

Members

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



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, January 22, 2015
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEETING AGENDA

- | | |
|---|------------------------------|
| 1. Action Item: Approval of minutes - PDSC meeting held on December 12, 2014 (<i>Attachment 1</i>) | Chair Ellis |
| 2. Marion County Service Delivery Review (<i>Attachment 2</i>) | Commission
Invited Guests |
| 3. Proposed Contract Revisions (<i>Attachment 3</i>) | Paul Levy
Caroline Meyer |
| 4. Action Item: Approval of new Contract for Sage Legal Center (<i>Attachment 4</i>) | Caroline Meyer |
| 5. Action Item: Commission approval of Payment Policies and Procedures – Updated GSA rates (<i>Attachment 5</i>) | Angelique Bowers |
| 6. Executive Director’s Annual Report to the PDSC (<i>Attachment 6</i>) | Nancy Cozine |
| 7. OPDS Monthly Report | OPDS Staff |
| 8. Executive Session* --Executive Director Performance Review | Commission |

Executive Sessions: **The Public Defense Services Commission will meet in executive session at approximately 1:30 p.m. The executive session is being held pursuant to ORS 192.660(2)(i). **Following the 1:30 p.m. session, the Commission will meet in executive session pursuant to ORS 192.660(2)(d).*

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

Next meeting: March 19, 2015, 1 p.m. – 4 p.m., at the Oregon Civic Justice Building, 790 State Street, Salem, Oregon. Meeting dates, times, and locations are subject to change; future meetings dates are posted at:
<http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Friday, December 12, 2014
10:00 a.m. – 1:15 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

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

STAFF PRESENT: Nancy Cozine
Peter Gartlan
Cynthia Gregory
Amy Jackson
Paul Levy
Amy Miller

Cecily Warren

The meeting was called to order at 10:00 a.m.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on October 10, 2014

Chair Ellis requested two corrections to the minutes. **MOTION:** Commissioner Potter moved to approve the minutes with suggested corrections; Commissioner Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 3 Approval of Case Manager Contracts

Amy Miller, Attorney Manager for the Parent Child Representation Program (PCRP), reminded Commission members about the role of independent case managers, who work with clients on behalf of the clients' attorneys, and the Commission's previous contract approval for the first case manager, Dana Brandon. She requested the Commission's approval of four additional case manager contracts, noting that each case manager should be able to provide services in about 27 cases; or 10 to 15% of cases. She explained that the contracts cover a

three year period and the dollar amount is a maximum, meaning case managers submit invoices and are paid only for the time spent assisting clients. She also explained that one contract is for a reduced number of hours because the provider plans to work part-time. Commissioner Welch asked about the criteria for assignment of case managers. Ms. Miller indicated that there is a procedure manual for case managers, which explains the type of cases where the services are most appropriate, but that the lawyers are able to choose which clients need the service most, as they can only use a case manager in 10-15 percent of their cases.

MOTION: Hon. Elizabeth Welch moved to approve the proposed case managers; Commissioner Ramfjord seconded the motion; hearing no objection, the motion carried:
VOTE 5-0.

Agenda Item No. 2

Prioritization of Policy Option Packages

Chair Ellis began the conversation noting that prioritizing the Policy Option Packages (POPs) is a Sophie's choice, but also emphasizing that it was requested by Legislative Fiscal Office, and is critical. Ms. Cozine provided an overview of how the prioritization process would work, the materials available to the Commission, and provided information about her contacts with legislators and other stakeholders related to Commission priorities. She asked that the Commission consider how each policy option package aligns with legislative priorities, and made some recommendations regarding priorities that fit well with legislative interests. Ms. Cozine indicated that POP 100, which offers consistent case rates in each county and would equalize case rates between public defender offices, law firms, and consortia groups, should be a top priority. She also explained that there is significant support for improving outcomes in dependency cases, and asked the Commission to place a high priority on POP No. 104, Juvenile Dependency Improvement, and particularly funding for the administrative support necessary to continue the pilot program. During this discussion, she also mentioned LC 2058, a separate bill generated through the HB 3363 Juvenile Dependency Task Force, which creates an expanded pilot program, with funding to ensure that each entity in the dependency system has resources to reduce unnecessary delays. She explained that the LC 2058 model provides funding to ensure that DHS is represented so that caseworkers aren't asking for continuances because they don't understand the legal intricacies of a case, public defense lawyers have the funding needed to provide quality representation, and the court has adequate resources to avoid delays due to limited judicial resources. Ms. Cozine asked that the Commission prioritize pursuit of improved dependency representation generally, so that the agency could pursue whichever pilot model (expansion of the PCRCP or LC 2058) was favored by the Legislature. She provided additional details regarding the apparent level of support for improved funding in this area, and asked that the Commission listen to OCDLA's recommendation with regard to hourly provider compensation increases. Chair Ellis asked about POP 105, parity for employees at OPDS, and Ms. Cozine explained that if the Commission approved the requested compensation plan change, the amount necessary to reach parity would be reduced by approximately half. Ms. Cozine also talked about POP 106, which addresses additional OPDS office space needed to alleviate office-sharing, increases meeting and training space, and provides client interview rooms. She also noted that staff prefers parity before additional office space. Finally, Ms. Cozine reminded the Commission of the possibility of PDSC being a co-locating state agency in the new Multnomah County Courthouse, which would bring some expense, but not until completion of the project in 2019 or later. She noted that the County has expressed a commitment not to charge any leasing fee for the life of the state bonds. She summarized the concept behind the Public Defense Resource Center idea – a 5,000 square foot space that would serve as an initial client meeting point, and have 10 telework stations so that trial lawyers have a space where they could work during breaks and between hearings, a conference room for meetings, and 10 telework stations for appellate lawyers. She explained that with appellate lawyers in the building, they can be a resource to trial lawyers, and appellate lawyers would get a better sense of what is happening at the trial court level by viewing trials and hearings, talking with judges, and participating in CLEs in the community. Ms. Cozine told the Chair that twenty-seven out of

43 OPDS lawyers are commuting from Portland, and noted that if the concept worked well in Multnomah County, it could be replicated elsewhere. Ms. Cozine indicated that she would ask county stakeholders to present information about the plan at a future Commission meeting. Ms. Cozine concluded by summarizing committee assignment changes in the Legislature.

Eve Oldenkamp, president of Oregon Criminal Defense Lawyers Association, summarized the work and recommendation of the OCDLA pay parity committee. She explained that the OCDLA Pay Parity Committee's priorities were unanimously adopted by the OCDLA board in December 2014. Their highest priority is POP 100, and C through F of POP 103, which addresses pay for hourly non-capital attorneys and investigators. Ms. Oldenkamp pointed out that the current rate is below what professionals in most fields charge, and that the rationale behind the recommendation was to bring outliers in public defense work up to a more reasonable level. She emphasized that it still doesn't get close to parity with the prosecution. OCDLA's second priority is half of POP 101, half of POP 105, and the other hourly providers in POP 103, (a) and (b) - capital contract attorneys and capital contractor mitigators, all of whom are very experienced providers who are paid significantly below those working in the private sector.. Ms. Oldenkamp also reminded the Commission that excessive public defense caseloads are being discussed at the national level, and that the policy option packages allow the Commission to address this issue here in Oregon. She also explained that POP 104 wasn't seen as the highest priority because it doesn't serve their broader membership.

Dan Bouck, Executive Director of the public defender's office in Roseburg, spoke in favor of POP102, which focuses on quality assurance. He noted the importance of funding for contract administration and quality oversight, and cautioned the Commission against adopting funding priorities that favor the Portland area, as that area is already seen as getting more than other jurisdictions.

Lane Borg, Director of Metropolitan Public Defender (MPD), spoke about the importance of engaging in the Multnomah County Courthouse conversation to ensure that whatever space is allocated to public defense is not just taken away later, as it was at the Justice Center, where defense attorney interview rooms were repurposed for other priorities, and that the Commission should negotiate for courthouse IDs as part of the package so that individual providers don't have to pay to get into the building without going through security. MPD currently spends about \$3,300 a year on courthouse IDs, and if a lawyer leaves, MPD has to buy another ID for the new lawyer. Mr. Borg also encouraged that the Commission be as flexible as possible with their priorities to capitalize upon legislative priorities during session, and preserve flexibility when it is time to award contracts. He also encouraged OPDS and the Commission to watch what happens with Justice Reinvestment funding, as it creates increased costs for public defense because it is qualitatively changing how public defenders must do their work.

Mr. Liebowitz, speaking on behalf of a group called the Oregon Defense Consortium, encouraged the Commission to support OCDLA's priorities. He also agreed with Mr. Borg's description of Justice Reinvestment creating additional defense costs.

Jennifer Nash, Administrator of the Benton County Consortium and a member of the OCDLA pay parity committee, expressed her support for OCDLA's recommended priorities and emphasized the need for providers to work together to get public defense funded appropriately. She provided an example from her own group to demonstrate how higher case rates are necessary to reduce caseloads and increase the quality of representation.

Mark McKechnie, Executive Director of Youths, Rights & Justice, emphasized the need for the Commission to first get funding at the current service level, then get funding for POPs, pointing out that if the Legislature funds POPs but doesn't fund CSL, it is actually a cut to basic services. He pointed out that since 2010, the consumer price index increased by 9%,

while the PDSC professional services account increased by only 5.5%. He also expressed support for the parity POP, pointing out that prosecutor salaries continue to increase more rapidly than public defender salaries, as well as funding for improved dependency representation.

Judge Welch noted the importance of considering *Hurrell-Harring v. New York* and the *Wilbur* case, out of Washington, as the Commission makes its decisions about priorities. Commission members explored differences between LC 2058 and POP 104. Ms. Cozine emphasized the need to be flexible in order to respond to legislative priorities, and explained the rationale behind building in funding requests for Clackamas and Multnomah Counties.

Commissioner Ramfjord gave his support and rationale for the OCDLA proposal of POP 100 and a portion of POP 103, followed by the juvenile dependency improvement with flexibility to work with the Legislature on what form that takes. Judge Welch agreed. Commissioner Potter agreed, but suggested moving the \$313,000 in POP 104 (administrative support for the PCRCP) as a No. 2 priority. Otherwise, Commissioner Potter indicated support for the OCDLA submission. Commissioner Stevens agreed with others. Chair Ellis explained all of the reasons he also supports the OCDLA recommendation, with a few minor deviations, and asked Ms. Cozine to provide a bit more information about POP 102, which supports funding for contract administration and quality assurance. Ms. Cozine did so and also provided additional information regarding the critical need for permanent funding for administrative support of the PCRCP. Commission members continued to deliberate.

Chair Ellis summarized the apparent consensus view: POP 100 - No. 1 priority. POP 101, half of it would be at the No. 2 and half at a No. 3. POP 102 would be a No. 3. POP 103 items (a) and (b) would be a No. 2 and items (c) through (f) would be a No. 1. POP 104 the first two boxes would be No. 3, and administrative costs a No. 1. POP 105 would be a No. 3. POP 106 would be a No. 3.

MOTION: Judge Welch moved to approve the priorities as summarized; Commissioner Stevens seconded the motion.

