

# **Public Defense Services Commission Service Delivery Plan for Deschutes County**

(Approved July 28, 2011)

## **Introduction**

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

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems.

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense system begins with a review of an OPDS report like the initial version of this document.

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

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

The original version of this report was provided to Commissioners and others

prior to the June 17, 2010 meeting of the Commission.

### **PDSC's Preliminary Investigation in Deschutes County**

In April 2010 OPDS Executive Director Ingrid Swenson and Public Defense Services Commissioner John Potter visited with stakeholders in Deschutes County. They met with or spoke by telephone with six of the seven Circuit Court judges; the juvenile court referee; the trial court administrator and members of his staff; the District Attorney, his chief deputy and chief misdemeanor deputy; the Citizen Review Board coordinator; Juvenile Department staff; two CASA supervisors; DHS supervisory personnel; a Department of Justice attorney, State Representative Judy Steigler; and directors of all four contract offices.

### **OPDS's Initial Findings in Deschutes County**

#### The Circuit Court

There are seven Circuit Court judges in Deschutes County. Judge Michael Sullivan is the presiding judge. The others are Michael Alder, Alta Jean Brady, Stephen Forte, Barbara Haslinger, Edward Perkins, and Stephen Tiktin. The Trial Court Administrator is Ernest Mazorol. Steven Kurzer is a part time referee who handles primarily juvenile delinquency cases. All of the judges handle criminal matters. Judge Forte is the principal juvenile judge. Two of the Circuit Court judges restrict their caseloads to what were District Court cases prior to the consolidation of the state courts<sup>1</sup>.

The court operates a number of specialty courts – a drug court, a family court (in which all cases relating to a particular family are consolidated), a mental health court and a domestic violence diversion program. There is also an early disposition program in the county.

#### District Attorney

Long term Deschutes County District Attorney Mike Dugan was defeated in the May election and will be replaced by Patrick Flaherty, effective January 1, 2011. There are currently 18 deputies in the District Attorney's office. Two deputies are assigned to handle juvenile matters and their offices are located at the juvenile facility located several miles from the county courthouse.

#### Procedure in Criminal Cases

The court uses a hybrid docketing system. While cases are assigned to individual judges at the time of filing, they do not actually go to the assigned judge until after the entry of plea. The five felony judges alternate handling the

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<sup>1</sup> This system may be changing at the end of 2010 upon the retirement of one of the "misdemeanor" judges; other docket changes may also be considered.

arraignment docket on a weekly basis, with out-of-custody arraignments in the morning and in-custody arraignments at 1:30 daily. All in-custody arraignments are done by video from the jail. Attorneys are present in the courtroom and can communicate with incarcerated clients over a secure telephone connection. The judge assigned to handle arraignments also handles changes of plea<sup>2</sup>.

Misdemeanor cases are assigned to the two "District Court" judges, with odd numbered cases going to one judge and even numbered cases going to the other. These two judges alternate between hearing trials and hearing short matters. Delays in resolution of misdemeanor cases resulted in a backlog of unresolved cases that required the court to bring in an out of county judge to help clear the docket<sup>3</sup>.

Both felony and misdemeanor cases may be set over by either side.

Obstacles to resolution in felony cases were reported to include: not having a deputy district attorney present with authority to settle the case, defense attorneys not meeting with their clients<sup>4</sup>, defense attorneys not making counter offers to the offers made by the deputy district attorney at the time discovery is provided.

An entry of plea date is set in both felony and misdemeanor cases within 21 days after the arraignment for in-custody defendants and 35 days after arraignments for out-of-custody defendants. At the entry of plea hearing a case may be resolved, set for trial or continued. Settlement conferences are scheduled frequently. Cases are sometimes settled on the day of trial. Trial rates in Deschutes County are below average<sup>5</sup>

## Procedure in Juvenile Cases

### Delinquency cases

The juvenile court referee is assigned to hear delinquency cases one and one-half days a week in a courtroom at the juvenile facility. Attorneys are generally present at initial hearings. An "admit/deny" hearing is scheduled two weeks after the shelter hearing.

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<sup>2</sup> This system was implemented several years ago at the request of both the prosecution and the defense in order that attorneys could have all of their criminal appearances in a single courtroom.

<sup>3</sup> There was a difference of opinion about the cause of the backlog which resulted in cases being set out five and six months after the entry of plea, the defense attorneys indicating that the deputy district attorneys who appeared did not have authority to settle the cases and the district attorney's staff indicating that the assigned defense attorney were often not present.

<sup>4</sup> One person noted that the jail is four miles from the courthouse making it more difficult for defense attorneys to meet regularly with clients.

<sup>5</sup> In 2009, according to the State Trial Court's "Cases Tried Analysis," 3.4% of felonies and 2.2% of misdemeanors went to trial, compared to a statewide average of trials in 5.7% of felonies and 4.4% of misdemeanors.

Juvenile caseloads are declining according to the juvenile department. Five positions in the detention center were terminated in April. A portion of the 56 beds in the Deschutes County detention facility are rented to other counties and some are used to house juvenile Measure 11 defendants. The county has not been required to reduce juvenile department probation staff, however.

One juvenile department team handles only formal accountability agreements (FAAs). According to a spokesperson for the juvenile department, the county seeks to divert as many youth as possible to FAAs and to informal diversion programs operated by the Bend City Police, the Redmond City Police and the cities of Sisters and LaPine. Minor offenses such as Theft II, Assault IV and Minor in Possession are handled informally and do not require involvement of juvenile department staff<sup>6</sup>. Probation violations are prosecuted as motions to revoke probation.<sup>7</sup>

It is rare for a juvenile in Deschutes County to waive counsel<sup>8</sup>.

Trial rates in delinquency cases are above statewide averages.<sup>9</sup> In sex offense cases, a procedure has been developed in which counsel for the youth obtains a sex offender evaluation. Depending on the evaluator's conclusions, the report may be provided to the state. Through the use of a "conditional postponement" it is often agreed that the court will adjudicate the youth on one or more non-registerable offenses and the youth will make factual admissions to one or more registerable offenses with disposition being withheld on the registerable offenses. Successful completion of probation, including sex offender treatment, results in dismissal of the registerable offenses.

