



Public Defense Services Commission ♦ Office of Public Defense Services
1175 Court St.NE ♦ Salem, OR97301 ♦ www.oregon.gov/opds ♦ Phone: 503-378-3349 ♦ Fax: 503-378-4463

Public Defense Services Commission

Office of Public Defense Services

Executive Director's Biennial Report to the
Oregon Legislative Assembly
July 1, 2011 – June 30, 2013

Nancy Cozine
Executive Director
(November 2013)

Contents

I.	Introduction	4
(a)	Agency Mission	4
(b)	The Right to Counsel	4
(c)	Role in Juvenile and Criminal Justice Systems.....	4
(d)	Oregon’s Public Defense Delivery Model.....	5
II.	Agency Organization and Operation	6
III.	PDSC’s Accomplishments in 2011-2013	8
(a)	Contract and Business Services Division (CBS)	8
(b)	Appellate Division (AD)	10
(c)	Service Delivery Reviews.....	122
(d)	Peer Reviews	12
(e)	Efficiency of Operation.....	13
IV.	PDSC’s Challenges in 2011 – 2013	13
(a)	Quality Issues.....	13
(b)	Recruitment and Retention.....	13
(c)	Compensation Issues	14
(d)	Funding for 2013-2015	15
V.	Conclusion.....	15

The Right to Counsel

The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Gideon v. Wainwright, 372 US 335, 344 (1963)

Fifty years ago this Monday – writing for a unanimous Supreme Court – Justice Black observed that: it “seems to us to be an obvious truth” that “in our adversary system, any person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided to him.” This constituted a watershed moment – and a critical step forward – in our nation’s enduring pursuit of equal justice for all.

In the decades since this remarkable case – and Gideon’s retrial, at which he was found not guilty – public defender systems have been established in some states and strengthened in others... And our nation has made significant strides in fulfilling the promise of Gideon – and ensuring quality representation for more of those who need it.

Yet, despite half a century of progress – even today, in 2013, far too many Americans struggle to gain access to the legal assistance they need. And far too many children and adults routinely enter our juvenile and criminal justice systems with little understanding of the rights to which they’re entitled, the charges against them, or the potential sentences they may face.

As a judge on the District of Columbia Superior Court – and, later, as United States Attorney for the District of Columbia – I frequently witnessed the devastating consequences of inadequate representation. I saw that wrongful convictions and unjust sentences carry a moral cost that’s impossible to measure – and undermine the strength, integrity, and public trust in our legal system. I also recognize that, in purely economic terms, they drain precious taxpayer resources – and constitute an outrageous waste of court funds on new filings, retrials, and appeals just because the system failed to get it right the first time.

Written Testimony by Attorney General Eric Holder at the Justice Department’s 50th Anniversary Celebration of the U.S. Supreme Court Decision in Gideon v. Wainwright Committee, Washington, D.C. ~ Friday, March 15, 2013

“The right to representation by counsel is not a formality. ...It is the essence of justice.”

Kent v. United States, 383 U.S. 541, 561 (1966).

I. Introduction

The Public Defense Services Commission (PDSC) is an independent commission within the judicial branch of state government. In July of 2003 it assumed full responsibility for administering Oregon's public defense system, which delivers trial level and appellate legal services in criminal, juvenile, civil commitment, post-conviction relief, and habeas corpus cases across the state.

(a) Agency Mission

In carrying out its responsibilities, the PDSC's mission is to establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.¹

(b) The Right to Counsel

The legal services provided by PDSC represent an essential component of Oregon's public safety system. Under the United States Constitution, the Oregon Constitution and Oregon statutes, financially eligible individuals charged with a crime, parents and children in abuse and neglect cases, and individuals facing involuntary commitment due to mental health concerns are entitled to representation by court-appointed counsel at trial and on appeal. During the biennium, circuit and appellate courts appointed attorneys to represent clients in more than 342,000 cases.

(c) Role in Juvenile and Criminal Justice Systems

The state cannot prosecute crime, remove children from their parents, or involuntarily commit those in need of treatment without providing constitutionally mandated representation to financially eligible individuals subject to these proceedings.

Court appointed attorneys defend the rights of all Oregonians by asserting the constitutional and statutory protections afforded to the criminally accused, family members who are involved in juvenile

¹ ORS 151.216(1)(a).

dependency or delinquency proceedings, and the rights of allegedly mentally ill persons, to ensure that they are not inappropriately deprived of their liberty or fundamental rights.