Commission members continued to discuss priorities. Judge Welch made a motion to put the first two lines of priority POP program in the 2 category rather than the 3, making expansion into Clackamas County a No. 2 priority. Commissioner Ramfjord seconded the motion. That motion failed. Commissioner Potter moved to change POP 105 to a No. 2 priority. Commissioner Ramfjord seconded the motion, but that motion also failed.

Chair Ellis asked for a vote on the original motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 4

House Bill 3363 Task Force Report

Ms. Cozine gave an overview of Task Force members, the Task Force charge, and the group's work product, which included both commitments to improve representation within current resources, as well as LC 2058, which would fund improvements for each state-funded entity in the dependency system in a few pilot counties. She explained that LC 2058 also requires a scientific study of pilot program outcomes. Ms. Cozine said that the HB 3363 Task Force presented on Wednesday to a joint committee meeting of House and Senate Judiciary Committees. The Commission asked questions about whether LC 2058 and pilot county expansion under POP 104 are duplicative, and Ms. Cozine explained that they are for PDSC, but not for other entities. The Commission also asked about the viability of LC 2058, noting the appeal of its broader inclusion model. Ms. Cozine indicated that it was still too early to determine whether it would have a champion, and emphasized the need to work with the Legislature throughout session to determine which dependency concept has a greater chance

of success. Ms. Cozine also said that pilot county selection for LC 2058 would begin in early January.

Agenda Item No. 7 Approval of Proposed Compensation Plan changes

Ms. Cozine requested the Commission's approval of compensation plan changes that would help the agency reduced disparity for OPDS employees. The plan, already reported to the General Government Subcommittee, as well as the full Ways & Means Committee, without objection, would bring employees to within about 7% of DOJ and other state agency employees. Ms. Cozine reminded Commission members that in previous reports to the Legislature, the PDSC said it would address compensation disparity if funds were available during the biennium. She also noted that after these changes, it would be necessary to address compression between Senior Defenders and AD management, where there is now very little difference in compensation.

MOTION: Judge Welch moved to adopt the compensation plan; Commissioner Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 9 Executive Director Annual Review – Schedule

Chair Ellis requested that the review process from last year be used again this year. Ms. Cozine indicated that the review would be initiated and on the Commission's January or March agenda.

Agenda Item No. 5 *Hurrell-Harring v. New York Update*

Paul Levy reminded Commission members that this case was discussed at the October PDSC meeting, and informed them that the case has now settled. He indicated that Commission members are updated on these national developments both to understand the challenges elsewhere, and to measure Oregon against what is happening elsewhere. Mr. Levy summarized the key ingredients of the settlement, the first of which is presence of counsel at arraignment. He noted that this has been a high priority of the Commission and the agency, and that while it has not been universally achieved, the agency is making progress and the Parent Child Representation Program has very quickly achieved it in the dependency area in Linn and Yamhill Counties. The second is the development of a method to track and report lawyer caseloads, including the privately retained cases. He indicated that there is an agreement to development a method to determine appropriate caseloads, taking into account the type of case, the travel requirements, and the existence or non-existence of support staff or supervisory obligations. Mr. Levy indicated that while Oregon caseloads aren't anything like what they were in Mt. Vernon, the PDSC also needs to track this kind of information. He also noted that there is a plan to hire lawyers and staff to meet the reduced caseload requirements and then to develop other plans for training, use of experts and investigators, communication with clients and appropriate supervision of lawyers.

Agenda Item No. 6 Proposed 2016-17 Contract Revisions

Mr. Levy summarized the process of contract revisions, which included a review by staff as well as the Public Defense Advisory Committee. Contract changes were modified in response to feedback received, and are now being presented to the Commission for their consideration and further examination. Mr. Levy noted that the goal of the revisions is to strengthen the quality assurance roles and responsibilities of our contract administrators, and to set out in a more cohesive way the expectations around standards of representation. Mr. Levy then pointed to specific portions of the contract where the revisions are most significant. Commission members expressed support for the changes, and Commissioner Ramfjord asked whether the contract includes a mechanism for getting data from contract administrators. Mr. Levy indicated that there are reporting requirements. He noted that the final contract

revisions would be presented to the Commission for its approval with the Request for Proposals.

Agenda Item No. 8 OPDS Monthly Report

OPDS monthly report items were deferred to the January meeting.

Chair Ellis recited the following:

The Public Defense Services Commission will now meet in executive session for the purpose of conducting deliberations with persons designated by the governing body to carry on labor negotiations and to consider information on records that are exempt by law from public inspection. The executive session is being held pursuant to ORS 192.660(2)(d), which permits the Commission to meet in executive session for the purposes just stated. Representations of the news media and designated staff, and any staff that are in the room are designated, shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room.

Agenda Item No. 10 Executive Session

Commissioner Potter announced the conclusion of executive session and reconvened the regular session.

MOTION: Commissioner Ramfjord moved to adjourn the meeting; Judge Welch seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Friday, December 12, 2014
10:00 a.m. – 1:15 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

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

STAFF PRESENT: Nancy Cozine
Peter Gartlan
Paul Levy
Amy Miller
Cynthia Gregory
Amy Jackson
Cecily Warren

The meeting was called to order at 10:00 a.m.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on October 10, 2014

0:11 Chair Ellis There is an awesome crowd here today. The first item of business, and we do have a quorum, is the approval of the minutes of the October 10, 2014, meeting. I did have a couple of corrections, myself. One is on Agenda Item No. 1. It was myself who suggested the change not Commissioner Stevens. I also think the word “minute” in the second line should be plural. That was all that I had. Did anyone else have any additions or corrections? If not, I would entertain a motion to approve the minutes.
MOTION: John Potter moved to approve the minutes; Per Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 3 Approval of Case Manager Contracts

1:14 Chair Ellis Should we just do it in the sequence that is here?

1:12 N. Cozine Chair Ellis, I do think the POP prioritization will be a longer discussion.

1:18 Chair Ellis I know it will.

1:17 N. Cozine The contract approval is something that Amy is going to have to do. We would like to address that sooner because she has to be in Yamhill County this afternoon.

1:28 Chair Ellis Perfect. Amy. Take the floor.

1:32 A. Miller Thank you, Chair Ellis, and members of the Commission. For the record my name is Amy Miller. I am the Program Manager for the Parent/Child Representation Program. I am here today regarding what is on the agenda as Item No. 3, Approval of Case Manager Contractors. I am going to be brief because I know the Commission has a lot of work to do today. As you know part of the program includes independent case managers who work on behalf of the client's attorneys. We discussed that in more detail at the September Commission meeting when I asked for your approval of contracts without having identified specific individuals. At that point you approved the contract for our first manager, Dana Brandon, and gave preliminary approval to proceed in the process. As I reported in October, we had a good response to our RFP. We interviewed eight qualified candidates. We had a long day, and from that point selected four really highly skilled individuals who I think will do a great job in this role. You have a copy of three files of these individuals. As you can see they are qualified and have a lot of experience in a variety of social service settings. I was actually pleasantly surprised at the quality of folks that we were able to meet with. So today I am asking for your approval of the four additional case manager contracts in addition to the one that approved for Dana. There are a couple of additional pieces of information that I wanted to share with you. Case managers will have about 27 cases. They are capped so they can't take on too many, which means they are a target resource that will be available in about 10 to 15% of cases. The contracts are for over a three years period and the dollar amount that you see represented is an up to figure, meaning that the case managers reported to me on a monthly basis and would invoice in that manner for the work that they complete. I am happy to answer more questions.

3:23 Chair Ellis I see five bios and a list of four recommended.

3:28 A. Miller Correct. You approved Dana Brandon who was our initial case manager that we identified back in September. So there are five total. The reason for that is we are trying to make sure we can handle conflict issues in both counties so we need to have several folks.

3:46 Chair Ellis Any questions?

3:47 J. Potter Along the same lines, and you may have told us before, why one of the contracts is for \$90,000 and the rest are for \$240,000?

3:59 A. Miller Sure. The rest of the contracts are for full-time services up to 160 hours of month. Bethany is going to be working about 15 hours a week, so she is just going to be working part-time with our program in Yamhill County. As I just mentioned, one thing that was important to the lawyers in both counties is that we had enough case managers to be able to handle conflicts and if the need arose to even have two on a case if that was required. By doing that we wanted to make sure we had folks available, so she is going to be working about 15 hours a week.

4:30 Hon. Elizabeth Welch My question has to do with what is the criteria for who gets a case manager?

4:42 A. Miller That is a good question. We put together a policy manual or procedure for the case managers on the type of cases where the services are going to be most appropriate on. We gained that information from talking to the folks in Klamath who have been doing something similar for

quite some time and from talking to the folks in Washington who have been doing similar things and from talking with Youths, Rights & Justice who have social workers at their office as well. We have given the lawyers a list of these are the types of services where people who have been doing this kind of work have identified the use of case managers is most effective. However, the lawyers are able to choose – if a lawyer is full-time in this program which is 80 cases, we are talking about maybe 10 cases they are able to use this case manager on. We are going to need to make some choices about where that is most appropriate and the instructions we have given them is either - at some of the early portion of the case when there is a chance maybe for a return home if some more vetting is done around a state's plan to get a child back in a home. That kind of thing, or in Washington what they planned to was at that point in the case after jurisdiction is established where the parent is on the cusp of maybe engaging in services or completely stepping out of the case is a very effective place to target that resource.

6:04 Chair Ellis Any other questions? So you need from us an approval of the four?

6:10 A. Miller That is correct.

6:10 Chair Ellis Is there a motion?

MOTION: Hon. Elizabeth Welch moved to approve the proposed case managers; P. Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

6:23 A. Miller Thank you.

Agenda Item No. 2 Prioritization of Policy Option Packages

6:31 Chair Ellis I think we ought to go straight ahead with what I predict will be the most challenging issue that we have today. Just a little by way of background. We have prepared a number of policy packages and they are attached as Attachment 2. The legislative fiscal office, Steve was here two meetings ago or was it one meeting ago? They said we will be asked to prioritize our packages. This is a little like Sophie's choice. We have to choose between things we really would like to see. Nancy, do you want to say some things and then I do want to hear input from those that have come?

