going to do training in the future for social workers and investigators. We have excellent capital resources that are being organized at a higher level. We have a good capital committee and we are producing and Alex [Bassos] has been a huge benefit to us in helping us do a lot of this. For the first three things I talked about, I am just describing what we do. This last one is an ask, would you consider giving it a try for the year to see whether or not it is of significant value to you as a state beyond what you are able to do here. I can't tell you how delighted I am to be here. Somebody said to me that you can't get to Portland from Kentucky but I am living proof to the contrary. I have made it and I appreciate the opportunity to be here today.

- 2:15:31 Chair Ramfjord Thank you so much.
- 2:15:32 T. Christ Thank you.
- 2:15:33 J. Potter I just want to make sure that I gathered the information correctly. I have four questions and I think they have all been answered. Your budget is \$56 million a year?
- 2:15:44 E. Monahan It is in the 50 some million.
- 2:15:46 J. Potter And you have cases per year, 158,000. Population of Kentucky is 4.4 million and the pay scale of prosecutors is equal to the pay scale of public defenders.
- 2:16:00 E. Monahan The pay scale for prosecutors and public defenders is identical for those who are state employees. The county and commonwealth attorneys are in a different pay scale structure. They have a different problem, they are given a hunk of money and they have more discretion in whether they pay you something versus you something else. I am on a pay scale that dictates to me. So, if they pay their group of people higher, they can hire fewer people because they have a fixed amount of money. But, the assistant attorney generals are all on the same pay scales as us.
- 2:16:38 J. Potter 158,000 cases, that includes appellate cases, juvenile cases, and trial level cases.
- 2:16:45 E. Monahan Yeah, we are doing about 9,000 juvenile cases, we do about 4,000 involuntary commitment cases, we are doing most all of the capital cases, appeals.
- 2:16:54 J. Potter How many capital cases a year?
- 2:16:58 E. Monahan We have probably 30 to 50 that are subject to notice and probably 30 plus that are noticed. We have two, we have a capital trial branch and we have two sections so we can handle co-defendants ethically. In those sections we have I think four or five attorneys plus a mitigation specialist plus an investigator who only do capital cases, same over here and when we get to a third client or beyond what they can handle then our trial office will handle that in addition to their other cases.
- 2:17:44 J. Potter Thank you.
- 2:17:45 M. De Muniz One question, when is the social workers responsibility to the client, when does it end?

2:17:53 E. Monahan Six months after, but...

2:17:58 M. De Muniz Practically, it probably goes past that?

2:18:00 E. Monahan It goes longer than that because you know there is one group of people that have bigger hearts than public defenders and that's social workers. They love to help people; they were born to help people like we were. Back over to your salary question, I am not sure so stop me if this is irrelevant but, I went to the Kentucky Bar Association and asked them if they would create a task force to look at prosecutor's and public defender's salaries. They put together a neat little group of people. It had prosecutors, judges, prominent bar people, public defenders and we did seven surrounding state analysis to what legislators like to look at for both prosecutors and public defenders. We looked at turnover data. There is a great study in Florida, it was done by a conservative think tank that, the title of the study is *It Cost More to Pay Less* because of the turnover and you are losing your intellectual capital and cases get delayed and they did a lot of, they must have had funding from some place because it is an excellent study. It actually helped prosecutors and public defenders in Florida get increased salaries. This bar association did this with a lot of energy and we produced an excellent report and we are now working cooperatively, prosecutors and public defenders, where we generally don't do that in Kentucky under the auspices of the Kentucky Bar Association we are jointly going to legislators and we did not prevail this last general assembly when we asked for a 22% increase but I am confident that we are on a path towards getting increased salaries with this cooperative effort with the bar association. We have an excellent report that is available should it be of interest to you. I am not sure why you all are asking me, I welcome the questions, but we've got to do better on salaries in Kentucky for public defenders and politically we are not going to do that unless, the decision we have made is that our success goes up substantially if we pair with prosecutors in jointly requesting this and get the extra clout of the Kentucky Bar Association.

2:20:37 Chair Ramfjord Thank you.

2:20:38 N. Cozine Chair, if I may just note quickly. I just want to thank Alex Bassos who is in the room who helped organize the speakers today and also to thank tomorrow at the CLE we do have co-sponsorship with the Department of Justice, the Senate Judiciary Committee and the Oregon State Bar so I wanted to thank those organizations and also just note a funny little anecdote which was that Channa Newell, who is helping she is Judiciary Counsel, she also helped. Tomorrow's CLE was really a joint effort. When she heard that Ed Monahan had agreed to come, little did we know that she was headed to a group of judiciary counsel from around the country and she sought out her Kentucky counterpart who told her how much they love Director Monahan. So, I think it is clear that he has very good relationships there and that was confirmed by Channa Newell's own investigative research. I just really want to thank all of our speakers. It is really interesting to hear about the work that is being done nationally and I hope it is helpful to you.

2:21:53 Chair Ramfjord It is very helpful, thank you very much. Why don't we take a brief break before we move on, about ten minutes, does that sound good?

**Break**

**Agenda Item No. 4 National Standards: Pre-Petition and Pre-Indictment Advocacy in Juvenile Cases**

1:10 Chair Ramfjord Are we all ready? Can we go ahead? The next item on the agenda is Amy and Elizabeth Levi talking about national standards for pre-petition and pre-indictment advocacy in juvenile cases. You are already up and ready to go.

1:35 A. Miller We are. Thank you. I am here today with Elizabeth Levi who is an experienced criminal defense attorney, but first I am going to provide a quick introduction and then she can talk

more about how this works practically. Pre-petition and pre-indictment representation is a best practice and is endorsed by the ABA in capital defense guidelines. It is endorsed by the NJDC, by the ABA in parent representation standards, criminal justice standards, it is recommended by the US Department of Justice and it is being considered for inclusion in the Oregon State Bar performance standards as part of the updates to the parent child standards as recommended by the governor's task force on dependency representation. In juvenile cases, and I included some materials so if you want me to move on you can check it out in the materials, but in juvenile cases it's really with representation of parents prior to filing a dependency petition. It is attorneys who are able to advocate for and work on behalf of parents. While the agency is involved doing an assessment or doing an investigation the attorneys can attend interviews, safety planning meetings, advocate for services to keep children in home, identify placement resources, protect the rights of parents. I can't emphasize this enough. As the agency continues to work more and more with families outside of the court process what is happening is parents are consenting to polygraphs, to psychosexual evaluations, to ongoing questions, to removal of their children under a voluntary plan and this is all happening outside of court without counsel. I think dependency cases are uniquely suited for this type of advocacy and I think without it children can enter foster care when it could've been avoided. Nancy and I were at a meeting in Columbia County and a judge mentioned to us that a petition had been filed and a case brought before the court because a parent did not get a child glasses. Those are the kinds of cases that should never come before the court and that is one small example. I also wanted to mention that this kind of work offers an opportunity for cost savings and you can see that in the materials that I provided to you. There are several iterations about how this is working around the country, but there is a big program in New York City where when the agency begins the investigation of a family they inform both parents that they have the opportunity to obtain free legal advice and the parents can decide whether or not they want to avail themselves of that but generally they do. What happens is half of those children do not end up in the juvenile court system. There is a similar program in Detroit and there is also one in Chicago. All are seeing similar results. There are two reasons I put this topic on the agenda today; the first one is just as follow-up from your meeting in April. You might remember Michael Schmidt was here from the Criminal Justice Commission and there were also researchers here from OYA. There was a conversation among the Commission members about how as a result of charging practices defense attorneys are put in sort of a reactionary position and the question of how to implement things further upstream so that they are not in that position. Elizabeth can talk more about that. The other reason is because of the Parent Child Representation Program and the work I am doing up in Columbia County. As you know we launched that program in January and in August Nancy and I attended a meeting there with the judges, with the DHS district manager and with Senator Johnson. One of the things that came out of that meeting was really an ask for us to look at whether the idea of pre-petition representation in juvenile cases would be feasible. I mentioned the one case about the glasses, but truthfully Columbia County is unique in that regard. They have an extremely high number of petitions filed. They have the same number as Clackamas County and almost the same number as Washington County. They have the highest percentage of children in care per capita with the exception of Grant County. They have very long length of stay for children in foster care. That particular county is uniquely situated so they asked us to look into this and Senator Johnson really expressed her interest in trying to work with us to try and figure out a solution. I realize that is not something we can do within our existing resources but I am hopeful to continue to work with her and with the courts there to maybe develop a solution of sorts. And, in the event that I may be back before you asking for your authorization maybe related to contracts in the future, I just wanted to kind of begin the conversation.

6:46 E. Levi

My name is Elizabeth Levi. I am currently a private practitioner. I am in a small firm with three partners. I was a public defender for 12 years in Multnomah County before opening my office and I have been doing that for five years. At the public defender's office I had the fortunate opportunity to work through all the levels of criminal cases, misdemeanors up to major felonies, some special courts like civil commitments and then my focus, my favorite

part of that work was the juvenile work both dependency and delinquency. When we moved into private practice that has still been my focus. It is different. I don't have a contract. I take conflict cases sometimes but I don't have a contract. I am representing a different population mostly. What I noticed right away that there is this huge void there is this need for representation during a law enforcement investigation prior to the indictment being followed, during the DHS assessment while a juvenile is being investigated for a sex offense or something else that is disrupting the home and going to disrupt their lives. People come to your door, a lot of people can't afford it and as I was going through, for this presentation, the cases I have had like this over the years and OPDS does authorize legal consulting for say in Multnomah County YRJ represents parents in dependencies and they represent juveniles in juvenile delinquency cases but they don't do adult criminal cases and they don't do ballot measure 11 cases. If they have a client, say in a dependency case, and they know they are being investigated for something they might call me and ask if I can advise that client. It might just be talking to them about their rights and if it is going to be more work they might get me appointed as a legal consultant for the contract rate to work with that client either to avoid an indictment or to have maybe a reduction of the charges or at least have it happen in a way that is less of a negative impact on the client and the family. There are four juvenile connected types of cases where I do pre-petition or pre-indictment work and that is when parents come to me and say 'hey DHS is knocking at my door they want to take my kids or they want me to do a psychosexual evaluation, what do I do?' and I will work with them to advocate with DHS. I will work with them to help them understand why DHS is involved and I work with them to help ensure that their kids stay in the home. That might be helping them understand that they have to follow a protective action plan while an investigation is being completed. It might be something simple like that. It might be going to DHS and saying, 'hey, this dad hasn't seen his kids for a month and you need to have the least restrictive contact provision in place, and there are ways that this dad can safely have supervised visits with his kids which helps the father and the kids.' I think it is easy. DHS is such a huge agency. They have so many different workers, they are all humans, a lot of them are overworked and if no one is complaining it is easy for them to say 'I am not going to organize those supervised visits for this family because they're not the squeaky wheel and I have got 20 other cases I am working on today. Another thing I do with the DHS cases is try and hold DHS to their standards. We have seen, in my office, DHS come in and put a protective action plan removing a parent from the home and under the regulations they have ten days to either change that plan or file a petition in court. We have seen them have that in place for months where a parent isn't allowed to see their child and isn't allowed to return to the home. And, depending on the case we have strategies or different recommendations for our clients but that is not okay and I was not aware that that was going on when I was only getting cases, as Amy [Miller] said, sort of reactively once the petition was filed. That was very eye opening for me. Another thing that we have seen is DHS not following the timelines. You have 30 days to complete an investigation or you get a 30 day extension easily, then with more work you can get another extension, but they just sort of put the timelines to the side and unless someone reminds them often times these assessments go on and on hanging over a family's head. So, there are a lot of things that I feel I have been able to do in pre-petition representation during assessments to help families through the system, to help families stay together, to help prevent petitions being filed in court or to lead to early dismissals if a petition is filed because I have been there. You get time on the assessments, timely services in place. I have had caseworkers say 'we can't refer you to services' so we try to get families into services another way and it defers; it derails the petition in the court process if it is successful. The second way that I am involved pre-something is during law enforcement investigations or pre-indictment of parents who are in the system. That can be anything from, just recently I represented a client who was being investigated for some property felonies. He had a long history of drug abuse. He had just gotten a job. He was in treatment and working with DHS and then he finds out that he is being investigated for these property felonies. So his lawyer got funding for legal consult for me and by the time I was on board the detective was telling me, 'well, I am ready to file an arrest warrant.' So, we quickly did a polygraph, we quickly did some investigation to get some alibi evidence and we arranged for him with the detective rather than have the detective

come pick him up at work or arrest him in an unfortunate place or time, to come on after work one day with all of his references in hand, with his work information in hand, his addresses phone numbers and everything he needed to basically do a book and release when otherwise he might've been picked up at work and held until court and lost his job. So, he was in a much better place to be there for his family and to continue his services and make his own income with his job which was new to him than he would've been had there not have been pre-indictment involvement there. He wasn't actually indicted. It was no-complained and then I was able to share some of the alibi information with the DA to make sure it is not coming back. Sometimes the pre-indictment representation results in no charges. Sometimes the pre-indictment representation doesn't help; it was too late or the evidence was too bad but I do everything I can to minimize consequences for the client and the client's family. The third type of pre sort of juvenile representation that I do is pre-indictment for juvenile ballot measure 11's. I think all but one of those that I have handled have been referrals from juvenile practitioners who don't do adult cases and don't handle jury cases so they don't handle measure 11's. I have had one private client who we were able to get the district attorney to delay grand jury so we could do assessments. We found out this kid had different mental health issues than anyone had thought he had all his life and the Washington County DA actually agreed to issue it as a juvenile case instead of an adult measure 11 which was huge for this kid and this family. All but two, and then one was Oregon State Bar has this program for people who will just give free advice to kids and this turned out to actually be a pre-indictment measure 11 sex offense representation and actually worked out well. We did investigation and I think I got OPDS to pay for an investigator. We did investigation, we did a polygraph and we just cleared her with the police before it even got to a district attorney. The fourth kind of work I do is juvenile delinquency pre-petition and that is one where it is mostly private clients because there is not really a way they come to you through OPDS or have come to me through OPDS. And, those have actually been I think very successful and mostly haven't resulted in formal petitions being filed. When there is a formal petition that is filed it is usually in a more serious case like a felony sex offense case or what would be a felony. The thing that I can do in those cases is help plan with the family what will happen if a petition is filed, what kind of safety plan do they need to follow and where can the child be in treatment and how are we going to convince everybody that one, this kid should be out of custody pending trial and that any resolution in this case should not result in incarceration or institutionalization. It should be the lowest possible place for the kid to get the treatment they need to be successful in the future. That has actually been pretty successful too. So, these are not 100% successful and certainly have bad outcomes and you play the hand that you are dealt, but overall I really feel like this has been a real eye opener during my private bar career that this was a huge void that I wasn't even aware of. I don't know that that many practitioners are doing it and I think we are fairly uniquely situated because the combination of juvenile and criminal experience that I have so I am able to understand and handle what is going on with the juvenile case while also handling the criminal piece of it. I think it is worth thinking about for the future this proactive or less reactive sort of representation. I think there is also a question of equity because again as public defender I wasn't seeing these cases coming in because people don't get court appointed counsel for the pre-charge or pre-petition circumstances. So, unless they can afford it or unless they have juvenile lawyer who knows that they can ask OPDS, and they probably can't do that in every case and they probably can't find enough lawyers to represent all of these people at the contract rate. It is something to keep in mind and I am happy to answer any questions about the work that I have done. It is just anecdotal. I don't have data. But, Amy [Miller] is familiar with the work that I am doing because we discuss it and if it would be helpful for me to answer any questions, I am happy to.

18:05 T. Christ

I am not very familiar with juvenile practice so these may be dumb questions, but I understand now that a petition filed in court is what triggers paid representation.

18:18 E. Levi

Yes.

- 18:19 T. Christ           What would be the trigger other than a petition? What would initiate the route to paid representation? Is it just anytime someone complains to DHS and a file gets opened? Or some other step farther along the line?
- 18:40 A. Miller            I think that is open for consideration, certainly. There is a point at which DHS, during their assessment, can institute what is called a protective action and it is a voluntary agreement with the family and its duration is ten days. The idea is to eliminate safety threats and to continue to investigate during that ten day period. At the close of those ten days, what is supposed to happen is either the protective action is supposed to go away or the case is supposed to be filed in juvenile court. Thinking back to those ten days prior, or it can be changed, thinking back if you are thinking about appointed time, the work of the agency becomes invasive when there is the opportunity to keep a child in a home or to protect a parent's rights I think that is the place to think about. You might have a different perspective.
- 19:29 E. Levi             No, that makes sense. And, certainly DHS gets a lot of calls that don't go anywhere.
- 19:36 T. Christ           What would be DHS's reaction to parents lawyering up?
- 19:46 A. Miller           That is a good question. When we were approached in Columbia County about this concept DHS was at the table. They were supportive of the idea. I think they recognize that there are times when they could use some assistance in trying to figure out where the safety threats are and how the parents can be compliant and how they can work together to not have to bring these cases forward. They were very supportive of the idea.
- 20:04 T. Christ           So they are not looking at it as the lawyer is going to tell the parent's to not cooperate, we are not going to be able to do our investigation?
- 20:12 A. Miller           No, and I actually put them on notice and said, 'hey, there are going to be times when the parent's lawyer would go to an interview when they tell their client not to speak or not to cooperate or advise them to do stuff.' No, they understand that, but they were still supportive of the idea.
- 20:27 T. Christ           Okay.
- 20:28 E. Levi             My experience just with individual case workers is for the most part they are happy to have a lawyer involved because you are in a different position of trust with the client. You are not the one coming in and uprooting their family, so it is that idea of counseling and it makes them a little less defensive with DHS sometimes when it helps keeps the families intact or keeps the children in the home with one parent at least.
- 21:00 T. Christ           Okay, I assume we are not doing this now, are you presenting it to us to see our reaction? Is this a good idea going forward? I assume we have to get money from the legislature and maybe some changes in statutes.
- 21:14 A. Miller           I would assume so. I am not asking this is not an action item; it is more of just an educational update based upon our conversation and the fact that we were asked to investigate this further. I thought, one thing that is important to do of course is to let you know about the things that we are working on and being asked to look for. Senator Johnson indicated a willingness to look at legislative options and so to the extent that it is possible for us to keep working with her on that, I think that it makes sense, but I can't forecast how it would shake out.
- 21:41 P. Levy             If I could address your question about a change in statute, I don't think we identified it immediately that it had to happen because the legislature in their wisdom and years ago made the commands to the Commission to be aligned public defense services in the most cost efficient manner consistent with state and national standards of justice and Amy has outlined the standards of justice that call for this kind of representation.

22:15 T. Christ My reaction in reading the materials and hearing the presentations is that it is a great idea. Fiscally, it seems like it saves money down the road and it also seems the best thing for the parent and the child so I am certainly supportive of that. I had some concerns with the rules when I was reading the law review article and they gave the example of Travis P. who his family was homeless because as I recall the mom was evicted and couldn't get the deposit back from the prior place and so the suggestion was if they could have an attorney at that point in time they could help the mom get the deposit back from the landlord and it got me wondering about at what time point does public defense morph into legal aid. Are there lawyers now going to be bringing landlord tenant lawsuits on behalf of?

23:15 A. Miller I wondered the same thing. The program in New York City they actually look at domestic relations work as well for the same sorts of reasons so they look at legal barriers that they can address that can keep the cases from coming into the court system. I don't know that that is how we need to design that here, but certainly one of the programs does expand it much more broadly. I think for what it is worth, there is probably an opportunity to connect with legal aid and I think that is something that I could investigate a little bit. There is legal aid that is up in Columbia County and works pretty closely with the consortium there.

23:53 Chair Ramfjord This is a question I should know the answer to, but I don't. Are there any circumstances in which we provide pre-indictment representation to adults in the normal courts and what are those circumstances?

24:06 A. Miller Capital cases and that can go on for quite a period of time and I think that is the biggest.

24:12 Chair Ramfjord That is post-arrest but pre-indictment?

24:14 A. Miller That is correct.

24:16 Chair Ramfjord Any pre-arrest cases? Capital cases come to mind, but any kind of pre-arrest cases? You get a detective showing up at your door and starting to say, 'we are going around talking to all of your friends,' does that ever happen? It would be very useful to have.

24:37 N. Cozine To my knowledge, we certainly don't provide any kind of pre-arrest representation or a lawyer at a pre-arrest representation...

24:50 P. Levy I can answer. I think some contractors do and any gets contacted and in certain circumstances and did and probably still does that ought. Our contract with, the general terms of our contract provide for that to happen where there is a provision that talks about pre-indictment or pre-petition where it seems as though one of those is imminent and the person likely qualifies, then it does require a request to us undertaking that representation but the opportunity is ahead of them.

25:41 Chair Ramfjord I agree with Commissioner Christ's observations, it seems like a good idea. Any other questions?

25:53 A. Miller Thank you for your time.

25:55 Chair Ramfjord Thank you very much.

**Agenda Item No. 5 Approval of PDSC Strategic Plan for 2016-21**

26:05 Chair Ramfjord The next action item is the approval of the strategic plan. Nancy?

26:18 N. Cozine Thank you Chair Ramfjord, members of the Commission. The strategic plan included in your materials as attachment five should reflect the changes that we discussed at the meeting on

July 25<sup>th</sup> and 26<sup>th</sup>, I suppose technically it was the 26<sup>th</sup>. If you have any questions about it or see any changes that you wanted that did not get made I am very open to making those changes.

- 26:56 Chair Ramfjord I thought the plan looked as discussed at the meeting. I don't know about others. The comment that all the things we have heard about today makes me think of new ideas, but as I reviewed this plan I think that many of the things we have heard about today or that we have heard about fit comfortably within the range of this plan.
- 27:27 N. Cozine Our next steps internally is that once it is approved we actually have a meeting set on Monday, not that we were prejudging your approval, for the management team to actually go through. We told you the general ideas that we had about what tasks we would be undertaking in order to accomplish these strategies and goals. On Monday we will spend time formalizing our action plans for the year and certainly we will take into account the new information that we have learned. The big challenge for us, of course, is the funding challenge. With things like social worker involvement in criminal cases, I would love to do that but I think it takes a policy option package. We didn't create that for this particular budget but we are working very hard to get funding for on the dependency side which includes the social workers. I felt it was important as part of this CLE to the legislature to talk about all the ways that public defense is developing across the country so the legislature has an understanding that what we are asking for is really a step one and that we can do better. If we are provided with adequate funding we actually can get better outcomes in these cases and we are part of the solution as opposed to just a necessary piece of the public safety puzzle. I would agree that this strategic plan has enough broad umbrellas for us to fit new tasks under as we move forward with the plan.
- 29:14 T. Christ Including the ones we heard today, social workers and then the pre-petition representation?
- 29:18 N. Cozine I would hope so. And, pre-petition representation is another one where the long term savings are there, the hard part is getting it put into our budget now. We have mechanisms in place but we have them narrowly crafted so that we don't run into a budget problem. But, as legislators become more interested in this and as we become able to secure the funding needed, hopefully that is a door that can open more widely.
- 29:54 Chair Ramfjord Other questions or comments? Do we have a motion? **MOTION:** Commissioner Potter moved to adopt the strategic plan for 2016-2021; Commissioner Christ seconded the motion; hearing no objection the motion carried: **VOTE: 4-0**
- 30:10 Chair Ramfjord Thank you very much for the extensive work on this and thank you also for the really very valuable discussion that we had with all members of the staff as well as the retreat. I thought it was extremely informative and beneficial. Thank you.
- 30:27 N. Cozine Thank you and thank you for all of your time.
- Agenda Item No. 6 Annual Performance Progress Report**
- 30:34 Chair Ramfjord The next item is the OPDS monthly report.
- 30:39 N. Cozine Chair, I think we have the annual performance progress report.
- 30:42 Chair Ramfjord Oh yes, I see that, I apologize.
- 30:44 N. Cozine I know you don't want to skip this.
- 30:45 Chair Ramfjord No, I don't.

- 30:47 N. Cozine            You may recall that every year we are required to submit to the legislature the report on our key performance measures. Historically we have moved forward with three. Those are; the appellate case processing which measures the median number of days to filing the opening brief, the customer service satisfaction survey, the best practices for boards and commissions. We added then in this biennia a fourth KPM that measures the number of attorneys who obtain at least 12 hours of CLE in their specific area of public defense practice as well as a measure related to representation provided in our Parent Child Representation program that looks at the number of hours or rather the percentage of time that attorneys are spending with their clients. Caroline, actually, was able to enter the results of all of the surveys into the system and has an updated version for you today. You will see that we have made gains on KPM number one, the appellate case processing. We finally broke the 210 day mark which was our original KPM target and so, we are beginning the march toward our 180 day target that we adopted in our last full legislative cycle. In terms of the customer service survey, we made some gains over the last survey. We do this survey every other year and as you might recall we have had some relatively significant change on the business side of our operation. There has been a lot of new employees. As we move through some change we expected some dip and we did experience that in the last cycle and I think the uptick is happening in all but one category. Was that timeliness?
- 33:02 C. Meyer            That we did better; availability of information was our lowest.
- 33:07 N. Cozine            Okay, so we will keep working on that. We still had a relatively high rate of good or excellent in those categories. You probably recall that in our last meeting we reviewed the best practices for boards and commissions. We continue to do well on that KPM. The trial level representation, this is the first time that we have sent out a survey measuring the CLEs completed by our trial level providers. It was really a great exercise and the results were, I would say for having never done it before, surprisingly good. This is now a contract term in this new cycle, so the 2016 contract cycle includes it as a contract term but this survey actually measured 2015. So, I would expect that we would have some gains when we do this survey again next year. The Parent Child Representation Program, we are still striving to meet the target in that category. We have about 25% of the lawyers meeting with their clients one third of the time and Amy, I don't know if you want to comment at all.
- 34:26 A. Miller            Sure, I can comment. This key performance measure was designed at the same time this program was implemented and so you are kind of shooting in the dark in terms of what is a good measure of performance and what the target should be. Nonetheless, I think it is interesting although we are only at 25% of the lawyers reporting spending a third of their time with their clients, when you look at time spent with clients in the aggregate 27% of the time our lawyers reported to us is spent with clients. So, you have a bunch of lawyers who are at the 30%, and the 29% and then you have a few that are at 40%. So, what you are seeing is a result of that in terms of how we decided to capture that number. I also just wanted to point out that I meet with each team quarterly and we talk about data. One of the things we are working toward is this particular KPM and one of the things the lawyers always say to me is, 'but yes, but now we have social workers and they spend their time in client contact,' and they are required to spend 80% of their time doing that and they say, 'that helps me so much because I am finally able to spend time with legal research.' So, again, when you think about when we created this and not necessarily knowing how things would unfold, if you add in the time with social workers or the case managers sit in with clients, it is nearly half the time (inaudible 35:43). I think that is important to keep in mind because I think this is abysmal and I don't think it is an accurate reflection of what is happening, but it is an accurate number.
- 35:56 Chair Ramfjord      Do you feel the number is the wrong number to have due to the factors that you're suggesting, the target is set too high or you think the target is right and there should be minor changes to where people actually (inaudible 36:12) when they are starting to try to achieve the target is better than actual?

36:19 A. Miller I think it is too soon to know. I think a year from now after we have a whole other years' worth of data, I mean this is the first year of data from our program, so I think we will have a better sense, because lawyers are having to change practice as well. So, I think it is too soon to know. I think it is worth continuing to track and paying attention to when I do that on a monthly basis. I am just not sure that this exact number is providing the incentive that we are trying to achieve. Hopefully, I will be able to answer your question with more knowledge.

36:51 Chair Ramfjord To the extent it is possible and not too difficult when we next discuss this at that time to get some report on what the average level is or what the ranges are so we can see that, that would be...

37:07 A. Miller Absolutely, it is not too difficult. It's on my computer every month so it is not a problem at all.

37:11 N. Cozine Chair Ramfjord, it maybe actually worth looking at whether or not we want to rework the language of the KPM so that our target remains the same, but the way we are measuring it more accurately reflects the practice and I think that is kind of what you are suggesting. I think that is a conversation we can have and bring back in October.

37:39 Chair Ramfjord Other questions or comments?

37:41 T. Christ I had some questions from the first key performance measure about time lines for appeals. We track the time to the opening brief but there are many other steps in appeal. Do we track those as well, like do you get a reply brief in many cases?

38:03 N. Cozine From the state, is that what you mean?

38:06 T. Christ No, when we are appealing do we get to file a reply brief to the state? Do you get a reply brief in criminal cases?

38:12 N. Cozine You can and I am going to have Shannon answer that.

38:13 S. Storey Yeah, I can answer that. You can ask for leave to file a reply brief but we don't have one as a matter of right.

38:25 T. Christ So, do we track the time for filing the reply brief when we do, for example? What I am getting at is there are many steps in the appellate process, so filing the opening brief is just one of them. time to oral argument and time to decision...

38:38 S. Storey I think the opening brief is the one time component that is in our control and once we file the opening brief all the other dates flow from there. The courts have a back log of their own that we don't have control over when they set oral argument or when the state's brief is due.

38:56 T. Christ I noticed the other day they decided a case and I think it was almost three years from the argument to the decision.

39:02 N. Cozine Yep.

39:03 T. Christ Which is mind boggling to me but then I sort of wondered then is it almost becomes a not really important number, does it?

39:15 N. Cozine If I may, it is an important number, and Shannon can chime in because she has been in the office longer than I have, but you know it used to be well over 300 days. Our own backlogs were creating extensive delays for clients. So, having that measure in place so that we can continue to push ourselves is actually really critical even though we can control the other pieces, having our own metrics and our own standards becomes a driver of our practice and

helps us when we are looking at ways that we can improve and when we are looking at the budget. If we want to drive that number down, how can we do it? How many lawyers do we need to drive that number down?

- 40:08 T. Christ I guess that is sort of what I am getting at because you can hire a bunch of lawyers to drive that number down, but if you were tracking it at the back end and finding out that because of delays in time to argument or delays in decision making by the Court of Appeals, you are losing ground in the length of the appeal overall. It could become a kind of false victory. Yes, we are getting our briefs filed on time but the client is and hopefully not an innocent client sitting in jail for even longer periods of time because of all the things we cannot control. So, maybe we don't want to spend more resources on hiring more lawyers to drive down that. That is what I am getting at.
- 40:56 N. Cozine Commissioner Christ, I very much understand the rationale behind the question. I think the challenge there is that really we have an obligation to our clients to tackle those systemic issues so that people aren't waiting. Just two weeks ago one of our appellate lawyers got a concession from the state. The client was convicted of something that had a long prison sentence and based on the summary of facts as I heard them my suspicion is that he probably should have been convicted of a misdemeanor charge, not even a felony charge, and it was well over two years after his incarceration. That is a long time to wait. One thing that Pete Gartlan did was advocate for the court to have more resources so that they could reduce their backlog. So, rather than abandoning our own efforts to reduce the time that our cases are in the system in our little quadrant, I would say we have an obligation to work with the other pieces of the system to get everything moved through efficiently and quickly.
- 42:10 S. Storey I know that historically that we have done that and the court did adjust their NFE deadline as we have adjusted ours and there has been a lot of working with all of the partners, the judicial branch as well as the AG's office because it is sort of everybody has a moving backlog and I think all parties have an interest in reducing the time that these cases are taking.
- 42:31 Chair Ramfjord What is the AG's average time for filing the opposition brief?
- 42:35 S. Storey I don't know.
- 42:36 N. Cozine 210, the court set it at 210 for them and we have had conversation around that number moving down but because of some of these systemic issues and the backlog it creates for the court I think there is not yet an interest in doing that but perhaps as the newest appellate panel of judges becomes more part of the ongoing circuitry, that is something we could do.
- 43:01 Chair Ramfjord Just so I get this straight, the state's average time for filing a composition brief on a criminal appeal is 210 days?
- 43:07 S. Storey We have always had the same amount of time as the time has shifted over the years. I think when I started in the office, I think we were at 325 or 335, 365 days to file the opening brief and that is from settlement of the transcript. That is not from when the notice is filed. We are way out, particular there are some cases where the transcript can take six months or eight months to be filed. So, there are a lot of pieces of the pie in terms of getting the cases settled quicker.
- 43:37 T. Christ So, I guess my suggestion is if it is not too burdensome, to consider tracking the time for the other things besides the state's so you can decide how much resources we want to put in to advancing our briefing date to advocating that the other players in the system make some changes in what they are doing. It is against my interest as a civil appellate attorney, but you could front load the criminal cases for oral argument, but somehow keep our eye on the final goal is disposition of the criminal appeal and not just how we are getting on quicker.