In addition, defenders contribute directly to public safety by (1) advocating for effective criminal sanctions that help clients avoid future involvement in the criminal justice system; (2) finding resources for families involved in dependency cases that help them avoid or limit disruption of the family unit, lead to reunification or, when reunification is not possible, help children find permanent safe and supportive homes; and (3) assisting allegedly mentally ill persons find safe and effective alternatives to involuntary hospitalization.

On the appellate level defenders play a critical role in clarifying the law and ensuring its consistent application across the state. On both the state and local level defenders participate in public safety planning groups and provide valuable input to policy makers regarding effective approaches to controlling crime, protecting children and providing for the mentally ill, and facilitating the efficient operation of the courts and the public safety system as a whole.

(d) Oregon's Public Defense Delivery Model

The PDSC provides representation in most criminal and juvenile dependency appeals directly through state employee lawyers and staff in the Appellate Division (AD) at the Office of Public Defense Services. PDSC provides representation for all trial level cases and appellate cases not handled by the Appellate Division through contractual and hourly agreements administered by the Office of Public Defense Services.

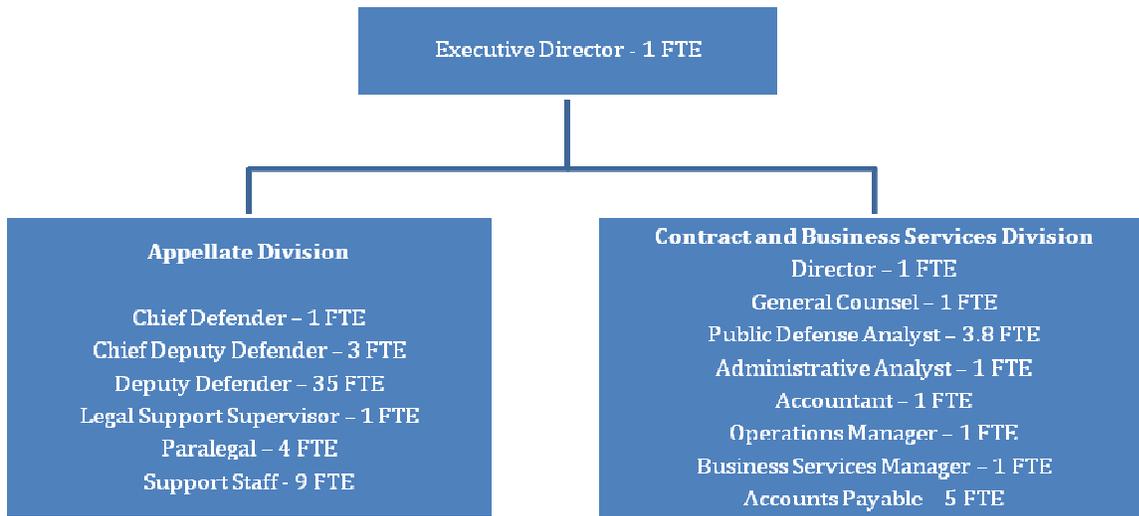
II. Agency Organization and Operation

The Public Defense Services Commission is a seven-member commission that serves as the governing body for Oregon's public defense system. It provides policy direction and oversight for the administration of the system. The commissioners are civic-minded, uncompensated volunteers who are appointed by the Chief Justice who serves as an *ex officio*, non-voting member. By statute, two members must be non-attorneys, one must be a former prosecutor, and another must be an attorney engaged in criminal defense practice who does not serve as a court-appointed attorney compensated by the state. The current members of the PDSC are listed in Appendix A.

The Commission established the Office of Public Defense Services, as required by ORS 151.216(1)(b), as the administrative agency responsible for carrying out the Commission's directives and other statutorily defined duties. The Commission appoints the agency's executive director. Ingrid Swenson served as the executive director and retired on July 31, 2011. The Commission hired a new executive director, Nancy Cozine, who joined the office on September 7, 2011.