### Dependency cases

In Deschutes County the Department of Human Services provides factual information for dependency petitions and the District Attorney's office prepares and files them. Preliminary hearings occur in the afternoon and are scheduled

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<sup>6</sup> Statewide Juvenile Justice Information System statistics indicate that in calendar year 2009, approximately 55.8% of youth were diverted in Deschutes County (compared to 34.0% statewide). However, 43.4 percent of youth had cases dismissed or not petitioned statewide compared to only 22% in Deschutes County. The percentage of youth adjudicated in Deschutes County (21.3%) was nearly identical to the statewide percentage of 21.2%. See: [http://www.oregon.gov/OYA/jjis\\_data\\_eval\\_rpts.shtml#\\_Dispositions](http://www.oregon.gov/OYA/jjis_data_eval_rpts.shtml#_Dispositions).

<sup>7</sup> While informal sanctions are often used to address probation violations, in 38 cases in 2009 a total of 728 days of detention were imposed post adjudication with an average length of stay of 19.2 days.

<sup>8</sup> Email from Bob LaCombe, Division Administrator, Deschutes County Juvenile Community Justice and testimony of Judge Steven Forte at the OCDLA Spring Juvenile Conference, April 2010.

<sup>9</sup> Oregon Judicial Department statistics indicate that in the one year period ending July 30, 2009, 29 of the 402 delinquency petitions were resolved by trial (approximately 7%), compared to approximately 4% statewide.

only as needed. The Oregon Judicial Department reported that there were 77 petitions filed in Deschutes County in the one year period ending September 30, 2009. Attorneys are appointed for both children and parents in almost all cases according to DHS. No discovery is provided prior to the hearing and usually only the petition and the temporary custody report are available. DHS staff indicated that initial hearings are never contested. A custody review hearing and settlement conference is generally scheduled for several weeks after the initial hearing. The great majority of cases are resolved at this hearing or at a third hearing, if needed. Statistics for the year ending September 30, 2009 indicate that 11 cases were tried.

The court and the Citizen Review Board (CRB) both conduct regular reviews in dependency cases. The Judicial Department reported that there were 555 review hearings in the year ending September 30, 2009 in Deschutes County, which is a ratio of approximately seven review hearings to each new dependency case filed<sup>10</sup>. The Deschutes County District Attorney's Office appears at these hearings.

Contested trials in termination of parental rights cases are reported to be rare in Deschutes County<sup>11</sup>. Most of the cases that proceed to termination are family court cases in which an array of services have already been provided in an effort to reunite the family.

Deschutes County has an active CASA program.

### Civil Commitment Cases

Attorneys sitting as pro tem judges usually hear civil commitment cases in Deschutes County. Most of these hearings occur at the courthouse although some are held at St. Charles Hospital. A delay in processing the required paperwork in these cases has now been addressed. County Counsel represents the state in commitment proceedings.

### Specialty Courts

Deschutes County has a relatively new family drug court that opened in 2007. Judge Brady is the family drug court judge. There are 21 clients in the program that requires involvement of family members. The court is directed primarily at women, many of whom are single parents. The family court drug team meets weekly.

The county also has a family court that was started in 1994. It was the first pilot site in the country and has been written up as a best practice model by a number

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<sup>10</sup> The statewide ratio according to Oregon Judicial Department data is less than two review hearings for every new dependency petition.

<sup>11</sup> One state's attorney could not recall a termination trial in the past five years.

of organizations including the National Center for State Courts and the National Institutes of Justice. All of the judges have cases that have been designated as family court cases. Currently each judge has between 15 and 20 cases<sup>12</sup>. Participation in the court is not voluntary. Cases are subject to family court treatment if members of a family have multiple cases before the court, at least one of which is a juvenile dependency case. Once the cases are “bundled” and sent to one judge, any new cases will also be transferred to that judge. Active involvement of the court requires that family members be willing to execute releases and waive confidentiality. If they choose not to, the cases remain bundled but are processed in the traditional manner. Active family court cases involve frequent court hearings and occasional family meetings with participation by multiple treatment providers. Brie Arnette is the Family Court Coordinator.

The county also sponsors a mental health court. Jail staff usually makes the initial referral of a potential mental health court candidate to the district attorney who determines whether the person appears to meet program admission criteria of: a pending non-violent felony or misdemeanor with a history of mental health issues. Judge Tiktin presides over the court. Participants appear twice a month. Successful completion of the program results in a dismissal of the charges. The Mental Health Department recently received a grant that will permit it to enhance coordination. The program can serve a maximum of 25 clients.

A domestic violence diversion program is overseen by Judge Sullivan. Persons charged with both felonies and misdemeanors are eligible to participate. The court meets every two weeks. A diversion offer is initially made by the district attorney. If the defendant accepts he or she must enter a guilty plea and agree to get into a batterer’s intervention program within 30 days. The case is then continued for 60 days to confirm that the defendant has entered the program. The program lasts approximately 18 months. The defendant is returned to court upon successful completion of the program or if diversion conditions are violated. Successful completion results in a dismissal of the charges. Approximately 50 to 60 program participants are monitored by the court and approximately 100 by probation and parole.

There is an early disposition program in the county. There were approximately 500 EDP cases last year. Most cases involve minor property crimes such as Theft II. EDP permits the district attorney’s office to focus on other offenses, including domestic violence cases and DUIs. According to Brendon Alexander, the attorney with whom PDSC contracts to handle these cases, there are between six and sixteen defendants a day referred to this program. Discovery is provided a day or two before the hearing; defendants plead guilty and are ordered to complete 8 hours of community service. Mr. Alexander meets with the defendants as a group and describes how the court works. If they have any

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<sup>12</sup> As of May 25, 2010 a total of 302 families had been assigned to the court. Currently there are 93 active cases.

concerns about the process he tells them that they can contest the charges if they wish or take a brief continuance to consider their options.

Current funding does not permit the county to create a special DUII court or a veteran's court, both of which have been explored.

### Public Defense Providers

PDSC contracts with four providers for non-death penalty cases in Deschutes County: Crabtree and Rahmsdorff, the Bend Attorney Group, DeKalb, Brenneman & Brenneman, and Alexander and Associates.

The Crabtree and Rahmsdorff firm was established in 1981. It is a non profit public defender office with 13 attorneys and a number of non-attorney employees including investigators, administrative and clerical staff. The firm represents public defense clients in both Deschutes and Crook Counties. The current contract includes 3,640 Deschutes County cases per year, including all major case types except aggravated murder, and includes mental health court cases and family drug court cases. The executive director, Tom Crabtree, serves at the pleasure of the office's board of directors, which also reviews and approves office policies, budgets and contracts. The board's outside members include representatives of the local business community.