- 44:29 S. Storey There is a benefit when there is an opening brief filed earlier, that means the attorney, if that is their goal, they are looking at the case earlier and then if it is a case where we can do a joint motion for remand or sort of bypass some of the other pieces and get a quicker resolution, that is going to happen quicker as well which is helpful too.
- 44:47 N. Cozine I will mention that Ernie Lannet, our Criminal Chief Defender, is actually in the Supreme Court today, so I can certainly add this to our agenda for our next meeting so he can talk a little bit more about his experience and the history of this dialogue and where he is at right now with his conversation with the court on this topic.
- 45:07 M. De Muniz I was just going to ask one question, not necessarily related, but on the referral just kind of going into the case I didn't realize it was a unicorn case where the state concedes. It is not like that happens every, probably once a year, maybe less than that.
- 45:23 N. Cozine This particular attorney has had two this year.
- 45:26 M. De Muniz I was just thinking, on the referral I just referred a case to you guys. It was a retained case but they were eligible for your services on appeal. On the referral it would be helpful if you guys added something like I know there is a brief notes where you can draw the attention of the attorney, but this is something that you guys should be like, 'this is a prison sentence and we should be looking at this immediately for a motion to stay,' or something like that. Maybe there is and I just list that when I look at the referral.
- 46:00 S. Storey You should and I thought there was, and again Ernie is not here and I am not so familiar with the criminal referral, but I thought there was an option of 'do you want contact with the appellate attorney immediately,' and that can be a choice and the appellate attorney would be responding as soon as the case assigned which typically happens within a week.
- 46:19 M. De Muniz It might be completely obvious, is there a reason to file a stay. I realize that again that is not something the courts entertain that often, but maybe in a case like this that comes along, just so it doesn't fall through the cracks.
- 46:33 N. Cozine Well, as I think about it, really the October meeting would be a perfect time to have Ernie do an overview of our appellate system and the intake process and what the competing priorities are around processing cases. If that would be helpful to you, I would be happy to add it.
- 46:51 T. Christ How about a later meeting, I can't make that one.
- 46:56 N. Cozine Alright, December it is.
- 47:00 Chair Ramfjord Other comments? Alright, I was glad to see the days finally come down. That was a long standing effort.
- 47:12 N. Cozine I know, so exciting.
- Agenda Item No. 7 OPDS Monthly Report**
- 47:14 Chair Ramfjord Thank you. Now, you are onward for the monthly report.
- 47:25 S. Storey Chair Ramfjord, members of the Commission, as Nancy informed you, Ernie is, we have six Supreme Court arguments in the criminal appellate section this week, so he is arguing one of those tomorrow and with his colleagues on the other ones today. So, he couldn't join us today. We don't have much news. We have hired a legal support staff supervisor that will be working with primarily with criminal, but some with the juvenile paralegals and she will be starting in October. We are happy with her. In my unit, the juvenile appellate section, has been spending a lot of time and energy getting ready to roll out the new database which we

think is going to help with a lot of the data collection that Nancy may have spoken about as well as just efficiencies in our appellate practice. That is about all I have.

- 48:12 T. Christ            There were, I think, four criminal cases decided today by the Supreme Court I think favorably to the defendant when it was arson.
- 48:24 S. Storey            One was Ernie's, Davidson, and then the other two I don't know the name of. But I know Laura Frikert won one. Hers was a Miranda one. Those were the two that were ours.
- 48:43 N. Cozine            Ernie's case is a really important cast. Do you want to talk about it?
- 48:48 S. Storey            Sure, it was a client who had some cognitive difficulties and throughout his life had committed public indecency four times and the last two times within an hour of each other and then was sentenced to life without the possibility of parole. The issue was whether that was a constitutional sentence. We prevailed, thankfully.
- 49:13 P. Levy              It is important to know that public indecency is a misdemeanor, until you have committed your third.
- 49:21 S. Storey            So, it was third and fourth under the span of an hour.
- 49:24 Chair Ramfjord      They counted those as separate instances because they were an hour apart?
- 49:27 S. Storey            Yes, and different people observing the contact.
- 49:31 N. Cozine            And, the way that the statute is drafted it is simply your third conviction. The third conviction triggers it, and as I recall the third conviction is the only one that has to be a felony. I think the two precursors can be misdemeanors and that is exactly what happened in this case. The court looked at the proportionality and found that it was disproportionate.
- 50:06 S. Storey            Thank you.
- 50:11 N. Cozine            Paul, did you have any updates?
- 50:12 P. Levy              No.
- 50:14 A. Miller            I would like to make two updates. The first one is, you heard all about social workers today. You know that we have social workers in Parent Child Representation Program. One of those individuals was no longer able to continue to fulfill obligations under the contract, so we opened a new RFP, which closes at the end of this month, in Columbia County. The great news is now DHS are the first people who are referring these RFPs out to retired caseworkers. So, I have talked to two retired caseworkers that want to work part time and we will see if they put in a proposal. That is exciting. We have funding for 1.5 worth of case managers there, so it is a point three. The other thing is I just wanted to announce so everybody is aware that the Parent Child Representation performance standards are underway so that things that are being considered are and some issues are parallelism for child representation and parent representation, also social media, pre-petition representation and clarification on the role of appellate attorneys. We are meeting on the first Mondays of the month at the Oregon State Bar. (Inaudible) has been chairing that group. She chaired it (inaudible) a couple of years ago. I am on it, as is Shannon Storey. I just wanted to make sure that anybody who was by chance reading the transcript would be (inaudible 51:31).
- 51:37 C. Meyer            I was just going to add that since our last meeting we recruited and hired a new data and document specialist. He is with us today. I promised I wouldn't put him on the spot but he is raising his hand in the back there. Jared Philbrook, we are excited to have him on board. This

is his first week so we invited him to the meeting to come figure what this is all about, who you all are and we are excited to have him on board.

52:06 N. Cozine

A few final concluding updates; the Multnomah County Courthouse, the ground breaking for the new building is October fourth. So, we are moving forward. The new courthouse still includes a public defense resource center, we really continue to be very excited about that plan. Another development in Multnomah County, the court on September 30<sup>th</sup> held what they call a listening session. It was the first one they have ever done and they invited members of the community to come and talk about their experiences in the court system. They held it up in North Portland. I got very immediate feedback. I was not there. I got pretty immediate feedback following that because in the next day there had been commentary offered by the community that they observed that public defenders in Multnomah County seem to want to do a very good job but seem to be burdened with very heavy caseloads and community members had observed in court were carrying large stacks of client files and were simply not able to spend the time with their clients that they needed to. It has been suggested to me that there will be follow up listening sessions and that I need to attend. When I find out when they are scheduled, I will let you know as well. But, it sounds like there were some really important discussions. I believe that at tomorrow's CLE, Jeff Howes, who is the first assistant to Multnomah County District Attorney Rod Underhill, who was at the listening session, will be reporting to the legislature to some extent about what happened at that meeting. Following then, with information about the CLE. The CLE materials are slightly different than what you received today. Some overlap but you are welcome to look at these, they are online. I didn't print it for you because you already have quite a bit of reading in your materials today, but they are there if you want to go look at them and I think you will find them quite interesting. We are incredibly excited and grateful to all of our co-sponsors and we would love to have you there if you could come. As you know, it is September legislative days. We have been having meetings with legislators. Those have been going well. I think that we plan to return in December with our renewed request for funding to level out the compensation at the Office of Public Defense Services so that we have salaries that are commensurate with other state agencies. Also happening in the legislature this week is the judiciary committee meeting in the afternoon after our CLE. That meeting includes on its agenda a discussion of the governor's task force on representation which include parent and child representation. I will be presenting to the judiciary committee. The committee starts at two. I think we will be scheduled sometime around 3:30. I will be talking about the endorsement, the governor's task force endorsement of the PCR model and our request of an expansion of that model. Amy just completed her survey of system stakeholders and received more positive feedback than after the first year. So we are in year two of our first two pilot counties and I think she will have an opportunity to report on that later but it is very encouraging. Finally, we have in October the budget narrative that will be ready for your review and approval with any changes you would like to make. But, it will include all the policy option packages and the narrative so that we will be ready to proceed with the 2017 legislative session. I think those are the updates. Any questions?

56:11 Chair Ramfjord

thank you very much. Anything else for the good of the order?

**MOTION:** Commissioner Potter moved to adjourn the meeting; Commissioner Christ seconded the motion; hearing no objection the motion carried: **VOTE: 4-0**

**Meeting Adjourned**

# Attachment 2

# BUDGET NARRATIVE

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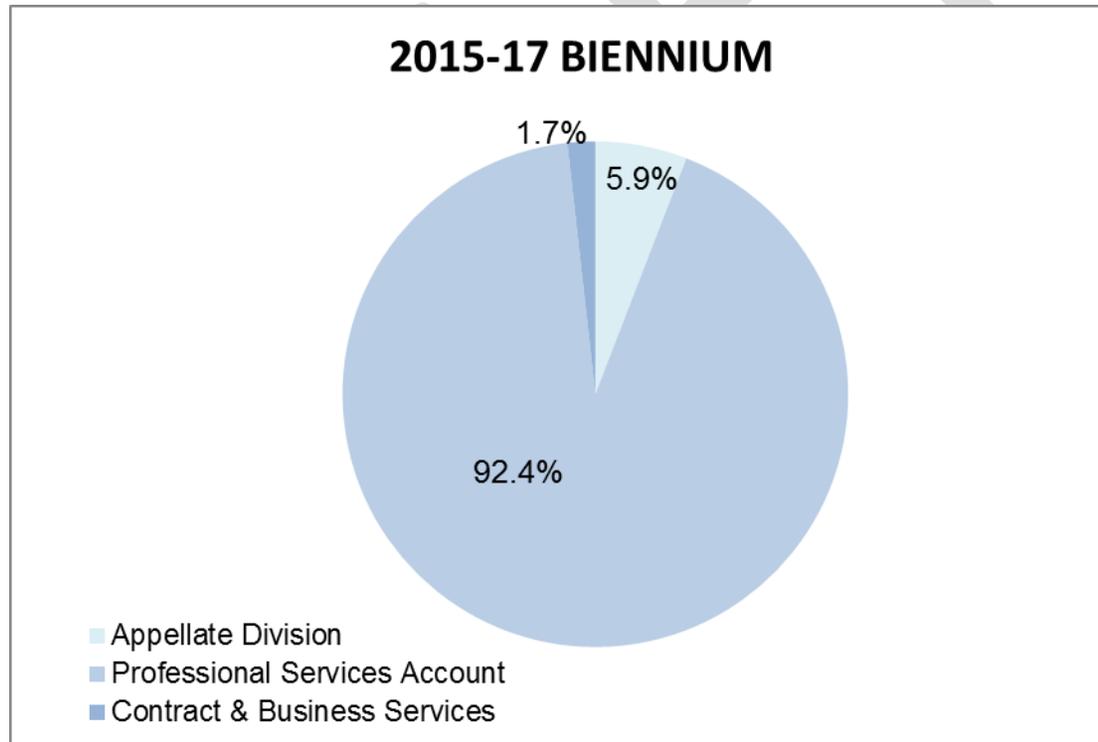
## Public Defense Services Commission

### Agency Summary

The Public Defense Services Commission (PDSC) is the judicial branch agency responsible for establishing and maintaining 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.

### Budget Summary Graphics

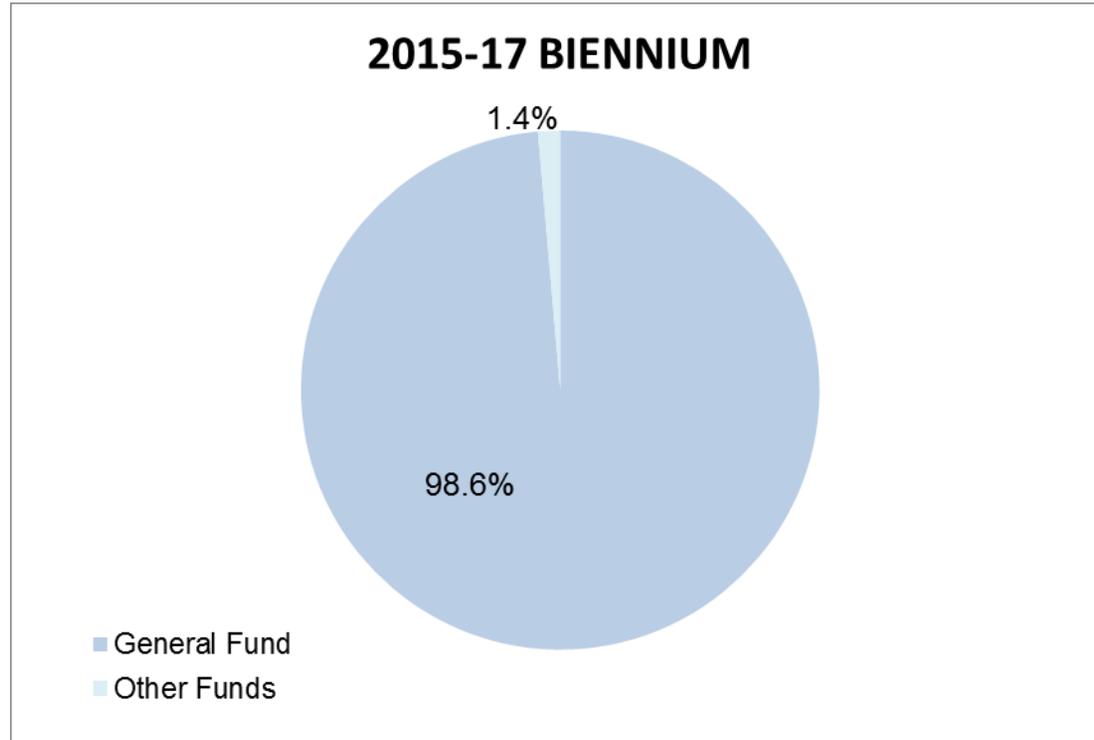
#### How the budget is allocated among programs



# BUDGET NARRATIVE

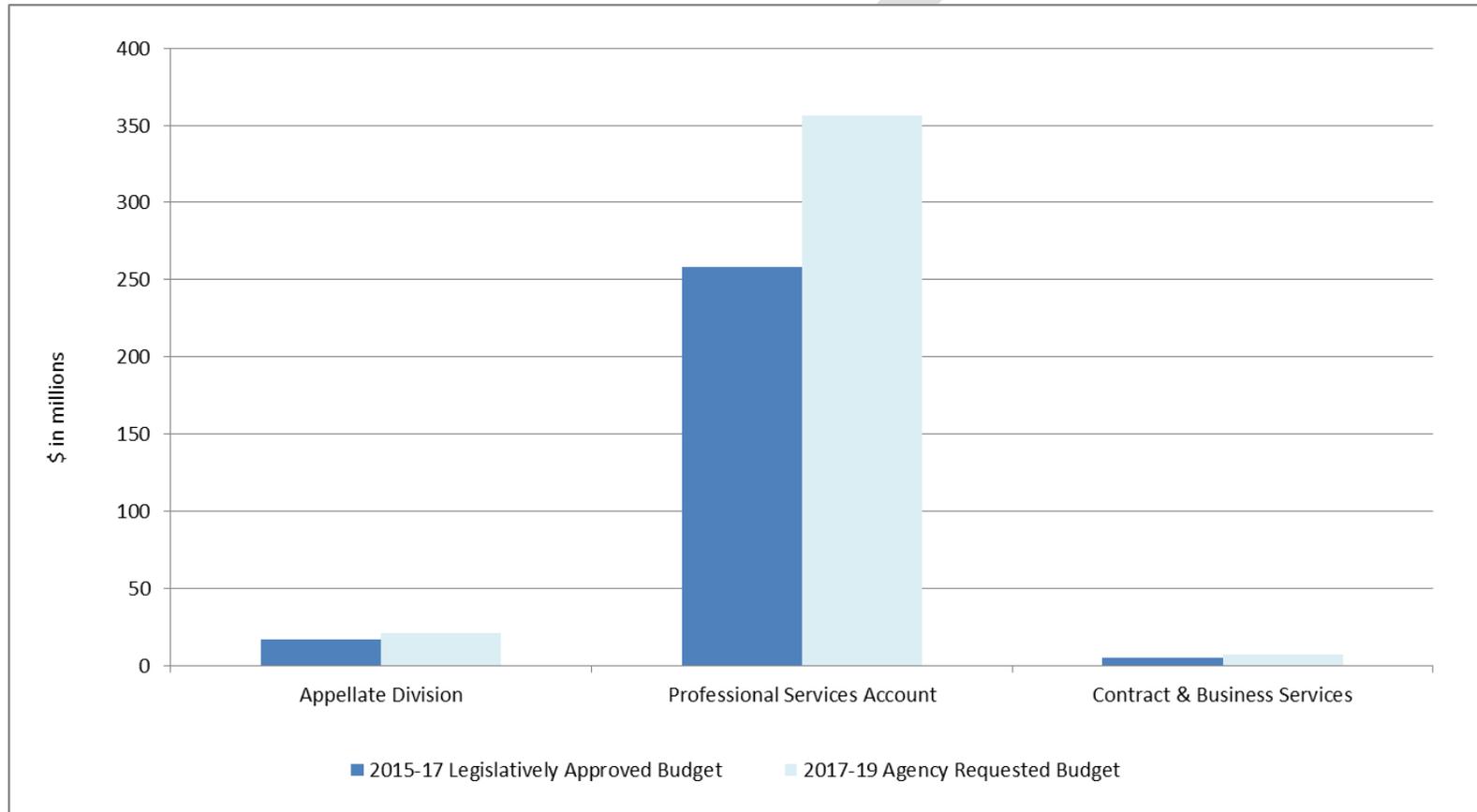
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## Distribution by fund types



# BUDGET NARRATIVE

## Comparison of 2015-17 Legislatively Approved Budget with the 2017-19 Agency Request Budget



# BUDGET NARRATIVE

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## **Mission Statement and Statutory Authority**

The PDSC's mission is to "ensure that eligible individuals have timely access to legal services, consistent with Oregon and national standards of justice." ORS 151.216 further directs PDSC to administer "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."

**Oregon Revised Statutes:** PDSC's authority is derived from ORS 151.211 et seq.

## **Long-Term Plan**

A well-functioning statewide public defense system is an essential part of Oregon's public safety and child welfare system. The long-term plan of the PDSC is the maintenance of a sustainable, effective, and cost-efficient public defense system. A key to securing such a system is funding that enables the PDSC to attract and retain qualified attorneys who are supported with appropriate training and other resources, with caseloads that permit competent and appropriate representation of each and every client.

While a defense attorney's first duty is to represent individual clients with skill, loyalty, and zeal, the fulfillment of those obligations generally benefits the entire system. No public interest is served in allowing the innocent to be convicted or in allowing children to be removed from their parents without just cause, or in committing persons to mental institutions who do not require such placements. Judges and prosecutors rely on the defense to protect their clients' interests and the integrity of the system. When the defense does not meet its obligations, the court, prosecution, and community cannot be confident that justice is done.

In communities around the state, judges, prosecutors, and defense attorneys work together to find efficient methods of handling large volumes of cases while preserving the rights of all involved. There are early resolution programs in many communities which help identify cases that can be resolved without trial and moved out of the system so that resources can be concentrated on the cases that require litigation. Drug courts, family courts, and mental health courts rely on judges, prosecutors, and defenders to identify, engage, and support appropriate clients for participation in and successful completion of these treatment focused systems. All parties participate in moving ceremonies to celebrate successful completions. When clients are convicted of criminal offenses, defense attorneys aid the system by helping to identify appropriate evidence-based programs and sanctions that can assist in their clients' rehabilitation. Attorneys for parents and children have been able to identify family members or others who can help address the family's needs without requiring that the family be separated. Some of these attorneys also identify treatment resources previously unknown to the child welfare system.

## BUDGET NARRATIVE

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In order for the public defense system to perform its statutory and constitutional function, it must be adequately funded. Quality representation requires that there be qualified, experienced, and dedicated defenders. In order to sustain Oregon's unique public defense system, comprised entirely of private providers at the trial level, defense providers and their employees must be fairly and adequately compensated. An efficient system also ensures that lawyers who provide quality representation continue to provide services as an essential component of the public defense system. The consequences of inadequate funding were dramatically illustrated in 2003, when public defense funding was reduced by nearly 20% in response to a statewide budget shortfall. Subsequent layoffs, furloughs, and the closure of public defense offices, resulted in the loss of skilled and talented defense attorneys and staff. At the same time, without these attorneys, courts were no longer able to process entire categories of criminal cases and many criminal cases were either not charged, or were dismissed. Police and prosecutors were not able to hold persons accountable for criminal conduct. Public safety leaders acknowledged that adequate public defense funding was essential to healthy and livable Oregon communities.

Although the crisis of 2003 has not recurred, the system continues to face challenges to its long-term stability. The PDSC's budget and strategic plan target the three main challenges faced by the agency: 1) the need to attract and retain quality public defense providers; 2) the need to improve the quality of representation, especially in juvenile dependency cases; and 3) the need to enable contractors to reduce caseloads while maintaining adequate revenue to support continued operation.

All three of these challenges are interrelated. Among the agency's long-term providers, some of the most senior attorneys are reaching retirement age. Due to increases in the cost of living over the past two decades and the lack of a corresponding increase in the public defense budget, these providers do not have sufficient savings to retire when they should. Additionally, providers experience increasing difficulty in recruiting and retaining new attorneys. High caseloads also contribute to the difficulty of attracting new attorneys. The major reason that public defense caseloads in Oregon exceed national standards is that public defense contractors accept ever-increasing caseloads in order to meet rising costs. Quality of representation as well as morale and long-term job satisfaction have been negatively affected by excessive caseloads.

The agency's 2017-19 budget policy option packages address these challenges using several strategies, including:

- funding to expand the Parent Child Representation Program, which ensures reasonable caseloads, improved compensation, and multidisciplinary representation for parents and children in Oregon's Child Welfare system;
- rate increases to allow providers to improve compensation and reduce caseloads;
- funding for case management system user licenses to ensure that contract providers are able to effectively manage cases in an electronic environment, reduce paper costs, and efficiently collect and report to OPDS critical data in a standardized format;

## BUDGET NARRATIVE

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- compensation increases for staff at the Office of Public Defense Services who are currently earning approximately 2-34 percent less than comparable employees in other state agencies; and
- funding to enhance the agency's ability to monitor, support, and ensure quality representation across the state.

Taking these steps will reduce the chance that employees and providers will leave public defense practice and improve the quality of representation in all case types.

### **2017-19 Short-Term Plan**

Agency Programs – The Office of Public Defense Services is divided into two primary work areas: The Appellate Division (AD) and Contract and Business Services (CBS):

- The Appellate Division (AD), lead by the Chief Defender for the Criminal Appellate Section and the Chief Defender for the Juvenile Appellate Section, provides direct legal services in the Oregon Supreme Court and Court of Appeals on behalf of financially eligible clients appealing trial court judgments of conviction in criminal cases, and trial court judgments in juvenile dependency and termination of parental rights cases. Through best practices in performance management, results-based attorney work plans and regular performance evaluations of every employee, AD plans to continue making progress in increasing office efficiencies and, as a result of such efficiencies, continue the elimination of historic criminal case backlogs in the state's appellate courts and achieve established timelines for briefing in these cases.
- Contract and Business Services is comprised of several work units:
  - Contract Services, lead by the Contracts Manager, negotiates and administers approximately 98 public defense contracts with individual lawyers and groups of lawyers, and with nonprofit law firms, for the delivery of legal services across the state in criminal, juvenile, civil commitment, and post-conviction relief cases, and an additional 19 contracts for non-attorney services, such as mitigation services. This unit also reviews requests for expenses for public defense cases, and plans to continue developing and refining policies and practices that ensure the cost-effective administration of public defense contracts and payment of necessary and reasonable fees and expenses.
  - Financial Services, administered by the Budget and Finance Manager, processes expenses for public defense cases across the state, and will continue to ensure accurate and timely processing of all bills.
  - Executive Services includes general counsel's office, human resources, information technology, and operations support.

## BUDGET NARRATIVE

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- The PDSC's Executive Director, General Counsel and Deputy General Counsel, in collaboration with the Chief Defenders and Contracts Manager, will continue to implement quality assurance programs that evaluate the operations and performance of PDSC's major contractors throughout the state and their adoption of best practices in public defense and law office management:
  - (1) PDSC has reviewed the public defense delivery systems in 23 of Oregon's 27 judicial districts and will continue to hold meetings and conduct investigations throughout Oregon for the purposes of developing a "Service Delivery Plan" for every county or judicial district in the state. Such reviews are conducted with the cooperation of the public defense contractors in the area, the Circuit Court judges, the District Attorneys, and many other representatives of the local criminal and juvenile justice systems. PDSC prepares written reports that include final service delivery plans for each district; these reports are on its website for review by any interested person or group. The service delivery plans establish the most cost-effective local organizations, structures, and policies for the delivery of public defense services, taking into account the justice system practices and resources in each locality.
  - (2) The agency's General Counsel performs quality assurance assessments of providers in each judicial district. This unique program involves the volunteer effort of dozens of public and private defense attorneys and other professionals who devote two and a half days to on-site interviews, in addition to other study and analysis of the quality of representation being provided by a particular contractor or contractors in the county or district. To date 50 of these assessments have been performed. Detailed reports are provided to the subject contractors identifying areas of special achievement as well as areas in which improvement is needed and recommendations for actions to be taken to address any deficits. PDSC is not aware of any other state public defense system that is able to achieve thorough assessments of its providers with the use of an all volunteer group of lawyers and other professionals. The contribution made by these volunteers is an indication of their commitment to supporting high-quality representation for public defense clients.
  - (3) PDSC co-sponsors, with the Oregon Criminal Defense Lawyers Association (OCDLA) (a membership organization of defense providers) two conferences each year. The first is a two-day training for public defense managers which includes training on best practices for law office management, quality improvement initiatives, updates on technical developments that can affect productivity, and many other issues of interest to contractors. OCDLA is the organization that provides the great majority of continuing legal education programs for lawyers engaged in the practice of criminal law. PDSC also co-sponsors, along with OCDLA, the Juvenile Court Improvement Program, Department of Justice, and other juvenile law stakeholders, a two-day Juvenile Law Training Academy for all participants in the juvenile law system.

## BUDGET NARRATIVE

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(4) The agency's Parent Child Representation Program (PCRP), implemented in 2014 as a pilot project in Yamhill and Linn counties, specifically targets improved representation in juvenile cases. Modeled after a very successful Washington state program that reduced time children spent in foster care and reduced the time required to achieve permanency, the PCRP ensures that lawyers have reduced caseloads and the assistance of social workers, adhere to best practices, and receive additional training. The agency self-funded an expansion of the program into Columbia County in January 2016.

Environmental Factors – The public defense services that PDSC provides are mandated by state and federal constitutions and statutes.

The factors that drive the demand for public defense services are beyond the control of PDSC. These factors include demographic factors such as population growth and growth in the at-risk population for juvenile and criminal offenses, the state's crime rate, policy decisions regarding criminal law made by the Legislative Assembly and by the voters through ballot initiatives, and the law enforcement policies and practices of state and local police agencies and the 36 independently elected district attorneys.

PDSC is committed to ensuring that taxpayer funds devoted to public defense services are spent wisely by carrying out its obligation to provide quality legal services cost-efficiently. PDSC is accomplishing that through results-based agency operations and management and a commitment to performance measurement and evaluation, as well as through collaborations with public defense contractors to implement best practices in law office management and quality assurance throughout the state.

Public defender compensation is well below the compensation received for legal services not only by attorneys in other areas of practice, but also by their counterparts in public prosecutors' offices. Qualified lawyers are increasingly unavailable to provide public defense services. As a result, local public safety systems throughout the state suffer with caseloads that are too high, and systems that are at risk because of the legal impossibility of prosecuting criminal and juvenile cases without public defense attorneys, as occurred statewide in the 2001-2003 biennium.

Agency Initiatives – This budget request contains six policy option packages that are designed to ensure the availability of qualified public defense attorneys throughout Oregon and the continuing operation of the state's public safety system.

- Package No. 100 provides funding to improve the quality of trial level representation in juvenile court cases. This policy package seeks to expand the Parent Child Representation Program (PCRP) which began in Linn and Yamhill counties in August 2014 and expanded to Columbia County in 2016.

## BUDGET NARRATIVE

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- Package No. 101 provides increased case rates to allow contract providers to reduce caseloads where they exceed Oregon and national standards, and increase compensation to within 5 percent of compensation received by deputy district attorneys in an effort to comply with PDSC's statutory mandate to adopt policies that provide for a "fair compensation" system. ORS 151.216 (1)(f)(C). This package will also improve providers' ability to attract and retain qualified lawyers.
- Package No. 102 provides funding for user licenses of a public defender case management system. This package would allow the state to provide a case management system to contracted trial attorneys for the effective management of their public defense cases. The system would allow contractors to gather and send data to manage caseloads, payments, monitor quality, and better understand the profile of those receiving public defense representation across the state.
- Package No. 103 provides funding required to carry out the statutory directive to adopt a compensation plan for the Office of Public Defense Services that is commensurate with other state agencies. ORS 151.216(1)(e). Lawyers and staff are paid consistently below comparable employees at other state agencies, which negatively impacts staff morale and employee retention efforts. Given the length of time required to train lawyers and staff, rapid turnover is an unnecessary drain on state resources.
- Package No. 104 will allow PDSC to develop data-driven continuous quality improvement initiatives for evaluation and improvement of legal representation in all cases.
- Package No. 105 increases funding in the Professional Services Account to restore an ongoing budget shortfall from the account that covers expenses of attorney and non-attorney providers, as well as other case-related expenses, in contracted and hourly public defense cases.

### **Criteria for 2017-19 Budget Development**

To continue to provide constitutionally and statutorily mandated legal representation to financially eligible persons while improving the quality of representation and maintaining the long-term viability of the program.

# BUDGET NARRATIVE

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## **Reduction Options**

### Appellate Division

A 10% reduction (\$1.8 million GF) of the agency's current service level for the Appellate Division would require the elimination of 5.5 attorney positions and 1.5 support staff positions. The existing backlog of appellate cases would increase and the average length of time an appeal is pending would increase. The Court of Appeals may order the dismissal of pending cases that exceed 350 days from the date the record settles to the filing of the opening brief.

### Professional Services Account

A 10% reduction (\$27.8 million GF; \$354,485 OF) of the Professional Services Account represents the level of funding required for two and a half months of public defense services. Unless the 2017 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2017-19 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.

### Contract and Business Services

A 10% reduction (\$470,277 GF; \$56,511 OF) of this section's current service level will require the elimination of approximately 3 positions (contract analysts and accounting staff), which will result in delays in paying providers and a substantially reduced ability for staff to manage contracts and caseloads, and audit contractor caseload reports, fee statements, and expense requests. Delayed payments will impact over 1,800 individual service providers and businesses in Oregon. Failure to adequately review payments will likely result in the inappropriate expenditure of funds.

## BUDGET NARRATIVE

### 10% REDUCTION OPTIONS (ORS 291.216)

ACTIVITY OR PROGRAM	DESCRIBE REDUCTION	AMOUNT AND FUND TYPE	RANK AND JUSTIFICATION
(WHICH PROGRAM OR ACTIVITY WILL NOT BE UNDERTAKEN)	(DESCRIBE THE EFFECTS OF THIS REDUCTION. INCLUDE POSITIONS AND FTE IN 2017-19 AND 2019-21)	(\$GF, LF, OF, FF. IDENTIFY REVENUE SOURCE FOR OF, FF)	(RANK THE ACTIVITIES OR PROGRAMS NOT UNDERTAKEN IN ORDER OF LOWEST COST FOR BENEFIT OBTAINED)
1. Appellate representation will be further delayed.	REDUCTION OF 5.5 FTE ATTORNEY POSITIONS AND 1.5 FTE SUPPORT STAFF POSITIONS WILL AT FIRST EXTEND THE CURRENT DELAY IN FILING AN OPENING BRIEF. OVER TIME AS THE BACKLOG OF CASES GROWS, ALL CASES WILL BE DELAYED MORE THAN 350 DAYS AT WHICH POINT FEDERAL INTERVENTION IS LIKELY.	\$1,854,489 GENERAL FUND	THE AGENCY CANNOT RANK THE RELATIVE IMPORTANCE OF CONSTITUTIONALLY MANDATED SERVICES.
2. Trial-level representation will not be provided during the final 2.5 months of the biennium.	IN THE ABSENCE OF FUNDING FOR LEGAL REPRESENTATION, PROSECUTIONS CANNOT PROCEED.	\$27,811,879 GENERAL FUND \$354,485 OTHER FUNDS	THE AGENCY CANNOT RANK THE RELATIVE IMPORTANCE OF CONSTITUTIONALLY MANDATED SERVICES.
3. Auditing of fee statements and caseload reports.	REDUCTION OF 3 FTE WOULD REDUCE AGENCY'S ABILITY TO AUDIT FEE STATEMENTS AND TO VERIFY CONTRACT CREDITS CLAIMED.	\$470,277 GENERAL FUND \$56,511 OTHER FUNDS	IN THE ABSENCE OF AUDITING, IT IS LIKELY THAT THE EXPENDITURES FROM THE PROFESSIONAL SERVICES ACCOUNT WOULD INCREASE.