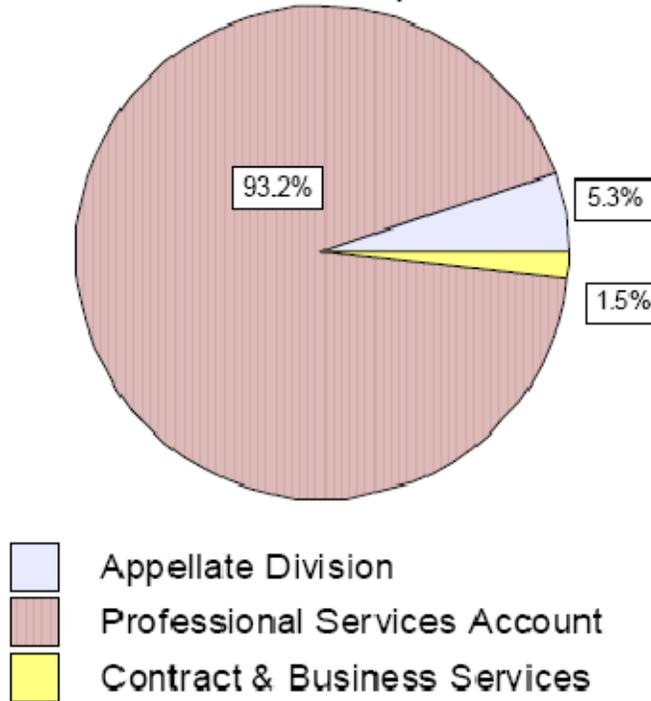
As shown on the Organizational Chart (next page) for 2011-2013, the Office of Public Defense Services was comprised of two divisions, the Contract and Business Services Division (CBS), and the Appellate Division (AD). During the 2011-13 biennium, CBS managed the business operations of the two divisions. CBS employees also negotiated with private contractors and administered the Public Defense Services Account which funds representation and related services in all criminal, juvenile, and civil commitment cases at the trial level and in those appeals not assigned to the Appellate Division. Finally, CBS processed all expenses related to representation in public defense cases. The Appellate Division (AD) provides direct legal representation in the state appellate courts in criminal cases, juvenile dependency and termination of parental rights cases, and parole cases. The Agency's General Counsel serves as legal counsel for the entire agency.

Kathryn Aylward was the Director of the Contract and Business Services Division until her retirement in May 2013. Peter Gartlan is the Chief Defender and manager of the Appellate Division. Paul Levy is the agency's General Counsel, and served as Interim Director of the Contracts and Business Services Division following Ms. Aylward's retirement.



The chart below sets forth the 2011-2013 funding allocations for the two divisions and for the Public Defense Services Account which funds private contractors, hourly rate attorneys, and other private service providers such as investigators and expert witnesses.

2011-13 Total Expenditures



III. PDSC’s Accomplishments in 2011-2013

(a) Contract and Business Services Division

With respect to the provision of trial-level representation, the agency’s Contract and Business Services Division (CBS) was able to negotiate contracts with more than 100 private providers in every region of the state to ensure representation in over 342,000 cases during the biennium. The division also monitored performance under these contracts by performing a monthly reconciliation of case counts from contractors and data from the Oregon Judicial Department regarding court appointments.

In addition to negotiating and administering contracts for the provision of legal services, the Contract and Business Services Division managed the non-routine expense authorization process. The expense authorization process requires OPDS to review each request for approval of fees for investigators, expert witnesses, discovery materials provided by other parties, and other expenses necessary for the preparation and presentation of an adequate defense. The agency uses a peer-review process in public defender offices to obtain input from experienced attorneys about which expenses are truly “reasonable and necessary,” as required by ORS 135.055. There were more than 34,000 such requests in 2011-2013. Responses to OPDS’s Customer Service Survey in 2012 indicated high satisfaction with the agency’s helpfulness, accuracy, timeliness, knowledge and expertise. In addition to managing the division, the CBS Division Director served as the agency’s Chief Financial Officer. She prepared the draft the budget proposal for the 2013-15 biennium for approval by the Commission.

OPDS’s General Counsel provided oversight on quality of representation issues for public defense providers statewide. He worked closely with the agency’s advisory group, the Public Defense Advisory Group, to assemble peer review teams of volunteer lawyers to perform intensive three-day site visits to public defense contractor offices to review the quality of services provided. When a peer review team identifies significant quality issues, General Counsel assists in outlining and implementing quality improvement measures. In 2011-13, he completed two site visits in Clatsop and Marion counties. He also conducted two statewide public defense performance surveys and worked with contract analysts to follow up on concerns raised in responses to the survey. General Counsel also oversaw the agency’s complaint process that permits judges, district attorneys, clients and members of the public to bring complaints regarding the cost or quality of public defense services to the agency’s attention.

The agency’s General Counsel is a frequent presenter at continuing legal education training sessions for public defense attorneys statewide. He also organized a diversity training, focused on the topic of implicit bias, for all OPDS employees in May of 2013. Additionally, he acts as the agency’s legal counsel, as mentioned

earlier, he served as Interim Director of the Contracts and Business Services Division when the Division Director retired in mid May 2013.