The Bend Attorney Group, a consortium of 9 attorneys, contracts to handle 1,914 cases per year, including family drug court cases and all major case types except murder and aggravated murder. Jonathan Pritchard is the administrator. The consortium formed a board of directors over a year ago. Members include a civil attorney, a deputy district attorney from another county, a criminal attorney in private practice, and a consortium member. The board hires the executive director, approves contracts, surveys judges and district attorneys, and reviews complaints and quality assessments.

At the time of the PDSC meeting in Bend, Dekalb, Brenneman & Brenneman was a law firm with five attorneys. Two of the partners left and the firm now consists of Jacques DeKalb and two associates. The firm contracts for 1,537 cases per year including primarily criminal matters, a small number of juvenile dependency review hearings and cases in the mental health court and the family drug court. Jacques DeKalb manages the contract.

Alexander and Associates is a law firm with three attorneys which contracts for 542 cases per year including all major case types except aggravated murder and contracts to handle the early disposition program. Brendon Alexander manages the contract.

Non-contract attorneys are not needed on a regular basis but there are some Bend attorneys in private practice who are willing to accept occasional public

defense cases and one of the contractors in Crook County also accepts Deschutes County cases when necessary.

## Comments regarding Local Public Safety System and PDSC Providers

### Criminal Cases

OPDS received comments from judges, court staff, district attorneys and defense lawyers about court scheduling issues. There was no consensus regarding the causes of scheduling conflicts. The judges noted that felony trials are sometimes delayed for long periods because the appointed attorney is not available. They said that some contractors handle cases more expeditiously than others and are more cooperative with the court's effort to make the process more efficient. One lawyer is so contentious that he doesn't settle cases when it would be in his client's interest to do so. The judges said that there is a need for more attorneys qualified to handle major felony cases. Court staff noted that attorneys don't usually have calendars in the courtroom. If they did it would help to prevent scheduling conflicts.

District attorneys said that the defense bar moves slowly and has no real incentive to resolve cases quickly. Some of the attorneys will make an affirmative effort to negotiate, others won't. Defense attorneys don't always meet with their clients before settlement conferences and the need to confer with victims limits the state's ability to negotiate at the last minute. The district attorneys said that because all of the judges handle criminal cases lawyers often have multiple appearances, making scheduling conflicts common.

Defense attorneys point to the judges' individual dockets as the principle scheduling challenge and also note that it is difficult to resolve cases at settlement conferences when the deputy district attorney who is present lacks the authority to amend the offer. Scheduling has improved in misdemeanors since there is now a deputy in charge who has the authority to settle cases.

### Representation of parents

Juvenile dependency system representatives reported that most attorneys provide good representation to parents but some are more skilled than others at collaborative efforts on behalf of their clients in family court, with some appearing to prefer the adversarial model of representation. Several interviewees said that some contractor attorneys are not meeting with their clients before court, necessitating the rescheduling of hearings. Individual attorneys were identified as providing particularly zealous representation and others as providing relatively apathetic representation.<sup>13</sup> It was said to be unusual for all but two of the

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<sup>13</sup> One interviewee said that if he were a public defense client and either of two attorneys he identified were appointed as his counsel, he would sell his dog to be able to retain his own

attorneys to have any contact with DHS between court hearings. One state's representative said that sometimes attorneys are too passive and sign off on terminations without a fight. Attorneys are said to use the CRB process well.

### Representation of children

Children's attorneys are visiting with their clients more often than they did in the past. Other interviewees reported that they are generally on top of their cases. Some attorneys exceed expectations in the frequency of their contact with their child clients and the strength of their advocacy. Teens have expressed appreciation for their attorneys' efforts to assure them a voice in family court. One interviewee said that many attorneys are not adequately trained in how to communicate with child clients. They also don't meet with clients as often as they should. One dependency system representative said that adoption is a "black hole" in Deschutes County and urged that children's attorneys make a greater effort to see that adoptions are finalized.

### Delinquency cases

State representatives note that defense attorneys often fail to meet with clients before the admit/deny hearing, often requiring that the hearing be reset. Some attorneys also fail to return phone calls from clients and their parents. There are attorneys who are prepared and do excellent work and others who "are just there for the pay check."

## **OPDS's recommendations for further inquiry at PDSC's June 17, 2010 meeting**

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

### The Structure

Under the system currently in place, PDSC contracts with four providers in the county. The variety of provider types allows for some of the benefits and involves some of the weaknesses noted in the description of public defense providers at pages 6 to 9 of this report. A non-profit public defender office serves as a recruiting and training resource for the county, the consortium attorneys can represent multiple parties in a single case without conflicts, the law firms can provide special expertise such as the high quality representation in serious cases reportedly provided by the DeKalb firm and the ability of the Alexander firm to represent clients described by court staff as "difficult."

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counsel. Information about the reported performance of particular attorneys was provided to contract administrators in each office.

Currently, the caseload is declining in the county. Over time it is possible that fewer providers will be needed although there appears to be general agreement that there is a need for more attorneys qualified to handle serious felony cases. Attorneys are still described as “stretched thin” and many interviewees acknowledged that as a result of the hybrid docketing system attorneys appear to be scheduled in multiple places at the same time, a situation that is aggravated by the fact that the jail and the juvenile court are located several miles from both the county court house and the law offices of most of the attorneys.

Commissioners might wish to question providers at the hearing on June 17 about ways in which the providers and PDSC could recruit and retain more attorneys skilled in serious cases.

### The Juvenile Dependency System

In Deschutes County, as elsewhere, representation at shelter hearings, even where it occurs, is compromised when attorneys don’t have adequate notice or access to discovery and when they aren’t able to meet with their clients until the hearing is in progress.<sup>14</sup> These are difficult problems to address since shelter hearings must occur within 24 hours of removal meaning that there is very little time to give notice to attorneys, to prepare and provide discovery to attorneys and to expect attorneys to meet with potential clients to prepare for the hearing. Critical decisions are made at shelter hearings that can shape the final outcome of the case. Some counties have had success in providing meaningful representation at this stage but they are a small minority.

Even if representation at the initial hearing is undermined by circumstances beyond the attorneys’ control, and efforts to modify the system have been unsuccessful, by the time of the second hearing it is reasonable to expect that attorneys will have met with their clients and discussed their cases and determined whether an expedited hearing should be requested, whether more time for investigation is needed, whether the case is likely to be settled or set for trial. The failure to have met with the client by the time of the second hearing in dependency cases is often explained by the attorneys in Deschutes County as well as attorneys in other areas of the state as the failure of the client to respond to a letter directing the client to call the attorney’s office and schedule an interview. PDSC’s contracts include the following requirements regarding initial interviews with clients:

#### 7.1.4.1 In-Custody Initial Interviews

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<sup>14</sup> Standard 3.5 “Obligations of a Lawyer Regarding Shelter Hearings and Pretrial Placements,” Specific Standards for Representation in Juvenile Dependency Cases, 2005 revision, Principles and Standards for Counsel in Criminal, Delinquency and Dependency Cases requires active representation of the client’s interests at this hearing.  
<http://www.osbar.org/docs/resources/juveniletaskf>.