7:41 N. Cozine Yes. Thank you. Chair Ellis, members of the Commission, you will find in your packet a prioritization worksheet. We have included in the worksheet a space for you to write notes and a space for you to write in priority numbers if you so choose. If you need an extra copy it is in your packet of materials as Attachment 2. But the idea here is that you are going to be hearing from a lot of people and it is a Sophie's choice. I think it is fair to say that every single one of these policy option packages is ultimately necessary for a healthy, functioning public defense system. As you know, we heard from legislators last biennium that they wanted to know what the real need was in public defense. Over the course of the last week plus, but the last week in particular, I had the opportunity to speak with over a dozen legislatures. As you know the composition of the legislature has changed and it will be slightly different in the coming biennium, or in the coming legislative session. I had a great opportunity to get a better idea of where this particular body is headed. I think that one of the things that we have to keep in mind as we decide how to prioritize these packages is what the priorities of the legislature are. If we pick a priority that doesn't match well with their priorities, we are less likely to accomplish our goal. So while I would like to see every single one of these policy option packages funded and while I think we should talk about that with legislators, when it comes to prioritizing the packages there are two things that stand out to me as our top priorities and things that are resonating very well at the legislature. The first one is POP 100. We have talked about this so many times so I don't want to belabor it. This is the package that would offer consistent case rates in each county. It would equalize case rates between public defender offices, law firms, and consortia groups. The way it was structured was the investigation costs that are typically in a case rate are split out in a different area so that there is no confusion anymore between a difference in case rate. The amount for that

package if you add in the mileage, which is what creates the consistent rates for our eastern county providers, is a little over \$7.5 million dollars. The second package that I think is very critical and has a lot of traction right now at the legislature, is Policy Option Package No. 104, Juvenile Dependency Improvement. The way we have structured is we have put in two of our largest counties as proposed expansion areas for the pilot program. We also put in administration and quality assurance costs. I will say that piece is absolutely critical. We didn't ask for that funding when we had our dependency package proposal to the legislature last time because we had envisioned it originally as lowering case rates - excuse me, lowering caseloads and demonstrating results. When the legislature didn't fully fund that package and we had such a limited amount, we recognized that if we spread it statewide, and we have talked about that, if we spread it statewide we wouldn't be able to demonstrate results. We created our pilot counties. At this point we really need the administrative funding for the next biennium. So that \$300,000 plus amount is very, very, very critical to continuation of our pilot program. We regard to expansion into new counties, we proposed Clackamas and Multnomah so we could compare small and large counties. We think those are counties where we have some good work to do. We also had a competing structural funding system that is later on your agenda and I am going to draw your attention to it now because it is related. Item No. 4 on the agenda is House Bill 3363. It was a juvenile dependency task force. Judge Welch also participated in the task force conversations. We met many times throughout the course of the year. The report is attached as Item No. 4 in your materials. LC 2058 came out the work of that group. LC 2058 attempts to create a pilot program that is really an expansion upon our pilot program. It provides resources to every entity in the dependency system so that we are able to reduce unnecessary delays. So the concept is DHS has representation so that they don't have caseworkers asking for set overs because they do not understand the legal intricacies of a case. That our lawyers have the funding that they need to provide quality representation, and that the court has adequate resources to have enough judicial staff and judge time so that there are not document crowding in these cases, which is very, very common. This structure is clearly something that competes with our policy option package structure. It is a little unclear to me right now which structure is going to actually going to get more legislative support. I would ask the Commission to prioritize quality dependency representation, but in whatever format becomes more viable in this legislature. I realize that is a little bit of a different ask, but it is based upon what I have learned throughout the course of this week and where I see things heading over the course of the legislative session.

13:55 J. Potter

So, Nancy, in that LC 2058, they are talking about a pilot program in four to six counties, and the POP that is presented in front of us as two counties. Do we know what four to six the legislature is thinking of?

14:13 N. Cozine

We don't. There was a roundtable discussion yesterday hosted by Representative Krieger. He and Senator Kruse were present. We have a meeting scheduled in January where we had already talked about looking at data from the different counties. Representative Krieger asked that when we do that work in January that we circle back with him and let them know what the numbers are associated with different counties. So we will meet with the stake holder group in January and figure out the numbers associated with a variety of counties where it looks like it would be the most effective. Does that make sense? I feel like I am leaving pieces out because I am trying to cover a very broad array of things that happened over the last week. Do you have questions?

15:08 Chair Ellis

Not yet.

15:08 N. Cozine

And touching on yesterday meeting, it was called by Representative Krieger. Senator Kruse was there. Judge Waller, Bill McKenzie from the court reporter, Judge Abernathy, Judge Partridge, Lois Day from DHS, and Joanne Southie from the Department of Justice. It was very clear that there is a lot energy behind improvement in dependency cases. The legislators are clearly very interested in working on this topic. Representative Krieger asked that

someone reach out to Secretary of State Brown, because she has also expressed interest in being a part of this conversation. She has also expressed interest in improving the quality of representation. We will be meeting with her next week to find out what, if any, role she would like to play. As you can see this is an area where there is so much enthusiasm and momentum right now that in my view it would be a miss opportunity to not try and push forward, and to leave it flexible enough that if we have to adjust the way we have our POP structured we can. Senator Winters expressed her view that it would be nice to get out of the Willamette valley with the policy option package type approach. That as much as Multnomah and Clackamas are important counties because they large, we ought to also be thinking about getting out of the I-5 corridor. We wrote these this way for a reason, but I think it would help to have some flexibility as we continue to have conversations with legislatures. So I think those ought to be the two top priorities. I think that our hourly rate providers clearly we have a problem with the rates that we are paying on an hourly basis. We use hourly rate providers in approximately 2.5% of our cases. That is for the lawyer services. Then we also use our investigators. In terms of how to prioritize between the different providers, I know that OCDLA will a recommendation. I would prefer that you hear the recommendation from OCDLA in terms of which hourly providers to prioritize. They had a very full discussion about that and will present more information to you on that. POP nos. 101 and 105, are the packages that address pay parity within this office and for our providers at the trial court level. In my views those are also critical packages, of course. I think that because the legislature prioritized pay parity last session and because we are moving forward with self-funded compensation, or we will be asking you to move forward with compensation plan changes for this office, my guess is that the legislature will be more motivated to address POP 100 and 104. But I think these ought to be prioritized as the second in line priority.

- 18:39 Chair Ellis You said something that I think needs a little more explanation. That is the interaction between the compensation plan change and the POP 105.
- 18:54 N. Cozine So when we structured our policy option package we started building these much earlier in the biennium. We figured out the full amount to reach parity in this office.
- 19:08 Chair Ellis And that is parity between our appellate lawyers and the appellate lawyers at the DOJ?
- 19:13 N. Cozine That is part of it. We actually looked agency wide. So we looked at every single position in the office. We found that out of all the positions in our office, there were only three that were consistent with what is paid in other state agencies. Everyone else had a lower amount of pay by somewhere between 3 and 18%. So the compensation plan proposal that we will present to you later today brings everyone within approximately 7%.
- 19:48 Chair Ellis That plan, which doesn't require a POP, would be a significant movement towards equalization?
- 20:00 N. Cozine It would. For some people more than others, clearly, because we have this 3 to 18% ranges. So for those people who are at the 18% level of disparity, they have gotten a 9% improvement in their compensation.
- 20:15 Chair Ellis Okay and that plan has gotten, I thought, some encouragement.
- 20:26 N. Cozine It has. So we are really mixing all our agenda items. They do all link together.
- 20:30 Chair Ellis You need the background on one in order to address the other.
- 20:33 N. Cozine That is true. In 2012, a statute past that requires our agency to present to the legislature any compensation plan change before it goes into effect. Because of the timing of their legislative days and our meeting, I needed to present to the legislature during the first half of this week. So on Tuesday I appeared before the General Government Subcommittee of Ways & Means

with our proposed compensation plan change. We had one question. It was from Senator Johnson. She wanted to make sure that there would be a further request for increased compensation through our policy packages. We had not a single objection at the subcommittee level, and we did not have a single objection in the full committee. I met with many legislatures and we have a lot of support right now for funding for public defense. It is very encouraging. So I will be asking this Commission to adopt those compensation plan changes to bring our employees to within 7% of DOJ and other state agencies. As Mr. Bender, our LFO analyst made clear, we are able to do this because we were incredibly conservative with how we spent our resources. When we adopted our compensation plan in October of 2013 and appeared before the legislature, we told them that we were going to prioritize in terms of the money we were spending. We were going to prioritize getting our computer systems in line with where they needed to be. Updating other technology that was out of date and restoring CLE funding and also trying to reach parity for our lawyers. We appeared in front of the legislature a second time during the biennium to talk about restoration of the 2%. That was in February of 2014. We again stressed that if we had any money remaining after necessary expenditures that we would be pursuing compensation plan changes. With Angelique Bowers being new to our office after a very long break.

22:49 Chair Ellis

Renewed.

22:50 N. Cozine

Renewed. Exactly. We needed her to get very familiar with how expenditures were running out of this office before we made any decisions. We were far enough into the biennium that we were confident that we had been able to hold enough in reserve to make these compensation plan changes. It is exciting. It is self-funded. Steve pointed out to the legislature is what it means is that we don't have these resources to use for other things. I think he anticipates that during the next biennium, and it is what we anticipate as well, it will be tighter for us because we won't have as much of a cushion. The flip side of that is that we worked very hard to be incredibly conservative with our spending and to be as thrifty as we could in every arena. So we have the resources there to do it and it does take away from the policy option package need. It reduces the amount by almost half that we would need in the next biennium.

23:56 Chair Ellis

Do you want to comment on 106?

23:59 N. Cozine

I do. Policy option package 106 is the package that addresses additional space for this office. As you know we have lawyers who are sharing offices. This is the biggest space that we have for meetings and for training. It is very small. We would like to have more rooms so that we don't have quite so many cubicles packed closely together. We would like to have client interview space. Our staff has been very clear with us that before we expand in space they would like to be at parity with other state agencies. So I would ask that the Commission note the importance of this package, but prioritize it below the other requests. Parity has got to come before office expansion. Do you want me to talk about the courthouse piece here or later?

24:59 Chair Ellis

I would put it all out there.

25:00 N. Cozine

So there is another concept that we have talked about and you may recall or may not, but the Multnomah County Courthouse is in a state of significant disrepair and there have been a lot of conversations about how to best go about replacing that structure. I had come to the Commission earlier with the idea that perhaps PDSC should be involved as a co-located state agency in that structure.

25:28 Chair Ellis

In a new structure.

25:28 N. Cozine

In a new structure. The funding mechanism for courthouses historically the county was responsible for courthouses, and they were responsibly by statute for providing suitable and

sufficient facilities. The terms “suitable” and “sufficient” were not specific enough to really yield the kind of maintenance that needed to happen and now the courthouses are just in a really bad state of disrepair, many of them, but the Multnomah County Courthouse, I think, is worse than many. The legislature passed a bill last session that would authorize the state to contribute to the construction of new courthouses in the amount of 25% in any county, if the county made a particularized showing. It requires the chief justice to make some findings and to agree that it was an appropriate expenditure among other things. The legislature also agreed that they would actually contribute 50% in the event that there was a co-located state agency. When I was talking to Senator Devlin many, many months ago about our need for office space, he suggested that I really ought to talk to the counties because they were looking at courthouses and co-located state agencies. I had that conversation. We have been a part of the conversation about the new courthouse. The concept, and I have shared it before but I am going to share it again just to make sure that we all have the information, but the concept is to have a public defense resource center in the new courthouse. The public defense resource center would be a space where lawyers can meet with their client initially. I don’t know if you have ever been to the courthouse on a Friday when there are pretrial conferences.

27:18 Chair Ellis

It is all done out in the car.