## BUDGET NARRATIVE

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### Revenue Discussion

ORS 151.487, et seq., provides the authority for judges to order individuals who apply for court-appointed counsel to pay the administrative costs of determining the eligibility of the person and the anticipated cost of public defense services prior to the conclusion of the case. Judicial Department Verification Specialist (VS) staff assist the courts in determining whether a person will be ordered to pay a \$20 application fee and a “contribution amount” toward the anticipated public defense cost of the case. The program is referred to as the Application Contribution Program (ACP).

ACP revenue is deposited in the Public Defense Services Account, pursuant to ORS 151.225(3). The same ORS authorizes funds in the account to be used to reimburse the actual costs and expenses, including personnel expenses, incurred in the administration and support of the public defense system. Currently, ACP revenue funds 21.90 FTE VS positions in the courts and 2.47 FTE positions within PDSC. The VS positions are distributed throughout the state with partial FTE in a number of counties.

Anticipated revenues for the 2017-19 biennium are \$3,910,748. Of that amount, \$3,416,569 will be transferred to the Judicial Department to fund the VS positions and \$564,849 will be expended by PDSC. The 2017-19 revenue will not provide sufficient resources to fully fund Judicial Department and PDSC expenditures. The additional revenue needed for PDSC expenditures will need to come from the 2017-19 other funds beginning balance.

# BUDGET NARRATIVE

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## Appellate Division

### Program Description

The agency's Appellate Division is the defense counterpart to the Appellate Division of the Oregon Department of Justice. The centralization of court-appointed direct appeals in one office establishes an institutional defense entity in the appellate court system, promotes the consistent and rational development of appellate law, and facilitates the identification and implementation of system-wide efficiencies.

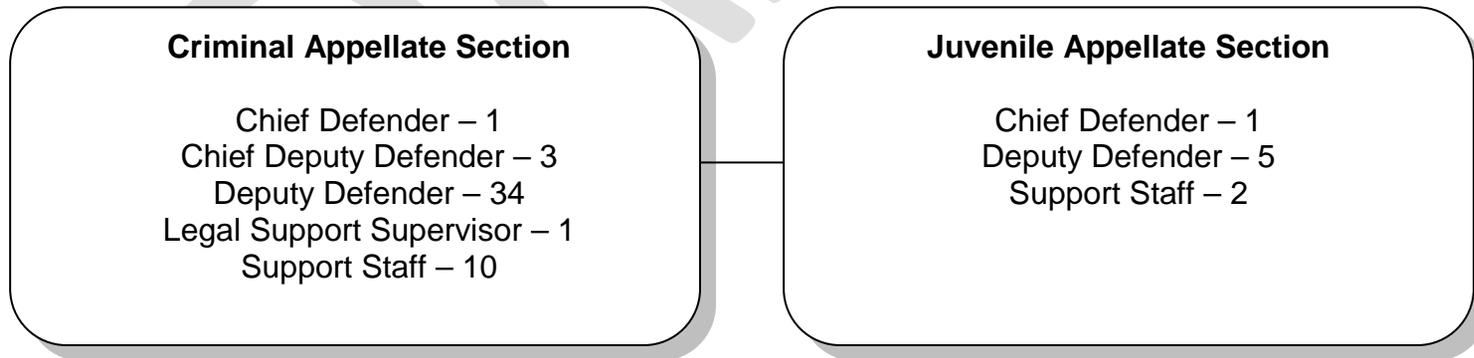
The Appellate Division has two sections: the Criminal Section and the Juvenile Section.

The Criminal Section provides statutorily and constitutionally mandated appellate representation to financially eligible individuals in a wide variety of case types, including: misdemeanor and felony appeals (including capital cases); contempt cases; DNA-related appeals; appeals by crime victims; mandamus actions; and appeals of decisions by the Board of Parole and Post-Prison Supervision.

The Juvenile Section provides appellate representation to parents in juvenile dependency and termination of parental rights cases.

Appellate Division attorneys appear regularly in the Oregon Court of Appeals and the Oregon Supreme Court. The division has appeared and argued in the United States Supreme Court on one occasion in the past ten years.

### Organizational Chart



# BUDGET NARRATIVE

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## Summary Description of Attorney Positions

Chief Defenders: The Chief Defender for each section is responsible for managing the section. The responsibilities include recruiting and training new attorney employees and directly supervising the section's litigation in the Oregon Supreme Court and the United States Supreme Court. The Chief Defender of the Criminal Section has a minimal caseload that emphasizes practice in the Oregon Supreme Court. The Chief Defenders also oversee the division's litigation in the Oregon Court of Appeals

Chief Deputy Defenders: Three Chief Deputies support the Chief Defender of the Criminal Section in managing the section. Each Chief Deputy carries a reduced caseload and is responsible for a discrete management area: office development, operations, and outreach.

Deputy Defenders: The remaining Deputy Defender classifications are Senior Deputy, Deputy Defender II, and Deputy Defender I.

A Senior Deputy has a caseload of complex cases and serves as the leader of a team of five to seven attorneys in the Criminal Section who meet weekly. The senior leads team discussions, serves as a resource for attorneys outside the team meeting setting, and edits the team members' meritorious Court of Appeals briefs.

A Deputy Public Defender II has several years' experience. In the Criminal Section, a Deputy Defender II provides representation in moderate to complex felony and parole cases. In the Juvenile Section, a Deputy Defender II provides representation in moderate to complex juvenile dependency and termination of parental rights cases.

The Deputy Public Defender I is the entry-level attorney position. In the Criminal Section, a Deputy Defender I provides representation in misdemeanor, simple felony, and parole cases. In the Juvenile Section, a Deputy Defender I provides representation in simple and moderately complex juvenile dependency and termination of parental rights cases.

# BUDGET NARRATIVE

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## Case Assignments and Production Levels

### Criminal Section

For case weighting purposes, the section identifies two primary case categories: (1) the *trial*-type case and (2) the *plea*-type case.

A trial-type case includes jury trials, trials to the court, conditional pleas, parole appeals, appeals involving requests for DNA testing, appeals initiated by the Attorney General, mandamus actions, and appeals initiated by crime victims. The transcript length for a trial-type case ranges from 50 pages to several thousand pages.

A plea-type case refers to guilty pleas, no-contest pleas, probation violation hearings, and re-sentencing proceedings. Transcript length typically ranges from 20 to 80 pages for plea-type cases.

In recent history, the criminal section has received between 3,100 to 4,000 case referrals per biennium. For example, the criminal section received 4,020 referrals during the 2009-11 biennium, 3,302 referrals during the 2011-13 biennium, 3,142 referrals during the 2013-15 biennium, and 1,550 case referrals during the first year of the 2015-17 biennium, which projects to 3,100 cases for the current biennium. Unlike past years when up to 289 overflow cases were assigned to outside providers annually, since 2012 the criminal section has handled nearly all criminal case referrals, excluding conflict cases.

Appellate Division attorneys are assigned a significant annual workload. According to the Institute for Law and Justice, the annual appellate public defender workload ranges from 25 to 50 cases per attorney. Georgia and Indiana set the maximum appellate caseload at 25 cases per attorney; Nebraska sets the maximum appellate caseload at 40 cases per year; and Florida and Louisiana set the maximum appellate caseload at 50 cases per attorney. *Compendium of Standards for Indigent Defense Systems* (2000); *Keeping Defender Caseloads Manageable*, Spangenberg Group, 2001. The average annual caseload for a non-management Office of Public Defense Services criminal section attorney is currently 47 case assignments per year.

## BUDGET NARRATIVE

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### Juvenile Section

At the end of the 2007 session, the Legislature funded the creation of a four-attorney Juvenile Appellate Section in the Appellate Division. The unit is intended to centralize and enhance appellate representation for parents in juvenile dependency and termination of parental rights cases, act as a resource to the trial bar, and promote more consistent state-wide application of the juvenile code through published appellate opinions.

To minimize the disruption to children's lives, dependency and termination of parental rights cases have an expedited appeal schedule. ORAP 10.15. Consequently, the Juvenile Appellate Section can never have a backlog.

The section represents parents in the majority of the dependency cases on appeal. It retains the cases it can resolve within the established timelines. Cases that cannot be kept in-house due to conflict or workload issues are referred to a panel of appellate attorneys approved by the agency.

In 2012 and again in 2016, the agency reassigned an attorney position from the criminal section to the juvenile section to address the significant increase in juvenile case referrals. Case referrals have risen over the past several years: 151 case referrals during the fiscal year ending June 30, 2010; 234 referrals during the fiscal year ending 2011; 304 referrals during the fiscal year ending 2012; 263 cases during the fiscal year ending 2013; 313 cases during the fiscal year ending 2014; 330 during the fiscal year ending 2015, and 379 during the fiscal year ending in 2016.

## BUDGET NARRATIVE

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### **Appellate Division**

#### **010 Non-PICS Personal Services / Vacancy Factor**

##### **Package Description**

This package includes standard adjustments to PERS Pension Bond Contribution and standard inflation for non-PICS personal services accounts. The components of this package increase general fund expenditures by \$71,025.

#### **031 Standard Inflation**

##### **Package Description**

This package includes standard inflation adjustments on services and supplies in the amount of \$109,436 in general fund. State government services charges increased by \$244,018, making the total amount of the package an increase of \$353,454 in general fund.

#### **032 Above Standard Inflation**

##### **Package Description**

This package includes inflation above the standard inflation adjustment for services and supplies in the amount of \$36,000 in general fund for IT Professional Services.

# BUDGET NARRATIVE

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## **Appellate Division**

### **103 Employee Compensation ORS 151.216(1)(e)**

#### **Package Description**

##### **Purpose:**

This package will enable the PDSC to provide quality legal representation through recruitment and retention of attorneys and staff capable of providing and securing quality and cost-efficient appellate representation by providing funding needed to establish salary schedules comparable to salary schedules at the Department of Justice and other state agencies. For over ten years, the PDSC has been attempting to accomplish its statutory mandate to adopt a “compensation plan, classification system and personnel plan for the Office of Public Defense Services that are commensurate with other state agencies.” ORS 151.216(1)(e). As of January 1, 2017, all but four employee classifications will be 2 to 32 percent below their counterparts in other state agencies. This difference negatively impacts staff morale and the agency’s recruitment and retention efforts.

##### **How Achieved:**

In developing the requested salary structure, the agency used the Department of Justice’s Appellate Division as the comparable agency for the majority of the positions, as Department of Justice attorneys appear on the exact same cases from opposing sides. Contract analyst positions were compared with employees in the Judicial Department because comparable positions weren’t part of the Department of Justice structure.

Historically, the agency hires recent law school graduates into the entry-level Deputy I attorney position and devotes significant management-level resources to training during an attorney’s first six months of employment. The training investment shows returns for the agency after twelve months, when the typical entry-level attorney becomes increasingly self-sufficient and productive. After two to three years, the Deputy I attorney has demonstrated sufficient competency to warrant consideration for the Deputy II position. After two to three years in the Deputy II position (or five years with the agency), the attorney is an experienced, competent, and valued contributor to the agency. Unfortunately, this time period coincides with the greatest salary disparity between the agency and the Attorney General’s office, the attorney is experienced and attractive to other firms, and the time loss and fatigue associated with a two to three-hour daily commute between Salem and Portland or Eugene leads many attorneys to consider and seek employment elsewhere. Since 2003, twenty nine attorneys have left the agency, many at the four-to six-year mark. Interestingly, during the brief

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window of time when OPDS non-management attorneys were closer to parity with attorneys at the Department of Justice, there was not a single attorney departure. This allowed the agency to make headway on its longstanding KPM, reducing the median time to filing of the opening brief to 209 days - the lowest it has ever been. With a legislatively approved target of 180 days, the agency is concerned that it will not make further progress unless it is able to retain attorneys past the four to five-year mark.

The policy package helps address the compensation inequity between state employees on opposite sides of the same cases. It would mitigate the loss of talent that occurs around the five-year employment mark, and enables management to direct training resources into case production. Providing parity for lawyer staff while ignoring the disparity that exists in other classifications, particularly those employees in the lowest salary ranges, would decrease employee morale and productivity. Therefore, the policy option package would enable the agency to recruit and retain employees who are committed to and capable of achieving the agency's goal of providing quality, cost efficient legal representation.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This portion of the package would require an additional \$1,716,089 from general fund for the Appellate Division Appropriation.

	General Fund	Other Funds
Appellate Division	\$1,716,089	
Contract & Business Services	\$273,901	\$9,268
POP #103 TOTAL	\$1,989,990	\$9,268

*NOTE: Shaded sections indicate this portion of the total policy option package costs and FTE.*

## BUDGET NARRATIVE

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### Appellate Division

#### 104 Parent Child Representation Program (PCRP) Staffing and Quality Assurance

##### Package Description

##### Purpose:

This package is comprised of three separate staffing components: (1) a Research Analyst to assist with data collection and analysis of attorney performance in both the PCRP program and other cases across the state, (2) a Deputy General Counsel position to assist with the current backlog of quality assurance work associated with representation in criminal cases, and (3) an additional Deputy Defender 2 position to provide appellate representation in juvenile delinquency cases.

##### How Achieved:

The additional Deputy Defender 2 position requested for the Appellate Division would be dedicated to representation in juvenile delinquency cases. This is a case type not historically or routinely practiced within the Appellate Division. In recent years, the agency has become aware of increasing concerns related to the quality of representation in juvenile delinquency cases. Additionally, the number of delinquency case referrals has been increasing, and fewer panel and contract attorneys are available to handle these cases. Finally, there are increasing concerns about cross-over cases – individuals who have both a dependency case and a delinquency case. The agency's expertise in dependency and criminal appeals puts the agency in an excellent position to serve as a resource for those who face delinquency charges. With all of these developments, the agency is requesting an internal position for the purpose of representing individual clients while also addressing systemic issues that can be briefed and presented to the court from a centralized location. This is a strategy that worked very well in dependency cases. As noted above, the agency received funding to start its Juvenile Appellate Section in 2007; this is a natural next step that will bring increased consistency in Oregon's appellate system.

**Staffing Impact:** This portion of this package adds one Deputy Defender 2, and a part-time Paralegal for a total of 1.5 FTE.

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**Revenue Source:** This portion of this package would require an additional \$328,196 from general fund for the Appellate Division Appropriation.

	Agencywide TOTAL	Appellate Division	Contract & Business Svcs	FTE
PCR Staffing	\$89,794		\$89,794	0.5 FTE
Quality Assurance	\$335,449		\$335,449	1.5 FTE
Juvenile Delinquency Appeals	\$328,196	\$328,196		1.5 FTE
<b>POP #104 TOTAL</b>	<b>\$753,439</b>	<b>\$328,196</b>	<b>\$425,243</b>	<b>3.5 FTE</b>

*NOTE: Shaded sections indicate this portion of the total policy option package costs and FTE.*

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# BUDGET NARRATIVE

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## Professional Services Account

### Program Description

The Professional Services Account pays the cost of legal representation in criminal cases for financially eligible persons at trial, and for persons who are entitled to state-paid legal representation if they are financially eligible and are facing involuntary civil commitment proceedings; contempt; probation violation; juvenile court matters involving allegations of delinquency and child abuse or neglect; and other limited civil proceedings. The Account also funds the costs of all transcripts and the cost of appellate legal representation for cases not handled by the Appellate Division.

The United States Constitution, the Oregon Constitution, and Oregon statutes require the provision of legal representation, at state expense, for persons who are determined to be “financially eligible” (see “Financial Eligibility Guidelines” below) and who face the types of state court proceedings listed below.

- Although “court-appointed counsel” and “public defenders” generally are associated by the public with criminal cases, only 62% of the FYE 2015 public defense caseload was for representation in criminal trial court proceedings. Another 34% of the caseload, for example, was for representation in juvenile cases.
- Public defense representation was provided in over 170,000 cases in FYE 2015.

The Professional Services Account provides funding for legal representation in the following types of state trial court proceedings for persons who are determined to be financially eligible for appointed counsel. The percentages of the total public defense trial-level caseload that each of the following case types represented in FYE 2015 are noted in parentheses.

- Criminal proceedings, ranging from misdemeanors to death penalty cases (47%);
- Child abuse and neglect proceedings, including dependency and termination of parental rights proceedings and review hearings—all of which require the appointment of counsel upon request for children who are the subject of these proceedings and the appointment of counsel for most financially eligible parents (31%);
- Probation violation and extradition proceedings (14%);

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- Contempt proceedings, including nonpayment of court-ordered child support and violations of Oregon's Family Abuse Prevention Act (2%);
- Civil commitment and Psychiatric Security Review Board proceedings (2%);
- Post-conviction relief and Habeas Corpus proceedings (<1%); and
- Juvenile delinquency and probation violation proceedings (3%).

In addition, persons who are determined to be financially eligible are entitled by constitutional provisions or statutes to appointed counsel on appeal of any of the above types of cases.

The Appellate Division is responsible for the majority of criminal and probation violation appeals and for the majority of parents' appeals from juvenile dependency and termination of parental rights judgments. The Professional Services Account provides funding for counsel in all other appeals – for all the case types set out above.

### **Oregon's Eligibility Verification Program and Financial Eligibility Guidelines**

The Oregon Judicial Department established one of the first eligibility verification programs in the nation in 1989. For years, Oregon's program for screening applications for appointment of counsel and verifying applicants' income and assets was nationally recognized. It's structure remains intact, but the resources available for the program have been adversely impacted, particularly over the past ten years.

From implementation of the verification pilot project in 1988 until 1993, the Judicial Department's Indigent Defense Services Division had total responsibility for the verification program and verification positions in the courts. Effective January 1, 1993, the verification positions (Verification Specialists – VSs) and supervision of VSs were transferred to the individual trial courts. Since that time and increasingly so, these positions have been among the first in many local courts to be reduced or laid off due to reduced funding, or utilized for court functions other than verification.

The verification program, which continues to be administered by the Judicial Department, has historically more than paid for itself, and preserved funds that would have been spent from the Professional Services Account.

## BUDGET NARRATIVE

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Vs assist judges in their decision whether to order the appointment of state-paid counsel. The Vs are responsible for ensuring that Affidavits of Eligibility are completed and that the information provided by applicants is complete. Using an “Eligibility Worksheet”, a VS performs calculations relating to an applicant’s available income and liquid assets and the eligibility guidelines addressed below to make a determination whether to recommend to the judge the appointment of counsel. This process is called “screening” for eligibility.

In addition, Vs are responsible for verifying financial information provided to the court, such as income, assets and dependents. This process, which generally occurs after the applicant first appears in court, is called the “verification” process. Vs routinely verify the financial information provided by applicants, using information obtained from the Department of Motor Vehicles, local county assessors’ offices (property value), federal and state agencies (e.g., Social Security, Food Stamps, Employment Division) and private businesses (credit reports).

### **Financial Eligibility Guidelines**

The United States Constitution, Oregon’s Constitution and Oregon statutes require the appointment of counsel at state expense for those who are unable to retain suitable counsel in certain legal proceedings. Generally, these proceedings are limited to those that involve the potential for the loss of one’s liberty (e.g., criminal, probation violation and civil commitment cases) or the loss of other rights determined to be so essential as to demand the assistance of counsel (e.g., termination of a person’s parental rights).

The following is a summary of the statutory provisions, and policies and guidelines, adopted with respect to the courts’ determinations of whether a person who applies for court-appointed counsel will be provided such counsel, i.e., whether the person is financially eligible for state-paid counsel.

The Oregon statutory standard for determining who is financially eligible to receive services paid from the Professional Services Account mirrors that established under the federal constitution. Specifically, “. . . a person is financially eligible for appointed counsel if the person is determined to be financially unable to retain adequate counsel without substantial hardship in providing basic economic necessities to the person or the person’s dependent family...” (ORS 135.050 and ORS 151.485). An applicant for state-paid representation is required to provide a verified financial statement listing detailed information regarding income, assets, debts, and dependents.

## BUDGET NARRATIVE

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The eligibility standard is implemented statewide under a two-pronged means test.

First prong: Federal food stamp guidelines (130% of the federal poverty level) serve as the first determinant of eligibility. If the applicant's income is less than or equal to the eligibility level for food stamps, the applicant is presumed to be eligible for appointed counsel, unless the applicant has liquid assets that could be used to hire an attorney. As of October 2015, the Federal food stamp gross income eligibility level for a family of four is \$31,536 per year.

Second prong: If an applicant's income exceeds food stamp standards, that person is eligible for state-paid counsel only if the applicant's available income and liquid assets are determined to be insufficient to hire an attorney, depending upon the seriousness of the pending case(s). The "privately hired attorney" guideline rate currently used, for example, for a DUII case is \$2,500. If an applicant has available income and assets exceeding \$2,500, guidelines provide that eligibility verification court staff recommend that the person be denied appointed counsel.

### **Program Service Delivery**

There is no position authority associated with the Professional Services Account. The Account funds mandated legal representation entirely by independent contractors or hourly paid attorneys in the private sector.

PDSC provides legal services through the Account principally pursuant to two-year contracts under which compensation is paid on a per-case basis, based upon the types of cases included within a specific contract. The contracts are negotiated and monitored for compliance by the Contracts Manager and Contract Analysts. In addition PDSC provides legal services through non-contract "private bar appointed counsel" (individual case-by-case assignments where compensation is on an hourly rate basis).

In approximately 98% of all trial-level, non-death penalty public defense cases, legal representation is provided pursuant to contracts entered into between the PDSC and private sector, non-state employee attorneys. These contracts are with nonprofit public defender offices, law firms, consortia of attorneys, and sole practitioners. By comparison, in FYE 1993, legal representation was provided pursuant to contracts (versus non-contract hourly rate individual case appointments) in 85% of the total caseload. Unlike public defense cases in which an attorney is appointed on a case-by-case, hourly paid basis, a number of PDSC's contractors also provide additional non-attorney services such as investigation and interpreter services.

## BUDGET NARRATIVE

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As of June 30, 2016, there were 98 contracts, covering all 36 counties, for the provision of public defense representation. The contracts vary with respect to the types and number of cases covered. The contracts range from “specialty contracts” (limited to specific case types such as death penalty, post-conviction relief, juvenile, or civil commitment) to contracts that include representation in virtually all case types for which state-paid counsel is mandated. The PDSC also has 19 contracts for non-attorney services, such as mitigation services.

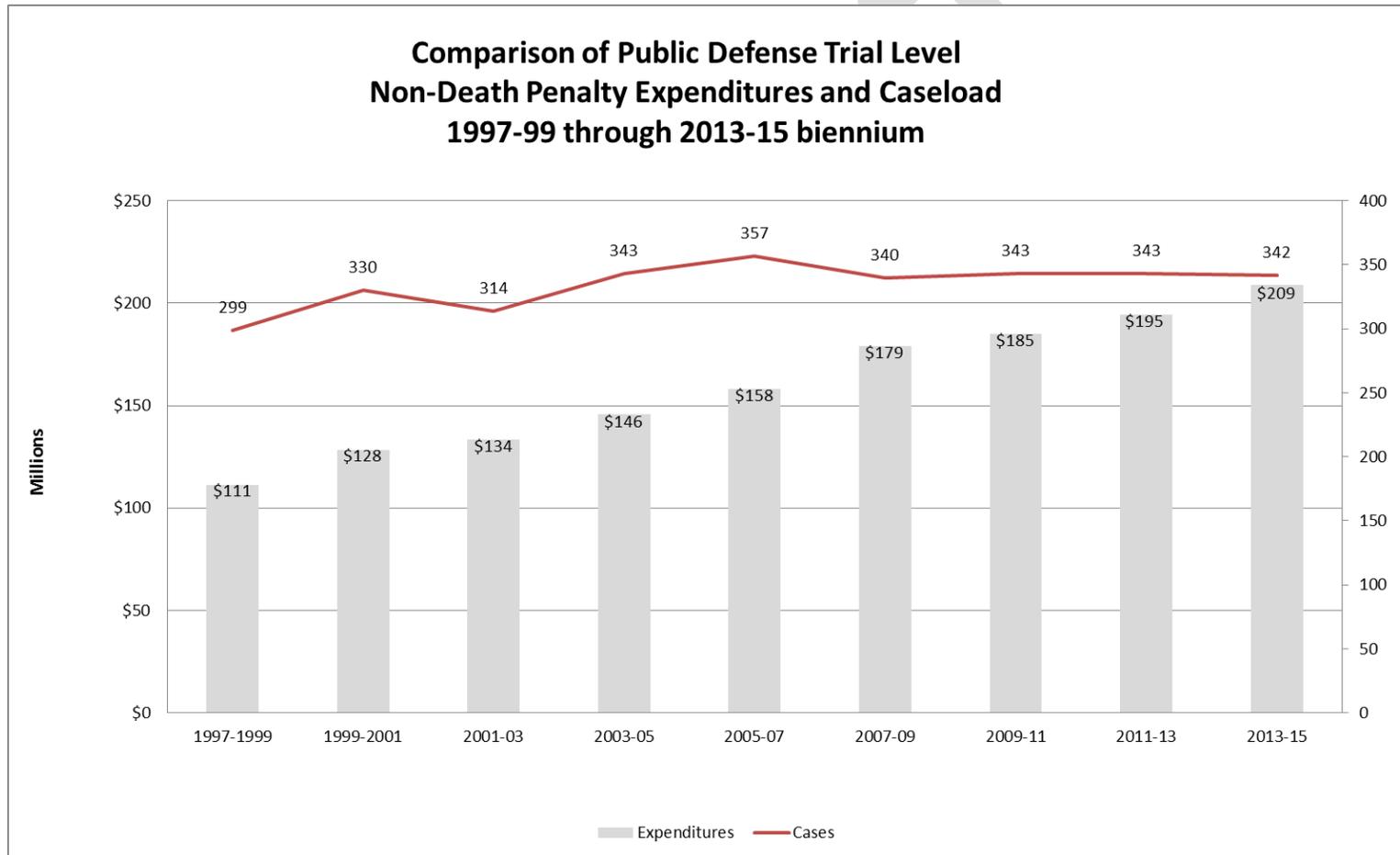
Persons who are financially eligible for appointed counsel are also eligible for non-attorney services that are "reasonable and necessary" for the preparation, investigation, and presentation of the case (ORS 135.055(3)). Examples of such non-attorney services are interpreters, investigators, transcriptionists, and psychologists. Non-attorney services must be sought and approved on a case-by-case basis.

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# BUDGET NARRATIVE

## Program Costs

Generally, program costs have increased due to the complexity of the caseloads; e.g., Measure 11, “Jessica’s Law” prosecutions, juvenile dependency and termination of parental rights and death penalty post-conviction relief cases. Below is a chart displaying a “Comparison of Public Defense Trial Level Non-Death Penalty Expenditures and Caseloads” for the last nine biennia.



## BUDGET NARRATIVE

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The costs associated with death penalty representation do not follow the same pattern as costs for non-death penalty cases. A charge of Aggravated Murder with a possible sentence of death is the most costly case type to defend. Even so, one would expect that if the number of new cases each biennium remains constant, costs should remain constant (plus inflation). However, the real cost driver is whether or not a sentence of death is imposed.

When a death sentence is imposed, the case is subject to automatic review by the Oregon Supreme Court. The majority of these appeals would be handled by the Appellate Division and would not impact expenditures from the Professional Services Account. However, the Appellate Division has a limited capacity to accept death penalty cases so, depending on the timing of such cases, some must be assigned to counsel payable from the Professional Services Account.

If an appeal is unsuccessful, the next step is post-conviction relief. All post-conviction relief cases are handled by attorneys payable from the Professional Services Account. A post-conviction relief case with a sentence of death will often cost as much or more than the original trial-level case. Post-conviction relief attorneys must not only review the work performed by the original trial counsel but must also explore avenues of defense that were not pursued in the original case.

If the post-conviction relief case is unsuccessful, the next step is an appeal of the post-conviction relief case. Post-conviction relief appeals are also handled exclusively by attorneys payable from the Professional Services Account. If a post-conviction relief appeal is unsuccessful, all state remedies have been exhausted and a case moves to the federal court with representation provided by the Federal Defenders office. However, a number of cases reaching federal court have been held in abeyance for the completion of additional state court proceedings.

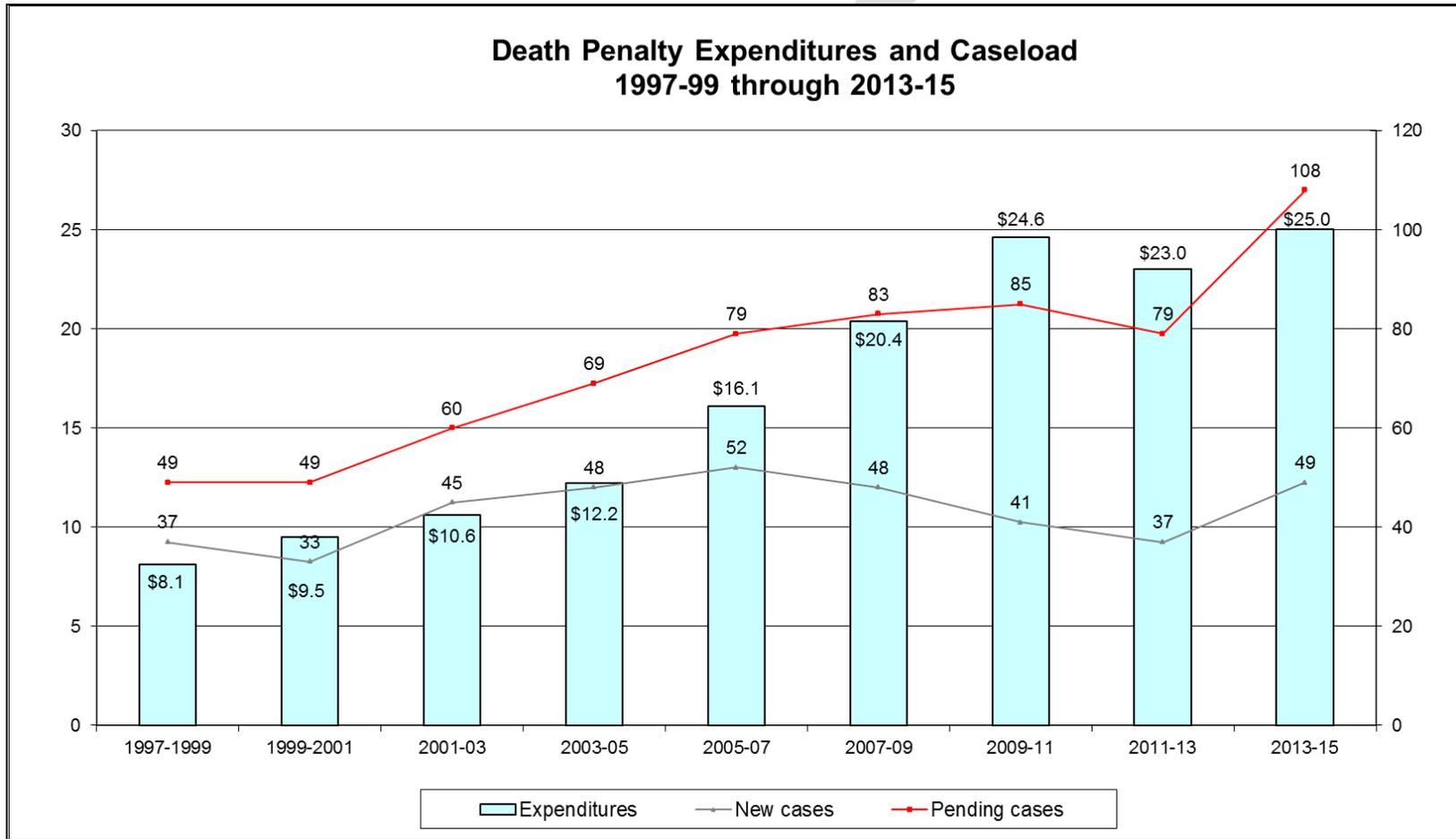
If a direct appeal, a post-conviction relief, or a post-conviction relief appeal is successful, then a case can return to the trial court for a new trial or resentencing.

There have been 62 defendants sentenced to death since the death penalty was reinstated in 1984. Of those, two have been executed, four died while on death row, one had his sentence overturned, and 21 were later re-sentenced to a lesser sentence. Of the remaining 34 defendants, only six have exhausted their state remedies and moved to the federal system.

What this means in budgetary terms is that there will be an exponential growth in expenditures. The amount of work associated with cases that have been in the system for decades grows with every stage of review. And recent developments in case law and the science, particularly in the area of brain science, have increased the responsibilities for counsel to adequately investigate cases, and to engage highly-specialized experts.

# BUDGET NARRATIVE

The chart below shows death penalty expenditures relative to new aggravated murder filings during each biennium and relative to the number of cases that are pending from previous biennia on July 1st (the start of each biennium).