Contractor shall, whenever possible, speak to and conduct initial interviews in person with in-custody clients:

- (a) within 24 hours of appointment; or
- (b) by the next working day if the court appoints Contractor on a Friday, weekend, or holiday.

**7.1.4.2 Out-of-Custody Interviews**

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

Paragraph 7.1.4.2 appears to sanction a minimal effort by the lawyer to communicate with the client by notifying the client of what the client must do to schedule an interview time. It appears that both the client and the system would benefit from a greater effort on the part of the attorney to make contact with the client. Demands on public defense lawyers' time are already great. Initiating contact with the client as well as visiting with some child clients, monitoring compliance by both the client and DHS with the service plan as well as many other components of good representation in dependency cases can be performed by a well-trained legal assistant or social worker. Several of PDSC's contractors have hired such professionals to supplement the work of the attorneys. PDSC could consider a policy option package in its '11 – '13 budget proposal to provide additional funding in juvenile dependency cases to either lower the caseloads of the attorneys or add support staff to assist them.<sup>15</sup>

### EDP Representation

Commissioners may want to talk with some of the invited guests at the June 17 meeting about the Deschutes County EDP program. While the program does not conform to PDSC's Guidelines for the operation of EDP programs, some members of the local justice system consider the program a success and urge that providing direct, conflict free representation for each participant is not necessary and that both the state and the clients are satisfied with the way these cases are being handled. Assuming that Mr. Alexander's relationship with the defendants in these cases is not an attorney/client relationship under applicable ethical rules, PDSC may want to consider whether it should be compensating a public defense contractor for participation in this process or whether someone other than a public defense attorney should be making the "orientation" presentation.

### Information Provided at June 17, 2010 PDSC Meeting

Chair Ellis welcomed members of the audience to the Commission meeting. Ingrid Swenson summarized the draft report on the delivery of public defense services in Deschutes County.

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<sup>15</sup> The Juvenile Dependency Interbranch Workgroup is considering support for a similar proposal. The workgroup includes representatives from all of the agencies involved in juvenile dependency cases.

Ernest Mazorol, the Trial Court Administrator for the Deschutes County Circuit Court provided the Commission with information about the caseload in the county. He said there had been a boom period from 2005 to 2009 with the biggest area of growth in civil cases. Criminal cases, felony offenses in particular, however, had declined by 6%. Over that period the number of judges had remained the same but court staff had been reduced by approximately 15%.

Mr. Mazorol reported that the judges are very pleased with the quality of representation provided by public defenders in the county, although they would like to have additional experienced attorneys available. He said that the court is reviewing its calendaring system and will be considering changes over the next several months. The current system is a hybrid system with individual calendaring for criminal cases. This creates scheduling conflicts for the attorneys. Another challenge for the attorneys is that the jail is four miles from the courthouse making contact with clients more difficult. There are four public defense contracts. The public defender office receives a large portion of the felonies and some misdemeanors, the DeKalb firm is also appointed in felony cases. The consortium receives the majority of the misdemeanor cases and the Alexander firm handles the early disposition cases as well as some felony cases.

Chair Ellis noted that the trial rates in criminal cases in Deschutes County were significantly below the statewide average. Mr. Mazorol said that the court conducts a lot of settlement conferences.

Mr. Mazorol outlined the early disposition program in which a large number of lower level misdemeanors are resolved. He said that the report provided to the Commission by OPDS staff was helpful. He also said that if there were performance problems with any of the attorneys the judges would make their concerns known to the appropriate person. When asked particularly about the consortium he said that the administrator of the consortium had been very responsive to any concerns raised by the court. He said there will be some important changes in the near future with a new judge and new district attorney coming into office.

Brie Arnette, the manager of the family court program in Deschutes County, said that the Deschutes County program was the first in the nation. It was started in 1994 and is designed to bring all of a family's cases before a single judge who works with a team to address the underlying needs of the family. To be eligible, a client must have an open dependency case, a criminal case and a domestic relations case. Attorneys are involved from the beginning and attend family court meetings. Generally speaking, the group does not discuss matters that could affect the criminal case. Very few cases involve termination of parental rights, none in the past two and a half years. Parents in the program are usually successful in getting their children returned to them or else agree to another permanent plan for the children. There are approximately 300 families that have participated in the court. About 100 are currently active. The family court judge

generally hears all of the cases, including the criminal case. Occasionally, however, another judge will hear a case if that is what the parties prefer. Most parents who also have criminal cases are represented by a single attorney in all of the matters but occasionally there is more than one attorney for a party. When there are multiple attorneys they appear to communicate effectively with each other. Clients generally represent themselves in the domestic relations case. Some attorneys assist their clients with paperwork and legal advice but do not represent them on the domestic relations case.

Tom Crabtree said that the contractors in Central Oregon have had a long, stable history of providing services there. Crabtree and Rahmsdorff started as a private law firm in 1981 but from the beginning handled primarily public defense cases. Approximately five years later the firm became a 501(c)(3) program. The firm has 13 lawyers three of whom have been there 28 years. One attorney has been with the office for 12 years and the rest have all come since 2000. A lot of attorneys left over compensation issues. Four attorneys left in 2001 and then nine left between 2005 and 2008. His firm would like to be able to have more experienced attorneys. It is a challenge to attract them with the salaries public defense providers are able to pay. Currently the salary gap between his firm and the district attorney's office is approximately \$15,000 per year and DA salaries will increase in January, but since 2008 there has not been a problem with attorneys leaving. The cost of housing has declined in Bend so it is now more affordable for attorneys to live there. It has been easier to attract attorneys from Pendleton than from Portland or Eugene.

Beginning last year, Crabtree and Rahmsdorff began to fall behind in its case quota and were asked to return funds to OPDS at the end of the year. They ended up with a shortage of \$172,000 with credits and had to pay back \$7,000 per month despite a 12.5% increase in health insurance costs. Even though OPDS has handled the case assignment process for some of that time, the firm ended up short and is having to pay them back. In some counties the public defender gets all the cases until they have met their quota. In Deschutes there is an effort to predict in advance the number of cases that will be available. Pick-up dates are apportioned based on the percentage of the caseload that each contractor is supposed to receive but the schedule has to be modified when contractors aren't receiving their share. Crabtree and Rahmsdorff did not get its quota of cases and other groups got an overage. This is difficult for the office that has fixed costs.