27:24 N. Cozine

All the lawyers say, “Meet me on the 4th floor.” So all the legal assistants are lined up on the 4th floor and all the clients come and all the lawyers convene. It is a big mess. There are serious concerns about the confidentiality of communications with clients when the lawyers are meeting in the hallways with their clients. This would be a 5,000 square foot space that would accommodate a meeting point, initially meeting point with clients in the building. It would also have 10 telework stations so that lawyers, who were either in a trial and having had a break or were between hearings, would actually have a space where they could plug in their laptop and could get some work done. It would have a conference room so that lawyers could have larger conversations and it would 10 telework stations for appellate lawyers. The idea there being that if the appellate lawyers are in the building, the trial lawyers can actually use them as a resource. Additionally, it will give our appellate lawyers a better sense of what is happening at the trial court level. They can view cases. They can talk with judges. They can work with trial lawyers to put on CLEs in the community.

28:34 Chair Ellis

How many of our appellate lawyers commute from Portland now?

28:38 N. Cozine

Twenty-seven out of our 43 lawyers are commuting from Portland. So it provides a space and while I recognize that it is important to always be conscientious about creating things that benefit one county, my view is that this actually serves the community on a broader level. The county wants us there as a partner. They recognize that having a public defense resource center in the building could benefit the clients that we serve and their public safety system. The court wants us there. It provides us an opportunity to demonstrate our importance in the public safety system and it can then be replicated in other areas. Perhaps it won’t be necessary in every courthouse in smaller jurisdictions where lawyers are closer to the courthouse it may not be needed. But in our larger jurisdictions this could serve as a model that could be replicated.

29:50 Chair Ellis

So consummation of all this is probably three to four years away, but doesn’t that relieve some of the pressure on 106?

30:03 N. Cozine

It may because it gives this alternate space. It may add another telecommute day for lawyers if they have one telecommute day at home and one telecommute day out at the courthouse. That could be an escape valve. The one thing it doesn’t provide is the meeting space and the client meetings space here, but it would provide a Portland client meeting space. So I think that it does take some of that pressure off. I don’t know that it is a complete solution unless we select 10 attorneys at that is their permanent work location. That would alleviate the office sharing.

- 30:42 Chair Ellis That creates another issue that we have never really wanted to go to which is to divide appellate between Portland based and Salem based.
- 30:51 N. Cozine Right. I think it provides some relief. It is not a complete solution. You are correct that the courthouse construction will not be completely until at least 2019. The county has indicated that for the co-locating state agency, if it meets the legislature's criteria there will be no lease, so the space would be available at no cost for the life of the bonds. As long as this is something that the legislature wants to invest in, it could be a really wonderful thing.
- 31:30 Chair Ellis And it is nice for us to be wanted by the legislature, by the courts, by the whole group.
- 31:40 N. Cozine During this legislative cycle the court and county went to the legislature asking for expanded bonding authority. LFO generated a report noting the fact that the PDSC had expressed an interest in being the co-locating agency, but that we had not yet committed. That there had been no finding by the legislature that it met the criteria of a co-locating state agency. So another piece that I will need from this body is some instruction on how to move forward. I think that in conversations with Chair (inaudible) and with Judge Waller, there is a clear indication that they would really like the PDSC to be a part of the conversation and to be talking about the role that we would play in the courthouse and about the importance of a public defense presence in the courthouse. I didn't anticipate the conversation arising, particularly related to use, quite so soon with the construction not being done until 2020, most likely. But is here and we need to be having it. My thought is that it would be nice to actually have Judge Waller and some counties representatives come and present to this Commission and show us the design that they have in mind and where we are with the project. They have selected a priority location. Their first choice is on the downtown side of the Hawthorne Bridge, which would be a very good location. Very close to the Justice Center and close to our lawyer providers.
- 33:14 Chair Ellis Okay. Other background before we get comments?
- 33:20 N. Cozine I think my other comments are simply that this is a really good time for us to be talking about our priorities. We really need to be talking about all of them. I appreciate the Commission prioritizing packages and I appreciate how difficult it is. No matter what the prioritization, I think it is important that we continue to talk about all of them. That would be my plan to talk about all of them but emphasize the critical nature of a few. The changes in leadership are somewhat significant. The Public Safety Ways & Means subcommittee will be chaired by Representative Williamson and Senator Shields.
- 34:06 Chair Ellis Who are two of our strongest supporters over the years and both have a great deal of knowledge in our area. That is really great news.
- 34:15 N. Cozine It is exciting. Another addition to the Public Safety Ways & Means subcommittee is Representative Krieger, who is another significant, as I have talked about already, a significant supporter of improved representation in dependency cases. He is also very knowledgeable on subjects in the criminal law arena. With that group looking at all the public safety related concepts, we need to be prepared to provide as much information as we can with each one of our packages and really hope that we can be successful in this next legislative cycle.
- 34:59 P. Ramfjord Just a couple of quick questions. With regard to POP 104, I was glad to hear that there appears to be the level of support for LC 2058 and the breadth of support. One thing that raised for me is if we got approval of POP 104, would that take the wind out of the sails behind LC 2058, or how would that affect that? Is that a strategic consideration? I have to say having reviewed LC 2058 from a long term basis that would, in many ways, be a better

way of doing this than doing it through a POP of our own. I would just be interested in hearing your comments on that issue.

- 35:48 N. Cozine Thank you, Commissioner Ramfjord. I think that it probably has to be one or the other. I agree with you. I think administratively it would be very difficult for this office to have new pilot counties in the PCRCP structure that we have now, and then a whole other set of counties in a different pilot program. If we just have the two, Yamhill and Linn, continue on their current structure, they have already been launched and are on their way. It will work fine to add on something through LC 2058, but we do have to be strategic and that is why I am requesting some flexibility to work with the legislature to see what structure they prefer. It really also requires a conversation with the Department of Human Services. They had a request for full representation. It requires 58 new Department of Justice lawyers. The Governor did not put that into his recommended budget. That means that agency is constrained from advocating for additional representation. So we need to work through some of the logistics around LC 2058 and whether or not it would really work in this way.
- 37:16 P Ramfjord One other brief question with regards to POP 105. It was unclear to me whether the amount that is being requested in that POP reflects the idea that we would actually go forward with the compensation plan changes in Action Item No. 7 or not.
- 37:37 N. Cozine The amount requested in Policy Option Package 105 would be decreased.
- 37:45 P. Ramfjord Okay. Understood.
- 37:47 Chair Ellis Can you estimate the amount?
- 37:50 N. Cozine You know we should have figured that out before. We do need to recalculate.
- 37:54 Chair Ellis We are used to getting very precise answers.
- 37:58 N. Cozine It is very employee specific. We actually have to adjust the compensation for each individual employee, before we come up with a new number and we haven't done that yet. I apologize for that.
- 38:09 J. Potter Didn't you say maybe about half?
- 38:14 N. Cozine Maybe about half. The amount we are self-funding is about \$400,000 in the next biennium, plus what we get through current service level, which is about another \$300,000, so total of about \$700,000.
- 38:38 Chair Ellis Other questions for Nancy before we get comments from people that are here? Okay. We would welcome anyone who has a view that they want to share with us on this issue of prioritization.
- 39:04 E. Oldenkamp My name is Eve Oldenkamp. I am the president of Oregon Criminal Defense Lawyers Association. We have adopted the POPs that have been listed by Ms. Cozine and we have met with committee and have kind of reorganized the prioritization. So we created a pay parity committee, is what we refer to it as, approximately a year ago.
- 39:45 Chair Ellis This is the group that met with Representative Richardson and others a year ago? Or is it post that?
- 39:51 E. Oldenkamp It is post that. So basically the Oregon Criminal Defense Lawyers Association there had been some contentions within the group. We pulled together a broad spectrum of members and created a committee to address the basic pay parity. Pay parity within the group, as well as pay parity, hopefully, with the district attorney offices. Just so you guys get an idea the

committee included Lynn Dickinson Peterson was the chair. Part of a consortium contract. We had Caroline Meyer with OPDS assisted with giving us numbers and helping us understand how the contracts were different. How they were similar. What the different service provisions were. Elizabeth Baker is an hourly contractor. She was part of the group. Kathryn O. Berger a capital contractor. Ann Christian, who I think you guys are all familiar with, who has lots of experience with the administration of funds for public defense. She participated. We had James Comstock who is an investigator. Eric Dedrick with the public defender's office. Doug Engle with the public defender's office. David Ferry with the Office of Public Defense Services. Jennifer Nash who is also a consortium contractor. Tom Sermak a public defender and Jon Weiner, who is also a contractor. So we had a very diverse group and we had met a number of times over the course of this past year to address these issues. When we received from OPDS the worksheet, the same worksheet that you guys have received, we had a meeting where I think everybody was in attendance except for Ms. Baker. She was unable to be there. We looked at the policy option packages. We had a very long discussion and we came up with a prioritization which we believe is logical. It accommodates everyone's interests. There were certainly concessions made on the part of each group that is represented there. I think the easiest place and I added notes for you guys on the back page. The OCDLA Pay Parity Committee's priorities which were then recommended to the board and which the board passed unanimously at our December board meeting. It essentially puts No. 1 is Policy Option Package 100, and additionally we added to that and that is where we are different from OPDS, C through F on Policy Option Package 103. So C through F on Policy Option Package 103 addresses our hourly attorneys and our hourly investigators. Right now you can just look at the numbers and it is clear that what they currently are paid is something that professionals in most fields wouldn't even take as compensation, whether you are talking about your plumber or a computer tech or a massage therapist. Many of our attorneys operate at an incredibly low rate for the type of services that they provide in a constitutionally mandated profession. The discussion that we had in our pay parity committee was simply that these packages together bring up the out layers of our work. They pull them in. This is not really a huge leap. This is not putting us anywhere close to parity with the district attorney offices, but what it does do is it brings the pack together. Now we are all more equal with each other and we are working together towards the same goal, which our next goal is and that is what our second one is. The second one is half of 101 plus 105. Now let's go back to 103(a) and (b) and add those in. 103(a)(b) is capital contract attorneys and capital contractor mitigators. We realize that just last session we got a little bump. Those of us who are represented there but ourselves back. We are still, again, nowhere near where professionals at our caliber and our level of work are getting provided in the private sector at all. Nowhere near what the district attorney's office gets provided. But again this was a compromise. We had lots of discussions and everybody agrees that it is a team effort. We want to pull together and bring everybody up. I think the other part that is very important and I think the footnotes are still there for you guys, but the footnote for 101 drops you down to 103. What it says is that this funding will reduce disparity between public defense providers and district attorney's salaries. Again that is reduced. It doesn't pull us even with them. That is just a reduction in that disparity and reduces caseloads that are above Oregon and national standards. This is a national conversation right now. I don't know if the Commission is aware of the decision that came out of Washington where essentially you have practice ...

45:16 Chair Ellis

Mt. Vernon.

45:17 E. Oldenkamp

Yes. The Mt. Vernon decision. It is creating a situation where people are taking on too many cases to try to make their office, and/or they are just not having an office. Elizabeth Baker doesn't have an office. She has a staff member but she doesn't have an office. She is on the road at \$46 bucks an hour. Essentially what we are doing is we are then addressing that next national conversation that I think we need to be addressing. I think that the legislature, from what I have heard from Nancy Cozine and from Gail, is they are ready to look at this. They are actually shocked, I think, when they really saw the numbers at how low our salary or our compensation is for what we provide.