## BUDGET NARRATIVE

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### **Professional Services Account**

#### **031 Standard Inflation**

##### **Package Description**

This package includes standard inflation adjustments in the amount of \$10,441,706 in general fund and \$122,296 in other funds.

#### **032 Above Standard Inflation**

##### **Package Description**

This package includes inflation above the standard inflation adjustment in the amount of \$7,988,288 in general fund and \$130,569 in other funds. Included in this adjustment is the non-attorney provider cost increases for expert and medical services.

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# BUDGET NARRATIVE

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## Professional Services Account

### 040 Mandated Caseload

#### Package Description

This essential package provides the additional funding required for the 2017-19 biennium. The package assumes no changes in PDSC policies regarding financial eligibility and no changes in guideline payment rates. The package does not include any additional funding that may be necessary due to the passage of ballot measures or new legislation.

There are two components to this essential package:

1. Trial-level non-death penalty caseload change

The caseload in recent years has been more challenging to project in part due to unprecedented changes in the economy. Budget reductions for law enforcement, prosecution, probation, corrections, social services, and the judicial system create unpredictability in the caseload as each entity adjusts its current practices to cope with budget shortfalls. For budgetary purposes, the caseload is projected to increase by 1.39% compared to the caseload funded for the 2015-17 biennium. The agency will adjust the projection throughout the remainder of the 2015-17 biennium and periodically during the 2017-19 biennium.

2. Death penalty caseload from prior biennia

Although the annual number of new death penalty cases filed has been fairly stable in recent years, the cumulative cost of these cases increasingly impacts each subsequent biennium. After the initial trial-level case, which often spans a year or more, there is an appeal, then post-conviction relief, then an appeal of the post-conviction relief case. So every year, in addition to expending funds for representation on new cases filed, the agency continues to have expenditures for cases filed in previous years. Death sentence post-conviction relief appeals currently pending are the result of cases originally filed as far back as 1986.

The additional expenditure during the 2017-19 biennium for death penalty cases from prior biennia is \$1,464,534 in general fund.

# BUDGET NARRATIVE

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## Professional Services Account

### 100 Parent Child Representation Program (PCRP) Expansion

#### Purpose:

The purpose of this policy package is to improve the quality of trial level representation in juvenile court cases to address chronic quality issues resulting from excessive caseloads, inadequate resources, and an ill-suited agency contracting structure. This policy package seeks to expand the Parent Child Representation Program (PCRP) which began in Linn and Yamhill counties in August 2014 and expanded to Columbia County in 2016.

The PCRP was developed by the Office of Public Defense Services, and initially funded by the Oregon Legislative Assembly in 2013, to address longstanding concerns relating to the quality of legal representation for parents and children in juvenile dependency and termination of parental rights cases. The PCRP aims to ensure competent and effective legal representation throughout the life of a juvenile case through reduced attorney caseloads and workload limits, the provision of specialized support services, and adherence to best practices for attorney performance. The goal of the program is to achieve positive outcomes for children and families through the reduction of the use of foster care and reduced time to permanency for children. Repeated studies show that when parents are represented by attorneys with reasonable caseloads, the attorneys spend more time with clients and, as a result, both parents and children have better outcomes within the child welfare system.<sup>1</sup>

Initial data already show signs of improved outcomes and cost efficiencies in the counties where it has been implemented:

- **Reduced Rate of Foster Care:** The initial two PCRP counties had an average foster care reduction rate of 19% in 2014 and 13% during the first six months of 2015, compared to a statewide decrease of 4.33% in 2014 and a statewide increase of 0.44% during the first six months of 2015.
- **Increased Reunification Rate:** In the initial two PCRP counties, from 2014 to June 2015, the rate of reunification increased by 6.5% while the increase was 1.7% statewide.<sup>2</sup>

The Governor's Task Force on Dependency Representation, established by Senate Bill 222 during the 2015 session, thoroughly reviewed the current systems and business models used to provide legal representation in juvenile dependency cases, assessed their efficacy and made recommendations on how to improve representation in order to best protect due process and improve child welfare

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<sup>1</sup> Laver, *Improving Representation for Parents in the Child-Welfare System*, American Bar Association Children's Rights Litigation (2013).

<sup>2</sup> See Parent Child Representation Program Annual Report 2014-2015 (2016), available at [https://www.oregon.gov/OPDS/docs/Reports/PCRP\\_report\\_PDSC\\_Jan\\_2016.pdf](https://www.oregon.gov/OPDS/docs/Reports/PCRP_report_PDSC_Jan_2016.pdf).

## BUDGET NARRATIVE

outcomes. The Task Force recommendation, that “the Oregon State Legislature should allocate the funding necessary for the Public Defense Services Commission (PDSC) and the Office of Public Defense Services (OPDS) to adopt a workload model of contracting with a caseload cap (similar to the Parent and Child Representation Program (PCRP)”, is reflected in this policy package.<sup>3</sup>

**How Achieved:**

If this policy package were funded, the Agency would build upon the existing Parent Child Representation Program by expanding the program statewide. The Agency would utilize the same model which has shown promising results in Linn and Yamhill counties and has been successfully operating in Washington State for the past 15 years.

Components of the model include a reduced caseload and limited workload, regular monitoring and evaluations, additional training requirements, adherence to best practices for representation, multidisciplinary representation, and use of collaborative decision-making.

Because the PCRP model is both scalable and easily replicated, OPDS proposes the expansion occur in one, two or three phases as directed by the legislature.

**Staffing Impact:** see corresponding POP #100 in Contract and Business Services.

**Revenue Source:** This portion of the package would require an additional \$35,158,946 from general fund for the Professional Services Account Appropriation.

	Agencywide TOTAL	Professional Svcs Account	Contract & Business Svcs	FTE
Phase 1	\$10,648,893	\$10,648,893		
Phase 2	\$10,594,715	\$10,594,715		
Phase 3	\$13,915,338	\$13,915,338		
			\$786,300	3.0 FTE
<b>TOTAL POP #100</b>	<b>\$35,945,246</b>	<b>\$35,158,946</b>	<b>\$786,300</b>	<b>3.0 FTE</b>

*NOTE: Shaded sections indicate this portion of the total policy option package costs and FTE.*

<sup>3</sup> See Oregon Dependency Representation Task Force Final Report (July 25 2016), available at [http://courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/EYES-2016/Dependency%20Representation%20Task%20Force%20Report%20\(full\).pdf](http://courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/EYES-2016/Dependency%20Representation%20Task%20Force%20Report%20(full).pdf).

# BUDGET NARRATIVE

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## Professional Services Account

### 101 Public Defense Contractor Parity

#### Package Description

##### *Part 1: Contractor Parity with District Attorney's*

**Purpose:** To provide funding necessary to:

- attract and retain qualified attorneys in public defense organizations throughout the state;
- reduce disparity between public defense provider and district attorney salaries and reduce caseloads that are above Oregon and National standards.

#### **How Achieved:**

##### **Public Defender Contractor Parity**

The first component of this policy package would allow adjustments to be made in response to the difficulty public defense providers have attracting and retaining qualified attorneys. One measure of their ability to attract and retain attorneys is whether the salaries of such attorneys are competitive within their local communities with attorneys engaged in comparable types of legal practice. A comparison of public defense attorney salaries and prosecution salaries in the same counties (based on publicly available information) shows that, based upon average salaries, public defense salaries in many counties lag behind prosecuting attorneys. Both prosecutor and public defender salaries lag significantly behind the average salaries of attorneys engaged in other types of practice. The Oregon State Bar's 2012 Economic Survey report noted that average full-time public defense attorneys' and prosecutors' salaries (\$68,246 for public defenders, and \$93,979 for public prosecutors) were well below any area of private practice. (Business and corporate litigation lawyers reported an average salary of \$192,715. Family law practitioners received an average salary of \$99,637 and private criminal defense lawyers received an average of \$134,779.)

## BUDGET NARRATIVE

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The agency has received two limited opportunities to increase compensation for providers over the last eleven years. Based on testimony presented to the Public Safety Subcommittee of the Joint Ways and Means Committee in the 2007 Legislative Assembly regarding the extreme difficulty one type of provider — nonprofit public defender offices — was having attracting and retaining a sufficient number of qualified attorneys to fulfill their contract obligations, the Legislature provided the agency with sufficient funding in the 2007-09 biennial budget to increase public defender salaries to a level that would move them one-sixth of the way to parity with district attorney salaries in the same counties. The Legislature provided an additional three million dollars to improve compensation for non-profit public defense providers during the 2013 legislative session, and an additional five million in 2015 to increase rates for law firms and consortia groups. While the most recent increases allowed some providers to make gains, others have simply maintained significant disparities, since average district attorney salaries have increased over the course of the last two biennia. Due to increases in prosecution salaries, the cost of achieving parity with district attorney salaries is greater now than it was in 2007.

Low compensation for public defenders significantly contributes to inadequate representation for Oregon's vulnerable citizens. Low case rates mean that attorneys take caseloads that exceed national standards. In a recent "listening session" in Multnomah County, one participant observed that though defenders seem to want to do a good job, the heavy stack of cases in their arms prevents them from spending an adequate amount of time with each client and on each case. Additionally, low compensation contributes to the constant cycle of attorney departures, and subsequent training of new lawyers. This cycle means clients must wait while a new lawyer gets acquainted with the case, cases are delayed, and people have repeated visits to lawyers and the court before the resolution of the case. This cycle harms the public, clients, and case outcomes.

Approval of the amount requested would allow the agency to increase case rates in those counties where there is significant disparity with prosecutor salary levels. Some providers may need to use rate increases to reduce caseloads by adding attorney members to their law firm or consortium group. The agency will work with entities that submit proposals in response to the Request for Proposals issued in May 2017 to ensure that increased case rates are appropriately allocated toward compensation increases or caseload reduction.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This portion of the package would require an additional \$19,769,176 from general fund for the Professional Services Account Appropriation.

# BUDGET NARRATIVE

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## **Professional Services Account**

### ***Part 2: Hourly Rate Increases***

#### **Package Description**

**Purpose:** To provide funding necessary to increase hourly rates for:

- attorneys who provide legal representation in public defense cases on an hourly rate basis;
- attorneys providing legal representation under contract in aggravated murder cases;
- mitigation specialists providing services under contract in aggravated murder cases;
- investigators who accept work on public defense cases.

#### **How Achieved:**

##### **Hourly Rate Increase for Hourly Paid Public Defense Attorneys**

The current guideline rates (\$46 per hour for non-death penalty cases and \$61 per hour for death penalty cases) have increased by only \$6 per hour since June 1991. The requested funding would allow an increase in the current rates from \$46 to \$75 per hour for non-death penalty cases and from \$61 to \$100 per hour for death penalty cases.

The 2007 legislature provided funding for the 2007-09 biennium that permitted the agency to increase the guideline rates for hourly-rate paid counsel statewide for the first time since 1991. In 2012, the legislature provided funding to increase hourly rates by \$1 for the 2013-15 biennium.

The small increases in hourly rates that were implemented in 2007 and 2012 did not result in rates that bear any relation to rates regularly charged for services by attorneys who handle criminal and family law cases for retained clients. The Oregon State Bar's 2012 Economic Survey reports statewide average and median criminal defense hourly rates at \$214 and \$200 per hour. Family law attorneys statewide charge \$214 (average) and \$200 (median). To the extent attorneys who performed public defense representation

## BUDGET NARRATIVE

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at \$46 and \$61 per hour responded to the Bar's survey, those hourly rates would have helped contribute to the lower overall rates. The hourly rate at the Department of Justice for the 2017-19 biennium was \$175 per hour, and lawyers in many private law firms that provide representation in criminal cases in Oregon's larger cities are now charging well over \$400 per hour.

Just as with automobile mechanics or plumbers who are paid on an hourly basis, hourly rates paid to attorneys, whether in the public or private sector, are meant to include overhead costs such as staff salaries, taxes and benefits, rent and other office costs, and necessary capital. Overhead expenses frequently are estimated by attorneys to be 50% of the hourly rate. Assuming 50% overhead expenses and an average of 1,800 billable hours in one year, an hourly-rate paid public defense attorney working full time at \$46 per hour would receive \$82,800 per year, with half of that amount (\$41,400) paying for overhead and half being available as attorney salary.

The Consumer Price Index increased 76% between 1991 and 2016. Adjusted for inflation, the 1991 rates of \$40 and \$55 per hour should be \$71 and \$97 per hour in 2016.

### **Hourly Rate Increase for Attorneys and Mitigators Under Contract In Aggravated Murder Cases**

The agency has worked to achieve consistent case rates for representation in capital cases for many years. Contract providers received limited rate increases in 2008, and in 2010, the agency provided a modest increase for those contractors who had an office with a staff, as well as contractors specializing in capital post-conviction relief. In 2013 and 2016 respectively, after a thorough review of the services provided by capital contractors, and revision of the qualification standards for capital representation, the Commission approved funding to increase all capital contracts to an hourly rate of \$98 and then \$100.

This policy option package would increase the hourly rate for capital providers from \$100 to \$175. This rate change is structured to allow the PDSC to compensate lawyers at a level that is competitive with the rates offered in federal-level cases in Oregon.

Prior to 2010, mitigation services were paid on an hourly basis at \$39 per hour, and it was very difficult for capital attorneys and OPDS to find trained mitigators capable of providing high quality work for this rate. In 2010, the Commission approved funding to change the rate to \$59 per hour for mitigators who were willing to enter into a contract for services. In 2012, the agency added several more mitigation contracts to match the caseload, with no rate increase. In 2014 the agency was able to increase the rate to \$62 per hour. This policy option package would increase the rate from \$62 to \$75 per hour.

## BUDGET NARRATIVE

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### Hourly Rate Increase for Hourly Paid Investigators Who Provide Public Defense Services

The amount requested for the 2017-19 biennium is the amount needed to increase investigation rates from \$29 to \$40 per hour in non-death penalty cases and from \$40 to \$50 per hour in death penalty cases.

The public defense guideline rate for investigation services has remained fairly constant since it was initially set, at \$25 per hour, when the state assumed responsibility for public defense services in approximately 1983. The rate for very experienced investigators in death penalty cases increased from \$25 to \$34 per hour in 1996, and in 2007 the Legislature provided funding to permit the agency to raise the rate from \$25 to \$28 per hour in non-death penalty cases and from \$34 to \$39 in death penalty cases. In 2012, the Legislature provided funding to allow OPDS to increase the hourly rates for all hourly providers by \$1, resulting in a rate of \$29 per hour for non-death penalty cases and \$40 per hour for death penalty cases. Despite these increases, investigator rates remain inadequate. If investigation rates had kept pace with inflation, current rates would be \$61 per hour for non-death penalty cases, and \$82 per hour for death penalty cases.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This portion of the package would require an additional \$14,697,716 from general fund for the Professional Services Account Appropriation.

### TOTAL PACKAGE REQUEST FOR PUBLIC DEFENSE PARITY – POP #101

Part 1:	Contractor Parity with District Attorney's	\$19,769,176
Part 2:	Hourly Rate Increases	\$14,697,716
	Total Policy Option Package #101	\$34,466,892

# BUDGET NARRATIVE

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## Professional Services Account

### 102 Trial-Level Case Management System

#### Package Description

##### Purpose:

To provide funding for user licenses of a public defender case management system. This package would allow the state to provide a case management system to contracted trial attorneys for the effective management of their cases. The system would allow contractors to gather and send data to manage caseloads, payments, monitor quality, and understand public defender clients.

##### How Achieved:

The Office of Public Defense Services has identified, through investigation and consultation with public defense providers across the state, a case management system that could bring significant benefits to Oregon's public defense system if utilized by a majority of providers. The system would enable the agency to offer providers a system that is specially configured to collect, in a standardized format, data necessary for the agency to complete its quality assurance data reviews. Currently, the agency requires contract providers to submit information in excel spreadsheets that must be individually evaluated for compliance within required fields, and then sorted and analyzed. This type of manual manipulation and review of data is time-consuming for both providers and the agency. Additionally, though there are some providers who have sophisticated case management systems, other providers, and especially those who exclusively focus on representation in public defense cases, do not have the resources to procure a case management system. This package would allow the agency to cover the user licenses for all providers who are interested in working with a uniform case management system.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would require an additional \$1,450,800 from general fund for the Professional Services Account Appropriation.

# BUDGET NARRATIVE

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## Professional Services Account

### 105 Professional Services Account Budget Shortfall

#### Package Description

##### Purpose:

This package increases funding in the Professional Services Account to restore an ongoing budget shortfall to pay attorney and non-attorney providers for public defense case costs.

##### How Achieved:

The Professional Services Account has been historically underfunded for attorney and non-attorney provider public defense case costs. Each biennium, the agency has needed to request additional funding from the Emergency Board to cover this budget shortfall. This package will allow the agency to be funded appropriately for the base public defense expenditures needs.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would require an additional \$3,500,000 from general fund for the Professional Services Account Appropriation.

# BUDGET NARRATIVE

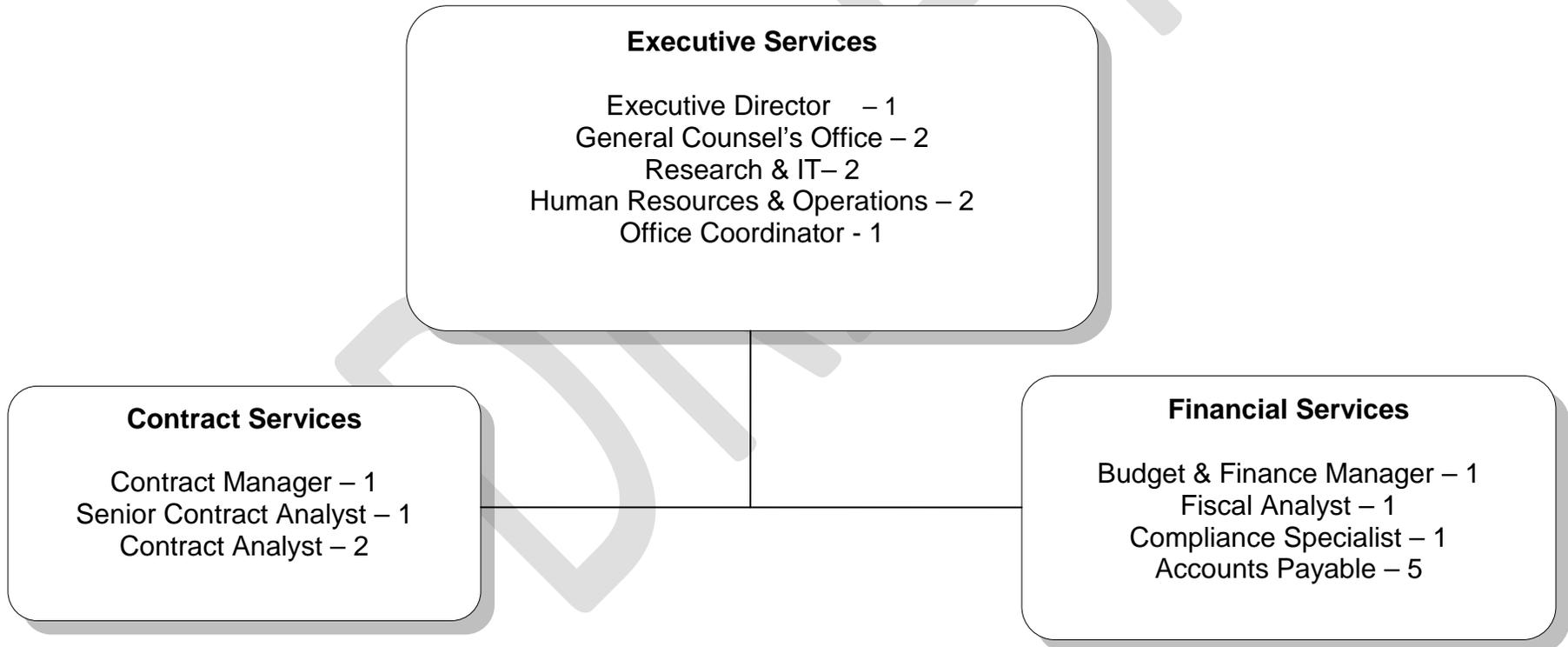
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## Contract & Business Services

### Program Description

Contacts and Business Services is responsible for negotiating and administering the public defense contracts that provide legal representation for financially eligible persons, and for processing requests and payments for non-contract fees and expenses. In addition, this section provides administrative support (accounting, budget development, human resources, information technology, facilities management, and general operations) for the agency as a whole.

### Organizational Chart



# BUDGET NARRATIVE

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## **Major functions**

### Contract Administration:

Contract Services staff negotiate and administer approximately 98 contracts for the provision of legal services, and an additional 19 contracts for non-attorney services, such as mitigation services. Three Contract Analysts as well as the Contracts Manager have primary responsibility for contracts assigned to them. In addition, Contracts and Financial Services has one temporary Office Specialist 1 position to audit monthly caseload reports submitted by contractors.

### Review of Non-Routine Expense Requests:

ORS 135.055(3) requires that PDSC pay the cost of "reasonable and necessary" expenses for public defense cases. Routine expenses, such as copying costs, do not require pre-authorization. Non-routine expenses, such as investigation, must be approved by PDSC before the expense is incurred. Over 19,000 requests for pre-authorization are submitted per year.

### Accounts Payable:

Five accounts payable staff process the operating bills for both the Appellate Division and Contract and Financial Services as well as all fee statements submitted for payment from the Public Defense Services Account. Over 40,000 payments are reviewed and processed per year.

### Quality Assurance and Complaint Processing:

OPDS's Office of General Counsel coordinates peer reviews of public defense providers. Review teams of experienced public defense administrators and attorneys from across the state conduct evaluations of public defense contractor management and operations to identify strengths and weaknesses, and make recommendations for change where needed. In addition to document and data review, review teams usually devote three days to interviewing contractors and other justice system stakeholders, including judges, prosecutors, corrections officers and other law enforcement, probation and parole officers, juvenile department officials, Department of Human Services case managers, and others. To date, OPDS has completed 50 comprehensive contractor evaluations through the peer review process. General Counsel also receives and coordinates the handling of complaints regarding expenditures and the quality of legal representation, pursuant to the PDSC's Complaint Policy and Procedure. A Deputy General Counsel, who

## BUDGET NARRATIVE

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focuses on issues arising in juvenile court representation, assists with complaints. Other quality assurance initiatives include an annual statewide performance survey with detailed follow-up on survey results and comments; review of certificates of attorney qualification; planning and participation in continuing legal education programs; participation in performance standards revision projects; and participation in other workgroups and initiatives aimed at improving the quality of public defense services.

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## BUDGET NARRATIVE

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### **Contract & Business Services**

#### **010 Non-PICS Personal Services / Vacancy Factor**

##### **Package Description**

This package includes standard adjustments to PERS Pension Bond Contribution and standard inflation for non-PICS personal services accounts. The total of this package is \$9,779 in general fund and \$117 in other funds.

#### **031 Standard Inflation**

##### **Package Description**

This package includes standard inflation adjustments on services & supplies in the amount of \$30,607 in general fund. State government services charges are increased by \$38,337 in general fund and \$256 in other funds, making the total amount of the package an increase of \$68,944 in general fund and \$256 in other funds.

#### **032 Above Standard Inflation**

##### **Package Description**

This package includes inflation above the standard inflation adjustment for services and supplies in the amount of \$12,000 in general fund for IT Professional Services.

# BUDGET NARRATIVE

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## Contract & Business Services

### 100 Parent Child Representation Program (PCRP) Expansion

#### Package Description

##### Purpose:

The purpose of this policy package is to improve the quality of trial level representation in juvenile court cases to address chronic quality issues resulting from excessive caseloads, inadequate resources, and an outdated agency contracting structure. This policy package seeks to expand the Parent Child Representation Program (PCRP) which began in Linn and Yamhill counties in August 2014 and expanded to Columbia County in 2016.

The PCRP was developed by the Office of Public Defense Services, and initially funded by the Oregon Legislative Assembly in 2013, to address longstanding concerns relating to the quality of legal representation for parents and children in juvenile dependency and termination of parental rights cases. The PCRP aims to ensure competent and effective legal representation throughout the life of a juvenile case through reduced attorney caseloads and workload limits, the provision of specialized support services, and adherence to best practices for attorney performance. The goal of the program is to achieve positive outcomes for children and families through the reduction of the use of foster care and reduced time to permanency for children. Repeated studies show that when parents are represented by attorneys with reasonable caseloads, the attorneys spend more time with clients and, as a result, both parents and children have better outcomes within the child welfare system.<sup>4</sup>

Initial data already show signs of improved outcomes and cost efficiencies in the counties where it has been implemented:

- **Reduced Rate of Foster Care:** The initial two PCRP counties had an average foster care reduction rate of 19% in 2014 and 13% during the first six months of 2015, compared to a statewide decrease of 4.33% in 2014 and a statewide increase of 0.44% during the first six months of 2015.
- **Increased Reunification Rate:** In the initial two PCRP counties, from 2014 to June 2015, the rate of reunification increased by 6.5% while the increase was 1.7% statewide.<sup>5</sup>

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<sup>4</sup> Laver, *Improving Representation for Parents in the Child-Welfare System*, American Bar Association Children's Rights Litigation (2013).

<sup>5</sup> See Parent Child Representation Program Annual Report 2014-2015 (2016), available at [https://www.oregon.gov/OPDS/docs/Reports/PCRP\\_report\\_PDSC\\_Jan\\_2016.pdf](https://www.oregon.gov/OPDS/docs/Reports/PCRP_report_PDSC_Jan_2016.pdf).

## BUDGET NARRATIVE

The Governor’s Task Force on Dependency Representation, established by Senate Bill 222 during the 2015 session, thoroughly reviewed the current systems and business models used to provide legal representation in juvenile dependency cases, assessed their efficacy and made recommendations on how to improve representation in order to best protect due process and improve child welfare outcomes. The Task Force recommendation, that “the Oregon State Legislature should allocate the funding necessary for the Public Defense Services Commission (PDSC) and the Office of Public Defense Services (OPDS) to adopt a workload model of contracting with a caseload cap (similar to the Parent and Child Representation Program (PCRP)”, is reflected in this policy package.<sup>6</sup>

**How Achieved:**

If this policy package were funded, the Agency would build upon the existing Parent Child Representation Program by expanding the program statewide. The Agency would utilize the same model which has shown promising results in Linn and Yamhill counties and has been successfully operating in Washington State for the past 15 years.

Components of the model include a reduced caseload and limited workload, regular monitoring and evaluations, additional training requirements, adherence to best practices for representation, and use of collaborative decision-making .

Because the PCRP model is both scalable and easily replicated, OPDS proposes the expansion occur in one, two or three phases as directed by the legislature.

**Staffing Impact:** This portion of the package adds three PCRP Attorney Managers, for a total of 3.0 FTE.

**Revenue Source:** This portion of the package would require an additional \$786,300 from general fund for the Contract & Business Services Appropriation.

	Agencywide TOTAL	Professional Svcs Account	Contract & Business Svcs	FTE
Phase 1	\$10,648,893	\$10,648,893		
Phase 2	\$10,594,715	\$10,594,715		
Phase 3	\$13,915,338	\$13,915,338		
			\$786,300	3.0 FTE
<b>TOTAL POP #100</b>	<b>\$35,945,246</b>	<b>\$35,158,946</b>	<b>\$786,300</b>	<b>3.0 FTE</b>

NOTE: Shaded sections indicate this portion of the total policy option package costs and FTE.

<sup>6</sup> See Oregon Dependency Representation Task Force Final Report (July 25 2016), available at [http://courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/EYES-2016/Dependency%20Representation%20Task%20Force%20Report%20\(full\).pdf](http://courts.oregon.gov/OJD/docs/OSCA/JFCPD/Juvenile/EYES-2016/Dependency%20Representation%20Task%20Force%20Report%20(full).pdf).

# BUDGET NARRATIVE

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## **Contract & Business Services**

### **103 Employee Compensation ORS 151.216(1)(e)**

#### **Package Description**

##### **Purpose:**

This package will enable the PDSC to provide quality legal representation through recruitment and retention of attorneys and staff capable of providing and securing quality and cost-efficient appellate representation by providing funding needed to establish salary schedules comparable to salary schedules at the Department of Justice and other state agencies. For over ten years, the PDSC has been attempting to accomplish its statutory mandate to adopt a “compensation plan, classification system and personnel plan for the Office of Public Defense Services that are commensurate with other state agencies.” ORS 151.216(1)(e). As of January 1, 2017, all but four classifications will be 2 to 32 percent below their counterparts in other state agencies. This difference negatively impacts staff morale and the agency’s recruitment and retention efforts.

##### **How Achieved:**

In developing the requested salary structure, the agency used the Department of Justice’s Appellate Division as the comparable agency for the majority of the positions, as Department of Justice attorneys appear on the exact same cases from opposing sides. Contract analyst positions were compared with employees in the Judicial Department because comparable positions weren’t part of the Department of Justice structure.

Historically, the agency has hired recent law school graduates into the entry-level Deputy I attorney position and devotes significant management-level resources to training during an attorney’s first six months of employment. The training investment shows returns for the agency after twelve months, when the typical entry-level attorney becomes increasingly self-sufficient and productive. After two to three years, the Deputy I attorney has demonstrated sufficient competency to warrant consideration for the Deputy II position. After two to three years in the Deputy II position (or five years with the agency), the attorney is an experienced, competent, and valued contributor to the agency. Unfortunately, this time period coincides with the greatest salary disparity between the agency and the Attorney General’s office, the attorney is experienced and attractive to other firms, and the time loss and fatigue associated with a two to three-hour daily commute between Salem and Portland or Eugene leads many attorneys to consider and seek employment elsewhere. Since 2003, twenty eight attorneys have left the agency, many at the four-to six-year mark.

## BUDGET NARRATIVE

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The policy package helps address the compensation inequity between state employees on opposite sides of the same cases. It would mitigate the loss of experience that occurs around the five-year employment mark, and enables management to direct training resources into case production. Providing parity for lawyer staff while ignoring the disparity that exists in other classifications, particularly those employees in the lowest salary ranges, would decrease employee morale and productivity. This policy package would enable the agency to recruit and retain non-lawyer employees who are committed to and capable of achieving the agency's goal of providing quality, cost efficient legal representation.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This portion of the package would require an additional \$273,901 in general fund and \$9,268 other funds for the Contract & Business Services Appropriation.

	General Fund	Other Funds
Appellate Division	\$1,716,089	
Contract & Business Services	\$273,901	\$9,268
POP #103 TOTAL	\$1,989,990	\$9,268

*NOTE: Shaded sections indicate this portion of the total policy option package costs and FTE.*

# BUDGET NARRATIVE

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## **Contract & Business Services**

### **104 Parent Child Representation Program (PCRP) Staffing and Quality Assurance**

#### **Package Description**

##### **Purpose:**

This package is comprised of three separate staffing components: (1) a research analyst to assist with data collection and analysis of attorney performance in both the PCRP program and other cases across the state, (2) a Deputy General Counsel position to assist with the current backlog of quality assurance work associated with representation in criminal cases, and (3) an additional Deputy Defender 2 position to provide appellate representation in juvenile delinquency cases.

##### **How Achieved:**

This portion of the package will allow PDSC to develop data-driven continuous quality improvement initiatives for evaluation and improvement of legal representation in all cases. One-half of a research analyst position will be dedicated to the Parent Child Representation Program and will be responsible for compiling and analyzing data from attorneys, case managers, and system partners including the Department of Human Services and Judicial Department. The research analyst will ensure that the expansion of the PCRP is built on a foundation of sound analytics, will pinpoint opportunities for improvement by individual attorneys, and identify program strengths and deficiencies.

The success thus far of the PCRP is due in large part to the work of the Deputy General Counsel, who serves as attorney-manager for the program in addition to other duties focused on monitoring and improving representation in juvenile cases statewide. Through this policy option package, the agency is also seeking funding to hire another Deputy General Counsel who would similarly focus on seeking improvements in representation in criminal cases statewide. The agency is aware, through statewide surveys, and various agency-conducted assessments and reviews, and through daily contacts with courts, attorneys, and consumers of public defense services in criminal cases, that a significant variation exists across the state in the quality of representation provided in criminal cases. If funded, the new deputy general counsel would assist in developing new training programs, assist local providers and justice system partners to address specific quality of representation concerns, develop relevant metrics to provide better monitoring and oversight of provider performance, and develop new models for contracting for public defense representation in criminal cases, similar

## BUDGET NARRATIVE

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to the PCRCP, that require adherence to best practices, reasonable caseloads, and the use of appropriate professional, non-attorney services.

Both the current Deputy General Counsel, and the new position, if funded, will work under the supervision of the agency's General Counsel, who will continue to be responsible for advising the agency and its Commission on matters concerning Oregon government law, including ethics, public meetings, and public records laws, as well as responsibility for the agency's complaint policy and procedure, its nonroutine expense funding protocols under ORS 135.055(3), and many of the agency's other quality assurance initiatives. Although he has been performing some of the duties envisioned for the new Deputy General Counsel position, funding for this position will permit a more strategic and focused quality improvement effort in criminal cases, and allow General Counsel sufficient time for his other duties and responsibilities.