Chair Ellis said that Commissioners are aware that it is harder for public defender offices to shrink and they cannot take private work like a consortium can. He asked about the low trial rates in Deschutes County. Tom Crabtree said that Judge Sullivan does an excellent job with settlement conferences in felony cases. There had been a backlog in misdemeanor cases but the Trial Court Administrator brought in some pro tem judges to conduct settlement conferences and trials.

Mr. Crabtree said there has been an increase in the juvenile caseload, which may be due to a temporary drop that occurred when the Oregon Safety Model was implemented by the Department of Human Services. The caseload dropped dramatically but is coming back to previous levels. The family court program is excellent. It provides better results for clients than the adversarial system has. Ms. Arnette has excelled at bringing in outside community partners to provide services that aren't available in the normal case.

Tom Crabtree was asked to represent clients in the early disposition program for the first six months of its operation. He was not comfortable with the way it was run. The system processes cases quickly but the attorney role may not meet ethical requirements. Most of the clients just wanted to get their cases over with. In reviewing the Deschutes EDP program he urged the Commission to be guided by its own standards.

Chief Justice Paul De Muniz said that he had created a Court Reengineering and Efficiencies Workgroup that had been meeting for approximately seven months to identify ways of delivering judicial services at reduced cost. The entire Judicial Department staff was surveyed about cost saving ideas. A common theme in the responses was that money could be saved if the number of appearances were reduced. It was reported by a number of respondents that multiple appearances were often caused by defense attorneys' inability to meet with their clients between hearings.

Tom Crabtree said that because of the individual docketing system in Deschutes County from 8:30 to 9:30 every morning there are five felony courts in operation. If cases in one court run longer than expected, the attorney cannot get to the next appearance on time and cases sometimes have to be set over. He has invited the District Attorney Elect to discuss with his attorneys methods of streamlining the system.

Brendon Alexander of Alexander and Associates said that his office had reluctantly agreed to handle early disposition cases after the OPDS analyst for the county told him that his firm's contract would not be renewed unless it agreed to take responsibility for the EDP program. He said that he had run the program as well as he could have, given the resources available. It is a burden for a small firm to provide coverage for this court on a daily basis. He would not be unhappy if responsibility for the program went to another provider. It is a money losing kind of representation for him. The number of clients varies from two or three a day to 15 or more. Discovery is provided in advance. Most of the cases involve pleas with a set-over for sentencing. If all of the conditions are met, the case is closed. The goal is to keep people off probation. At the initial appearance the defense attorney tries to identify the cases that are not appropriate for EDP. Even if a civil compromise were possible in some of these cases, the firm does not receive adequate compensation to explore this option for EDP clients. Most

cases are second degree thefts, primarily shop lifts. In most of these cases the defendant has already had an opportunity to get the case dismissed through a victim/offender reconciliation program but has failed to complete the conditions. Other case types include misdemeanor hit and run cases and other motor vehicle cases. Most of the time there is a plea offer that reduces it to a careless driving, which means the defendant will not be convicted of a crime and his license will not be suspended. Oftentimes they are very questionable cases, but the attorney can usually identify those by reading the reports. Criminal mischief is the third major category of cases in the program.

Mr. Alexander generally meets with the EDP eligible defendants in a group. He is representing each individual client, however. He discourages some defendants from participating in EDP if their cases need investigation of if the client appears to have mental health issues. In addressing the group he discusses case categories but not the details of the offense, and gets the consent of the defendant before talking about what the charge is and the district attorney's offer in the presence of the others. If defendants request a private meeting with him he will meet with them in the hallway. About 10% ask for individual time.

Chair Ellis inquired why no one had considered implementing the standards adopted by PDSC for these programs. Mr. Alexander said there had been no complaints but with a new district attorney coming into office it might be a good time to take a look at it.

Commissioner Ozanne inquired whether it wasn't the Commission's obligation to take action.

Chair Ellis said he was not criticizing Mr. Alexander, only the structure of the program, and was trying to determine the best levers to push. He asked Ingrid Swenson who, from her observation of the local system, should be involved in the discussion. She said that a conversation with local officials might lead to the desired result but those who had designed the program might not welcome changes that significantly increased the amount of time these very minor offenses required to be resolved. Chair Ellis said that the change in district attorneys offered an opportunity to take a look at the program and make adjustments. Commissioner Potter said that part of the appeal might be that if the model were improved it could be extended to other types of offenses. Mr. Alexander said that there had been an effort to extend the program to include additional offenses and he refused because of the more serious consequences attached to the additional offenses.

Commissioner Lazenby expressed concern about whether these programs are really making the system more efficient. Does the benefit outweigh the limitations imposed on the attorney/client relationship? Mr. Alexander said that one benefit is that PDSC is saving \$300 to \$400 per case through the use of this

model. Chair Ellis said that a decision by the Commission on whether to continue funding this type of representation should be postponed until willingness of local officials to change the program had been explored. Ingrid Swenson was directed to discuss possible changes with Deschutes County officials. Commissioner Stevens inquired whether there wasn't a value in having someone inform this group of defendants about the program and what they could expect from it without actually representing them. Commissioner Ozanne inquired whether most of these defendants wouldn't otherwise be waiving their right to counsel. Mr. Alexander said that he does believe it is important for them to have some legal advice about the impact of their criminal histories and how they could be affected by the property crime measures, and whether they are eligible for expunction of their records. People want someone to tell them that they will not be going to jail, tell them what the maximum punishment is going to be. Even though the judge is responsible for taking a knowing and informed plea time does not allow the judge to provide all the information people want and clients understand it better coming from an attorney than from the judge's comments to a whole roomful of people.

Jon Pritchard, the administrator for Bend Attorney Group, and Lori Hellis, an attorney with the group, said that their group included nine attorneys, three of whom regularly handle felonies and five who do juvenile work and a couple do misdemeanor cases. They are the conflict provider for the county. Except for misdemeanors they pick up only the cases that the other providers cannot.

Ms. Hellis said that one difficult issue in juvenile dependency representation is that clients are unable to afford counsel to prepare domestic relations custody and parenting time orders that need to be in place before the juvenile case can be dismissed. Sometimes counsel appointed in their juvenile cases provide such services pro bono. Someone should be paid to make certain this work gets done. The Deschutes County Family Court is doing excellent work for families. It could benefit from the participation of the deputy district attorneys who are prosecuting the family's criminal cases.