46:02 Chair Ellis There is a pretty clear issue on which your presentation conflicts with Nancy's. So let me address that or identify that and ask you to address it. You have put as No. 3 priority, POP 104. She clearly was putting that as a very high priority. I would be interested in your thinking.

46:35 E. Oldenkamp So really that discussion was the individuals at the table during the pay parity committee meeting are really looking at bringing in everybody who is outside. We are looking at trying to bring us all up together. We understand that the juvenile dependency project has gotten traction with the legislature, but really for the broader membership that we represented that was not our priority. Our priority is to try to take care of as many of our members as we possibly can, and the way to do that is the way we set up those priorities. I am not going to say that any of the committee members thought that this was a bad program, but just in the needs based assessment. You know arguably and we had this discussion as well, if you pull us up in our compensation packages you are going to have the same cost savings in the end, right? You are going to have people that are actually filing motions. They are actually meeting with their clients more than once. They are actually having investigation done.

47:56 Chair Ellis It is not a cost savings, but it is a quality increase.

47:58 E. Oldenkamp But it is a cost savings because then you don't have as many appellate decisions. The interesting thing is I have looked at is the appellate courts in Oregon are one of the top ten most active appellate courts in the nation.

48:14 Chair Ellis Did you break that between civil and criminal?

48:14 E. Oldenkamp I haven't done that but I just noticed that. For this last month we have 15 appellate decisions that have come out that are criminal.

48:27 Chair Ellis They were all the Court of Appeals.

48:27 E. Oldenkamp Right. For a month. Then you have whatever else you need to track. But essentially what they are doing is they are looking at criminal cases where something has gone wrong, right? Or where something is being challenged.

48:41 Chair Ellis That is a little hard to generalize.

48:42 E. Oldenkamp Right. I understand that but I think that you would have cost savings in the end because you are going to have more representation at the front end. You are going to have better representation at the front end.

48:57 Chair Ellis I am going to agree with your premise that increased compensation should improve quality and that might reduce some appeals. I am going to have a hard time buying your statistical argument. There is a lot more that goes in ...

49:12 E. Oldenkamp That is fine. But I think that was part of our discussion when you had asked me about the juvenile dependency issue. We are focused on the vast majority of our membership and trying to bring them to a level where they are able to provide better representation and want to stay with us.

49:30 Chair Ellis I really appreciate you guys doing this. It makes the whole process a lot more meaningful. Thanks. Other questions?

49:50 E. Oldenkamp Okay. Thank you very much.

59:58 Chair Ellis Anyone else want to share their thoughts?

50:05 D. Bouck Dan Bouck with the public defender's office in Roseburg. I disagree as to maybe the priorities. Obviously the parity for all the attorneys, if I ask my rank and file, that is what they want above anything else, but I think \$24 million just isn't feasible. What I would encourage though is the 102, the quality assurance, it is something that could be sold to the legislature because it would increase the quality of the representation. When that POP was presented there was an explanation that most of the directors have come from being just attorneys in the first. There is no training for them and as the firms have gotten larger and more complex, it takes a lot of time to oversee them.

51:00 Chair Ellis When you use the word "firm" you are including consortia?

51:04 D. Bouck Yes. The problem, at least in Douglas County, is there really isn't any funding right now to manage. I am able to do it because my attorneys take some extra cases so I will take a few less. So I have time to go to the management. There isn't a mechanism in the contracts to pay them.

51:25 Chair Ellis And yours is a PD office and not a consortia.

51:26 D. Bouck But we have a consortium and a few other contractors in Douglas County. In discussions with them that is lacking for them. They want to go do some of this stuff but it is not funded. It is a quality issue. We want to meet all of the qualifications and the higher stuff, but it just isn't there. It just seems like something that I think we could sell to the legislature that if we gave a little bit more money to management specifically, we could increase the quality of the management, which would increase the quality and how the money is spent. I think it would be a good payback for us. Of course we would just rather across the board have more money and deal with it for there. The only other thing just briefly that was just mentioned under 106, the office space and the idea of doing something with Portland. If it means no other money is going to be taken away so that project would happen, great. If on the other hand the legislature is going to say, "Well, we are going to fund this project up there, and because of that we are not going to fund as much towards some other aspect of defense," it is going to take a lot of salesmanship to sell the rest of the state why Portland should be given this and how is it going to benefit Portland. There is already a very strong disagreement or distrust ...

52:58 Chair Ellis Jealously.

52:59 D. Bouck Many people view that we are looked on after Salem and Portland and we get the leftovers on everything. So if they get all this and we don't get anything, then they are going to have to sell it to us why we should support it. How is this going to benefit Douglas County?

53:18 Chair Ellis Your premise is one that assumes that if we end up doing this co-location in Portland that someone at the legislature is going to say that should subtract.

53:34 D. Bouck That is just what I am saying. If you are going to go forward on it, I just don't want to go forward if it means they are going to hit someone else.

53:42 Chair Ellis You are the first one to suggest it if you want to plant that seed.

53:47 D. Bouck Well I think it will crop up. If you came down to Douglas County and we said, "Gosh they are going to do this." Even if the legislature doesn't say it, I know there are going to be comments around the table and people are going to say, "Yep. There is Portland getting stuff and then we get the leftovers. They get the pilot programs up there for juvenile stuff but what do we get?" There is resentment. There is a perception. If you are going to go forward on that area if it is going to be part of the package, it needs to be strongly and with good PR work to get the rest of the state behind you.

54:26 Chair Ellis We need our people who are presenting to keep in mind the point you are making. That is fair.

54:33 J. Potter Mr. Chair.

54:35 Chair Ellis Yeah.

54:35 J. Potter I think it is accurate to say that your office was the only public defender office in the state for a number of years that was housed in the courthouse in Douglas County. It was before you were the director.

54:47 D. Bouck We had an agreement with our county that we would do justice court cases for free in exchange for office space. Then they canceled that because they wanted more space in the courthouse. They regretted that because they realized that it cost more money to hire attorneys to do justice court. We were in there for a long time. It was very convenient to be there. We wouldn't fit in that space now. We are way too large for that space.

55:11 J. Potter But the state wasn't involved in that. It was just the county. There was no state dollars?

55:20 D. Bouck No.

55:20 Chair Ellis Okay. Thanks. Lane. Mr. Borg.

55:26 L. Borg For the record, Lane Borg, director of Metropolitan Public Defenders not appearing as the president of OCDLA. A couple of comments that I wanted to make. I am not going to come and say to prioritize this and prioritize that. I just want to put some contextual comments on two things. One, the last comment that was just made about Portland because I appreciate what the Chair pointed out. I don't know that anybody has said that it is a quid pro quo that because that Nancy has generously agreed to be a co-located state agency in there that somehow that is going to diminish her dollars for having done that. But I would add a cautionary note because as Nancy said it is a long ways off to 2020, but the conversations are having right now, like in the next couple of months. The leverage time is right now in the next couple of months as we are having these conversations. I am old enough to remember when the justice center was built. I will remind people that those little tiny rooms right next to each courtroom were designed as defense rooms. They are no longer defense rooms. They are space for probation officers. They are space for other people to use. They are not our space. It is going to need to be made very clear that whatever space is designated if we agree to do that. It is not money from the Commission. It is really Nancy making an administrative decision to do that. I am not saying you have no input on that. It is going to bring tens of millions of dollars to the project. A whole bunch of money and this organization should be demanding more than just give us some space until it is inconvenient for you and then you will take it away. It should be we get the space and also we get the access. Everybody who is doing public defense work and I think it should be the majority. It could be 90%. We talk about the consortium people and they should be given the same access to that courthouse as the district attorneys are given. Right now I am spending about \$3,300 a year on courthouse IDs that I am obligated to take back. It says on the form that I am getting these for my employees. Even though Commissioner Ramfjord has a courthouse ID, I am sure, that he buys. As an attorney you can buy it and use it and it is good for three years. I did that in private practice. I buy the same ID at the same price with no discount, and yet when that employees leaves I am required to take back that ID and turn it back into the sheriff's office. So they are acting like it is some convenience to a public defender and yet they are charging me full boat. We should be getting those courthouse IDs for free just like the DA's get them. I will note that there are conversations happening right now where the DA's may not even be in the courthouse.

58:21 N. Cozine They are not.

58:21 L. Borg They are not. So they are going to be hotel spaced there, but they are not going to be physically in the courthouse. We need to leverage that and we need to protect the space. We need to have access. We need to be treated as co-equals with the district attorneys on that. It is not a foreign concept. The federal public defenders have the same access to the federal courthouse as the US attorneys do.

58:51 Chair Ellis May I make a suggestion. These are all good points. We are going to have this session before too long with Judge Waller and others. That would be a very good time.

59:02 L. Borg I will come down and present then. On the other what I would say is I think – I am remembering that two years ago we sat in this exact same room having a similar conversation only the Chair at the time was saying there is no money so why are we even worried about prioritizing. Yet that became a really critical thing in the waning months in the session. We have been told my legislative fiscal office that you should prioritize and look at those. But I would hope that the lesson that we take out of the last full session is that Nancy has crafted these, the Commission adopts. If they want to fully fund them that is great. Then there is a formula for that, but if they are not going to fully fund them, as they probably aren't, we really need maximum flexibility. It needs to be seen as more money into the system. To sit there and say, "We are not going to fund all of it, but we are piece meal." I appreciate what Eve presented from the committee. But when you get as specific as fund F, or B, or some little subset of things, could have the same effect as we had last time where we get very specific legal direction to how the Office of Public Defense Services can spend that. It created quite a riff and difficulty within our organization. It created a little fight that was very stressful and could have been avoided if say we can't give you everything. We think you are doing good work but let's give you this money to.... Maybe prioritize the goals. We want to deal with juvenile. We want to deal with hourly. We want to deal with adult criminal, but not get so specific in that rolls out because as we saw that has that effect. I would encourage, just like I think Nancy is very correctly saying, "Look. We are going to leverage ourselves. We are going to resonate if the legislature is interested in juvenile in other areas, so let's make sure we are funding our folks that we fund to be able to be responsive to that." Well there is another one that I am intimately involved with that we need to be looking at and hope the money was flexible enough to be responsive to and that is the justice reinvestment. The Governor's budget has funded not a 100%, but over 90%. He has come in at over \$58 million dollars in his budget for justice reinvestment. The rules were just adopted earlier this week on the grants for that. I will give you an example of how that is rolling out in the conversations in Multnomah County on it. The PDSC has a big portion of that. A lot of their cases are the consortiums cases for prison bound MCJRP cases in Multnomah County. It is a new process and procedure. My office deals with Keith's office. What we are really learning is these take a lot more time. These are time intensive by the district attorney and by the defense attorneys. We are trying to have a meaningful judicial settlement conference and the one clear thing that we gotten from, we have just finished our listening sessions for changes of all the user groups, everybody is saying this is okay. It is interesting. We don't know what the outcome is going to be, but it takes more time to really have a risk assessment done up front and to do the kind of mitigation work. So that I would urge that as these conversations go through the legislature about funding justice reinvestment and funding other programs, juvenile programs, that we advocate for our piece of that and say you need to know that this has a defense cost. It is not just more crimes that has defense cost, it is qualitatively changing how we do business as a defense cost. So we need to be considering that whether that is money that they are going to fund through the POP. Give Nancy and the Commission flexibility on how that to spend that. Don't be so rigid with it. Those are my comments unless you have any questions.