The success of the PCRCP is rooted in data analysis. Individual attorneys must meet specific contract performance targets and evaluation of the program as a whole relies on a number of internal and external data points. The current three-county PCRCP is managed by Deputy General Counsel who serves as an attorney-manager. However, statewide expansion of the PCRCP would involve nearly 350 attorneys who currently handle over 45,000 court appearances per year. Additional research and data analysis capacity is necessary to effectively expand the PCRCP beyond three counties.

The Office of Public Defense Services (OPDS) has never had a dedicated research analyst position. As times have changed, and all state agencies are asked to provide data demonstrating performance measures and improvements, the agency is ill-equipped to provide adequate data reports. With the addition of a new, unified court case management system, and the availability of increasingly sophisticated electronic case management systems for lawyers, the agency must develop and increase its ability to monitor attorney performance through complex data analysis. The position would be equally divided between evaluations of (a) representation in the PCRCP and (b) representation in criminal, juvenile, and other case types across the state.

The Deputy General Counsel position will focus on quality assurance efforts related to criminal case representation. Currently, OPDS has only two attorney positions dedicated to quality assurance: Deputy General Counsel, who's duties include management of the PCRCP and quality assurance oversight in juvenile cases across the state, and General Counsel, who's duties include all typical general counsel responsibilities, such as contracting, public records, public meetings, employment, ethics, legal advice to Commission members, etc., leaving little time for critical quality assurance activities. Projects that require extensive time, such as peer reviews, investigation of complaints, review of complex non-routine expense requests, development of training and oversight protocols, and other quality assurance responsibilities, are often difficult to achieve given the broad scope of duties. The requested Deputy General Counsel position would undertake a significant portion of the quality assurance work related to criminal case types, increasing the

## BUDGET NARRATIVE

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agency's ability to be proactive in its oversight, and to timely respond to all inquiries and concerns, while allowing General Counsel to focus more exclusively on General Counsel duties, thereby improving control around agency legal risk.

**Staffing Impact:** This portion of this package adds one Deputy General Counsel – Criminal and a Research Analyst, for a total of 2.0 FTE.

**Revenue Source:** This portion of the package would require an additional \$425,243 in general fund for the Contract & Business Services Appropriation.

	Agencywide TOTAL	Appellate Division	Contract & Business Srvcs	FTE
PCR Staffing	\$89,794		\$89,794	0.5 FTE
Quality Assurance	\$335,449		\$335,449	1.5 FTE
Juvenile Delinquency Appeals	\$328,196	\$328,196		1.5 FTE
<b>POP #104 TOTAL</b>	<b>\$753,439</b>	<b>\$328,196</b>	<b>\$425,243</b>	<b>3.5 FTE</b>

*NOTE: Shaded sections indicate this portion of the total policy option package costs and FTE.*

# BUDGET NARRATIVE

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## Public Defense Services Commission's Affirmative Action Plan

2017 – 2019 Biennium

### Agency Description

The Public Defense Services Commission (PDSC), an independent body in Oregon's Judicial Branch of government, is a seven-member commission appointed by the Chief Justice of the Oregon Supreme Court that serves as the governing body for Oregon's public defense system. The Commission provides policy direction and oversight for the administration of the system. As required by ORS 151.216(1)(b), the Commission established the Office of Public Defense Services (OPDS) to serve as the administrative agency responsible for carrying out the Commission's directives and other statutorily defined duties. The legal services provided by OPDS represent an essential component of Oregon's public safety system.

OPDS is comprised of an Appellate Division, which provides direct legal services in the Oregon Supreme Court and the Court of Appeals on behalf of financially eligible individuals appealing trial court judgments of conviction in criminal cases, and the trial court judgments in juvenile dependency and termination of parental rights cases; Contract Services administers the state's public defense contracting; Financial Services administers the payment system. Human Resources and Operations; General Counsel, and Research/IT provide agency support services.

### *Mission*

The statutory mission of OPDS 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.

# BUDGET NARRATIVE

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## ***Objectives***

The Public Defense Services Commission seeks to be 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; and
- Responsible steward of taxpayer dollars devoted to public defense.

## ***Agency Affirmative Action Policy Statement***

It is the policy of the Public Defense Services Commission that no person shall be discriminated against by reason of race, color, national origin, religion, gender, marital status, sexual orientation, age (if the individual is 18 years of age or older), or disability not directly and substantively related to effective performance. It is also the policy of PDSC to establish and maintain a program of affirmative action to address the effects of discrimination intended and unintended, which is indicated by analysis of present employment patterns, practices, and policies.

PDSC's Non-Discrimination and Affirmative Action Plan shall be followed by all PDSC staff. All personnel actions of PDSC shall be administered according to this policy. PDSC's supervisory and management staff shall ensure that the intent as well as the stated requirements of the Plan are implemented. In addition, it is the duty of every employee of PDSC to create a job environment that is conducive to non-discrimination and free of any form of discrimination or discriminatory harassment.

This Non-Discrimination and Affirmative Action Plan will be posted in plain sight at all times for employees' use and referral. The Plan is posted on the agency website and any agency or member of the public requesting a copy of the PDSC Affirmative Action Plan shall be provided one at no cost.

# BUDGET NARRATIVE

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## **Agency Diversity & Inclusion Statement**

PDSC recognizes a diverse workforce is crucial in service to Oregonians. We treat all people with dignity and respect and will not discriminate on the basis of race, color, national origin, religion, gender, age, marital status, sexual orientation, political or religious affiliation, or physical or mental disability.

## **Training, Education, and Development Plan**

The Oregon State Bar requires every attorney licensed to practice law in the state to attend Continuing Legal Education (CLE) programs that train and educate lawyers concerning issues of ethnic diversity and cultural competency. PDSC presents in-house training programs that satisfy these requirements, and also includes all non-attorney employees.

## **Programs**

### **Career Fairs/Community Outreach**

PDSC employees participate annually in career fairs at each of Oregon's three colleges of law and with the Oregon State Bar Association's Diversity & Inclusion program which "serves to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, by educating attorneys about the cultural richness and diversity of the clients they serve, and by removing barriers to justice."

### **Trade-specific Events**

PDSC attorneys regularly participate in the Oregon State Bar's recruitment and retention program, Opportunities for Law in Oregon (OLIO), for law students, who contribute to the bar's historically or currently underrepresented membership; who have experienced economic, social, or other barriers; who have a demonstrated interest in increasing access to justice; or who have personally experienced discrimination or oppression. The OLIO program provides PDSC the opportunity to provide mentoring and career planning skills to student members.

## BUDGET NARRATIVE

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In addition, PDSC attorneys work closely with the three Oregon law schools, Lewis & Clark Law School, Willamette University College of Law and University of Oregon School of Law, to provide mentoring and career planning assistance to law school students. PDSC attorneys participate annually in Mock Trial events with several Oregon high schools to help educate students in the function of the criminal justice system.

### ***Roles for Implementation of Affirmative Action Plan***

The person responsible for discharging this policy is PDSC's Executive Director, Nancy Cozine.

The Chief Defenders of PDSC's Appellate Division and the Human Resources Manager are assigned the following responsibilities:

- Brief all new employees on PDSC's Affirmative Action Plan and their role in supporting it.
- Periodically review training programs and hiring and promotion patterns in order to remove impediments to attaining affirmative action goals and objectives.
- Regularly discuss PDSC's affirmative action policy with employees to ensure the policy is being followed.
- Periodically review office policies, practices and conditions to ensure that:
  - Equal Employment Opportunity information and PDSC's affirmative action policy are properly displayed;
  - all facilities for the use and benefit of employees are in fact desegregated, both in policy and in use, exclusive of those areas excepted by federal laws and regulations;
  - minorities, females, and disabled employees are afforded a full opportunity to participate in PDSC's educational, training, recreation and social activities; and
  - all facilities are accessible to disabled employees or clients.

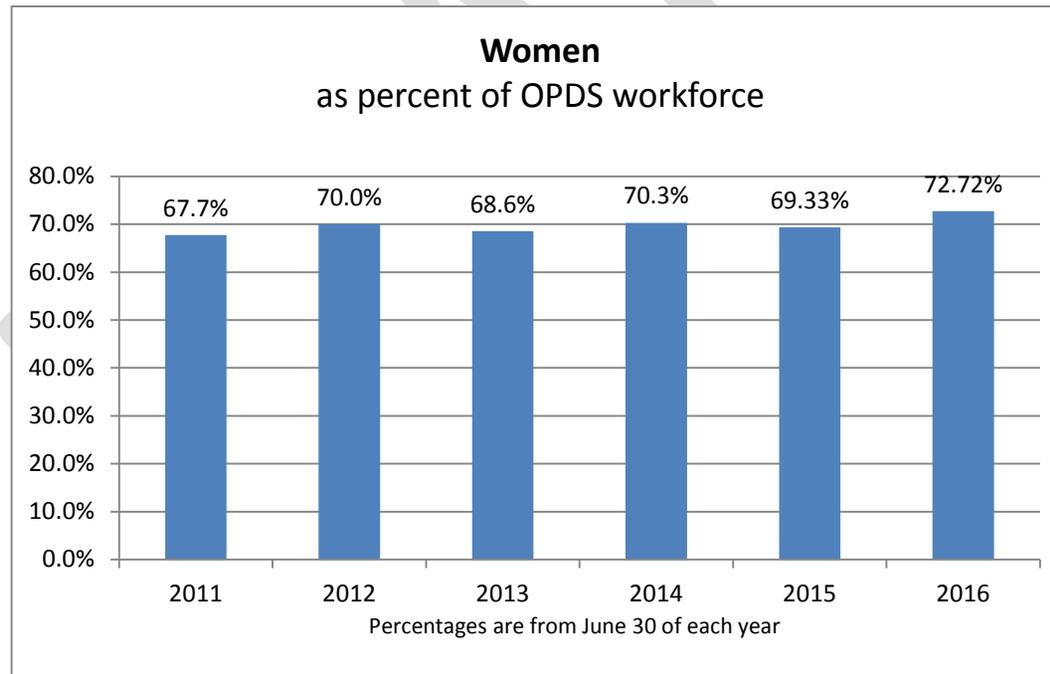
# BUDGET NARRATIVE

## ***Accomplishments***

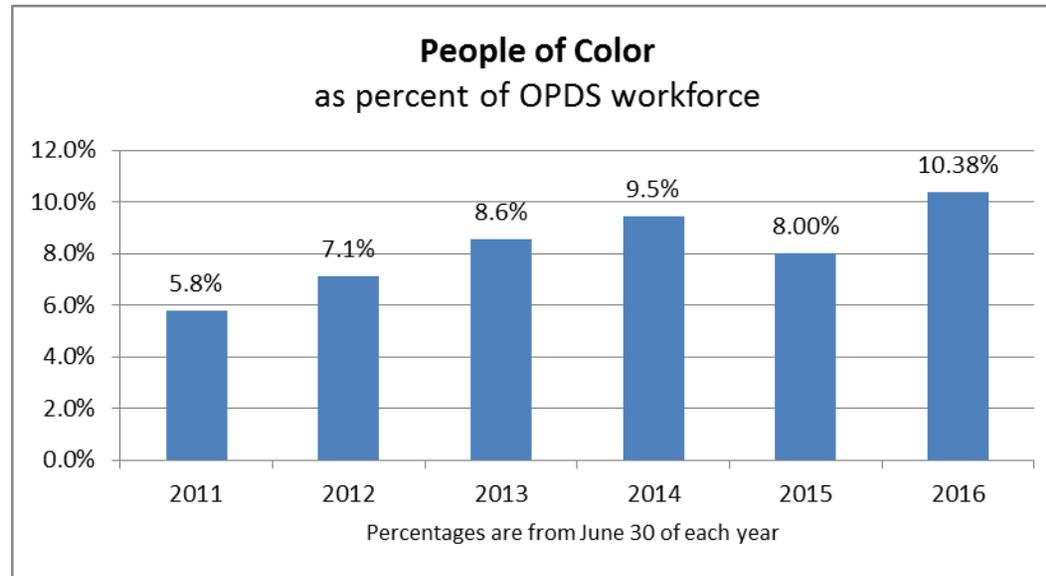
With a total workforce of 75 employees, PDSC employs 53 women and seven people of color.

PDSC has four job groups: official/administrator, professional, paraprofessional, and administrative staff. The official/administrator group has five positions, four of which are filled by women, one by a person of color. The professional group has 47 positions, 29 of which are filled by women and four of which are filled by people of color. The paraprofessional group has three positions, two of which are filled by women. There are 19 positions within the administrative staff group, 17 of which are filled by women and two of which by people of color.

The agency meets (or is within a fraction of a position) or exceeds goals for women and people of color. The agency does not have data on the goal for disabled persons, since disclosure is voluntary for employees.



## BUDGET NARRATIVE



### July 1, 2014 – June 30, 2016

- Attended and made presentations regarding employment in public defense at job fairs and recruitment events at Oregon law schools and at national and regional events sponsored by minority law student groups and others.
- Continued to develop working relationships with criminal law faculty, career counselors, and placement offices in Oregon's three law schools to identify and recruit law students of color, with disabilities, veterans and women who might be interested in internships and attorney positions in the state's public defense system.
- Continued to participate in job fairs and recruitment programs throughout the Pacific Northwest for law students and attorneys of color, with disabilities, veterans and women who are interested in careers in public service and public defense.

## BUDGET NARRATIVE

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- The agency's goals and strategies for diversity in sourcing, recruiting, hiring and retention practices, as well as the agency's ability to attract and retain a diverse workforce have continued to improve with the hire of a Human Resources Manager in late 2013.
- Use of [www.Oregonjobs.gov](http://www.Oregonjobs.gov) system for all agency external recruitments. These systems provide a wider range of outreach and sourcing of job candidates with the benefit of statistical recruitment data to better identify areas of disproportionate representation in recruitment and hiring.
- Continued to encourage public defense attorneys to examine the causes of disproportionate representation of minority clients in the criminal justice, juvenile justice and child welfare systems and to identify and implement strategies to address overrepresentation.
- Prepared and presented an annual diversity training to OPDS attorneys and staff.
- Agency leadership attended a full-day workshop on Values-Based Management presented by Dennis Morrow of Janus Youth Group in June 2015. Topics included communicating with respect and differences in communication between genders.

## BUDGET NARRATIVE

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### ***Goals and Strategies***

**July 1, 2015 – June 30, 2017**

- The demand for minority attorneys and other legal professionals such as trial assistants and investigators is high in Oregon, as it is elsewhere in the country. In order to attract these professionals to public defense work, PDSC needs to be able to offer compensation that is at least comparable to the compensation offered to district attorneys and other government lawyers in the state. In support of this effort PDSC has included in its 2015-2017 budget request policy packages that would help it achieve parity in compensation with prosecution lawyers for its appellate lawyers and for at least some of its private contractors.
- Expand outreach for employment opportunities to members of protected classes not represented in PDSC's current workforce.
- Assess minority group staffing on an ongoing basis to ensure PDSC is making progress toward meeting these objectives.
- Refine recruitment strategies and hiring practices to facilitate the placement and promotion of minority group personnel for both internal and external recruitments.
- Actively participate on trade and state-wide affirmative action committees, organizations and activities to promote PDSC's Affirmative Action Plan.
- Continue to distribute job announcements to all PDSC diversity partners to ensure that a diverse workforce is encouraged to apply for our job openings.
- Continue to provide outreach to people of color, people with disabilities, veterans and women through job fairs, career centers and college visits.
- Support a welcoming environment that is attractive to a diverse pool of applicants and our current employees and is inclusive, accepting and respectful of others' differences and recognizes the value of each individual's unique contributions.

## BUDGET NARRATIVE

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- PDSC will survey its contractors to obtain reliable data about workforce composition and establish appropriate goals to expand the number of minority attorneys and staff members employed in public defense in Oregon.
- In anticipation of the difficulty of recruiting successfully from the small group of minority attorneys graduating from Oregon law schools each year, PDSC will work with its contractors to develop strategies for promoting legal careers and, specifically, careers in public defense, among Oregon high school and college students.

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## BUDGET NARRATIVE

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### ***Appendix A – PDSC Policy Documentation***

#### ***PUBLIC DEFENSE SERVICES COMMISSION’S NON-DISCRIMINATION AND AFFIRMATIVE ACTION PLAN***

##### ***Introduction***

The purpose of this plan is to initiate and maintain a non-discrimination and affirmative action program consistent with directives of the Governor and applicable state and federal laws and regulations.

##### ***Non-Discrimination and Affirmative Action Policy***

It is the policy of the Public Defense Services Commission that no person shall be discriminated against by reason of race, color, national origin, religion, gender identity or expression, marital status, sexual orientation, age, or disability not directly and substantively related to effective performance, veteran or other status protected under applicable local, state, or federal law. It is also the policy of PDSC to establish a program of affirmative action to address the effects of discrimination intended and unintended, which is indicated by analysis of present employment patterns, practices and policies.

PDSC's Non-Discrimination and Affirmative Action Plan shall be followed by all PDSC staff. All personnel actions of PDSC shall be administered according to this policy. PDSC's supervisory and management staff shall ensure that the intent as well as the stated requirements of the Plan are implemented. In addition, it is the duty of every employee of PDSC to create a job environment that is conducive to non-discrimination and free of any form of discriminatory harassment.

This Non-Discrimination and Affirmative Action Plan will be posted in plain sight at all times for employees' use and referral. Any agency or member of the public requesting a copy of the PDSC Affirmative Action Plan shall be provided one at no cost.

##### ***Harassment in the Workplace Policy and Procedures***

Harassment is a form of discrimination that is prohibited by state and federal law and by PDSC's Affirmative Action Policy. Any person who believes that he or she has been harassed at PDSC based on race, color, national origin, religion, gender identity or expression, marital status, sexual orientation, age, veteran status or disability, or based on opposition to discrimination or participation in investigation or complaint proceedings under this policy may file a formal or informal complaint with PDSC's Executive Director. Confidentiality will be maintained to the fullest extent permitted.

## BUDGET NARRATIVE

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Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or creating an intimidating, hostile, or offensive working environment.

Harassment based on race, color, national origin, religion, gender identity or expression, marital status, sexual orientation, age, veteran status, disability, or because the employee opposed job discrimination or participated in an investigation or complaint proceeding under this policy is any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, intimidation or threat engaged in by an individual that is directed at and offensive to another person or persons in the workplace, that the individual knew or ought reasonably to have known would cause offense or harm when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or creating an intimidating, hostile, or offensive working environment.

PDSC's informal complaint process affords an opportunity to gather information to either establish a suspicion of harassment or to attempt to resolve a disagreement without following PDSC's formal complaint procedure. An informal complaint involves the following procedures:

- The complainant submits a written or oral complaint to the Executive Director or his designee,<sup>7</sup> who advises the complainant of her or his right to file a formal complaint with PDSC or with other state and federal agencies.
- The Executive Director contacts the individual or individuals accused of harassment to discuss the alleged harmful act.

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<sup>7</sup> The Executive Director will appoint as her "designee" for the purposes of PDSC's informal and formal Harassment in the Workplace complaint procedures a PDSC employee who has no management or supervisory responsibilities and who possesses personal characteristics that will not discourage employees' reports of harassment. All references to "Executive Director" in the informal and formal complaint procedures are meant to include this designee.

## BUDGET NARRATIVE

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- The Executive Director develops a proposed resolution, if appropriate, and informs the parties of that proposed resolution within fifteen (15) calendar days of receipt of the informal complaint.
- If the proposed resolution is unacceptable to the complainant, she or he may file a formal complaint with the Executive Director.

PDSC's formal complaint process ensures the investigation of cases of alleged harassment, the determination as to whether or not harassment has occurred and, where appropriate, the resolution of a complaint. A formal complaint involves the following procedures:

- The complainant submits her or his complaint in writing to the Executive Director or his designee, which must be filed within 365 days of the alleged harmful act.
- The Executive Director acknowledges in a Letter of Acknowledgement receipt of the formal complaint, which includes information on the complainant's right to file a complaint with other state or federal agencies. Copies of the Letter of Acknowledgement are sent to the individual or individuals accused of harassment and the director of the relevant division of PDSC. Upon determining that the complaint is facially valid, the Executive Director conducts a thorough investigation of the complaint.
- Within thirty (30) calendar days of receipt of the formal complaint, the Executive Director informs the complainant and all persons who received copies of the Letter of Acknowledgement of the formal complaint by a Letter of Determination of the final status of the complaint, its disposition and the complainant's rights to file a complaint with other state or federal agencies.

### ***Persons with Disabilities Policy and Procedures***

It is the policy of PDSC to comply fully with Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA) as amended by the 2008 ADA Amendments Act, and other applicable federal and state laws that prohibit discrimination on the basis of disability. The Rehabilitation Act and the ADA require that no qualified person shall, solely by reason of disability, be denied access to, participation in, or the benefits of, any program or activity operated by PDSC. Each qualified person shall receive the reasonable accommodations needed to ensure equal access to employment, educational opportunities, programs, and activities in the most integrated setting.

For a disability to be protected by the ADA, an impairment must substantially limit one or more major life activities. These are activities that an average person can perform with little or no difficulty, such as walking, seeing, or working. Temporary impairments, including pregnancy, are not covered as disabilities under the ADA.

PDSC's employees or qualified applicants for employment by PDSC with disabilities shall be responsible for:

## BUDGET NARRATIVE

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- notifying PDSC in a timely fashion of their need for reasonable accommodations;
- submitting appropriate documentation of the disability from an appropriate professional prior to receiving the accommodations requested; and
- demonstrating and documenting how the disability affects the employee's job processes, functions, responsibilities or performance evaluation criteria when requesting reasonable accommodations.

Upon receiving such notification and documentation from a disabled employee or applicant for employment requesting reasonable accommodation, PDSC shall be responsible for:

- making reasonable accommodations for a physical or mental disability, including but not limited to job restructuring, reassignment to a vacant position, part-time or modified work schedules, assistive technology, or aides or qualified interpreters, which do not create an "undue hardship" (defined as significantly difficult or expensive), and excluding the creation of new jobs or the reallocation of essential functions to another employee;
- engaging in an interactive process with the disabled employee or qualified applicant for employment with regard to the type of accommodation that will enable the individual to perform the essential functions of the relevant position;
- evaluating the employee's or applicant's physical or mental limitations in order to determine the accommodation that will be effective, excluding accommodations of a personal nature such as a guide dog for a visually impaired employee, or a wheelchair;
- keeping confidential any medical information obtained from a disabled employee or applicant; and
- using qualification or performance standards, tests and other selection criteria that screen out individuals with disabilities only when they are (a) job-related and consistent with business necessity and (b) cannot be satisfied through the provision of a reasonable accommodation.

# Attachment 3

### Q1 Please tell us your role in the justice system.

Answered: 161 Skipped: 10

Answer Choices	Responses	
Judge	54.66%	88
Prosecutor	17.39%	28
Juvenile Department Director	3.73%	6
Citizen Review Board Coordinator	0.00%	0
Department of Justice attorney	1.24%	2
Department of Human Services court worker	1.86%	3
Other	21.12%	34
<b>Total</b>		<b>161</b>

### Q2 How long have you worked in your county's justice system?

Answered: 163 Skipped: 8

Answer Choices	Responses	
1 to 3 years	11.04%	18
3 to 5 years	12.88%	21
5 to 10 years	16.56%	27
10 years and more	59.51%	97
<b>Total</b>		<b>163</b>

### Q3 In which Judicial District do you work? (If you work in multiple Judicial Districts, please complete a separate survey for each district. The survey instruments permits completion of multiple surveys from the same computer.)

Answered: 171 Skipped: 0

Answer Choices	Responses	
JD 1 Jackson County	4.68%	8
JD 2 Lane County	9.36%	16
JD 3 Marion County	8.19%	14
JD 4 Multnomah County	9.94%	17
JD 5 Clackamas County	5.26%	9

## 2016 Annual Statewide Public Defense Performance Survey

JD 6 Morrow & Umatilla Counties	2.92%	5
JD 7 Hood River, Wasco, Sherman, Wheeler, Gilliam Counties	5.85%	10
JD 8 Baker County	1.17%	2
JD 9 Malheur County	2.92%	5
JD 10 Union & Wallowa Counties	3.51%	6
JD 11 Deschutes County	5.85%	10
JD 12 Polk County	1.75%	3
JD 13 Klamath County	2.34%	4
JD 14 Josephine County	1.75%	3
JD 15 Coos & Curry Counties	4.68%	8
JD 16 Douglas County	1.75%	3
JD 17 Lincoln County	2.34%	4
JD 18 Clatsop County	2.34%	4
JD 19 Columbia County	1.75%	3
JD 20 Washington County	5.85%	10
JD 21 Benton County	3.51%	6
JD 22 Crook & Jefferson Counties	2.92%	5
JD 23 Linn County	3.51%	6
JD 24 Grant & Harney Counties	1.75%	3
JD 25 Yamhill County	1.75%	3
JD 26 Lake County	1.75%	3
JD 27 Tillamook County	0.58%	1
<b>Total</b>		<b>171</b>

### Q4 Are you able to comment on the quality of public defense representation in adult criminal cases?

Answered: 167 Skipped: 4

Answer Choices	Responses	
Yes	76.65%	128
No (the survey will skip questions related to these cases)	23.35%	39
<b>Total</b>		<b>167</b>

### Q5 Please rate your overall assessment of the quality of public defense representation in adult criminal cases.

## 2016 Annual Statewide Public Defense Performance Survey

Answered: 111 Skipped: 60

Answer Choices	Responses	
Excellent	18.02%	20
Good	67.57%	75
Fair	12.61%	14
Poor	1.80%	2
<b>Total</b>		<b>111</b>

### Q6 Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in criminal cases?

Answered: 112 Skipped: 59

Answer Choices	Responses	
Yes	37.50%	42
No	62.50%	70
<b>Total</b>		<b>112</b>

### Q7 How would you describe the adult criminal caseloads of public defense attorneys in your judicial district?

Answered: 110 Skipped: 61

Answer Choices	Responses	
Significantly too large	10.91%	12
Somewhat too large	46.36%	51
About right	38.18%	42
Somewhat too small	4.55%	5
Significantly too small	0.00%	0
<b>Total</b>		<b>110</b>

### Q8 In criminal cases, do public defense attorneys...

Answered: 112 Skipped: 59

	Always	Most of the time	Sometimes	Rarely	Never	Not enough information to form opinion	Total	Weighted Average
Appear to be proficient in the applicable substantive and procedural law?	11.43% 12	73.33% 77	12.38% 13	1.90% 2	0.00% 0	0.95% 1	105	2.09

## 2016 Annual Statewide Public Defense Performance Survey

Abide by the Oregon Rules of Professional Conduct?	<b>35.85%</b> 38	<b>50.00%</b> 53	<b>9.43%</b> 10	<b>2.83%</b> 3	<b>0.00%</b> 0	<b>1.89%</b> 2	106	1.87
Act professionally with clients, the court, opposing counsel, and other court workers?	<b>23.58%</b> 25	<b>66.04%</b> 70	<b>5.66%</b> 6	<b>1.89%</b> 2	<b>0.00%</b> 0	<b>2.83%</b> 3	106	1.97
Follow the rules of the court?	<b>26.92%</b> 28	<b>64.42%</b> 67	<b>2.88%</b> 3	<b>3.85%</b> 4	<b>0.00%</b> 0	<b>1.92%</b> 2	104	1.91
Acquire and maintain appropriate experience, skills and training?	<b>17.31%</b> 18	<b>58.65%</b> 61	<b>9.62%</b> 10	<b>2.88%</b> 3	<b>0.00%</b> 0	<b>11.54%</b> 12	104	2.44
Devote adequate time and resources to their cases?	<b>6.73%</b> 7	<b>50.96%</b> 53	<b>26.92%</b> 28	<b>5.77%</b> 6	<b>0.96%</b> 1	<b>8.65%</b> 9	104	2.69
Engage in the preparation necessary for quality representation?	<b>9.80%</b> 10	<b>55.88%</b> 57	<b>22.55%</b> 23	<b>4.90%</b> 5	<b>0.98%</b> 1	<b>5.88%</b> 6	102	2.49
Appear to establish and maintain a relationship of trust and open communication with their clients?	<b>5.77%</b> 6	<b>65.38%</b> 68	<b>20.19%</b> 21	<b>0.96%</b> 1	<b>0.00%</b> 0	<b>7.69%</b> 8	104	2.47
Appear to keep clients informed and seek the lawful objectives of their clients?	<b>11.82%</b> 13	<b>60.91%</b> 67	<b>18.18%</b> 20	<b>1.82%</b> 2	<b>0.91%</b> 1	<b>6.36%</b> 7	110	2.38

### Q9 Are you able to comment on the quality of public defense representation in juvenile dependency cases?

Answered: 150 Skipped: 21

Answer Choices	Responses
Yes	<b>57.33%</b> 86
No (the survey will skip questions related to these cases)	<b>42.67%</b> 64
<b>Total</b>	<b>150</b>

### Q10 Please rate your overall assessment of the quality of public defense representation in juvenile dependency cases.