Chair Ellis inquired about the Bend Attorney Group's board of directors and how it was decided to include an outside board member. Jon Pritchard said that the proposal was discussed for a number of years and was initially met with a lot of resistance from members of the group. He decided to go ahead and incorporate as a non-profit and select initial board members. The members of the group were initially opposed but are currently working with the system. The board chair is Cindy Spencer, an attorney who has practiced as a district attorney and a public defender. Jim Slothower, a local civil attorney, Mike Flynn who will be joining the district attorney's staff in another county, and a consortium member are the other members of the board. The board will decide on future board members after getting input from consortium members.

Membership in the consortium was traditionally based on who knew whom.

Members cover for each other so all of them have an interest in the qualifications of other members. From now on the board will make the final decision about which attorneys will be asked to join the group.

The handling of complaints about consortium members was a problem in the past. Mr. Pritchard as the administrator had all of the responsibility but no authority. In the past he has been given only hearsay information so recently the consortium distributed questionnaires to the courts and administrators but they were reluctant to provide information and court staff was not permitted to respond. When issues do come to the consortium's attention, it responds to them by sending a letter of concern to the attorney and requesting a response. The consortium can take corrective action if needed, by reducing the seriousness of cases the attorney can take. If attorneys appear to be overwhelmed, the volume of cases can be reduced. Attorneys with health issues have been given sabbaticals for up to a year. One contract had to be terminated because an attorney about whom the judges had expressed concern was unable to meet required standards. People have been let go.

Ms. Hellis said that before the non-profit corporation was formed, the consortium was a loosely affiliated group and their contracts did not permit the administrator to hire or fire members. Current contracts provide that the board has the authority to evaluate attorneys and to hire and fire them. In the past Jon Pritchard lacked authority to act on concerns.

Mr. Pritchard said that the group can offer support to attorneys who are underperforming if they are willing to accept help and Ms Hellis said that if members have health or family issues that interfere with their ability to handle their cases, other attorneys will provide coverage. In a recent case, after covering an attorney's caseload for several months it was determined that his health did not permit him to resume participation in the group and he was removed to protect the integrity of the group. Mr. Pritchard said they would like to receive better feedback from the courts since they are more likely than members of the group to see problems.

With respect to having their calendars in the courtroom, both Mr. Pritchard and Ms. Hellis said they did not think this was a problem for the members of their group and that they had observed only one retained attorney who failed to have a calendar available in the courtroom.

Commissioner Welch said that the issue raised by Ms. Hellis about the need for custody orders before juvenile cases can be dismissed in some cases is a big, long-standing problem in the state. In some courts the lawyers do it voluntarily; in others, like Multnomah County, nobody does. It is a tremendous problem. Cases must be repeatedly continued to await a custody order.

Commissioner Lazenby said that information from the judges about performance

of attorneys is critical feedback and in some counties they are reluctant to provide it. We need to increase that feedback while making the judges feel more comfortable about providing it.

Ingrid Swenson said that Jacques DeKalb had hoped to be present but would be unable to appear. She provided Commissioners with copies of a letter sent by Mr. DeKalb.

Asked whether his firm was meeting the time lines for initial contact with clients and for any additional comments he might wish to make, Tom Crabtree said that attorneys in his office generally have initial contact with their clients in the timeframes required by their contract with PDSC. He said that access to inmates is a problem for attorneys. The jail doesn't provide attorneys enough access to inmates. Over the years the jail has gradually restricted hours for attorney visits. There is only one attorney room available. If that room is in use, the attorney must talk to his client over a phone in an open booth next to another attorney. Commissioner McCrea said that since appearances of in-custody defendants are conducted by video, when she has a case in Deschutes County she must drive over to Bend for appearances since they cannot be done by telephone. She asked whether defense attorneys are able to speak with their clients about discovery during the video appearances. Mr. Crabtree said it was a problem and that for pleas the attorney must go out to the jail to get the client's signature and then drive back to the courthouse to submit it. Clients are transported for settlement conferences so that the judge can speak to them directly. Commissioner Ozanne inquired whether there was a local public safety coordinating group where these kinds of issues could be raised. Mr. Crabtree said that he believes the group has not been very active lately.

### **Additional Information and Developments - June to October 2010**

With respect to the court's concern about a need for more experienced attorneys, the problem was exacerbated when the DeKalb firm lost two of its partners around the time of the June 17, 2010 Commission meeting. The firm was reduced to Mr. DeKalb, two associates who remained with the firm, and a new attorney, Thomas Spear, who had been in private practice but who joined DeKalb and Associates on August 1. The firm was seeking to hire another experienced felony attorney.

Information about early disposition programs in other jurisdictions was forwarded to the trial court administrator and he indicated that he would like to review the information and talk further with the judges before convening a discussion about the future of the program in Deschutes County. He had briefed Presiding Circuit Court Judge Michael C. Sullivan about the issue, however, and Judge Sullivan was open to looking at existing procedures and any proposed changes. Additional information was requested about the current program from Brendon Alexander and an inquiry was sent to the incoming district attorney about his

view of the EDP program and his willingness to explore other models. Data was still being collected and reviewed at the time of this report but information collected to date indicates that there are approximately 60 new cases per month that are being processed through the EDP program. If the defendants in each of those cases had been provided with appointed counsel on the underlying case or cases, the cost to PDSC would have been approximately \$23,400 per month. The Alexander firm receives \$5,000 per month for the representation it provides in these cases. One of the things that is not known is how these cases would be handled if there were no EDP program. In some counties at least some of these offenses would be diverted or processed through a community court; some would probably be treated as violations rather than misdemeanors. Regardless of how they might be treated in other jurisdictions, it is largely up to the Deschutes County District Attorney to decide how they will be handled in that county. Until Mr. Flaherty takes office and decides whether he will continue the EDP program and, if not, whether he will prosecute all of these offenses and at what level, any changes attempted by others might be temporary.