1:02:56 Chair Ellis Thank you.

1:03:05 L. Borg Thank you, Chair.

1:03:06 B. Liebowitz Mr. Chair, thank you. Bruce Liebowitz. I am the administrator for Portland Defense Consortium and also speaking for a group called the Oregon Defense Consortium and many members are here today. I would like to first talk about Eve Oldenkamp's proposal of OCDLA. I am going to be very brief. We support that fully. I agree with a lot of what Mr. Borg just said, but our perspective is that maximum flexibility is great about POP 100 is achieved. Because as the Commission knows at the last session the consortia were left out and it did engender many hard feelings, so our position is we are going to be supporting OCDLA. We are going to be working with them. I think two barrels are better than one. I think that the climate is looking pretty good assuming Phil Knight doesn't sell billions of dollars of stock and other things happen.

1:04:17 Chair Ellis According to Lane we call it the opposite of what happened. That last time we were pessimistic there would be anything in policy packages and we got some. Now his is saying we are optimistic. Don't rely on our ability to predict the future of the legislature.

1:04:32 B. Liebowitz Certainly. I hope we are clear on what we are in support of. I would like to reemphasize what Lane Borg just said that the MCJRP program, as we call it, is for us an unfunded mandate. Half a day to a day more on each case and there is no accounting for the time. That is hurting us very badly. That is all I wanted to say. Hopefully there will be real movement towards equalization for the consortia and we are on board with OCDLA.

1:05:06 Chair Ellis Thank you.

1:05:15 J. Nash Good morning. I am Jennifer Nash. I am the Benton County Consortium administrator and I was a member of the pay parity committee for OCDLA. That process was at times painful for everyone involved, but I think the bigger issue was we were able, as a pretty diverse group, to get together and talk about all of the different issues. The overarching message to the Commission from that group is that we are really all in this together. We have to be a unified group. What has been happening for the last year doesn't do us any good. I call it the "cannibalism" of the defense providers. Everyone wants a piece of the small pie that is there and sometimes climbing over each other to get to each, which isn't helpful. The really have to look at this process as a long range goal.

1:06:15 Chair Ellis It has been described as the treasure of Sierra Madre.

1:06:17 J. Nash Yes, definitely. The long range goal is to fund public defense appropriately. That is going to be, and always has been, very difficult. Some of the questions that the Commission has asked so far about prioritization, why this over that? I will address that in a moment. Not surprisingly I fully support the pay parity committee's position. That position really came from the clear message from the legislature of okay, you have to pick. You don't want to choose what your priorities are, but you have to choose what your priority is. So you have a list of different options and you need to tell us. For that group the main priority was really as Eve said to bring all the different parts of the group in. The way I think of it is to raise the bottom up. So leaving out the hourly contractors isn't, in my opinion, a way to go about this. I am part of a consortium. It would be great if all of the money went to us, but that doesn't make any sense. That is exactly the same position we were in the last time around. You are funding one entity at the expense of another one. That may be the reality of what ends up happening but I don't think it is good policy. The hourly contractors are the people - as Eve said nobody can afford to run an office on \$40 dollars an hour. There is just no way to do that and those are the people that are carrying the high case loads and sacrificing much to be able to try to cobble together a living. If left to choose, combining POP 100 and the hourly, the non-capital contract hourly contractors in 103 really is a way to bring everyone in. Then the second part of the pay parity was recommendations were that it was doubtful that is going to be fully funded, so at whatever level would be provided to apportion that accordingly. So it wouldn't necessarily be 50/50, but it would be apportioned according to the dollar amounts in the POPs. For example, if the hourly non-contractor providers were 1%, then that amount

would go to those folks, that kind of apportionment. The other piece to this is by increasing compensation and this may be so obvious that it goes without saying, but I think a real example might be helpful. Increasing compensation will decrease caseloads and improve quality. I will give you an example from our county in particular. We have been dealing with a caseload increase every single contract cycle for quite a number of years now. We just decided to add a member to our group in January of 2014. That was a pretty difficult, multi-year process. Even though our caseloads were increasing, it was difficult to convince a majority of the members in our group to add another person because that required a cut in compensation, because we weren't actually being compensated by OPDS to add a member. It was, if you want to add people and reduce your own caseload that is great, but you have to pay this other person and that money was going to come out of the collect group's pocket. That is what we did.

- 1:09:46 Chair Ellis So do you think we should move more towards capping cases so that you don't end up with people adding cases and taking the additional compensation, because economically for the individual that is helpful, but it reduces quality. Do you think we ought to be capping cases to kind of push towards adding lawyers if you need to handle the caseload?
- 1:10:23 J. Nash Well I think that OPDS effectively does that. And by effectively, I don't mean that they are necessarily - what I mean is that we got the clear message that needed to happen because there was feedback that it seemed that lawyers were not being able to be in courtrooms when they were supposed to. Of course if you didn't schedule two lawyers in the courtroom at the same time, but we got the message from the bench and from other people in the system that it seemed like we were being spread too thin. We really needed to take a good, hard look at that issue. That issue was in part from OPDS. The problem was for our 2014-15 contracts we were absolutely flat. By flat we actually took a cut because of the services and supplies reduction, etc. We received no increase in our contract amount but were in the position of having to add another person. We did that. So what we did is we paid for that person out of our own compensation. Each contractor took a monthly hit in order to be able to add a person to reduce the caseloads. We are in the same position again 11 months in. We are running almost 19% over our allocated case contract amount. Way too high. We are really uncomfortable with how many cases we have. We are going to have a meeting on Tuesday, our group, to discuss adding another person. We have also requested OPDS to help us with that because we are running so far ahead so that we aren't taking a hit. But that really at this point is the conversation. If we want to reduce our caseload numbers without any assistance from OPDS, it requires us to take less in compensation.
- 1:12:15 Chair Ellis Keep focused on the prioritization.
- 1:12:22 J. Nash So that is directly related to the prioritization question. By increasing compensation we wouldn't have to do that. When we added people we would be able to, if the case rates were higher, we would be able to add a person without reducing our monthly income. That is directly related to - I was trying to give you a real world example of how it is that a consortium not being compensated at the same level is affecting our county in particular.
- 1:12:57 Chair Ellis And you are speaking in support of POP 100 when you say that?
- 1:12:58 J. Nash POP 100 and 103 (c) through (f) combined, yes.
- 1:13:07 P. Ramfjord OCDLA proposed all of this?
- 1:13:07 J. Nash Yes, exactly. Then the second piece to answer more fully your question about why not 103, why not the juvenile dependency piece. I practiced juvenile dependency law and I represent children and adults as well, but there are only certain members of group that do that because of the quality requirements that we have. My county is adjacent to Linn County, so I am very familiar with the pilot project there. Although I think that is a very worthy project, to the pay

parity group we did have a discussion about that and this is really a triage situation. You have a limited amount of funds, so what are you going to do with those funds. To us it didn't really seem to make a lot of sense to spread out a pilot project when there are other people that have a more immediate need. That was really kind of the bottom line for that issue.

- 1:14:00 Hon. Elizabeth Welch I don't understand that last comment other people that have a more immediate need.
- 1:14:05 J. Nash Well the 100 and the 103 (c) through (f) seemed to us to be a higher priority in terms of funding than increasing the pilot projects for dependency cases.
- 1:14:20 Hon. Elizabeth Welch You are talking about lawyer's compensation?
- 1:14:18 J. Nash Yes. Absolutely.
- 1:14:18 Hon. Elizabeth Welch The immediate need is the lawyer's compensation.
- 1:14:25 J. Nash Yes.
- 1:14:25 Chair Ellis Thank you, Jennifer.
- 1:14:25 J. Nash Thank you.
- 1:14:30 Chair Ellis Anyone else? Now we will get some push back on juvenile.
- 1:14:44 M. McKechnie Good morning, Commissioners. Mark McKechnie. I am the executive director of Youths, Rights & Justice.
- 1:14:44 Chair Ellis Good morning.
- 1:14:49 M. McKechnie I might surprise you with my comments. I think it goes without saying that we have advocated for improvements in juvenile representation at least since 2006, if not the beginning of time. I don't feel like I need to repeat that. What I do want to mention is that for all of our focus on the POPS, we also need to keep our eyes on the basic budget. I am not sure everyone understands still the problems that occurred at the end of the last session in terms of the base budget for OPDS. That is actually, in my mind, a better explanation for a lot of the conflicts and concerns that have occurred since then, then the POPS. The legislature underfunded the account at the current service level by \$10 million dollars. The POPS arguably added back \$5 million of that.
- 1:16:00 Chair Ellis Are you talking about the 2% withhold?
- 1:16:04 M. McKechnie No I am talking about today the account has \$10 million dollars less than what it should have had according to current service level. I think there are a couple of reasons for that. Part of it had to do with the ending balance or the tail. Essentially the six months that goes beyond the biennium was funded and there was an adjustment made to that last session, which may be helpful, but certainly caused a lot of pain this session. So just from 09-11 to the current biennium 13-15, the account increased by only 5.5%. The consumer price index from 2010, from when our contract started in that biennium to this year, was 9%. So we have lost ground just simply due to inflation. So are capacity overall is less relative to what the cost of doing business is. I don't want to be too focused on the POPS, which are choices like remodeling the kitchen or painting the walls, when the foundation is in such poor shape. I think we need to continue to hammer this point to legislators that the account has been chronically underfunded and we are paying the price for that in terms of our infrastructure. Some people can't afford

offices. We have been consistently cutting everything that wasn't absolutely critical just to keep pace. Whether it is employee benefits or other overhead costs or training budgets. Anything that we felt would cause the least pain. We have had to take those actions consistently over many years. I just don't want to lose sight of that in the POP discussion. I have said before and I will say again, I would have simply rather had current service level in the current budget than the POPs. We would be in better shape if that had occurred.

1:18:23 Chair Ellis Where do you come out on the tradeoff between POP 104 and LC2058?