(b) Appellate Division

The Appellate Division (AD) has a criminal section and a juvenile appellate section (JAS). The division provides legal representation in the state appellate courts on direct appeal in criminal cases, parole appeals, juvenile dependency appeals, and appeals from the termination of parental rights.

During the 2011-13 biennium the criminal section maintained its performance on PDSC's Key Performance Measure No. 1, which is to file opening briefs in criminal and parole cases earlier in the appellate process. In 2006 the median number of days to file the opening brief was 328. In 2012 it was 223 days.

The criminal section had many successful appeals, several of which established important new legal principles, such as the complete revision of the trial court's analysis of eyewitness identification evidence.

The division provides ongoing support to the trial level criminal defense bar. AD lawyers sit on the Oregon State Bar's criminal, juvenile, and appellate section executive committees, as well as the executive and educational committees for the Oregon Criminal Defense Lawyers Association (OCDLA). AD lawyers regularly present at continuing legal education (CLE) seminars sponsored, for example, by the Oregon State Bar and the Oregon Criminal Defense Lawyers Association. The division's attorneys field email and telephone inquiries from the criminal defense trial bar on a daily basis and provide briefing and memoranda for distribution through the OCDLA Library of Defense website that is available to criminal defense practitioners.

The division's juvenile unit, created by the 2007 Legislative Assembly, continues to receive high praise for its work in refining the way courts analyze and apply dependency statutes. The Juvenile Appellate Section (JAS) represents parents in the majority of appeals

in juvenile dependency and termination of parental rights cases, appearing regularly before the appellate courts in cases that produce written opinions that guide trial level practice. The unit also provided assistance to the Oregon Law Commission and individual legislators. The JAS lawyers routinely present at CLE seminars concerning juvenile dependency law, and they are in daily contact with and provide regular assistance to defense practitioners litigating juvenile dependency cases in the trial court. The Attorney General and Oregon trial and appellate court judges and staff report that the unit has provided superior representation that has enhanced and guided the development and application of juvenile dependency law statewide.

In October 2012, the Appellate Division completed its annual revision and expansion of its employee manual, and in April 2013, the juvenile appellate section published its first supplemental manual to address practices and policies unique to juvenile appellate practice. The manuals address AD policies, procedures, and commonplace issues that arise daily for attorneys and legal secretaries.

Division managers continue to meet regularly with the Chief Judge of the Court of Appeals and the Solicitor General of the Department of Justice to advance and promote practices that improve the appellate process without prejudicing the rights of clients. For example, to address the growing backlog of cases scheduled for docketing in the Court of Appeals, the court progressed from scheduling 40 agency criminal cases per month in 2011, to 60 agency criminal cases per month in 2012, and expects to temporarily increase that number to 80 criminal cases per month from December 2013 to June 2014, after the fourth panel of Court of Appeals judges assumes the bench in late 2013.

In addition, representatives from the Appellate Division, the Attorney General's office, and appellate court operations meet quarterly to address operational issues that affect system efficiencies, for example, issues concerning the quality and timeliness of transcript production, access to trial court files through the Odyssey system, eFiling, and appellate case docketing.

(c) Service Delivery Reviews

In pursuit of its mission to assure high quality, cost-effective public defense services in 2011-2013, PDSC conducted service delivery reviews in Douglas, Linn, and Clatsop counties. The service delivery review process includes holding public meetings in various locations in the state, gathering information from judges, prosecutors, other officials and citizens, evaluating the need for changes in the structure and delivery of local public defense services and directing the Commission's management team to implement needed changes.

There are three phases in the process. The Executive Director and other agency representatives perform an initial investigation. The Commission then meets in the region to hear directly from the stakeholders in the local justice system. The Commission then develops a service delivery plan, which is incorporated into a final report. This report serves as a blueprint for agency staff contracting with providers in the region. All of these reports appear on the agency's website.

In previous biennia, PDSC completed investigations in, and evaluations of, most of Oregon's local public defense systems.² It developed service delivery plans to improve the structure and operation of local systems, and to raise the quality of legal services in those jurisdictions.