### **Discussion of Service Delivery Plan at October 22, 2010 PDSC Meeting**

Ingrid Swenson reported that the district attorney elect of Deschutes County would not take office until January of 2011 and had had very little contact with court staff about any expected changes in charging practices or whether he would support changes to the EDP program. She said that OPDS staff had calculated the cost of paying standard case rates for the cases currently being processed through the EDP. Changing to case rates would cause a significant increase in costs. However, she said that it is not clear that all of the cases would be prosecuted if there were no EDP program. She said that since the commission hearing in Deschutes County two senior attorneys had left one of the defense firms, increasing the demand for experienced attorneys. Chair Ellis proposed postponing further discussion of a service delivery plan for the county until after the new district attorney had taken office. Tom Crabtree said that Patrick Flaherty had not yet met with other justice system representatives. Fifteen of the 16 deputy district attorneys had supported his opponent and were now attempting to organize a union in the office. He said that his experience with the EDP program in its first few months of operation indicated to him that a lot of cases would not be filed if there were no EDP program. Mr. Flaherty said during the campaign that he would file fewer cases and concentrate on the serious ones. Commissioner Ozanne asked whether part of the need for more experienced attorneys was related to the docketing system. Tom Crabtree replied that it was a significant part of the problem. He said another major problem was that defense providers had not been able to compete with the district attorney's office in salary levels in the previous contract period and had lost a number of attorneys. Commissioner Ozanne suggested that in order to maximize the value of the Commission's service delivery review process the Commission should address specific concerns, such as the lack of access to defendants in the county jail, to the local public safety coordinating council. He

said that issues related to the EDP program and the court's docketing system should be addressed by the court but that county commissioners would be interested in costs related to operation of the jail. Lack of timely access to clients can increase delay and costs. Ingrid Swenson was asked to follow up on these issues.

At the direction of the chair, approval of a service delivery plan for Deschutes County was postponed until Deschutes County officials had had an opportunity to consider whether they wished to make any changes to their EDP program.

### **Developments between October 2010 and June 2011**

On January 4, 2011 the *Bend Bulletin* reported that one of District Attorney Pat Flaherty's first official acts after he was sworn in on January 3 was to fire five of his deputies. At his swearing in ceremony, Mr. Flaherty said, "The DA's office is not meant to be a bureaucratic institution," that "it needs to be a meritocracy, not a bureaucracy."

In February the Trial Court Administrator reported that the district attorney had met with the judges and that they wanted to schedule a meeting with OPDS to discuss the future of the EDP program. A meeting was scheduled for March 3. Mr. Flaherty was provided with a copy of PDSC's guidelines for attorneys in early disposition programs. OPDS staff participated in the meeting by video from Oregon Judicial Department offices in Salem. Participating in the meeting were Judge Sullivan, Judge Brady, Ernie Mazorol, Pat Flaherty and his two chief deputies, Brendon Alexander, Kathryn Aylward, Amy Jackson and Ingrid Swenson. Mr. Alexander explained that the current EDP program included only lower end misdemeanor cases, principally shoplifting charges, hit and run offenses and criminal mischief. Some cases were given violation treatment, others resulted in convictions. Mr. Alexander said that the offers made by the state had been good. He said that his role was not to provide representation, only consultation. His practice had been to read the police reports prior to the proceeding, to talk with the clients as a group, warning them of some of the possible consequences of accepting the state's offer, such as drivers license suspension. He told them he was not representing them. He said that some of them had cases that could be civilly compromised and that by accepting the offer they would not get a chance to clear their records. He estimated that half of the clients had already had one misdemeanor dismissed. He would like to have a discussion with Mr. Flaherty about the ones who would be eligible for a civil compromise. He handled approximately 1300 cases through the EDP process last year.

Mr. Flaherty said that he believed he would make more violation offers than his predecessor and expects to do that up front. Judge Brady said that the court would like to ensure that defendants are getting good information about the impact of accepting fast track offers. Issues discussed included whether PDSC

would approve funding for “consultation” rather than representation and whether the bar would make any distinction. It was represented that 80% of the fast track cases are resolved with a single appearance. OPDS agreed to work with its contractors to arrange for representation.

After the March 3 meeting OPDS staff undertook to review court records of the cases processed through the fast track program to identify the number of appearances and length of hearings in these cases in order to estimate the amount of attorney time required to provide appropriate representation.

OPDS’s review indicated that there were sometimes five to eight appearances in a single EDP case even though it had been reported that the court limited the number of appearances per case to two. The defendant could accept the offer at the initial hearing or could continue the case for up to 10 days before making a decision. PDSC was later informed that there had only been five new EDP cases in March. Defendants in the program were being given up to 30 days to decide whether to accept the fast track offer. Although it was expected that most cases would be resolved with only one or two appearances, Mr. Alexander reported that he had many cases that were in warrant status. If clients turned themselves in or were picked up on outstanding warrants additional court appearances might be required.

Ernest Mazorol reported that the volume of misdemeanor cases had increased under the new district attorney, in part because there was a backlog of cases from the former district attorney. Fewer felonies were being filed by the new district attorney, however. Mr. Mazorol said that the DA’s office was getting discovery out quickly and had implemented a 35-day rule requiring the defense to accept the state’s offer within 35 days or set the matter for trial. He said that the court’s calendaring system had been modified. Two courts were now handling short criminal matters (one in-custody and one, out-of-custody). The individual docketing system had been abandoned. PDSC’s contractors were now concerned about having multiple matters scheduled for the same time in the two criminal courts. They were expecting to work on scheduling issues at a May 24 meeting with contractors.

At the May meeting it was reported that juvenile case filings had increased significantly.

In June, Tom Crabtree provided an email update on some of the other issues that were discussed at the May meeting and on other developments in the county. He said that when Patrick Flaherty took office five deputies were let go and two resigned so that there were only eight DAs to do the work of 15. It was necessary for the felony deputies to spend a significant amount of their time training new misdemeanor deputies. In this period EDP cases were given very low priority. If there is a recall campaign against the district attorney, things will remain unsettled until November or later. He said that the anticipated

reassignment of judges would not occur until July 11 and that there had not yet been a consolidation of the former district and circuit courts. Misdemeanor arraignments were still held separately and there were separate call calendars for misdemeanors and felonies. Attorneys in the Crabtree and Rahmsdorff firm had indicated that their waiting time had actually increased by three to five hours per week. He said that jail access had apparently improved, however, and that there had been no complaints for some time.

#### Testimony and Discussion at June 16, 2011 PDSC Meeting

Chair Ellis reminded Commissioners of two previous meetings at which there had been discussions about a service delivery plan for Deschutes County. Final action had been postponed until the newly elected district attorney had taken office and established prosecution policies including any adjustments to the early disposition program (EDP). Ingrid Swenson said that since the Commission's meeting in Deschutes County in June of 2010 the court had made some changes in judicial assignments and had gone to a centralized docket system instead of the hybrid system it had used in the past. She said there were still some scheduling issues for attorneys. She said that in June of 2010 a large number of cases were being processed through the EDP program. Since one of the goals of an EDP program is to resolve cases promptly, OPDS had assumed that most of these cases involved only one or two court appearances. After OPDS staff met with the court, the district attorney and Brendon Alexander, further research disclosed that it was not uncommon for there to be five or more appearances in some cases. In addition, in the past two months only two to three new cases per month had been processed through the program. Under these circumstances it appeared that there might not be a need for special treatment of these cases, that appointment of counsel could occur in the normal course.