1:18:31 M. McKechnie I think attitudes towards the LC will change once a price tag is attached to it. So in some ways I see the POP as a more feasible ask. The LC is sort of a Christmas tree bill. We certainly support it if it could be funded, but it seems like quite a stretch. I am concerned that we are talking about having to prioritize within our system, but there will be questions about which is the greater need, more attorney general representation for DHS, or representation for parents and children. My fear is that the representation for the agency will be seen as critical and necessary, while the other will be seen as a nice thing to do but something that we can't afford. I have already heard comments from my one visit in the legislature that Multnomah County would be too expensive to include as one of the pilot counties. This was in the context of the LC because it is so big. My response to that was in some ways we are closer to meeting the goals of that LC with the resources and the providers we have currently. Therefore, the marginal cost of getting us the rest of the way is not as great even though we are a big county. The other response is that is where a lot of the children are and you get a bigger bang for the buck for improving the system in Multnomah County in terms of the number of children and families you are going impact. If the dynamics that we have seen in Washington State hold true, then in Oregon if we have the chance to try something similar, moving a lot more children out of foster care more quickly in Multnomah County will have a bigger impact on the bottom line than in very small counties. I know it is hard to be an advocate for Portland in a statewide setting, but I think we also need to recognize that the big counties are where the biggest need and the biggest impact can be found as well.

1:21:09 Chair Ellis Any questions for Mark?

1:21:09 J. Potter I happen to agree with your analysis. It was succinct and it was accurate in my judgment. You have a legislature that cuts a budget, current service level budget, and then comes along and adds a POP, adds some money back into it, and that created a huge riff because they controlled where that money was going to go. The same thing could possibly happen this time as well. You could have a current service level budget that gets cuts 2%, 3%, and then the legislature comes along and says, "We really like this idea of juvenile dependency improvement. We are going to fund that." Then we created another riff. Notwithstanding that, but what I haven't heard you say is where will you come down on the POPs? Let's say the current service level budget is in fact funded and that it is our job, according to the legislature, to prioritize. Where are you?

1:22:03 M. McKechnie That is probably where I fall back into shameless self-interest.

1:22:11 J. Potter It is good to acknowledge.

1:22:11 M. McKechnie One thing that I will point out is that we were a beneficiary of the parity POP. Just comparing the 2013 DA's salary to the new 2014 YOJ's attorney salary level, there was still a 20% disparity at year one that increased to 36% at year 14. That is salary only not including PERS and other benefits that are benefits that are significantly better for government employees. Then as soon as the DAs got there next raise after 2013 that disparity would only increase again. Our experience has been after we received some funding in 2007 to improve salaries, all of that ground had been lost and then some by the time the next increase came along. So we are filling a bucket with a hole in it is what we are doing. Then obviously as I mentioned and it goes without saying, I would like to see some expansion of the enhanced juvenile

representation, whether it is through the POP or through the LC. I think it is too early to decide which horse to bet on at this point. But I certainly would advocate that if we stick to small counties because they are much less expensive, I don't think that is still going to tell us what we need to do in the larger counties where we are going to impact the most children. I don't think we can necessarily take what is gained in Linn and Yamhill County and then that will tell us what we need to do in Multnomah, Washington, Clackamas, and Lane counties.

1:24:04 Chair Ellis Okay. Other questions for Mark? Thanks. Alright does anyone else want to share thoughts or should we begin the process of deliberating?

1:24:19 Hon. Elizabeth
Welch Mr. Chair, I hark back to Nancy's comment when she was talking before. There is a lot of stuff on the agenda today that comes back to this discussion. The next on the item on the agenda, the House Bill, but also this whole issue with Item No. 5 on the agenda, *Hurrell-Harring v. New York*. I think that case and the case from Washington raise some really fundamental issues with this Commission and for the organization. It is probably not time now for us to decide what we are going to do about the issues that are raised in those cases as generality. It might be worth talking a little bit about those other two pieces to the extent they need to be talked about today before. I am not trying to hope that anybody is going away. It just seems like it is appropriate to have all these things in our heads when we make these choices. For me it has an impact. I just read this case yesterday.

1:25:57 Chair Ellis This settlement.

1:25:58 Hon. Elizabeth
Welch Yes. The settlement discussion and just what was in it. The principles of the Washington decision are pretty striking and appropriately so, of course it ought to be. They ought to be saying the same kind of things.

1:26:11 Chair Ellis We are going to bump up against some time constraints. We lose our quorum at 1:00. One of us has to leave.

1:26:25 N. Cozine We do have Janet on the phone.

1:26:25 J. Stevens You do.

1:26:28 Hon. Elizabeth
Welch If others don't agree with me.

1:26:37 Chair Ellis I will offer you a compromise. I would be interested in a report on LC 2058 and the group that sponsors that. I think it does tie into at least some of our views on POP 104. So if I could compromise with you and have that discussion now, but not get into the two cases because I think that is going to lead to abstractions. I am focused like a laser on getting to this priority.

1:27:15 Hon. Elizabeth
Welch Properly so. Let me just make a really short statement. I would rather Paul, or the one who was talking, hope he would say the same basic thing that I am going to say, because he is much more familiar with these cases than I am with just a couple of quick reading of them. Caseload is the issue and caseload should be the issue for this whole discussion. I want to know how Oregon actually looks on this whole issue. What they are saying in those cases is it doesn't matter what the lawyer does, if they have more than a certain number of cases the individual is not properly represented, period. That is profound. Maybe it is about time that it got said. When you think about it you don't have to be a neurosurgeon to figure that out, but we haven't.

Agenda Item No. 4**House Bill 3363 Task Force Report**

1:28:22 Chair Ellis

Do you want to talk about the juvenile group? Then we will get back to debating the prioritization. As you go, I really do want to understand better than I do right now, the interaction between 2058 and POP 104.

1:28:43 N. Cozine

Chair Ellis, members of the Commission, as earlier noted, you do have in your packet the final report of the Joint Interim Task Force on juvenile court dependency proceedings. It is Attachment 4. On the attachment it lists all of the members of that group and it did include Judge Welch and it included me. Judge Sullivan, Judge Love, Lois Day, Lori Fellows. Lois is the director of child welfare at DHS. Laurie Fellows is a district attorney in Multnomah County. Lene Garrett is a CASA director in Linn County who has recently relocated to Marion County. Leola McKenzie is the director of the Juvenile Court Improvement Program with the Oregon Judicial Department. Megan Schultz is the director of Legislative Affairs for the CASA program and is the CASA director in Lane County. Joanne Southey is the head of the trial practice lawyers at the Department of Justice who represent the Department of Human Services. This committee had a very broad charge and I think Judge Welch can comment if she wishes on how difficult it really was to adequately respond to the charge because it was so very broad. We tried very hard to really look at what we were asked to analyze. We were asked to identify impediments to the timely resolution of judicial petitions in juvenile court dependency proceedings. The assessment of the basis for dependency jurisdiction. The development and implementation of case plans for the reunification of families that include services and other assistance that are appropriate and accessible to parents. The assessment of adequacy of case plans. The identification and implementation specific, understandable and realistic conditions for the return of a child placed in substitute care to the physical custody of the child's parent, and the timely development implementation of permanent plans including reunification of the family that take into account the policies of the State of Oregon expressed in ORS 419B.090, and the concept of reasonable plans to fund 419.004. I will say that in a year's time and with, I think, it was six or seven meetings, it was really difficult to get beyond just the basic impediments which tend to be a lack of resources for everyone. We configured the information that we collected in many different ways, but we also heard testimony from the program in Washington about the way that they have tackled improved representation for parents. As the group talked about what is happening in Washington in their pilot and what was happening in Oregon in our pilot, the concept developed of creating what we started to call sort of a model county process, where all entities are adequately funded, to see whether or not we could actually make gains in getting children into permanent situations more quickly. We talked about the fact that when you talk about permanency, return home is the highest form of permanency that can be achieved. After that the other adoption and guardianship alternatives, when appropriate, have to be used. But it seemed that within current resources, as much as we tried to identify things that we could do and we agreed to partner commitments to really continue doing what we are already doing now. Holding people accountability for their representation in accordance with Oregon law and other standards, providing education to the lawyers who do the work and providing as much resource as we can that in the end every little bit of this system is impaired by the lack of funding for all entities. That discussion generated LC 2058, which is part of your packet. The concept really is to have every entity fully funded so that there aren't set overs as I explainer earlier, there aren't set overs because a caseworker doesn't understand the law and doesn't have a lawyer available. The parents and children's attorneys are so overwhelmed with cases that they can't meet their court obligations. That they have the resources they need in terms of caseworker and investigation. That they have support staff and an office so that clients can reach them. That they spend time with their clients. That the court has a docketing system that doesn't end filled with matters other than juvenile matters, so that the juveniles cases get pushed out and out and out. LC 2058 tries to address that by creating funding mechanisms and a pilot program to measure outcomes. It actually calls for a scientific study to measure the outcomes of the pilot program that would be created through LC 2058.

1:34:06 Chair Ellis Let me ask you a few questions. On the list of members they are defined as Non-Legislative Members. So do I understand there is a broader committee that has legislative members?

1:34:26 N. Cozine You don't there were any legislators on the group. That was a big question mark. Because I wasn't involved in the negotiations around House 3363, I am not entirely sure whether there was a discussion and it was an intentional choice, but there was certainly a lot of questioning after the fact about why a legislator hadn't been added to the group. They were certainly invited when the Washington State folks down. The Judiciary Committee sat in and listened to the presentation.

1:34:55 Chair Ellis How do you envision this report being presented and is there is a group in addition to you and Judge Welch that will be pushing for LC 2058?

1:35:13 N. Cozine Thank you for asking that question. I should have explained that earlier. We presented this report on Wednesday to a joint committee meeting of House and Senate Judiciary Committees.

1:35:27 Chair Ellis So not the Public Safety Subcommittee?

1:35:29 N. Cozine But the Joint Judicial Committees. So that was on Wednesday. We were part of a very long list of presenters. We had about 15 minutes so it was quite brief. But before the meeting we actually met with a few legislators who are really interested in the issue. Representative Krieger, Senator Winters, and Senator Kruse. Representative Krieger asked that we be prepared to come back again with another presentation in February, so that we can talk more about what counties would be viable counties. What the costs would be of those counties. So he would like to have it scheduled in early February and he would like the Department of Human Services, PDSC, and the courts to come within information that the legislature could really start weighing their options.

1:36:30 Chair Ellis As I read the bill, funding for it would not just to us but it would be to four other agencies.

1:36:40 N. Cozine That is true.

1:36:36 Chair Ellis So I am assuming that there is much more of a broader coalition that will be pressing for this.

1:36:45 N. Cozine Well I think that is part of the assessment that needs to be happening. That is one of the reasons that I have asked that this Commission allow me to work with the legislature to figure out whether LC 2058 is the better mechanism, or whether our POP is the better mechanism. It is unclear to me at this point what position DHS will be taking on this bill, for example.

1:37:17 Chair Ellis And they are duplicative aren't they?

1:37:18 N. Cozine For us. Yes, clearly. I think for us it is one or the other. Well, if the legislature wanted to give us money we could do it.

1:37:30 Chair Ellis At least I didn't use the mallow prop that a lot of lawyers do. They will stand up and say, "Your Honor, that is duplicitous." It is "duplicative."

1:37:37 Hon. Elizabeth Welch Let me interrupt just really quickly. Essentially they are the same. The terms of saying there needs to be better representation. That is what we say here at home. But it is the other players and particularly, in my opinion, the court that needs to have more resources. There are some other differences, but fundamentally it is our POP with some Christmas tree ornaments, whoever said that, or these other entities to get so that they can do a better job too.