Answered: 76 Skipped: 95

Answer Choices	Responses
Excellent	<b>27.63%</b> 21
Good	<b>56.58%</b> 43
Fair	<b>11.84%</b> 9
Poor	<b>3.95%</b> 3
<b>Total</b>	<b>76</b>

### Q11 Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in juvenile dependency cases?

Answered: 77 Skipped: 94

2016 Annual Statewide Public Defense Performance Survey

Answer Choices	Responses	
Yes	20.78%	16
No	79.22%	61
<b>Total</b>		<b>77</b>

**Q12 How would you describe the juvenile dependency caseloads of public defense attorneys in your judicial district?**

Answered: 74 Skipped: 97

Answer Choices	Responses	
Significantly too large	9.46%	7
Somewhat too large	28.38%	21
About right	58.11%	43
Somewhat too small	4.05%	3
Significantly too small	0.00%	0
<b>Total</b>		<b>74</b>

**Q13 In juvenile dependency cases, do public defense attorneys...**

Answered: 79 Skipped: 92

	Always	Most of the time	Sometimes	Rarely	Never	Not enough information to form opinion	Total	Weighted Average
Appear to be proficient in the applicable substantive and procedural law?	19.23% 15	70.51% 55	5.13% 4	2.56% 2	1.28% 1	1.28% 1	78	2.00
Abide by the Oregon Rules of Professional Conduct?	53.25% 41	38.96% 30	6.49% 5	1.30% 1	0.00% 0	0.00% 0	77	1.56
Act professionally with clients, the court, opposing counsel, and other court workers?	40.26% 31	45.45% 35	11.69% 9	1.30% 1	0.00% 0	1.30% 1	77	1.79
Follow the rules of the court?	44.00% 33	53.33% 40	0.00% 0	2.67% 2	0.00% 0	0.00% 0	75	1.61
Acquire and maintain appropriate experience, skills and training?	35.14% 26	45.95% 34	5.41% 4	1.35% 1	2.70% 2	9.46% 7	74	2.19
Devote adequate time and resources to their cases?	17.57% 13	55.41% 41	13.51% 10	2.70% 2	2.70% 2	8.11% 6	74	2.42
Engage in the preparation necessary for quality representation?	13.70% 10	63.01% 46	13.70% 10	2.74% 2	1.37% 1	5.48% 4	73	2.32
Appear to establish and maintain a relationship of trust and open communication with their clients?	26.67% 20	54.67% 41	9.33% 7	4.00% 3	0.00% 0	5.33% 4	75	2.12
Appear to keep clients informed and seek the lawful objectives of their clients?	29.73% 22	52.70% 39	6.76% 5	5.41% 4	1.35% 1	4.05% 3	74	2.08

**Q14 Are you able to comment on the quality**

2016 Annual Statewide Public Defense Performance Survey  
**of public defense representation in juvenile delinquency cases?**

Answered: 141 Skipped: 30

Answer Choices	Responses
Yes	46.10% 65
No (the survey will skip questions related to these cases)	53.90% 76
<b>Total</b>	<b>141</b>

**Q15 Please rate your overall assessment of the quality of public defense representation in juvenile delinquency cases.**

Answered: 62 Skipped: 109

Answer Choices	Responses
Excellent	27.42% 17
Good	61.29% 38
Fair	9.68% 6
Poor	1.61% 1
<b>Total</b>	<b>62</b>

**Q16 Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in juvenile delinquency cases?**

Answered: 62 Skipped: 109

Answer Choices	Responses
Yes	9.68% 6
No	90.32% 56
<b>Total</b>	<b>62</b>

**Q17 How would you describe the juvenile delinquency caseloads of public defense attorneys in your judicial district?**

Answered: 61 Skipped: 110

Answer Choices	Responses
Significantly too large	1.64% 1
Somewhat too large	18.03% 11
About right	68.85% 42

2016 Annual Statewide Public Defense Performance Survey

Somewhat too small	9.84%	6
Significantly too small	1.64%	1
<b>Total</b>		<b>61</b>

**Q18 In juvenile delinquency cases, do public defense attorneys...**

Answered: 62 Skipped: 109

	Always	Most of the time	Sometimes	Rarely	Never	Not enough information to form opinion	Total	Weighted Average
Appear to be proficient in the applicable substantive and procedural law?	30.65% 19	64.52% 40	3.23% 2	1.61% 1	0.00% 0	0.00% 0	62	1.76
Abide by the Oregon Rules of Professional Conduct?	53.23% 33	43.55% 27	0.00% 0	3.23% 2	0.00% 0	0.00% 0	62	1.53
Act professionally with clients, the court, opposing counsel, and other court workers?	42.37% 25	50.85% 30	5.08% 3	1.69% 1	0.00% 0	0.00% 0	59	1.66
Follow the rules of the court?	48.33% 29	46.67% 28	1.67% 1	3.33% 2	0.00% 0	0.00% 0	60	1.60
Acquire and maintain appropriate experience, skills and training?	38.98% 23	40.68% 24	8.47% 5	1.69% 1	0.00% 0	10.17% 6	59	2.14
Devote adequate time and resources to their cases?	25.42% 15	50.85% 30	13.56% 8	3.39% 2	0.00% 0	6.78% 4	59	2.22
Engage in the preparation necessary for quality representation?	23.73% 14	54.24% 32	10.17% 6	3.39% 2	0.00% 0	8.47% 5	59	2.27
Appear to establish and maintain a relationship of trust and open communication with their clients?	33.90% 20	52.54% 31	8.47% 5	1.69% 1	0.00% 0	3.39% 2	59	1.92
Appear to keep clients informed and seek the lawful objectives of their clients?	36.67% 22	51.67% 31	6.67% 4	3.33% 2	0.00% 0	1.67% 1	60	1.83

**Q19 Are you able to comment on the quality of public defense representation in death penalty cases?**

Answered: 138 Skipped: 33

Answer Choices	Responses
Yes	17.39% 24
No (the survey will skip questions related to these cases)	82.61% 114
<b>Total</b>	<b>138</b>

**Q20 Please provide any comments you have concerning the quality of public defense representation in death penalty cases.**

Answered: 20 Skipped: 151

**Q21 Are you able to comment on the quality of public defense representation in civil commitment cases?**

Answered: 137 Skipped: 34

Answer Choices	Responses	
Yes	51.82%	71
No (the survey will skip questions related to these cases)	48.18%	66
<b>Total</b>		<b>137</b>

**Q22 Please rate your overall assessment of the quality of public defense representation in civil commitment cases.**

Answered: 66 Skipped: 105

Answer Choices	Responses	
Excellent	42.42%	28
Good	40.91%	27
Fair	12.12%	8
Poor	4.55%	3
<b>Total</b>		<b>66</b>

**Q23 Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in civil commitment cases?**

Answered: 66 Skipped: 105

Answer Choices	Responses	
Yes	10.61%	7
No	89.39%	59
<b>Total</b>		<b>66</b>

**Q24 How would you describe the civil commitment caseloads of public defense attorneys in your judicial district?**

Answered: 64 Skipped: 107

Answer Choices	Responses	
Significantly too large	0.00%	0
Somewhat too large	3.13%	2

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About right	85.94%	55
Somewhat too small	9.38%	6
Significantly too small	1.56%	1
<b>Total</b>		<b>64</b>

**Q25 In civil commitment cases, do public defense attorneys...**

Answered: 68 Skipped: 103

	Always	Most of the time	Sometimes	Rarely	Never	Not enough information to form opinion	Total	Weighted Average
Appear to be proficient in the applicable substantive and procedural law?	38.24% 26	50.00% 34	5.88% 4	5.88% 4	0.00% 0	0.00% 0	68	1.79
Abide by the Oregon Rules of Professional Conduct?	66.67% 44	28.79% 19	1.52% 1	1.52% 1	0.00% 0	1.52% 1	66	1.44
Act professionally with clients, the court, opposing counsel, and other court workers?	64.62% 42	30.77% 20	3.08% 2	0.00% 0	0.00% 0	1.54% 1	65	1.45
Follow the rules of the court?	65.63% 42	29.69% 19	1.56% 1	3.13% 2	0.00% 0	0.00% 0	64	1.42
Acquire and maintain appropriate experience, skills and training?	46.88% 30	34.38% 22	7.81% 5	4.69% 3	1.56% 1	4.69% 3	64	1.94
Devote adequate time and resources to their cases?	37.50% 24	39.06% 25	7.81% 5	6.25% 4	0.00% 0	9.38% 6	64	2.20
Engage in the preparation necessary for quality representation?	37.50% 24	45.31% 29	7.81% 5	4.69% 3	0.00% 0	4.69% 3	64	1.98
Appear to establish and maintain a relationship of trust and open communication with their clients?	42.86% 27	39.68% 25	6.35% 4	7.94% 5	0.00% 0	3.17% 2	63	1.92
Appear to keep clients informed and seek the lawful objectives of their clients?	43.75% 28	37.50% 24	12.50% 8	1.56% 1	0.00% 0	4.69% 3	64	1.91

**Q26 Please provide any additional comments, concerns, or suggestions that you may have about the quality of public defense representation in your county or judicial district.**

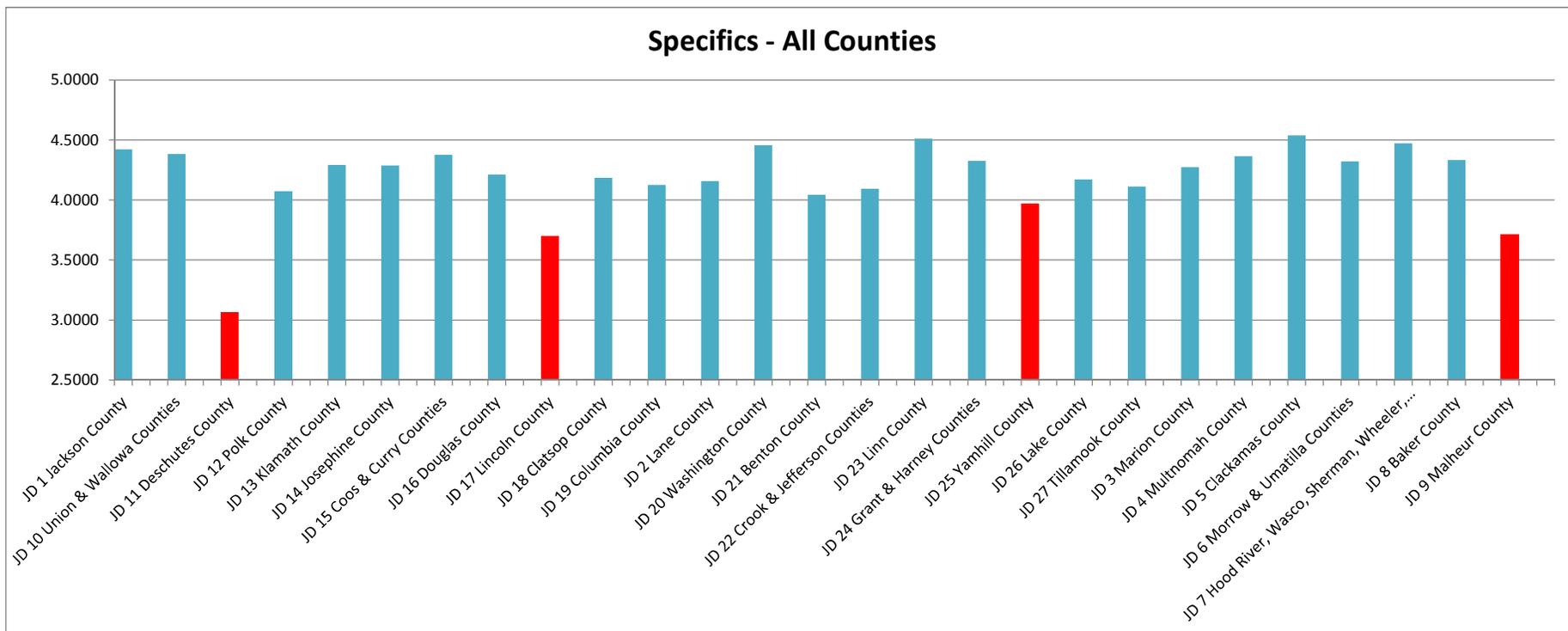
Answered: 50 Skipped: 121

**Q27 How can the Public Defense Services Commission and the Office of Public Defense Services better meet the public defense needs in your community?**

Answered: 38 Skipped: 133

**Q28 Your name (optional)**

Answered: 45 Skipped: 126



In your opinion, do public defense attorneys in your county...

Appear to be proficient in the applicable substantive and procedural law?

Abide by the Oregon Rules of Professional Conduct?

Act professionally with clients, the court, opposing counsel, and other court workers?

Follow the rules of the court?

Acquire and maintain appropriate experience, skills and training?

Devote adequate time and resources to their cases?

Engage in the preparation necessary for quality representation?

Appear to establish and maintain a relationship of trust and open communication with their clients?

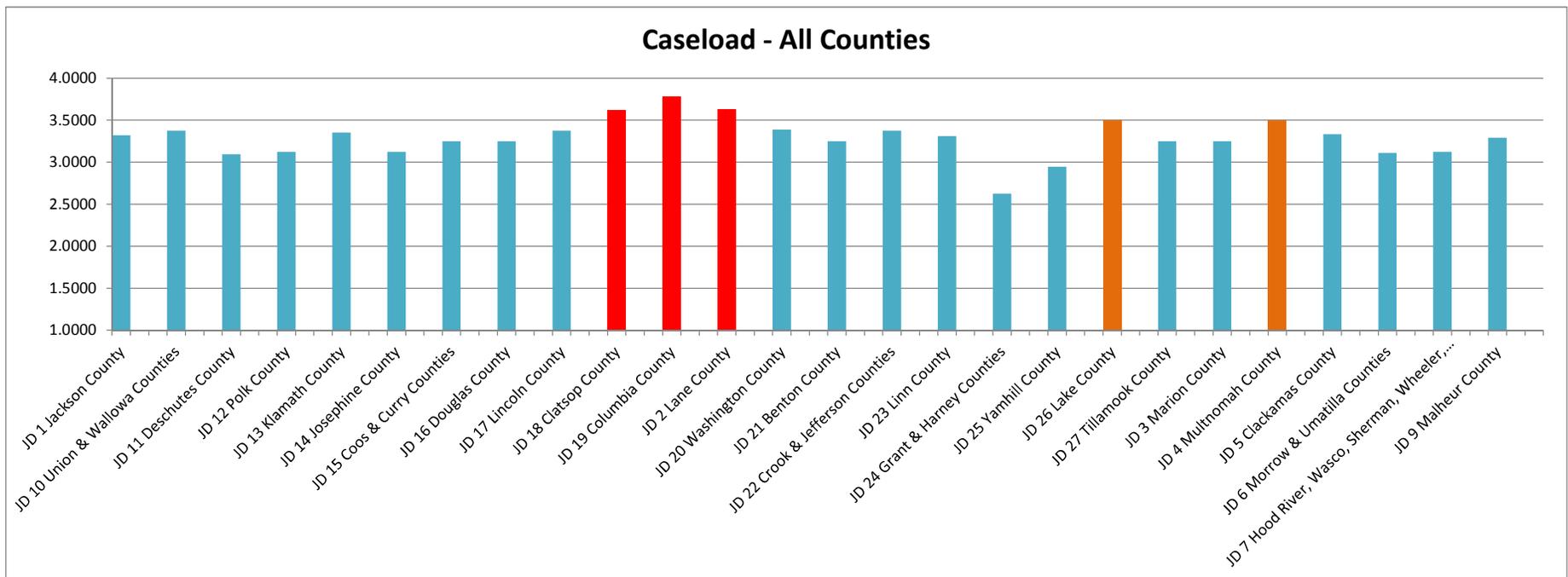
Appear to keep clients informed and seek the lawful objectives of their clients?

Scale:

- Always** 5
- Most of the time** 4
- Sometimes** 3
- Rarely** 2
- Never** 1

Key:

- Under 4.0 =** ■
- Over 4.0 =** ■



"How would you describe the caseloads of public defense attorneys in your judicial district?"

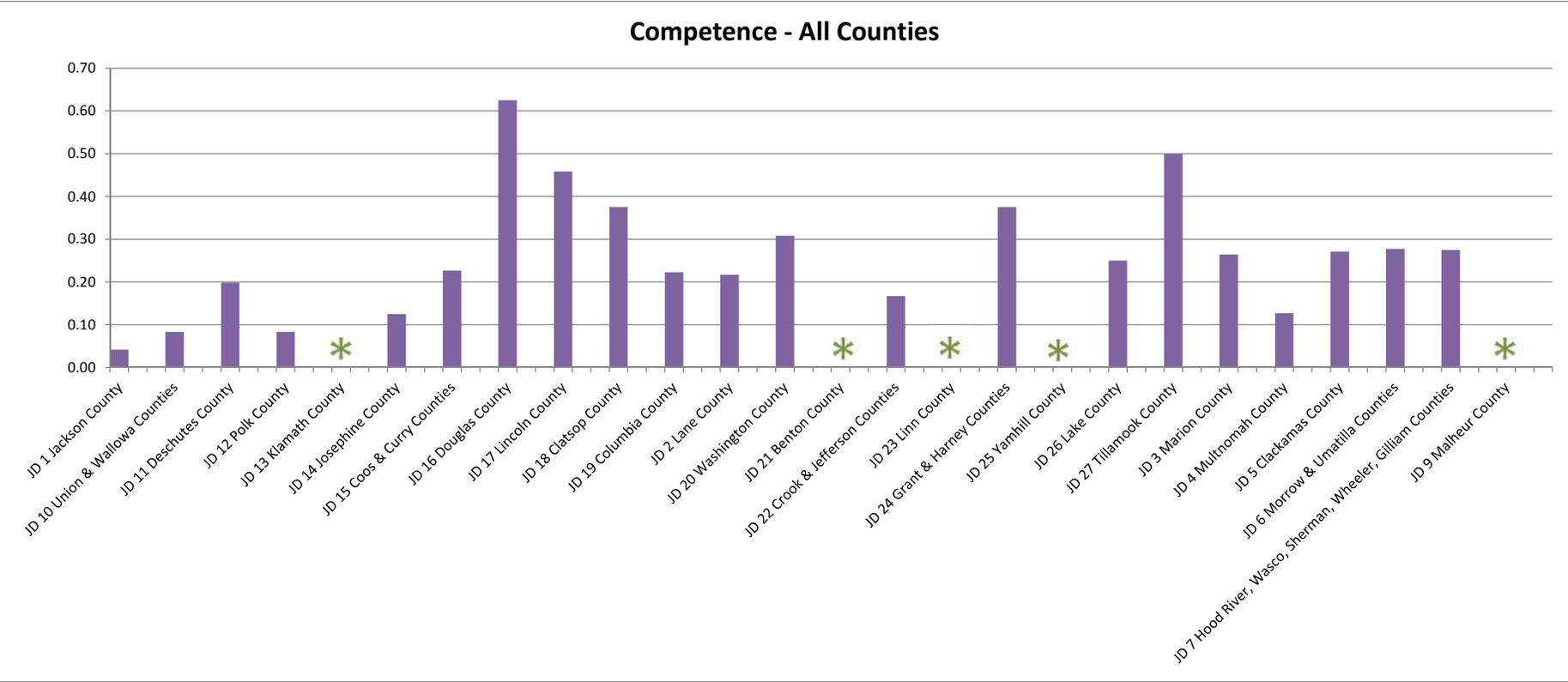
Scale:

<b>Significantly too large</b>	<b>5</b>
<b>Somewhat too large</b>	<b>4</b>
<b>About right</b>	<b>3</b>
<b>Somewhat too small</b>	<b>2</b>
<b>Significantly too small</b>	<b>1</b>

Key:

<b>Over 3.5 =</b>	
<b>3.5 =</b>	
<b>Under 3.5 =</b>	

### Competence - All Counties

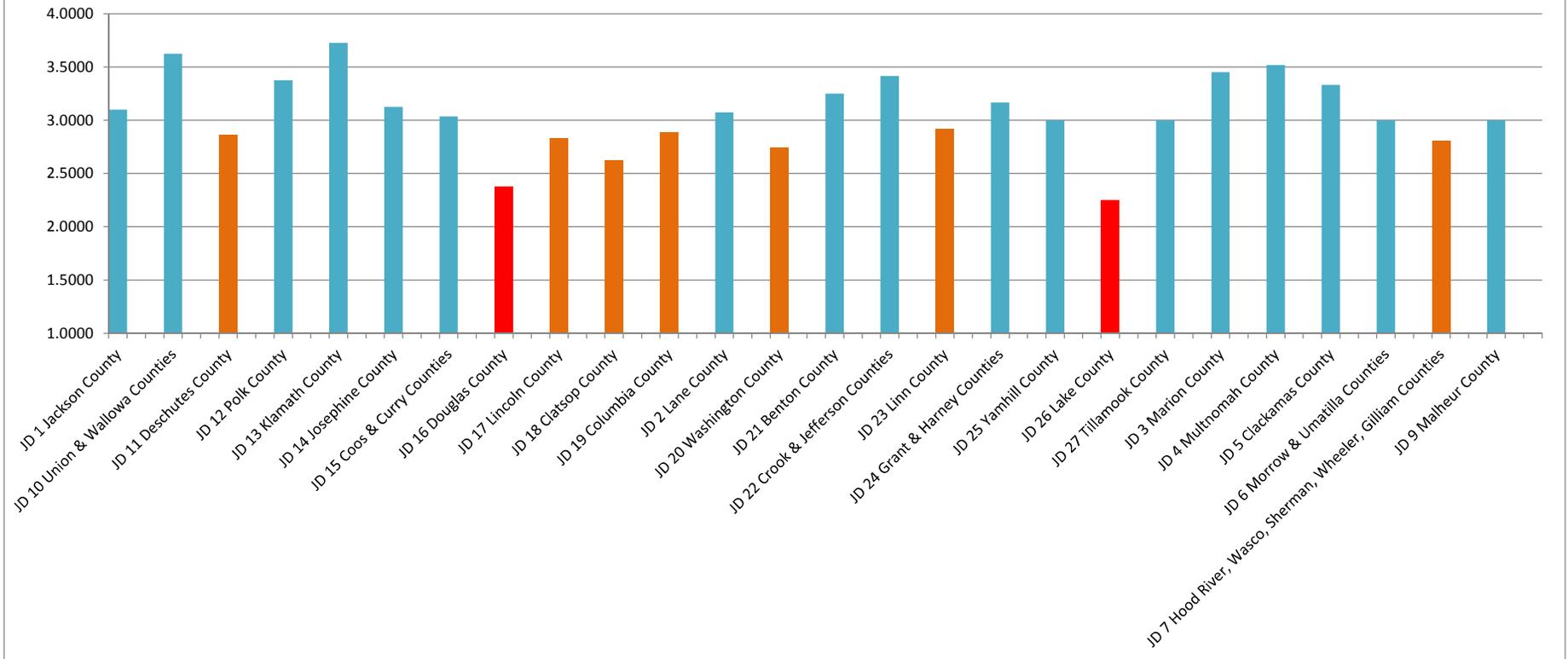


"Do you question the competence of any public defense attorneys in your jurisdiction?"

Scale:  
 Yes 1  
 No 0

Key:  
 Equals 0 = \*

### Overall Quality - All Counties



Please rate your overall assessment of the quality of public defense representation.

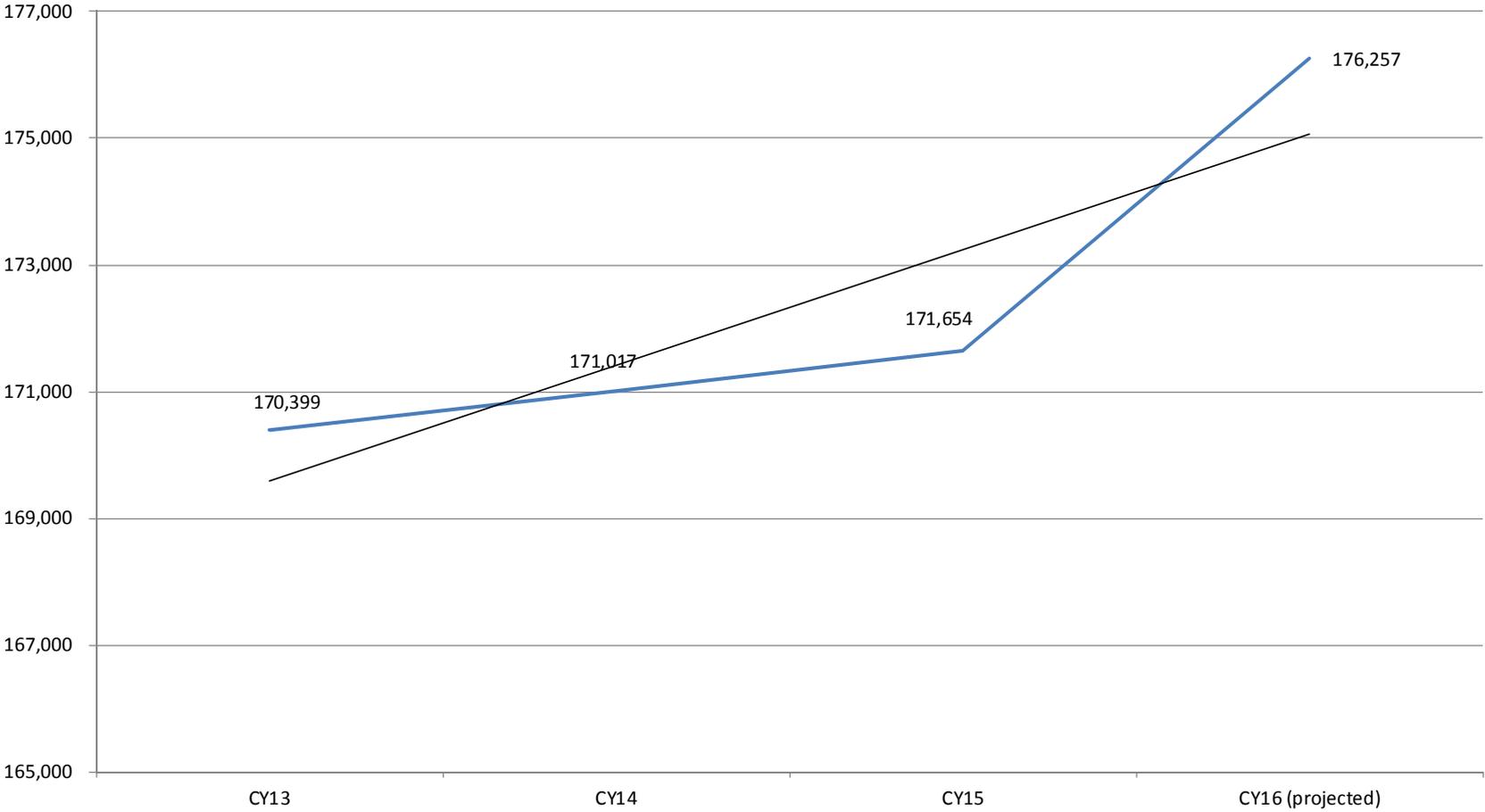
Scale:  
 Excellent 4  
 Good 3  
 Fair 2  
 Poor 1

Key:  
 Below 2.5 = ■  
 Below 3 = ■  
 3 or higher = ■

# Attachment 4

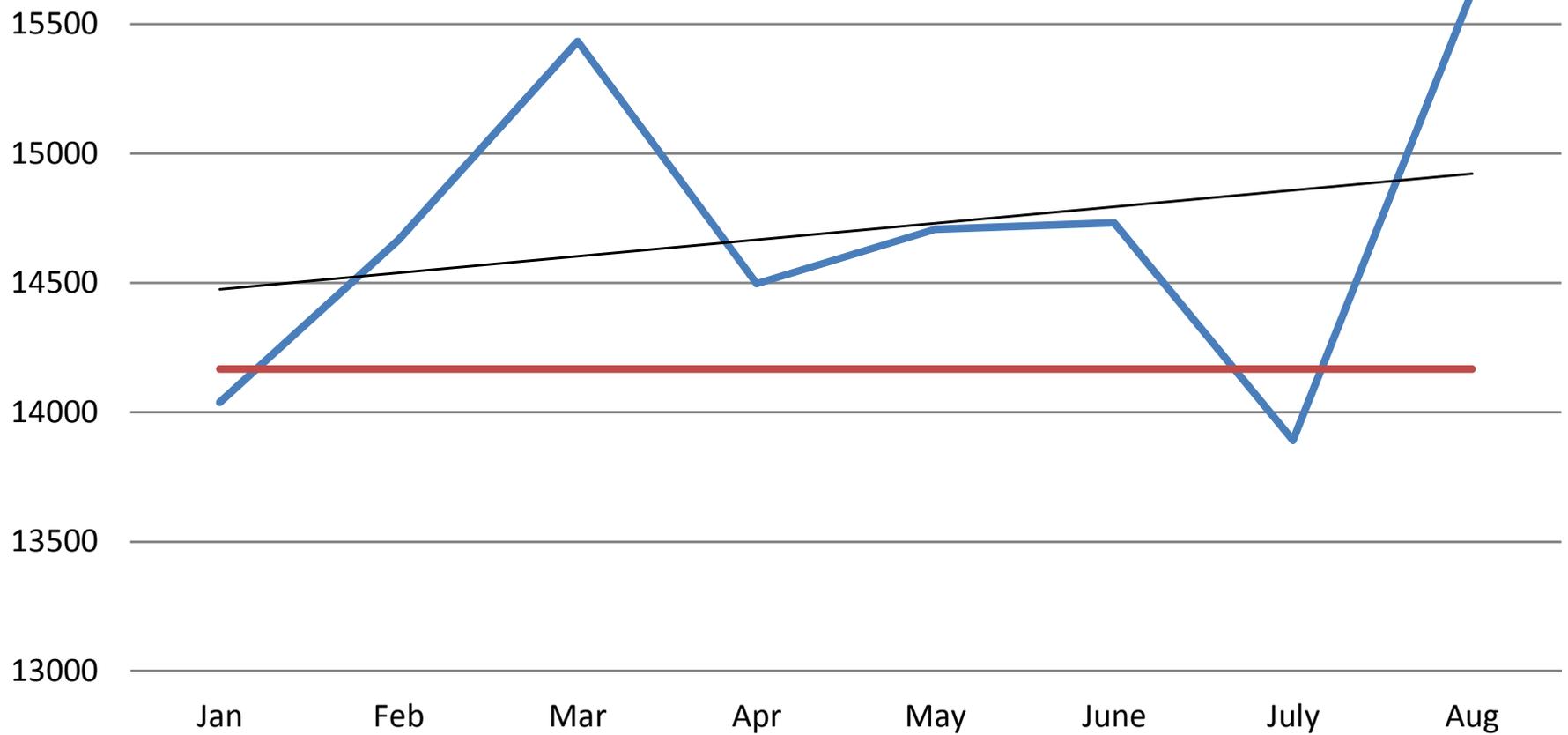
# TOTAL CASELOAD

by calendar year

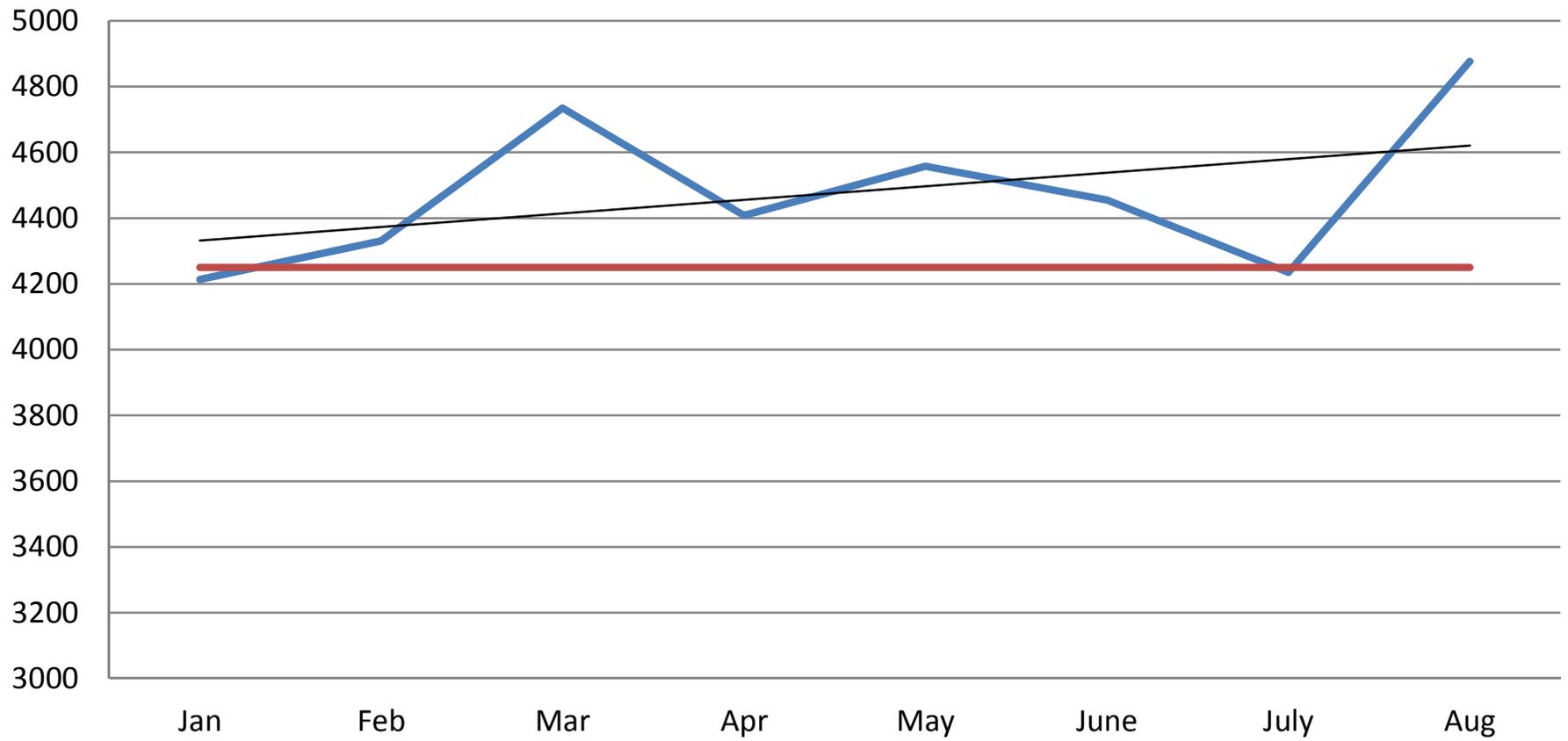


Actual Caseload thru August = 117,595

## Statewide Non-Capital Caseload Credits for January 2016 through August 2016



## Statewide Felony Contract Caseload for January 2016 through August 2016



# Attachment 5

## **PDSC COMPLAINT POLICY AND PROCEDURES**

**The following Public Defense Complaint Policy and Procedures (PDCPP) is adopted by the Public Defense Services Commission (PDSC) pursuant to ORS 151.216(1)(f)(j) and (h), effective October 22, 2004.**

### **Policy:**

**It is important for the Office of Public Defense Services (“OPDS”) to be aware of complaints regarding the performance of public defense providers and the cost of public defense services, to have a policy regarding the processing of such complaints, and to address such complaints in a manner which is consistent with its obligation to provide high quality, cost-efficient public defense services.**

**Certain complaints are in the jurisdiction of the courts or of the Oregon State Bar and should be conducted under procedures adopted by them for such matters. OPDS has an independent duty to oversee the quality and cost of public defense services and to take appropriate action to ensure quality and cost effectiveness.**

**The PDCPP governs the procedure for receiving, investigating, and responding to complaints regarding (1) the quality of services provided by public defense attorneys, and (2) payment from public funds of attorney fees and non-routine fees and expenses incurred in cases.**

**In order to provide OPDS with specific guidelines for the handling of complaints, the PDSC adopts the following procedures.**

### **Procedures:**

1. Complaints regarding the quality of services provided by public defense attorneys.
  - a. A “public defense attorney” is an attorney who provides legal representation at state expense pursuant to ORS 151.216 and other statutes.
  - b. A complaint regarding the quality of services provided by a public defense attorney shall be made in writing and signed by the complainant.
  - c. Upon receipt of a complaint under this paragraph, OPDS will make an initial determination whether the complaint raises a facially reasonable issue regarding the quality of services provided by a public defense attorney.
  - d. If the complaint raises a facially reasonable issue regarding the quality of services, OPDS shall determine whether:

- i. the complaint relates to a current concern or dispute which may be capable of resolution through OPDS intervention (for example, a current client contacts OPDS to report lack of contact with the client's lawyer); or
  - ii. the complaint relates to past or continuing conduct which cannot be resolved by OPDS intervention.
- e. If the complaint relates to a current concern which may be capable of informal resolution, OPDS shall provide the attorney and, if applicable, the attorney's employer or consortium administrator, with a copy of the complaint. OPDS shall attempt to resolve the issue with the attorney or the attorney's employer or consortium administrator by agreeing upon an appropriate course of action.
- f. If the concern is about past or continuing conduct which has not been or cannot be resolved by OPDS intervention, OPDS shall then determine whether the concern is one which is being or should be addressed:
  - i. by the court (for example, if the client is seeking to have counsel relieved and new counsel appointed, or if the client has filed a petition for post conviction relief alleging inadequate representation by counsel); or
  - ii. by the bar (for example, if the allegation is one of misconduct by the lawyer).
- g. If one or more of the collateral proceedings identified in *fi* and *fii* above has already been initiated, OPDS shall inform the complainant, the attorney, and, if applicable, the attorney's employer or consortium administrator that OPDS will monitor the progress of the proceeding in the court or bar.
- h. If the complaint is of a nature which would more appropriately be addressed by the court or bar and such proceedings have not been initiated, OPDS will inform the complainant of the availability of those processes and inform the attorney, and the attorney's employer or consortium administrator if applicable, that the complainant has been so advised.
- i. If:
  - i. the complaint is not capable of informal resolution and is also not properly the subject of a court or bar proceeding (such as an allegation that an attorney is continually failing to meet obligations under the attorney's contract with PDSC or fails to meet PDSC's Qualification Standards for Court Appointed Counsel to Represent Indigent Persons at State Expense), or
  - ii. the court or bar proceedings have resulted in a determination that the lawyer has failed to adequately represent the client or has violated an OSB disciplinary rule,
- j. Then:
 

OPDS shall review information submitted and findings made in collateral proceedings, if any, and may perform its own investigation. After notice to the attorney and the attorney's employer or consortium administrator, if

any, of the information obtained by OPDS and an opportunity for the attorney and the employer or administrator to respond, OPDS shall determine whether all of the information available establishes or fails to establish that the attorney's representation with respect to the matter complained of has been unsatisfactory.