(d) Peer Reviews

As noted above, during 2011 - 2013, OPDS General Counsel organized two peer reviews. The peer review process provides an extensive examination of the quality of services within the county. Historically, the reports generated by peer review teams were confidential, available only to the peer review team and contract providers who were being reviewed. This approach worked well in counties with few problems and motivated administrators who were interested in addressing concerns, but was less effective when providers were reluctant to implement changes. As a result of concerns that the confidentiality component was making it difficult

² As they are completed these plans are posted on the PDSC website: www.oregon.gov/OPDS/PDSCReports.page.

to achieve desired changes, the PDSC decided to remove the promises of confidentiality. This decision was made after discussion in several public meetings, and after consultation with the Public Defense Advisory Group – a group of dedicated contract administrators from around the state who meet quarterly to discuss matters of importance to public defense providers.

The preliminary findings suggest that removal of the confidentiality component has created more efficient and timely responses to peer review findings, and that the PDSC is better able to achieve its goal of ensuring the provision of quality representation.

(e) Efficiency of Operation

With two management level retirements within the Contract and Business Services Division in May of 2013, the management team began a review of the organizational structure to identify efficiencies that could be captured through modest reorganization efforts. The restructure, which is being implemented in phases throughout the end of 2013 and into early 2014, will better serve agency employees and contract providers.

IV. PDSC's Challenges in 2011 – 2013

(a) Quality Issues

The PDSC continues to actively administer a variety of programs and services to ensure that Oregon citizens receive quality legal representation. As mentioned, recent changes in peer review confidentiality provisions have increased responsiveness to peer review findings, and stakeholders in those counties report that there has been a correlating increase in the quality of representation. While that is very positive progress, the PDSC will continue to explore additional ways in which quality might be measured and evaluated in order to increase statewide oversight capacity.

(b) Recruitment and Retention

Public defense providers continue to experience difficulties attracting and retaining lawyers. Over the course of the biennium,

several lawyers presented information to the PDSC and the Legislature regarding public defender compensation. Younger lawyers explained that it is impossible to purchase a home, have a family, or achieve other life ambitions as a public defender due to the low compensation and high law school debt. A career services specialist from Lewis and Clark Law School told Commission members that average law school student loan debt is over \$100,000, making it very difficult for these lawyers to meet their financial obligations on their public defender salaries, especially for those students who have undergraduate student loan debt in addition to their law school debt.

(c) Compensation Issues

The PDSC has advocated for increased compensation for Oregon's public defense lawyers each biennium in an effort to reduce caseloads and improve quality of representation. Reduced caseloads improve representation and case outcomes in juvenile dependency cases,³ but are possible only when case rates are increased to amounts that allow attorneys to handle fewer cases. The PDSC submitted three policy option packages (POPs) in the 2011-13 agency request budget, all of them addressing compensation issues.

- POP 100: Increase in compensation necessary to achieve a 20% caseload reduction in juvenile dependency cases
- POP 101: Increased compensation for appellate division attorneys (to match Department of Justice attorney salaries)
- POP 102: Increased compensation for non-profit public defenders

These policy option packages were not funded by the legislature as part of the 2011-13 budget .

³ Mark E. Courtney, PhD., Jennifer L. Hook, PhD., and Matt Orme, "Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care," Partners For Our Children at the University of Washington, Discussion Paper Volume I, Issue I (February 2011). This report is available electronically at: <http://partnersforourchildren.org/pocweb/userfiles/PRP%20Discussion%20Paper.pdf>