Chair Ellis said that one issue for the Commission had been the group style of representation provided to EDP clients. He said that an EDP program with five appearances sounded like a contradiction in terms. Ingrid Swenson said that multiple appearance were the result of failures to appear for hearings and failure to fulfill the dismissal conditions imposed by the court. She said that OPDS had been trying to obtain information from the district attorney about whether he intends to continue the EDP program and, if so, for what types of cases. Recently it appears that more cases are being filed as violations, which may reflect a decision not to process some cases as misdemeanors through the EDP program. In the past the judges were concerned that the program did not comply with PDSC's guidelines.

Tom Crabtree said that the previous district attorney had processed a high volume of cases through EDP. When Crabtree and Rahmsdorff was evaluated by the first Quality Assurance Task Force site team one of the issues the site team identified for possible Commission review was the operation of the Deschutes County EDP program. The Commission's guidelines were issued in

response to problems observed in this program. The two “district court” judges assumed the role of probation supervisors for program participants. Multiple appearances resulted from failures to appear and from non-compliance. District Attorney Flaherty has increased the number of cases filed as violations and there are, therefore, fewer EDP cases. It remains to be seen whether this is a long term trend. One of the chief deputies recently hired by the office had been the deputy initially in charge of the EDP program.

Chair Ellis inquired whether there were an adequate number of experienced lawyers to handle major cases. Tom Crabtree said that the DeKalb firm had hired two new attorneys, one of whom had been a senior deputy DA, and he hadn't heard any recent complaints about the number of experienced lawyers. He said the district attorney's office had lost a lot of people and that had led to improved plea offers. He said the county had caught up on its backlog. The DA's office is still one deputy short in juvenile cases. They have gone from two and a half people to a half person assigned to juvenile cases.

Chair Ellis said that Judge Sullivan would testify later but that his sense was that the public defense system in Deschutes County appeared to be structurally sound, with a strong public defender office and a consortium to handle conflicts. Assuming representation in major cases is adequate, there don't appear to be major issues.

Presiding Judge Michael Sullivan and Deschutes County Trial Court Administrator Ernie Mazorol testified.. Judge Sullivan said that he would discuss what was changing in Deschutes County and how the changes might affect PDSC's contracting process. He said that the Eleventh Judicial District had had a reduction of approximately 8% in personnel. There have also been changes in personnel.

The courts have been consolidated with all judges carrying the same types of cases. In addition, the judges no longer have individual dockets. The court now has a criminal department, a civil department and a domestic relations department. In the past the judges had to await the arrival of defense lawyers on short matters since the lawyers had matters in other courts. It was very inefficient. They looked at the Jackson County model and now have two judges handling short criminal matters and other judges trying cases. There has been a change in the district attorney. Mr. Flaherty has a good working relationship with the judges. Judge Sullivan referred to a document provided to Commissioners that contained data on the number of cases and the number of trials for felonies and misdemeanors. The list does not include the aggravated murder case, *State v. Middlekauff*, that took over two months of one judge's time. In addition one judge was ill for a period of time. He said that the number of trials is down, the number of felonies is down but the number of misdemeanors is going to be up and that appears to be the trend for the future. One change that has been made is that when a driving while suspended charge is filed it is treated as a violation.

The number of DUII cases appears to be increasing. There are over a hundred a month. These cases involve a significant amount of paperwork. The new district attorney may be evaluating cases differently and deciding not to pursue some. Judge Sullivan said that he is continuing to hold settlement conferences. The deputy DAs who participate appear to have more authority than they did in the past.

Commissioner Ozanne inquired whether the data shows an increase in violation rates. Judge Sullivan said that the increase may be in the number of cases resolved as violations instead of filed as violations. He said that even with the reduction in resources the court is trying to make headway on its backlog. They are making headway in civil and domestic relations cases but lack sufficient resources, for example, to afford postage to mail notices of dismissal in a couple thousand small claims cases. Mr. Mazorol said their budget had been frozen in February and there is currently no flexibility to be innovative.

Regarding the provision of public defense services Judge Sullivan repeated that there would be more misdemeanors in the coming year but that felonies would probably not increase with the district attorney taking a very close look at these cases. If the fast track program continues the court is willing to work with it. They want people to be adequately represented. They believed they were being adequately represented in the previous program. If PDSC wants to change the system of representation, the court is willing to go along with that. He said PDSC should not put the burden on the court of justifying PDSC's program. Once it is in place the court will tell PDSC if it is good enough. Overall things are working but PDSC might want to look at what it is contracting for. There are three pending murder cases in Deschutes County. The Guzek case was before the court last year. Judge Sullivan cannot hear that case since he was the person, then in the district attorney's office, who authorized Guzek's arrest. Judge Sullivan provided more data on the total number of criminal cases for the past two years but said there would probably be continued changes coming from the district attorney's office.

Commissioner Ozanne asked whether in view of the changes that were occurring an early disposition program was even needed. He said that as an individual Commissioner he did not like paying for group consultation. Judge Sullivan said the program was still being used but to a lesser degree. There were certainly cases resolved and people got good dispositions. No one who went through the program has complained. It is up to PDSC whether it wants to provide representation in this program or not. There is a waiver form the court goes over with people who want to waive their right to counsel. People often waive on DUII diversions, for example.

## **A Service Delivery Plan for Deschutes County**

The current public defense service delivery system in Deschutes County appears to be working satisfactorily, with a non-profit public defender and a consortium being the principal providers and one or more law firms handling the balance of the cases. Some of the issues identified in the initial report appear to have been resolved, such as the use of a hybrid court docket, the scarcity of attorneys qualified to handle serious felony cases, and access to incarcerated clients. With respect to juvenile representation, since the identity of the lawyers whose representation was described as unacceptable appears to be known, in its current contract negotiations OPDS should determine whether the quality of their work has improved significantly and if it has not, juvenile cases should no longer be directed to these attorneys. All juvenile providers are reminded that they need to observe the Oregon State Bar's performance standards for representation in these cases. With respect to the fast track or EDP program, the volume of cases currently being processed through the program does not require a special contract rate. These cases should be assigned in the same manner as other misdemeanors.