- i. If OPDS determines that the representation has been unsatisfactory it may take appropriate action to attempt to correct the problem.
- ii. If corrective action is not possible or if the attorney or the employer or consortium administrator fails to correct the conduct complained of in a timely manner, OPDS may take such additional action as is appropriate under the circumstances, including but not limited to suspension of the attorney from appointment for any or all case types, in addition to any action authorized under PDSC's contract with the attorney or the attorney's employer or consortium.
- k. OPDS shall notify the attorney and the employer or consortium administrator, if any, in writing of its finding and of any action taken or sanction imposed in response to a finding of unsatisfactory representation.
- l. If a complaint is resolved informally, no written notice to the complainant is required. If a complaint is not resolved informally, OPDS shall notify the complainant in writing of its finding and of any corrective action taken or sanction imposed in response to a finding of unsatisfactory representation.
- m. OPDS shall maintain a record of each complaint filed under this section and of any action taken in response to the complaint.

## 2. Complaints regarding payment from public funds of attorney fees and non-routine fees and expenses.

- n. A complaint regarding payment from public funds of attorney fees or non-routine fees and expenses shall be made in writing and signed by the complainant.
- o. Upon receipt of a complaint under this paragraph, OPDS shall make an initial determination whether the complaint raises a facially reasonable claim regarding the payment from public funds of attorney fees or non-routine fees and expenses.
- p. If the complaint raises a facially reasonable claim, OPDS shall review records related to the attorney fees or non-routine expense authorization or payment.
- q. If the matter complained of is not resolved by a review of the records, OPDS shall contact the attorney or provider for an explanation. The attorney or provider may respond orally or in writing.
- r. If, after a review of the records and any additional information obtained from the attorney or provider, a reasonable concern remains that attorney

- fees or non-routine fees or expenses may have been unreasonable, OPDS shall notify the attorney or provider of its concern and shall conduct such further investigation as may appear appropriate under the circumstances.
- s. After completing its investigation, OPDS shall determine whether all of the information available establishes or fails to establish that the fee or expenditure complained of was unreasonable.
  - t. If OPDS determines that the fee or expense was unreasonable, it may take any or all of the following actions unless the fee or expense was specifically pre-authorized by OPDS and used for the purpose authorized:
    - i. decline payment for the goods or services in question;
    - ii. seek reimbursement for any funds determined to have been improperly obtained or used;
    - iii. warn the attorney or provider;
    - iv. upon approval by the executive director of OPDS, suspend the attorney's eligibility for appointment in public defense cases or decline to authorize future fees or expenses for the provider; and
    - v. take such additional measures as may be appropriate under the circumstances.
  - u. If a fee or expense determined to be unreasonable was specifically pre-authorized by OPDS and used for the purpose authorized, OPDS shall review its policies and procedures and take such action as appears appropriate to avoid future pre-authorization of unreasonable fees and expenses.
  - v. OPDS shall notify both the attorney or provider and the complainant in writing of its finding and of any action taken or sanction imposed in response to a finding that a fee or expense was unreasonable.
  - w. OPDS shall maintain a record of each complaint filed under this section and of any action taken in response to the complaint.
2. Nothing in the PDCPP prohibits OPDS from receiving information in any form from any source regarding the performance of public defense providers or the cost of public defense services, and taking such action as it deems appropriate.
  3. Submissions to OPDS may be made in confidence or may include information submitted in confidence. OPDS will not disclose such information, except as required by law, without the consent of the person making the submission.

# Attachment 6

**PUBLIC DEFENSE SERVICES COMMISSION  
QUALIFICATION STANDARDS  
FOR COURT-APPOINTED COUNSEL TO REPRESENT  
FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

Revised [new date]

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EXHIBIT A PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION

**PUBLIC DEFENSE SERVICES COMMISSION  
QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL  
TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

The following standards are adopted by the Public Defense Services Commission pursuant to ORS 151.216(1)(f)(F).

**STANDARD I: OBJECTIVE**

The objective of these standards is to ensure the provision of competent legal representation to all financially eligible persons entitled to court-appointed counsel by state or federal constitution or statute.

**STANDARD II: ATTORNEY CASELOADS**

Attorneys appointed to represent financially eligible persons at state expense must provide competent representation to each client. Neither defender organizations nor assigned counsel shall accept caseloads that, by reason of their size or complexity, interfere with providing competent representation to each client or lead to the breach of professional obligations.

**STANDARD III: GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS**

Subject to the provisions of Standard V, the appointing authority shall appoint only those attorneys who:

1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Agree to adhere to Standard II.
3. Either:
  - A. Meet the minimum qualifications specified in Standard IV for the applicable case type; or
  - B. Possess significant experience and skill equivalent to or exceeding the minimum qualifications specified below, and who demonstrate to the satisfaction of the Office of Public Defense Services that the attorney will provide competent representation; or
  - C. Work under the supervision of an attorney who does have the requisite qualifications and who describes to the satisfaction of the Office of Public Defense Services that they will provide oversight of attorney performance in order to ensure competent representation.

3. Have adequate support staff and a regularly monitored email address to ensure reasonable and timely personal and telephonic contact between attorney and client, and between the attorney and others involved with the attorney's public defense work;
4. Have an office or other regularly available and accessible private meeting space suitable for confidential client conferences; and
5. Have read, understood and agree to observe applicable provisions of the current edition of the Oregon State Bar's Performance Standards for Counsel in Criminal, Delinquency, Dependency, Civil Commitment, and Post-Conviction Relief Cases, available at [www.osbar.org](http://www.osbar.org).

#### **STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE**

##### **1. Misdemeanor Cases, Contempt, and Misdemeanor Probation Violation Proceedings in Trial Courts**

The minimum qualifications for appointment to misdemeanor and contempt cases and misdemeanor probation violation proceedings require that an attorney:

- A. Has reviewed and is familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases; the Oregon Rules of Professional Conduct; the Criminal, Vehicle and Evidence Codes of Oregon; the criminal drug offenses, and other crimes outside the Criminal Code; the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies at least one of the following:
  - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of a public defender office, a district attorney office, or attorney in private practice in criminal cases; has undertaken such representation for at least six months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable criminal procedure and sentencing alternatives;
  - b. Has observed five complete trials of criminal cases that were tried to a jury;
  - c. Has served as counsel or co-counsel in at least two criminal cases that were tried to a jury;
  - d. Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at court appearances and client interviews in each case;
  - e. Has served as a judicial clerk for at least six months in a court that regularly conducts criminal trials;

##### **2. Lesser Felony Cases and Felony Probation Violation Proceedings in Trial Courts**

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment to lesser felony cases and felony probation violation proceedings require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 1;
- B. Has met the qualifications in Standard IV, section 1 for at least nine months;
- C. Has served as counsel or as co-counsel in two criminal cases that were tried to a jury; and
- D. In at least one felony case tried to a jury, has served as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards.

### **3. Major Felony Cases in Trial Courts**

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than murder and capital murder cases.

The minimum qualifications for appointment to major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2; and
- B. Has met the qualifications in Standard IV, section 2 for at least nine months and has had at least nine months experience representing clients in lesser felony cases.

### **4. Murder Cases in Trial Courts**

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in murder cases, not including capital murder, require that an attorney:
  - a. Meets the qualifications specified in Standard IV, section 3;
  - b. Has met the qualifications in Standard IV, section 3 for at least three years;
  - c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, expert witnesses, mental state issues, and scientific evidence; and
  - d. Has acted as lead counsel or co-counsel in at least five major felonies tried to a jury, which include at least one homicide case that was tried to a jury.

- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, c, and e.

## 5. **Capital Murder Cases in Trial Courts**

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in capital murder cases require that an attorney:
- a. Has reviewed and agrees to fulfill the current version of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, and the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases;
  - b. Meets the qualifications specified in Standard IV, section 4.A;
  - c. Has represented clients in major felony cases for at least five years;
  - d. Has acted as lead counsel or co-counsel in at least one murder case that was tried to a jury.
  - e. Has attended within the last two years at least 24 hours of specialized training on in the management, preparation, and presentation of capital cases through an established training program awarding CLE credits;
  - f. Has demonstrated to persons with direct knowledge of his or her practice:
    - (1) a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
    - (2) substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
    - (3) skill in the management and conduct of complex negotiations and litigation;
    - (4) skill in legal research, analysis, and the drafting of litigation documents;
    - (5) skill in oral advocacy;
    - (6) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
    - (7) skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
    - (8) skill in the investigation, preparation, and presentation of mitigating evidence;
    - (9) skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and

- g. On request, can demonstrate all of the above by:
  - (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
  - (2) Written statements from those with direct knowledge of the attorney's practice, declaring that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Written statements must include at least five letters from persons in at least two of the following three groups:
    - i. Judges before whom the attorney has appeared;
    - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
    - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
  
- B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, c, e, f, g and h.
  
- C. *Procedure for Establishing Equivalent Skill And Experience In Capital Murder Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney will provide competent representation in capital cases. For qualification under this paragraph, attorneys must have either:
  - a. specialized training in the defense of persons accused of capital crimes,  
or
  - b. the availability of ongoing consultation support from other capital murder qualified attorney(s).
  
- D. *Case/load.* An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

**6. Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts**

The minimum qualifications for appointment in civil commitment proceedings under ORS Chapters 426 and 427 require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has handled at least three civil, juvenile or criminal cases in which a psychiatric or psychological expert was consulted by the attorney and the use of psychiatric or psychological evidence was discussed with the client;

- C. Has knowledge of available alternatives to institutional commitment;
- D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and mentally retarded; and,
- E. Satisfies one of the following:
  - a. has served as co-counsel in two civil commitment cases that have been submitted to a judge for determination; or
  - b. has observed five civil commitment hearings that have been submitted to a judge for determination.

**7. Juvenile Cases in Trial Courts, Including Delinquency, Waiver Proceedings, Neglect, Abuse, Other Dependency Cases, Status Offenses and Termination of Parental Rights**

The minimum qualifications for appointment to juvenile cases, under ORS Chapter 419, require that an attorney:

**A. Juvenile Delinquency Cases in Trial Courts including status offense cases and waiver proceedings**

- a. Misdemeanor, misdemeanor probation violation, and status offense cases
  - i. Meets the qualifications for appointment to misdemeanor cases as specified in Standard IV, section 1, and satisfies at least one of the following:
    - 1. has served as counsel or co-counsel counsel in at least two juvenile delinquency cases adjudicated after a contested hearing before a judicial officer; or
    - 2. has observed at least five juvenile delinquency cases adjudicated after a contested hearing before a judicial officer.
- b. Lesser felony and lesser felony probation violation cases. Lesser felony cases are defined in Standard IV, section 2.
  - i. Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a);
  - ii. Has met the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) for at least nine months;
  - iii. Has served as counsel, co-counsel or associate counsel in two juvenile delinquency cases adjudicated after a contested hearing before a judicial officer;
  - iv. In at least one juvenile felony case adjudicated after a contested hearing before a judicial officer has served as co-counsel or associate counsel with an attorney who has previously tried juvenile felony cases and
  - v. On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle lesser

felony cases involving the potential for commitment to a youth correctional facility until age 25.

- c. Major felony and major felony probation violations. Major felony cases are defined in Standard IV, section 3.
  - i. Meets the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b);
  - ii. Has met the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b) for at least nine months and has had at least nine months experience representing clients in lesser felony cases;
  - iii. On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25.
- d. Murder cases.
  - i. Meets the qualifications for appointment to murder cases in trial courts as specified in Standard IV, section 4; and
  - ii. Has met the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c) for at least three years.
- e. Waiver proceedings
  - i. Meets the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c). Where the underlying offense is murder the attorney must meet the qualifications for juvenile murder cases as specified in Standard IV, section 7A(d).
  - ii. In addition, the attorney satisfies one of the following:
    - a. has served as counsel, co-counsel in at least two delinquency cases adjudicated before a judge which involved alleged conduct at or above the major felony level; or
    - b. has observed, or reviewed transcripts in, at least two contested waiver hearings which involve alleged conduct at or above the major felony level;

**B. Juvenile Dependency Cases in Trial Courts**

- a. Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) or has had equivalent experience, civil or criminal, involving complicated child-custody issues and satisfies at least one of the following:
  - i. has served as counsel, co-counsel or associate counsel in at least two dependency cases adjudicated before a judge or
  - ii. has observed at least five dependency cases adjudicated before a judge.

**C. Termination of Parental Rights Cases in Trial Courts**

- a. Meets the qualifications for appointment to juvenile dependency cases as specified in Standard IV, section 7B for at least six months or has had equivalent experience, civil or criminal, involving complicated child-custody issues; and
- b. Meets the qualifications for appointment to adult criminal major felony cases as specified in Standard IV, section 3 or meets the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c).

**8. Appeals in Misdemeanor Cases, Misdemeanor Probation Violations Proceedings, and Contempt Proceedings**

The minimum qualifications for appointment in appeals in misdemeanor cases, misdemeanor probation violation proceedings, and contempt proceedings require that an attorney:

- A. Has reviewed and is familiar with:
  - a. ORS 138.005 - 138.504, ORS 33.015 – 33.155, and ORS Chapter 19;
  - b. Oregon State Bar, Criminal Law (current edition);
  - c. The Oregon Rules of Appellate Procedure;
  - d. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
  - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of an attorney in public or private practice in appeals in criminal or juvenile delinquency cases; has undertaken such representation for at least 12 months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable appellate procedure and criminal law;
  - b. Has served as counsel or co-counsel in at least two appellate cases which were briefed on the merits and argued to the court under the supervision of an attorney eligible for appointment to appellate cases under this standard;
  - c. Has observed oral argument and reviewed the appellate record in at least five appeals in criminal cases;
  - d. Has significant experience in written motion practice and arguments in state circuit court or federal district or appellate court; or
  - e. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

**9. Appeals in Lesser Felony Cases and Felony Probation Violation Proceedings, and Judicial Review of Parole Cases**

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment in appeals in lesser felony cases and felony probation violation proceedings, and judicial review of parole cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;

- B. Has reviewed and is familiar with:
  - a. ORS Chapter 144,
  - b. The Oregon Felony Sentencing Guidelines (OAR Ch 213);
  - c. The Rules of the Board of Parole and Post-Prison Supervision (OAR 255).
- C. Meets at least one of the following criteria:
  - a. Has served as counsel in at least seven appeals in criminal cases which were briefed on the merits and argued to the court;
  - b. Has significant and extensive experience in written motion practice and arguments in state circuit court or federal district or appellate court;
  - c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

**10. Appeals in Non-Capital Murder and Major Felony Cases**

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than capital murder cases.

The minimum qualifications for appointment in appeals in major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 9;
- B. Has served as counsel in at least 15 appeals in criminal cases which were briefed on the merits and argued to the court; and
- C. Has demonstrated proficiency in appellate advocacy in felony defense.

**11. Appeals in Capital Murder Cases**

The minimum qualifications for appointment in appeals in capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 10;
- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the proficiency and commitment necessary for high quality representation in capital murder cases.
- D. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending

capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and

- E. For co-counsel in capital murder appeals, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- F. *Alternate Procedures for Establishing Equivalent Skill And Experience in Capital Appeals.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital appeals. For qualification under this paragraph, attorneys must have either:
  - (1) specialized training in the defense of persons accused of capital crimes, or
  - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

## **12. Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases**

The minimum qualifications for appointment in post-conviction proceedings in cases other than murder and capital murder cases require that an attorney:

- A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the post-conviction proceeding;

- B. Has reviewed and is familiar with the Oregon Post-Conviction Hearing Act, ORS 138.510-138.686;
- C. Has served as co-counsel or observed proceedings and reviewed the record in at least two post-conviction relief proceedings in which a trial court entered a judgment on the petition; and
- D. Has attended and completed a legal education and training program on post-conviction relief proceedings within two years prior to appointment.

**13. Post-Conviction Proceedings in Murder and Capital Murder Cases**

The minimum qualifications for appointment in post-conviction proceedings in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. Meets the qualifications specified in Standard IV, section 12;
- C. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- D. For capital murder cases, meets the qualifications specified in Standard IV, section 5 for co-counsel in capital cases in the trial courts. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 5.
- E. *Alternate Procedures Establishing Equivalent Skill And Experience in Post-Conviction Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital murder cases. For qualification under this paragraph, attorneys must have either:
  - (1) specialized training in the defense of persons accused of capital crimes, or
  - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

**14. Habeas Corpus Proceedings**

The minimum qualifications for appointment in habeas corpus proceedings require that an attorney meet the qualifications specified in Standard IV, section 2.

**15. Appeals in Juvenile Delinquency Proceedings – Misdemeanor Equivalency**

The minimum qualifications for appointment in appeals in juvenile delinquency cases adjudicating the equivalent of misdemeanor offenses require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. Has reviewed and is familiar with:
  - a. ORS 419A.200 - 419A.211;
  - b. Oregon State Bar, Juvenile Law, (current edition).

**16. Appeals in Juvenile Delinquency Proceedings – Felony Equivalency**

The minimum qualifications for appointment in appeals in juvenile delinquency cases adjudicating the equivalent of felony offenses require that an attorney:

- A. Meets the qualifications specified in Standard IV, sections 10 and 15.

**17. Appeals in Juvenile Dependency and Termination of Parental Rights Proceedings**

The minimum qualifications for appointment in appeals in juvenile dependency and termination of parental rights cases require that an attorney:

- A. Has reviewed and is familiar with:
  - a. ORS Chapter 419B
  - b. ORS Chapter 419A
  - c. ORS Chapter 19
  - d. The Oregon Rules of Appellate Procedure
  - e. Oregon State Bar, Juvenile Law (current edition)
  - f. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
  - a. Has served as counsel in at least seven appeals in juvenile dependency or termination of parental rights proceedings including briefing the cases on the merits and arguing the cases to the court;
  - b. Has significant and extensive experience in written motion practice and arguments in state trial court and appellate court or in federal district court;
  - c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience and who will attest to the quality of the attorney's work by appearing as co-counsel on all filed briefs.

## **8. Appeals Other Than in Murder and Capital Murder Cases**

The minimum qualifications for appointment in appeals other than in murder and capital murder cases require that an attorney:

- A. Has reviewed and is familiar with:
  - a. ORS 138.005 - 138.504 in the case of appeals of criminal cases;
  - b. Oregon State Bar, Criminal Law (current edition) in the case of appeals of criminal cases;
  - c. ORS 419A.200 - 419A.211 and ORS Chapter 19 in the case of appeals of juvenile cases;
  - d. Oregon State Bar, Juvenile Law, (current edition), in the case of appeals of juvenile cases;
  - e. The Oregon Rules of Appellate Procedure; and
  - f. Oregon State Bar, Appeal and Review (current edition).
- B. Meets at least one of the following criteria:
  - a. Has experience as appellate counsel, either in practice or under the Oregon Supreme Court's Law Student Appearance Program commensurate with the seriousness of the underlying case;
  - b. Has served as co-counsel in at least two appellate cases which were briefed on the merits and argued to the court under the supervision of an attorney eligible for appointment to appellate cases under this standard;
  - c. Has observed oral argument and reviewed the appellate record in at least five appellate cases, at least one of which was an appeal from conviction of a major felony or murder;
  - d. Has significant experience in motion practice and arguments in state circuit court or federal district court;
  - e. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

## **9. Appeals in Murder and Capital Murder Cases**

The minimum qualifications for appointment in appeals in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;

- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the proficiency and commitment necessary for high quality representation in:
  - a. Capital murder cases if the appeal is in a capital case; or
  - b. Other murder cases, if the appeal is in a noncapital murder case;
- D. Has demonstrated proficiency in appellate advocacy in felony defense;
- E. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- F. For co-counsel in capital murder appeals and for lead or co-counsel in other murder cases, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- G. *Alternate Procedures for Establishing Equivalent Skill And Experience in Capital Appeals.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital appeals. For qualification under this paragraph, attorneys:
  - a. must be prescreened by a panel of experienced capital murder attorneys to determine whether the attorney will provide competent representation; and
  - b. must have either:
    - (1) specialized training in the defense of persons accused of capital crimes, or
    - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

**10. Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases**

The minimum qualifications for appointment in post-conviction proceedings in cases other than murder and capital murder cases require that an attorney:

- A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the post-conviction proceeding;
- B. Has reviewed and is familiar with:
  - a. The Oregon Post-Conviction Hearing Act, ORS 138.510-138.686, and

- b. The Oregon State Bar’s performance standards for counsel representing petitioners in post-conviction relief proceedings, and the authorities cited therein.
- C. Has served as co-counsel or observed proceedings and reviewed the record in at least two post-conviction relief proceedings in which a trial court entered a judgment on the petition.
- D. Has attended and completed a legal education and training program on post-conviction relief proceedings within two years prior to appointment.

**11. Post-Conviction Proceedings in Murder and Capital Murder Cases**

The minimum qualifications for appointment in post-conviction proceedings in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. Meets the qualifications specified in Standard IV, section 10;
- C. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- D. For capital murder cases, meets the qualifications specified in Standard IV, section 5 for co-counsel in capital cases in the trial courts. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 5.
- E. *Alternate Procedures Establishing Equivalent Skill And Experience in Post-Conviction Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital murder cases. For qualification under this paragraph, attorneys:
  - a. must be prescreened by a panel of experienced capital murder attorneys to determine whether the attorney will provide competent representation; and
  - b. must have either:
    - (1) specialized training in the defense of persons accused of capital crimes, or
    - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

## **12. Habeas Corpus Proceedings**

The minimum qualifications for appointment in habeas corpus proceedings require that an attorney meet the qualifications specified in Standard IV, section 2.

## **STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT OF COUNSEL**

### **1. Certificate and Supplemental Questionnaire**

In order to receive an appointment to represent a financially eligible person at state expense, an attorney must submit a certificate of qualification together with a completed supplemental questionnaire, and be approved by the Office of Public Defense Services for appointment to the case type for which the appointment will be made. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards, or as otherwise specified by the Office of Public Defense Services.

### **2. Submission Requirements**

- A. *Contract Attorneys.* Contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the execution of the contract and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.
- B. *Assigned Counsel (for all Non-contract Appointments).* Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

### **3. Supporting Documentation**

- A. An attorney must submit supporting documentation in addition to the certificate and questionnaire:
  - a. At the request of OPDS; or
  - b. When the attorney seeks to qualify for appointments based on equivalent skill and experience.
- B. Supporting documentation requested by OPDS may include, but is not limited to:
  - a. A written statement explaining why the attorney believes that he or she has the qualifications required to handle the case type(s) selected by the attorney; and
  - b. Written statements from those with direct knowledge of the attorney's practice explaining why they believe that the attorney is qualified to handle the case

type(s) selected by the attorney. Written statements may include those from persons in the following three groups:

- i. Judges before whom the attorney has appeared;
  - ii. Defense attorneys who are recognized and respected by the local bar as experienced trial lawyers and who have knowledge of the attorney's practice; and
  - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- C. Contract providers seeking to qualify attorneys pursuant to the Public Defense Organization provision of Standard III, section 3.C, shall submit prior to execution of its contract with OPDS and update as necessary:
- a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;
  - b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;
  - c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 3.C, signed by an authorized representative of the organization that states the type of cases for which the attorney is eligible to receive appointment; and
  - d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 3.C, completed and signed by each attorney.

#### **4. Approval for Appointment**

- A. *Review of Submitted Certificates.* OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications for a case type will be approved for appointment to cases of that type. OPDS's goal is to select attorneys who:
- a. are more than minimally qualified,
  - b. have specialized skills needed in a particular community,
  - c. are available to cover cases in the appropriate geographic area,
  - d. are able to meet specific needs of the court such as availability at specific times,
  - e. are able to effectively and efficiently manage a law practice, observing appropriate fiscal and organizational practices, and/or

- f. have other qualities that would benefit the court, the clients or OPDS.

At the completion of the review, OPDS shall notify the attorney of the case types for which the attorney has been approved for appointment and the reason for its decision not to approve the attorney for appointment in any case type for which certification was submitted.

- B. *Request for Reconsideration.* An attorney who is not approved for appointment in case types for which the attorney has certified qualification may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of approval/disapproval for appointment in particular case types, additional information, including supporting documents, if any, which the attorney believes demonstrates that the attorney meets the criteria for selection set forth in Paragraph 4.A.
- C. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. OPDS shall notify the attorney of its final determination.
- D. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.
- E. *Provision of Lists to the Courts.* OPDS will prepare a list of attorneys approved for appointment for counties that routinely appoint attorneys who do not provide public defense services pursuant to a contract with OPDS. Other courts should contact OPDS for assistance in identifying attorneys available for appointment.
- F. *Updating Lists.* OPDS will update lists as necessary.

## **5. Suspension From Appointment**

- A. *Suspension from Future Appointments.* If OPDS obtains information that calls into question an attorney's ability to provide adequate assistance of counsel, OPDS shall notify the attorney of the information and shall perform such investigation as is necessary to determine whether the attorney is able to provide adequate assistance of counsel. After completing its investigation and reviewing any information provided by the attorney OPDS shall have authority to suspend the attorney from future appointments for any or all case types until OPDS is satisfied that the attorney is able to provide adequate assistance of counsel. When OPDS suspends an attorney from future appointments OPDS shall notify the attorney and the court of the suspension and the reason(s) for the suspension.
- B. *Suspension from Current Appointments.* The court, after reviewing the reason(s) for the suspension, shall consider whether the attorney should be relieved as counsel in any pending court-appointed cases. The court shall consider with respect to each open case: the reason for the suspension, the needs of the client, and the ability of the attorney to provide adequate assistance of counsel under all of the circumstances. The court shall comply with the Paragraph 1.7 of OPDS's Public Defense Payment Policies and Procedures relating to substitution of counsel.

- C. *Request for Reconsideration.* An attorney who is suspended from future appointments may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of suspension, additional information, including supporting documents, if any, which the attorney believes establish the attorney's ability to provide adequate assistance of counsel.
- D. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration, the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. In reviewing the request, the executive director or the executive director's designee may select and empanel a group of public defense attorneys to advise the executive director about the attorney's ability to provide adequate assistance of counsel and whether the attorney should be suspended from future appointment for any or all case types. OPDS shall notify the attorney and the court of its final determination and the reasons for its final determination.
- E. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

**PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION  
FOR NON-CAPITAL CASE TYPES**

Name: \_\_\_\_\_

Bar Number: \_\_\_\_\_

Address: \_\_\_\_\_

Vendor or Tax ID#: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_

Foreign language fluency in: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Years of Experience:

Mobile Phone Number: \_\_\_\_\_

Practice of Law \_\_\_\_\_ Criminal \_\_\_\_\_

Juvenile \_\_\_\_\_ Appellate \_\_\_\_\_

For appointments in the following county(ies): \_\_\_\_\_

**TRIAL LEVEL**

**APPELLATE LEVEL**

Murder	
Lead Counsel	G
Co-counsel	G
Major Felony	G
Lesser Felony	G
Misdemeanor	G

Murder	
Lead Counsel	G
Co-counsel	G
Major Felony	G
Lesser Felony	G
Misdemeanor	G

Juvenile Delinquency	
Major Felony	G
Lesser Felony	G
Misdemeanor	G
Juvenile Dependency	G
Juvenile Termination	G

Juvenile Delinquency	
Major Felony	G
Lesser Felony	G
Misdemeanor	G
Juvenile Dependency	G
Juvenile Termination	G

Civil Commitment	G
Contempt	G
Habeas Corpus	G

Civil Commitment	G
Contempt	G
Habeas Corpus	G

Post-Conviction Relief	
Murder	G
Other Criminal	G

Post-Conviction Relief	
Murder	G
Other Criminal	G

**Please check only one box below:**

G I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. \_) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 2.B, I have submitted supporting documentation and explained how I am qualified for those case types.

or

G I certify that the above-named attorney will be working under the supervision of an attorney as described in Standard III.3.C, and have submitted a statement from the attorney or contract provider describing that supervision.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:
5. Number of years and location(s) of legal practice outside Oregon:
6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)
7. What percentage of your present practice involves handling public defense cases?
8. Do you meet the stated minimum qualifications for the case types selected on your certificate of attorney qualification? If you answer no here, proceed to Question 9. If you answer yes, describe in detail below and on additional pages if necessary, how you satisfy each of the minimum qualifications for the case type(s) that you have certified.
9. If you answered No to Question 8, are you certifying qualification on the basis of equivalent skill and experience? If no, proceed to Question 10. If yes, please separately attach the following: 1) A statement explaining why you believe equivalent skill and experience qualifies you to handle the case types you have certified; and 2) At least two letters or statements from persons familiar with you legal experience and skill that describe why they believe you are qualified to handle the case types you have certified.
10. If you answered No to Question 9, are you certifying qualification because you will be working under the supervision of an attorney who meets the qualifications for the case types that you have certified? If yes, attach a statement from the supervising attorney, pursuant to Standard III.3.C or Standard V.3.C, describing the supervision that the attorney will perform?
10. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?

11. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.
12. List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.
13. Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)
14. Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.
15. Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?
16. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.
17. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

---

SIGNATURE

---

DATE

**PUBLIC DEFENSE SERVICES COMMISSION  
QUALIFICATION STANDARDS  
FOR COURT-APPOINTED COUNSEL TO REPRESENT  
FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

Revised 12/21/13

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EXHIBIT A PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION

**PUBLIC DEFENSE SERVICES COMMISSION  
QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL  
TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

The following standards are adopted by the Public Defense Services Commission pursuant to ORS 151.216(1)(f)(F).

**STANDARD I: OBJECTIVE**

The objective of these standards is to ensure the provision of competent and adequate legal representation to all financially eligible persons entitled to court-appointed counsel by state or federal constitution or statute.

**STANDARD II: ATTORNEY CASELOADS**

Attorneys appointed to represent financially eligible persons at state expense must provide competent and adequate representation to each client. Neither defender organizations nor assigned counsel shall accept workloads that, by reason of their size or complexity, interfere with providing competent and adequate representation or lead to the breach of professional obligations.

**STANDARD III: GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS**

Subject to the provisions of Standard V, the appointing authority shall appoint only those attorneys who:

1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Either:
  - A. Meet the minimum qualifications specified in Standard IV for the applicable case type; or
  - B. Possess significant experience and skill equivalent to or exceeding the qualifications specified below, and who demonstrate to the satisfaction of the Office of Public Defense Services that the attorney will provide competent and adequate representation; or
  - C. Work under the supervision of an attorney who does have the requisite qualifications or experience in a public defense organization that certifies to the satisfaction of the Office of Public Defense Services that it will provide oversight of attorney performance, regular attorney trainings, and routine performance reviews in order to ensure competent and adequate representation. On request, an attorney qualifying under this section may be required to provide a written statement explaining why the attorney believes he or she has the qualifications to handle the case types to be

assigned to him or her, and be required to provide up to five letters of reference, at least two of which are from judges, attesting to his or her expertise and competence.