(d) Funding for 2013-2015

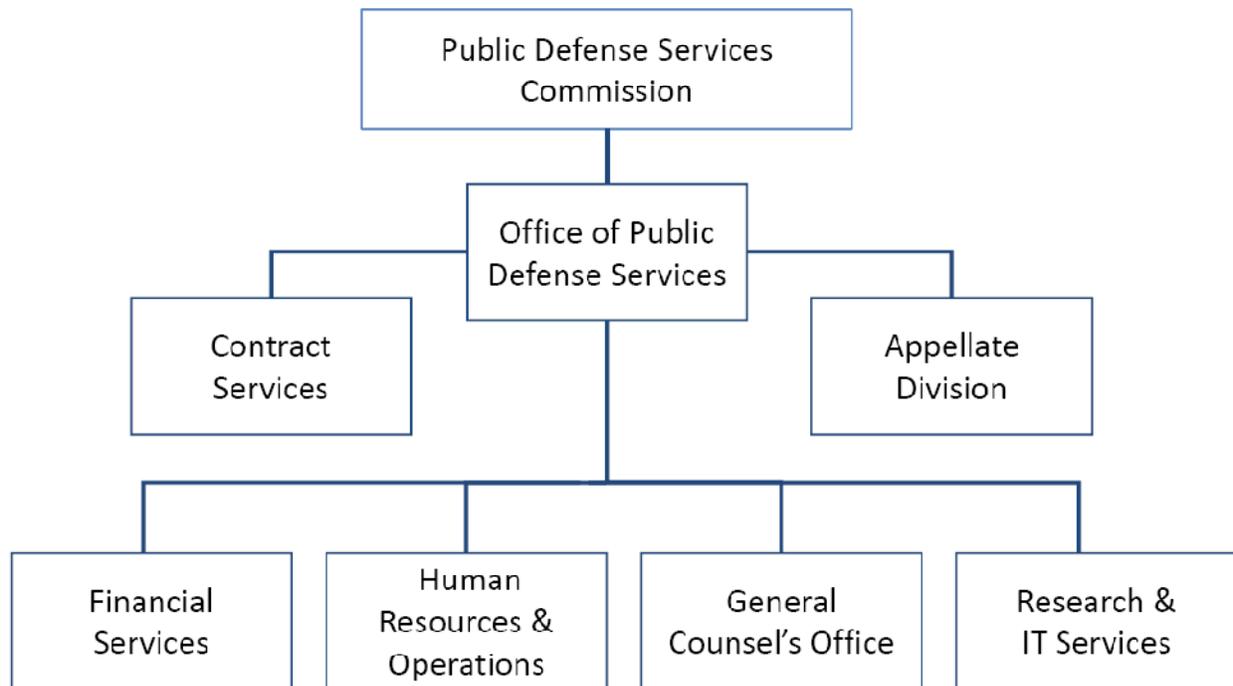
The PDSC included the same policy options packages described above in its 2013-15 agency request budget, but reduced the amount requested by two thirds – requesting only one third of what would be required to achieve the desired outcome. The Legislature authorized partial funding of two requests - \$2.4 million for reduced dependency caseloads and \$3 million to increase public defender compensation. The \$3 million dedicated to public defender compensation will help address pay disparity issues. While some public defender lawyers were being paid over 40 percent less than prosecutors with the same level of experience prior to the appropriation of those funds, that disparity will be decreased to closer to 35 percent during the next contract cycle. The \$2.4 million dedicated to reduced dependency caseloads will be distributed through a pilot program. The PDSC will measure outcomes in the selected counties to evaluate the importance of additional funding for reduced dependency caseloads in future biennia.

In addition to partial funding of policy option packages, the PDSC received amounts close to current service level for both operating and contracted services. Appropriation of the two percent holdback, taken from agency budgets with an indication that it would be returned dependent upon statewide economic circumstances, will be critical to maintaining services and implementing continued improvements in public defense.

V. Conclusion

Oregon's public defense system has long been considered a national leader in the provision of effective, cost-efficient representation to qualified individuals. With a slightly improved economy and partial funding of policy option packages, the PDSC is in a position to begin enhancing its quality assurance mechanisms, which will allow it to remain a nationally recognized model. While the peer and service delivery reviews are unquestionably very effective, the agency cannot fund or organize more than a few per year, making it difficult to consistently cover and revisit every region of the state. The agency will be exploring ways to assess quality through less costly and intensive mechanisms that can be administered with greater frequency as a way to augment its quality assurance programs. The current effort to reorganize the

office will assist with this goal by adding one full-time position dedicated to quality assurance efforts, as well as a research and information technology director. The structural changes will also facilitate increased capacity within the office, as it allows lawyers to focus on the practice of law rather than also spending time addressing human resources and information technology matters. A revised organizational chart is included below.



As the agency begins the 2013-15 biennium and starts to prepare for the 2015-17 biennium, it will continue to examine the needs of the agency, contractors, and clients, to ensure that the agency's key performance measures, policy option packages, and quality assurance mechanisms are designed to efficiently address the most significant challenges in public defense.

Appendix A

Oregon Public Defense Services Commission Members

Chief Justice Thomas A. Balmer
Ex-Officio Permanent Member

Barnes H. Ellis, Chair
General Counsel & Corporate Secretary, Mercy Corps

Shaun McCrea, Vice-Chair
Partner, McCrea PC

Per Ramfjord
Partner, Stoel Rives LLC

Henry H. Lazenby, Jr.
Lazenby & Associates

John R. Potter
Executive Director, Oregon Criminal Defense Lawyers Association

Janet C. Stevens
Co-Editor, Bend Bulletin

Hon. Elizabeth Welch
Senior Judge