3. Have adequate support staff or answering service/machine and email capability to ensure reasonable and timely personal and telephonic contact between attorney and client, and between the court and attorney;
4. Have adequate legal research access through an online service or other electronic means or by being located near a law library of sufficient size to ensure the attorney has ready access to legal references and research material; and
5. Have read, understood and agree to observe applicable provisions of the current edition of the Oregon State Bar's Performance Standards for Counsel in Criminal, Delinquency, Dependency, Civil Commitment, and Post-Conviction Relief Cases, available at [www.osbar.org](http://www.osbar.org).

#### **STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE**

##### **1. Misdemeanor Cases, Contempt and Misdemeanor Probation Violation Proceedings in Trial Courts**

The minimum qualifications for appointment to misdemeanor and contempt cases and misdemeanor probation violation proceedings require that an attorney:

- A. Has reviewed and is familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases; the Oregon Rules of Professional Conduct; the Criminal, Vehicle and Evidence Codes of Oregon; the criminal drug offenses, and other crimes outside the Criminal Code; the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies at least one of the following:
  - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of a public defender office, a district attorney office, or a private attorney office in criminal cases; has undertaken such representation for at least six months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable criminal procedure and sentencing alternatives;
  - b. Has observed five complete trials of criminal cases that were tried to a jury;
  - c. Has served as counsel or co-counsel in at least two criminal cases that were tried to a jury;
  - d. Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at court appearances and client interviews in each case;
  - e. Has served as a judicial clerk for at least six months in a court that regularly conducts criminal trials;

- f. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

## **2. Lesser Felony Cases and Felony Probation Violation Proceedings in Trial Courts**

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment to lesser felony cases and felony probation violation proceedings require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 1;
- B. Has met the qualifications in Standard IV, section 1 for at least nine months;
- C. Has served as counsel or as co-counsel in two criminal cases that were tried to a jury;
- D. In at least one felony case tried to a jury, has served as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards; and
- E. On request, can present an additional showing of expertise and competence in the area of criminal trial practice by submitting at least three letters of reference from other criminal trial lawyers or judges the attorney has appeared before on criminal cases. The letters must explain why the attorney has the requisite experience and competence to handle felony cases involving potential incarceration of up to five years.

## **3. Major Felony Cases in Trial Courts**

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than murder and capital murder cases.

The minimum qualifications for appointment to major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has met the qualifications in Standard IV, section 2 for at least nine months and has had at least nine months experience representing clients in lesser felony cases; and
- C. On request, can present evidence of additional expertise and competence in the area of criminal trial practice by submitting at least five letters of reference from other criminal trial lawyers or judges that the attorney has appeared before on criminal cases. The letters must explain why the attorney has the requisite experience and competence to handle felony cases involving potential incarceration of 25 years or more.

#### **4. Murder Cases in Trial Courts**

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in murder cases, not including capital murder, require that an attorney:
- a. Meets the qualifications specified in Standard IV, section 3;
  - b. Has met the qualifications in Standard IV, section 3 for at least three years;
  - c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent and adequate representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, psychiatric issues and scientific evidence;
  - d. Has acted as lead counsel or co-counsel in at least five major felonies tried to a jury, which include at least one homicide case that was tried to a jury; and
  - e. On request, can demonstrate the above by:
    - (1) A written statement explaining why the attorney believes that he or she has the qualifications required to handle a murder case; and
    - (2) Written statements from those with direct knowledge of the attorney's practice declaring that they believe that the attorney should be allowed to defend murder cases and explaining why the attorney has the qualities required. Written statements must include at least five letters from persons in at least two of the following three groups:
      - i. Judges before whom the attorney has appeared;
      - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; and
      - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, c, and e or must possess significant equivalent experience under Standard III, section 2.B.

#### **5. Capital Murder Cases in Trial Courts**

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in capital murder cases require that an attorney:
- a. Has reviewed and is familiar with the current version of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases,

and the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases;

- b. Meets the qualifications specified in Standard IV, section 4.A;
- c. Has represented clients in major felony cases for at least five years;
- d. Has acted as lead counsel or co-counsel in at least five major felony cases tried to a jury, which include at least one murder case that was tried to a jury.
- e. Has completed or, prior to trial will have completed, comprehensive training in the defense of capital cases. Such training should include, but not be limited to, training in the following areas:
  - (1) relevant state, federal, and international law;
  - (2) pleading and motion practice;
  - (3) pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
  - (4) jury selection;
  - (5) trial preparation and presentation, including the use of experts;
  - (6) ethical considerations particular to capital defense representation;
  - (7) preservation of the record and of issues for appellate and other post-conviction review;
  - (8) counsel's relationship with the client and his or her family;
  - (9) post-conviction litigation in state and federal courts;
  - (10) the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.
- f. Has attended and successfully completed within the last two years at least 18 hours of specialized training on current issues in capital cases through an established training program awarding CLE credits;
- g. Has demonstrated to persons with direct knowledge of his or her practice:
  - (1) a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
  - (2) substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
  - (3) skill in the management and conduct of complex negotiations and litigation;

- (4) skill in legal research, analysis, and the drafting of litigation documents;
  - (5) skill in oral advocacy;
  - (6) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
  - (7) skill in the investigation, preparation and presentation of evidence bearing upon mental status;
  - (8) skill in the investigation, preparation, and presentation of mitigating evidence;
  - (9) skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and
- h. On request, can demonstrate all of the above by:
- (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
  - (2) Written statements from those with direct knowledge of the attorney's practice, declaring that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Written statements must include at least five letters from persons in at least two of the following three groups:
    - i. Judges before whom the attorney has appeared;
    - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
    - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, c, e, f, g and h or must possess significant equivalent experience under Standard III, section 2.B.
- C. *Procedure for Establishing Equivalent Skill And Experience In Capital Murder Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital cases. For qualification under this paragraph, attorneys:
- a. must be prescreened by a panel of experienced capital murder attorneys to determine whether the attorney will provide competent representation; and

- b. must have either:
  - (1) specialized training in the defense of persons accused of capital crimes, or
  - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).
- D. *Caseload*. An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

**6. Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts**

The minimum qualifications for appointment in civil commitment proceedings under ORS Chapters 426 and 427 require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has handled at least three civil, juvenile or criminal cases in which a psychiatric or psychological expert was consulted by the attorney and the use of psychiatric or psychological evidence was discussed with the client;
- C. Has knowledge of available alternatives to institutional commitment;
- D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and mentally retarded; and,
- E. Satisfies one of the following:
  - a. has served as co-counsel in two civil commitment cases that have been submitted to a judge for determination; or
  - b. has observed five civil commitment hearings that have been submitted to a judge for determination.

**7. Juvenile Cases in Trial Courts, Including Delinquency, Waiver Proceedings, Neglect, Abuse, Other Dependency Cases, Status Offenses and Termination of Parental Rights**

The minimum qualifications for appointment to juvenile cases, under ORS Chapter 419, require that an attorney:

- A. For all cases, has knowledge of juvenile justice statutes, case law, standards, and procedures; is generally familiar with services available to children and parents in the juvenile system; and has reviewed and is familiar with the following materials:
  - a. Oregon Revised Statutes, Chapters 419A, 419B, and 419C, Oregon Juvenile Code.

- b. Oregon Revised Statutes, Chapter 417, Interstate Compact on Juveniles and the Community Juvenile Services Act.
  - c. Oregon Revised Statutes, Chapter 418, Child Welfare Services.
  - d. Oregon Revised Statutes, Chapter 420, Youth Correction Facilities; Youth Care Centers; and Chapter 420A, Oregon Youth Authority; Youth Correction Facilities, and applicable administrative rules.
  - e. Oregon State Bar, Juvenile Law, (current version).
  - f. Pub. L. 105-89, Adoption and Safe Families Act of 1997.
  - g. Pub. L. 95-608, Indian Child Welfare Act of 1978, 25 USC §§1901-1963 (1982) and Refugee Child Act, ORS 418.925-418.945.
  - h. Pub. L. 105-17 Individuals with Disabilities Education Act.
  - i. Pub. L. 93-112, Title V §504, Rehabilitation Act of 1973, as amended, 20 USC §794 (1982).
- B. For juvenile delinquency cases, meets the qualifications for the equivalent adult crimes specified in Standard IV, sections 1-4; and satisfies at least one of the following:
- a. has served as counsel or co-counsel in at least two juvenile delinquency cases adjudicated after a contested hearing before a judicial officer which involved alleged conduct at an offense level at least as serious as the level of qualification certified; or
  - b. has observed at least five juvenile delinquency cases adjudicated after a contested hearing before a judicial officer which involved alleged conduct at an offense level at least as serious as the level of qualification certified.
- C. For status offense cases, meets the qualifications specified in Standard IV, section 1;
- D. For dependency cases, meets the qualifications specified in Standard IV, section 2; or has had equivalent experience, civil or criminal, involving complicated child-custody issues. In addition, the attorney satisfies at least one of the following:
- a. has served as counsel or co-counsel in at least two dependency cases adjudicated before a judge or
  - b. has observed at least five dependency cases adjudicated before a judge.
- E. For waiver proceedings, meets the qualifications specified in Standard IV, section 3. Where the underlying offense is equivalent to adult murder or capital murder, the attorney must meet the qualifications specified in Standard IV, sections 4 and 5, respectively. In addition, the attorney satisfies one of the following:

- a. has served as counsel or co-counsel in at least two delinquency cases adjudicated before a judge which involved alleged conduct at or above the major felony level; or
  - b. has observed, or reviewed transcripts in, at least two contested waiver hearings which involve alleged conduct at or above the major felony level;
- F. For termination of parental rights cases, meets the qualifications specified in Standard IV, section 3, or has had equivalent experience, civil or criminal, involving complicated child-custody issues. In addition, the attorney satisfies at least one of the following:
- a. has served as counsel or co-counsel in at least two termination of parental rights cases submitted to a judge for determination; or
  - b. has observed, or reviewed the transcripts of, at least two termination of parental rights cases submitted to a judge for determination.

For purposes of this section, a court trial in a delinquency case is equivalent to a jury trial under Standard IV, sections 1-3.

## **8. Appeals Other Than in Murder and Capital Murder Cases**

The minimum qualifications for appointment in appeals other than in murder and capital murder cases require that an attorney:

- A. Has reviewed and is familiar with:
  - a. ORS 138.005 - 138.504 in the case of appeals of criminal cases;
  - b. Oregon State Bar, Criminal Law (current edition) in the case of appeals of criminal cases;
  - c. ORS 419A.200 - 419A.211 and ORS Chapter 19 in the case of appeals of juvenile cases;
  - d. Oregon State Bar, Juvenile Law, (current edition), in the case of appeals of juvenile cases;
  - e. The Oregon Rules of Appellate Procedure;
  - f. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
  - a. Has experience as appellate counsel, either in practice or under the Oregon Supreme Court's Law Student Appearance Program commensurate with the seriousness of the underlying case;

- b. Has served as co-counsel in at least two appellate cases which were briefed on the merits and argued to the court under the supervision of an attorney eligible for appointment to appellate cases under this standard;
- c. Has observed oral argument and reviewed the appellate record in at least five appellate cases, at least one of which was an appeal from conviction of a major felony or murder;
- d. Has significant experience in motion practice and arguments in state circuit court or federal district court;
- e. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

## 9. **Appeals in Murder and Capital Murder Cases**

The minimum qualifications for appointment in appeals in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the proficiency and commitment necessary for high quality representation in:
  - a. Capital murder cases if the appeal is in a capital case; or
  - b. Other murder cases, if the appeal is in a noncapital murder case;
- D. Has demonstrated proficiency in appellate advocacy in felony defense;
- E. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- F. For co-counsel in capital murder appeals and for lead or co-counsel in other murder cases, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- G. *Alternate Procedures for Establishing Equivalent Skill And Experience in Capital Appeals.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital appeals. For qualification under this paragraph, attorneys:

- a. must be prescreened by a panel of experienced capital murder attorneys to determine whether the attorney will provide competent representation; and
- b. must have either:
  - (1) specialized training in the defense of persons accused of capital crimes, or
  - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

#### **10. Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases**

The minimum qualifications for appointment in post-conviction proceedings in cases other than murder and capital murder cases require that an attorney:

- A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the post-conviction proceeding;
- B. Has reviewed and is familiar with:
  - a. The Oregon Post-Conviction Hearing Act, ORS 138.510-138.686, and
  - b. The Oregon State Bar's performance standards for counsel representing petitioners in post-conviction relief proceedings, and the authorities cited therein.
- C. Has served as co-counsel or observed proceedings and reviewed the record in at least two post-conviction relief proceedings in which a trial court entered a judgment on the petition.
- D. Has attended and completed a legal education and training program on post-conviction relief proceedings within two years prior to appointment.

#### **11. Post-Conviction Proceedings in Murder and Capital Murder Cases**

The minimum qualifications for appointment in post-conviction proceedings in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. Meets the qualifications specified in Standard IV, section 10;
- C. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- D. For capital murder cases, meets the qualifications specified in Standard IV, section 5 for co-counsel in capital cases in the trial courts. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 5.

- E. *Alternate Procedures Establishing Equivalent Skill And Experience in Post-Conviction Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital murder cases. For qualification under this paragraph, attorneys:
- a. must be prescreened by a panel of experienced capital murder attorneys to determine whether the attorney will provide competent representation; and
  - b. must have either:
    - (1) specialized training in the defense of persons accused of capital crimes, or
    - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

## **12. Habeas Corpus Proceedings**

The minimum qualifications for appointment in habeas corpus proceedings require that an attorney meet the qualifications specified in Standard IV, section 2.

## **STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT OF COUNSEL**

### **1. Certificate and Supplemental Questionnaire**

In order to receive an appointment to represent a financially eligible person at state expense, an attorney must submit a certificate of qualification together with a completed supplemental questionnaire, and be approved by the Office of Public Defense Services for appointment to the case type for which the appointment will be made. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards. An attorney who submitted a certificate prior to March 1, 2007 is not required to submit a new certificate unless the attorney seeks to accept appointment to cases not covered by a previous certificate, or unless submitting a new contract for execution.

### **2. Submission Requirements**

- A. *Contract Attorneys.* Contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the execution of the contract and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.

- B. *Assigned Counsel (for all Non-contract Appointments)*. Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

### **3. Supporting Documentation**

- A. An attorney must submit supporting documentation in addition to the certificate and questionnaire:
  - a. At the request of OPDS; or
  - b. When the attorney seeks to qualify for appointments based on equivalent skill and experience.
- B. Contract providers seeking to qualify attorneys pursuant to the Public Defense Organization provision of Standard III, section 2.C, shall submit prior to execution of its contract with OPDS and update as necessary:
  - a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;
  - b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;
  - c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 2.C, signed by an authorized representative of the organization that states the type of cases for which the attorney is eligible to receive appointment; and
  - d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 2.C, completed and signed by each attorney.

### **4. Approval for Appointment**

- A. *Review of Submitted Certificates*. OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications for a case type will be approved for appointment to cases of that type. OPDS's goal is to select attorneys who:
  - a. are more than minimally qualified,
  - b. have specialized skills needed in a particular community,
  - c. are available to cover cases in the appropriate geographic area,

- d. are able to meet specific needs of the court such as availability at specific times,
- e. are both effective and efficient, and/or
- f. have other qualities that would benefit the court, the clients or OPDS.

At the completion of the review, OPDS shall notify the attorney of the case types for which the attorney has been approved for appointment and the reason for its decision not to approve the attorney for appointment in any case type for which certification was submitted.

- B. *Request for Reconsideration.* An attorney who is not approved for appointment in case types for which the attorney has certified qualification may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of approval/disapproval for appointment in particular case types, additional information, including supporting documents, if any, which the attorney believes demonstrates that the attorney meets the criteria for selection set forth in Paragraph 4.A.
- C. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. OPDS shall notify the attorney of its final determination.
- D. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.
- E. *Provision of Lists to the Courts.* OPDS will prepare an applicable list of attorneys approved for appointment for each county. The list will be sorted by case type and, within each case type, alphabetically by attorney name.
- F. *Updating Lists.* OPDS will update lists as necessary.

## **5. Suspension From Appointment**

- A. *Suspension from Future Appointments.* If OPDS obtains information that calls into question an attorney's ability to provide adequate assistance of counsel, OPDS shall notify the attorney of the information and shall perform such investigation as is necessary to determine whether the attorney is able to provide adequate assistance of counsel. After completing its investigation and reviewing any information provided by the attorney OPDS shall have authority to suspend the attorney from future appointments for any or all case types until OPDS is satisfied that the attorney is able to provide adequate assistance of counsel. When OPDS suspends an attorney from future appointments OPDS shall notify the attorney and the court of the suspension and the reason(s) for the suspension.
- B. *Suspension from Current Appointments.* The court, after reviewing the reason(s) for the suspension, shall consider whether the attorney should be relieved as counsel in any pending court-appointed cases. The court shall consider with respect to each open case: the reason for the suspension, the needs of the client, and the ability of the attorney to provide adequate assistance of counsel under all of the

circumstances. The court shall comply with the Paragraph 1.7 of OPDS's Public Defense Payment Policies and Procedures relating to substitution of counsel.

- C. *Request for Reconsideration.* An attorney who is suspended from future appointments may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of suspension, additional information, including supporting documents, if any, which the attorney believes establish the attorney's ability to provide adequate assistance of counsel.
- D. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration, the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. In reviewing the request the executive director or the executive director's designee may select and empanel a group of public defense attorneys to advise the executive director about the attorney's ability to provide adequate assistance of counsel and whether the attorney should be suspended from future appointment for any or all case types. OPDS shall notify the attorney and the court of its final determination and the reasons for its final determination.
- E. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

**PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION  
FOR NON-CAPITAL CASE TYPES**

Name: \_\_\_\_\_

Bar Number: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_

Foreign language fluency in: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Years of Experience:

Fax Number: \_\_\_\_\_

Practice of Law \_\_\_\_\_ Criminal \_\_\_\_\_

Cell/Pager: \_\_\_\_\_

Juvenile \_\_\_\_\_ Appellate \_\_\_\_\_

For appointments in the following county(ies): \_\_\_\_\_

**TRIAL LEVEL**

**APPELLATE LEVEL**

- Murder
  - Lead Counsel
  - Co-counsel
- Major Felony
- Lesser Felony
- Misdemeanor

- Murder
  - Lead Counsel
  - Co-counsel
- Major Felony
- Lesser Felony
- Misdemeanor

- Juvenile Delinquency
  - Major Felony
  - Lesser Felony
  - Misdemeanor
- Juvenile Dependency
- Juvenile Termination

- Juvenile Delinquency
  - Major Felony
  - Lesser Felony
  - Misdemeanor
- Juvenile Dependency
- Juvenile Termination

- Civil Commitment
- Contempt
- Habeas Corpus

- Civil Commitment
- Contempt
- Habeas Corpus

- Post-Conviction Relief
  - Murder
  - Other Criminal

- Post-Conviction Relief
  - Murder
  - Other Criminal

**Please check only one box below:**

I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. 12-21-13) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 2.B, I have submitted supporting documentation and explained how I am qualified for those case types.

or

I certify that the above-named attorney will be working at a public defense organization as described in Standard III.2.C, which has provided the information required under Standard V.3.B.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Submit signed certificates together with the supplemental questionnaire and any supporting documentation to: mail@opds.state.or.us

## SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:
5. Number of years and location(s) of legal practice outside Oregon:
6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)
7. What percentage of your present practice involves handling public defense cases?
8. Briefly describe the nature and extent of your work experience in the area(s) of law which you have certified and any related areas of law.
9. Before which courts and judges have you regularly appeared in case proceedings which you have certified?
10. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?
11. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.
12. List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.

13. Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)
  
14. Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.
  
15. Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?
  
16. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.
  
17. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

# Attachment 7

Public Defense Contracts (Parent Child Representation Program Case Manager) Recommended  
for Approval by the Public Defense Services Commission at its  
October 27, 2016 Meeting

COUNTY	PROPOSED CONTRACTOR	CASE TYPE	SERVICE PROVIDED	VALUE (up to)	EXPIRATION DATE
Columbia	Stephanie Gonias	juvenile	case management	\$46,324	12.31.2017
<b>TOTAL</b>				<b>\$46,324</b>	

# Attachment 8

## Public Defense Services Commission

### Draft 2017 Meeting Schedule

<b>Date</b>	<b>Day</b>	<b>Location</b>	<b>Notes</b>
January 19	Thurs	Salem, OR	Review of proposed contract & RFP changes; ED Performance Review; note: 2017 legislative session begins in early February
March 16	Thurs	Salem, OR	Session update; approval of RFP
May 18	Thurs	Medford, OR	Jackson County Service Delivery Review
June 15	Thurs	Bend, OR	Held in conjunction with OCDLA Annual Conference
August 24	Thurs	Salem, OR	Review of contract proposals; KPM Assessment
September 21	Thurs	Madras, OR	Jefferson County Service Delivery Review; continued Review of contract proposals if needed
October TBD	Fri	TBD	Held in conjunction with OCDLA Public Defense Management Conference; date and location not yet posted; strategic plan – OPDS reports on tasks accomplished; provider input for phase II of strategic plan implementation & 2019-21 budget development
December 14	Thurs	Salem, OR	Commission input for strategic plan phase II implementation and beginning of budget development

# Attachment 9



# Oregon

**Office of Public Defense Services**

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Testimony before Joint Meeting of the  
Senate and House Judiciary Committees  
Regarding  
The Governor's Task Force on Juvenile Dependency Representation  
Final Report and Recommendations

Nancy Cozine  
Executive Director  
Office of Public Defense Services  
September 23, 2016

The Governor's Task Force on Dependency Representation, and the final report approved by task force members, was produced following a remarkably thorough examination of Oregon's system of dependency representation, and how it compares to other models around the country. The process included consideration of testimony from Oregon and national experts, as well as review of documented practices and outcomes. The recommendations are well-researched, thoroughly vetted, and keenly focused on improving outcomes for the children and families navigating Oregon's dependency courts.

In terms of representation for parents and children, the task force did not start with any assumptions. This approach, while ultimately effective, did cause some level of discomfort. The Public Defense Services Commission (PDSC) is the state entity responsible for administering Oregon's public defense system. How would the evaluation of an external task force, where the Commission had only one voice, be incorporated into the PDSC's plans? With such a broad review of systems used around the country, there was a risk that the task force recommendations would not fit well within the current public defense delivery system. And yet, asking the

question in an open-ended way, without a predetermined answer, was a critical part of the process.

The Alternative Models Subcommittee was responsible for evaluating different representation structures from around the country. Six separate models were examined:

- A statewide public defender office with state employees
- An hourly payment system
- A per case payment model
- The Parent Child Representation Program model – currently used in three Oregon counties
- The current system of payment per hearing or event, which is used in most Oregon counties
- A hybrid model including public defender office regional hubs and Parent Child Representation Program attorneys

These models were evaluated using specific attributes of high quality legal representation: consistency, continuity, availability, local community connection, manageable caseloads, outcome-oriented practice, cost-effectiveness and cost-efficiency, multidisciplinary representation, duration of representation, and scope of representation. In selecting a model, the subcommittee focused on finding one that offered data-driven positive outcomes in a cost effective manner.

Oregon's current model, created many years ago, which allows for payment per hearing or event, was ranked at the bottom. With only one payment at the initial appointment, and no further compensation until a review hearing or review by the Citizen Review Board (CRB), lawyers are not funded to do the important work that happens between hearings – visits to children, meetings with adult clients, and when necessary, service providers, family decision meetings, team decision meetings, etc. Additionally, the low rates of compensation offered at each hearing mean that lawyers must take caseloads well over national standards. While Oregon's performance standards for lawyers representing children and parents have evolved, the payment structure has not, and is simply no longer representative of the work required.

Ultimately, the Parent Child Representation Program (PCRP) proved to be the most promising. Oregon's PCRP, launched in Linn and Yamhill counties in August 2014, and in Columbia County in January 2016, has three independent and critical components.

- A client-centered, sustainable legal representation structure.
- Case managers [social workers] – available to assist in approximately 10% of the caseload.
- Quality assurance oversight.

Rather than a payment per hearing or event, the PCRP provides lawyers with a base level of funding sufficient to allow for an office location, staff, and participation in all case events. The lawyers' caseloads may not exceed 80 weighted cases to ensure that lawyers have adequate time to invest in each case. Case managers are available to assist with eliminating barriers - housing, treatment, or other issues. In addition, the program requires enhanced oversight of the lawyers' performance. Rather than simply tracking court hearings, the PCRP requires lawyers to report how their time is spent. The expectation is that lawyers will spend approximately 1/3 of their time in client meetings outside of court, 1/3 of their time preparing for court, and 1/3 of their time in court. Finally, PCRP lawyers receive additional training and support.

The PCRP ranked well for several reasons. First, it is cost-effective. Especially when compared to a statewide public defender or hybrid model, the only other models that offered a similar quality of representation. The PCRP showed similarly impressive results at a lower cost. Second, the PCRP addresses issues which have been consistently identified as impeding effective representation: excessive caseloads, inadequate resources, and a lack of data related to quality assurance and oversight. Finally, the program is evidence-based and can be easily replicated. It has already been implemented in three Oregon counties, where the initial indicators show promising outcomes, including a reduced use of foster care beds in the first two pilot counties.<sup>1</sup>

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<sup>1</sup> Parent Child Representation Program Annual Report (2014-2015).  
[http://www.oregon.gov/OPDS/docs/Reports/PCRP\\_report\\_PDSC\\_Jan\\_2016.pdf](http://www.oregon.gov/OPDS/docs/Reports/PCRP_report_PDSC_Jan_2016.pdf)

Ultimately, the Parent Child Representation Program was selected by the subcommittee, and endorsed by the full task force, because it offers improved outcomes. Modeled after a successful Washington State program, it is also being tested in various forms all across the country in an effort to improve the child welfare system. Robust parent and child representation is correlated with improved outcomes for children and families.<sup>2</sup> An attorney's advocacy for frequent visitation, family involvement, and the right service plans engages parents and steers the case toward timely reunification. More specifically, parent and child representation has been shown to

- ensure that families receive more appropriate services, reducing unnecessary removals.
- decrease time to reunification.
- decrease re-entry post-reunification.
- decrease time to other forms of permanency.<sup>3</sup>

These improved outcomes, in turn, create cost savings and efficiency. In New York, one representation program was found to save \$9 million per year by reducing the length of stay in foster care and promoting safe reunification with parents.<sup>4</sup> The program in Washington State saved \$7.5 million in one year by reducing foster care stays.<sup>5</sup>

Through quality legal representation, several Oregon families have already experienced success.

- In one unexplained injury case, the child and siblings were removed at school, before the parent, who was at work, had a chance to talk with the caseworker. The attorney's advocacy demonstrated that law enforcement officers had already communicated with the parents and that no evidence

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<sup>2</sup> 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](https://www.oregon.gov/gov/policy/Documents/LRCD/Oregon_Dependency_Representation_TaskForce_Final_Report_072516.pdf)

<sup>3</sup> *Id.*

<sup>4</sup> The Center for Family Representation, 2013 Report to the Community (2013). <https://www.cfrny.org/wp-content/uploads/2013/11/CFR-2013-Report-to-the-Community.pdf>

<sup>5</sup> Center on Children and the Law, American Bar Association, Investment that Makes Sense. [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/ParentRep/At-a-glance%20final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/At-a-glance%20final.authcheckdam.pdf)

existed to support any kind of criminal charge, the injury was accidental, the children in the home were healthy and well-cared for, and there was no history of abuse or neglect. The court dismissed the petition dismissed and returned the children.

- In several cases, attorneys have engaged program social workers to assist with resolving housing challenges; their advocacy and creativity has resulted in children being returned to their parents' care when they would have otherwise remained in foster care.
- Attorneys and their social workers have been also able to work with parents facing drug and alcohol dependency issues to get them stabilized in in-patient treatment programs. While DHS caseworkers often require that parents engage in a treatment program, the relationship between the DHS caseworker and the parent is sometimes strained, making trust and progress difficult. Several parents have commented that the participation of a social worker who is connected with the attorney has allowed them to move forward with treatment. In many instances, children have been placed with their parent in a treatment facility following a period of stabilization, again reducing the number of kids using valuable foster care bed resources, while allowing families to be reunited in a safe and stable environment.
- In domestic violence cases, attorneys are working closely with the non-offending parent in order to ensure that safety plans are created to allow the children to remain at home with a protective parent.
- One lawyer who is new to the PCRCP program commented that already, in several cases, due to the lawyer's communication with the parent before the initial shelter hearing, a fit parent or grandparent was found in order to keep the case from requiring removal and agency involvement.
- One judge commented that since the PCRCP started, there has been a dramatic decline in the number of termination of parental rights trials. He speculated that it was because lawyers are working with the clients to resolve issues before a TPR is filed.
- A recent survey of system partners generated the following comments:
  - "I cover caseloads in several counties, and the Linn Juvenile Attorneys are by far the most engaged in the youths' cases and successes. They travel the state to meet with youth; provide support

and encouragement. Youth report feeling connected to their attorneys and advocated for. I would love to see this program in neighboring counties.”

- “Since the program started there has been clear improvement in how often attorneys visit their clients. You can also tell the difference when there is a caseworker working on specific issues with a parent.”

While positive outcomes are achieved throughout Oregon each day, they are achieved far more frequently in counties with the PCRCP program, where lawyers have the time and resources to engage in a proactive and holistic manner.

Oregon’s PCRCP counties show notable results<sup>6</sup>, including:

- Reduced Use of Foster Care Beds<sup>7</sup>: While the statewide rate of foster care bed use increased by almost half a percent, the PCRCP counties had a 13% reduction in the use of foster care beds.<sup>8</sup>
- Preservation of families<sup>9</sup>: While statewide rate of reunification increased by 1.7%, the reunification rate in PCRCP counties increased by 6.5%. Similarly, where the statewide rate of guardianship increased by 12.5%, the rate guardianship in PCRCP counties increased by 111%.<sup>10</sup>
- Improved quality of representation: In PCRCP counties, there was a dramatic increase in attorney participation at shelter hearings, fewer continuances, increased use of experts and investigators, use of a multidisciplinary, team-based approach, and increased attendance at case-related meetings.

Oregon has received some negative attention in recent months in the area of child welfare, but the conversation around improving representation has become a ray of light. We are being highlighted as a state that has completed a thorough

---

<sup>6</sup> January 2014 to January 2015.

<sup>7</sup> While it is far too early to conclude that the PCRCP caused the reduced use of foster care beds, the correlative value is encouraging.

<sup>8</sup> Average rate of reduction of children in foster care, January-June, 2015. Parent Child Representation Program Annual Report (2014-2015). [http://www.oregon.gov/OPDS/docs/Reports/PCRCP\\_report\\_PDSC\\_Jan\\_2016.pdf](http://www.oregon.gov/OPDS/docs/Reports/PCRCP_report_PDSC_Jan_2016.pdf)

<sup>9</sup> Again, while it is far too early to conclude that the PCRCP was solely responsible for these positive changes, the correlative value is encouraging.

<sup>10</sup> Average rate of reunification, January 2014-June 2015. Average rate of guardianship, January 2014-June 2015. January-June, 2015. Parent Child Representation Program Annual Report (2014-2015). [http://www.oregon.gov/OPDS/docs/Reports/PCRCP\\_report\\_PDSC\\_Jan\\_2016.pdf](http://www.oregon.gov/OPDS/docs/Reports/PCRCP_report_PDSC_Jan_2016.pdf)

assessment of our system of representation, and the recommendations of this task force are being discussed at the national level. Though we are not yet at a point of passing legislation, it is important to note that the legislative concept being drafted includes provisions that will allow the PCRCP model of representation to expand, offering the promise of consistent legal representation and improved outcomes for more Oregon families. Oregon has an opportunity to shine, even if only in one small way, with the passage of legislation that will bring life to the task force recommendations.



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## **RIGHT TO COUNSEL**

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

- **TALK TO YOU**

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

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

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

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

**Answer your questions**

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

- **KNOW THE LAW**

- **INVESTIGATE YOUR CASE**

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

**Take pictures or videotapes of the scene**

**Interview witnesses**

**Interview police officers**

**Look at the prosecutor's evidence**

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

**Check records on prosecution witnesses**

**Decide if expert witnesses could help you**

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

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

- **LITIGATE**

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

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

**Prepare for trial:**

**Opening statement**

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

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

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

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

**Closing argument**

**Jury instructions**

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

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

*OJPC is a non-profit, non-partisan law firm that speaks for people who have been marginalized by the criminal justice system and that advocates evidence-based criminal justice reform.*

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