- 1:38:21 Chair Ellis So my other question is, I would think of anything that is called "pilot" which the current two county activity is, is intended to run long enough that you learn from it and then you can apply it more broadly. What is the argument that we ought to right now before the pilot in the two counties that Amy is working with, what is the argument that before that outcome is known start funding pilots in two of the largest counties in the state, which obviously is an expensive proposition?
- 1:39:05 N. Cozine So right now we have two counties. They are small counties. We picked two small counties because that is all the funding we had available. Ideally, to really measure the outcomes, we would like to have a broader base to see what the effect is in different size counties. If all we have is our two small counties, I think it could be difficult really in the end to have meaningful outcome measures because there are such limited populations. I would like to have some comparison groups in a larger jurisdiction.
- 1:39:34 Hon. Elizabeth Welch A friendly lob. Both Clackamas and Multnomah. Why?
- 1:39:50 N. Cozine I think it is important that the legislature has choice. So if we price both and we give them both options, they have something to look at and decide between. I think the same would be true of this Commission. If this Commission feels that we ought to prioritize dependency improvement representation, but in only one of the counties or one other county, I mean the legislation is drafted so that it is at least four to six. We can take that direction and we can work towards adding as many as this Commission and the legislature feels is reasonable. I am still at the point where because of the unknown factors it really is difficult to tell whether this LC will move. I certainly don't think the Commission should be the only entity moving it forward. I think if the courts and DHS aren't interested in being incredible active in pursuing this, then we need to move toward pursuing the policy option. My impression is that the courts are very interested in pursuing it. The Department of Human Services position is still somewhat unclear. One of the challenges they have is this split in representation. The district attorney represents the state in prosecuting the initial petition. DHS is represented by the Department of Justice. The lenses of these two entities are very different. DA's are representing the state. DOJ has a client. At times they have different positions. My understanding is that they haven't quite worked through how it would work if they had full funding. Would that mean that the district attorney still prosecutes the petition, but the DOJ lawyer is also present? Or would it mean that the DOJ lawyer comes in after the jurisdictional finding and disposition? I think that they are still working through some of those mechanics. I am just not sure that they - I don't think that we have heard a clear message from them about where they stand on LC 2058.
- 1:41:42 Chair Ellis Picking up on Judge Welch's question. If was there a judgment that yes there is a good argument to get a larger population county in the pilot program, but also a judgment that you can't do everything all at once. Between Multnomah and Clackamas do you have any thought?
- 1:42:08 N. Cozine Candidly, I think whichever one is legislatively more viable. At this point I think each one offers something different. In Clackamas County I think we have some caseload issues that we could look at and really make some gains on. In Multnomah County the truth is we have declining caseload, but the providers are paid such a low case rate that it actually creates such an immense strain on the system that providers are having a hard time making ends meet. That means that even though we have a declining caseload there business model is getting weakened because they don't have the funding they need to run their businesses.
- 1:42:53 Chair Ellis Okay. Other questions for Nancy on this? I am going to suggest we start deliberating now on the prioritization issue. You look like you have something.

1:43:04 N. Cozine I wanted to make one more comment just for purpose of clarity. When I did not talk about the hourly providers and said it was important for you to listen to the OCDLA proposal. I think that they worked that through very thoroughly and they came up with a recommendation to this Commission. I don't disagree with that position.

1:43:27 Chair Ellis So you are okaying distinguishing between the capital hourly providers and the other four categories of hourly providers. And emphasizing the other four categories over the capital providers?

1:43:44 N. Cozine Right. I felt like they were in the best position to speak to that because they had a very good dialogue with the people who are doing the work.

1:43:54 Chair Ellis Alright. I am going to suggest that we just talk for awhile and won't get to any decision making. I am going to ask Per to start if you have some thoughts.

1:44:05 P. Ramfjord Sure. I appreciate all of the testimony. I am struck by some of the fallout that occurred when we tried to achieve parity last year and didn't really make adjustments that were across the board. I think there is a lot of merit in the OCDLA proposal. I think that the rates are currently provided for hourly attorneys in the non-capital arena, particularly, are very low. We would want to have consistent case rates in each county consistent with POP 100. I think that to some extent that proposal would potentially allow for some reduction in caseloads because there wouldn't be the same need to maximum caseloads to achieve a minimal level of compensation. So I do tend to favor prioritizing in the manner suggested by OCDLA. I am very struck by the need for the juvenile dependency improvement program. I do feel that to some extent the momentum that appears to be gathering behind LC 2058, and the potential of a broader coalition supporting that may achieve that goal independent of our POP. So I am a little more inclined to focus on the compensation and the parity issues then to focus on that. So in priority I guess I would put the OCDLA proposal of POP 100 and a portion of POP 103, followed by the juvenile dependency improvement. I agree with Nancy's comments about wanting to have some flexibility with regard to that. Then I would put the other items below that. That is a preliminary thought.

1:46:34 Chair Ellis Judge Welch, what are your thoughts?

1:46:35 Hon. Elizabeth Welch My lawyer over there has done a very good job as far as I am concerned. I pretty much agree with what he said, except that I would agree that looking at the OCDLA prioritization that POP 100 and that portion of POP 103 that has been identified should be our highest priority. That the juvenile dependency improvement concept should be - I really have some question about the size of it and this whole issue of the two counties. I think we should also prioritize POP 101, excuse me, no, that the next priority after 104 should be the other two items in 103. The hourly rate. Even though it is a very tiny percentage of the work.

1:47:42 Chair Ellis So you are now talking about the capital contractors.

1:47:46 Hon. Elizabeth Welch Yes. The capital contractors. These are vitally important cases that need to be given the status and compensation that they deserve, then the rest of it after that.

1:48:07 Chair Ellis John, in your capacity as a commissioner and not in your capacity of OCDLA ED, what are your thoughts?

1:48:13 J. Potter I actually think the pay parity committee got it pretty close to right in my judgment. I think they took a principle position that was saying we have to raise the bottom. We have no choice in a way. You have cases out there that are going to crash down on Oregon if we don't do that. The Mt. Vernon case and I only read once the New York case, but it tends to support the

Mt. Vernon case. They could have looked to what was legislatively viable. What has the best chance of passing the legislature and trying to guess that process. The committee chose not to. I think that was wise. I like the global view they took. The only change that I would make to what was submitted to us on this worksheet would be I would probably take the OPDS program, administration and quality assurance component of the juvenile dependency and make that a No. 2 priority. So it wouldn't stay in the No. 3 priority. You would move that \$313,000 into the No. 2 priority. Otherwise, I would support the OCDLA submission.

1:49:41 Chair Ellis

Janet any thoughts?

1:49:44 J. Stevens

I have been listening to it all. I can't argue with it partly because at points it is hard to hear, but I also can't argue with the general list that has been put forward in the way that it has been put forward. I think it would be really nice to go in and ask for \$21 million dollars but we are sure not going to get it, at least not in one chunk for one thing. I would say POP 100 and POP 103 (c) through (f) as first, probably, then maybe the other two in 103 and 104.

1:50:27 Chair Ellis

Okay. I kind of approach it a little different direction, which is to see if there are some of these that I feel we are making progress by means other than through the POP process. So I look at 106 for example. I do think we had two data inputs today. One is that if the Multnomah courthouse project goes forward, it is a few years out but it would be a safety value on some of the pressure on space in this building for appellate attorneys. I think that is worth keeping in mind. The other data point is that I think the appellate attorneys are saying they can live with bunching up. They would like some support on compensation. That causes me to agree with the OCDLA prioritization of POP 106. Then if we look at POP 105, which is related to the appellate compensation, I do understand that the compensation plan that is being submitted and got good support, according to Nancy, so it is likely go through without difficulty. It doesn't bring the appellate lawyers all the way up to the DOJ lawyers, but it makes significant movement. So I am inclined to say that is a step in the right direction and it reduces the pressure on us, I think, to prioritize 105. I would change that from a two to a three for that reason. Then on 104, I have several problems. One is that I do believe in the concept that you do a pilot to get data to decide if you want to expand the pilot. Here we are just barely getting off the ground on the two counties that are the initial pilot. It just seems to me we are getting ahead of ourselves to start adding quite expensive, quite large counties until we have more a track record. Secondly, I do prefer seeing if we can't get a coalition of agencies to push on LC 2058, I think it is completely duplicative, 2058 over our POP 104. I would put the Clackamas and Multnomah dependency improvement piece as No. 3 priority. I do agree with John's proposal of making the third component of that a little priority, so I would make that a No. 2. Then going to POP 100. Just to recite my recollection of history. We had many years when no POP ever got the light of day. I think we lapsed into a state of mind that POPs are kind of exercise that are out there but they don't mean anything. For reasons that I accept responsibility for, the POP packages that were presented by this Commission last session, it still a mystery to me just how this all happened, but it did favor one segment of our provider community. It disfavored, or did not favor at all, another segment of our provider community. To my surprise, as Lane pointed out, that was the year the legislature did show real interest and did provide some funding. That all said leads me to feel a strong obligation to support POP 100. I feel like that is a piece of history that we can redress. So I share the prioritization of POP 100 as No. 1. That doesn't every question. I think the one that I am troubled by is reducing POP 102 to a No. 3 priority. I am not quite sure what to do with that. I am okay with the OCDLA proposal on 103. Breaking it out between the (c) to (f) getting a higher priority than the (a) to (b). That is where I found myself coming out. Let's use the OCDLA methodology, which is No. 1, No. 2, and No. 3. We did ask Steve Bender when he was here can we seek prioritization of a portion of a POP package, as opposed to having to prioritize the whole of one package against the whole of another. He was very clear that you can break it out. So still on sort of a straw vote basis because I think I don't want to see an actual vote until we have run this process. On POP 100, I thought I heard every member of the Commission say that would be a No. 1. Am I correct on that?

1:57:03 P. Ramfjord Yes.

1:57:10 Chair Ellis POP 101, which is the very large dollar amount, public defense contractor parity, the OCDLA proposal is to split it in half and say half of it is of a No. 2 priority and half is a No. 3. This is a package that would benefit the providers that did get benefit last time. That is not a reason - nobody is claiming they got all the way. What is the consensus there? Is it to support what OCDLA proposed?

1:58:03 J. Potter I am comfortable with that.

1:58:03 P. Ramfjord I am also comfortable with that. I think particularly in a year when as Nancy is saying we want to be pushing all of these POPs. I think we should be pushing them all but recognizing that the dollar volume there is really large and signaling clearly some flexibility on that point would be a worthwhile thing to do.

1:58:27 Chair Ellis So we would go with half of it would be a No. 2 priority and half of it would be a No. 3 priority. Alright, I would like to hear more discussion on POP 102. Nancy, maybe you want to refresh everybody what that addresses.

1:58:45 N. Cozine Certainly. Chair Ellis, members of the Commission, Policy Option Package 102 would allow a line item. We calculated it as 2% of the entire contract value that would actually be paid to the contract administrator for quality assurance and oversight functions. As you heard from contract providers there isn't any discreet funding for that function, so it is all taken out of case rates. The second piece is the case management system funding. That would be something to offset the costs that providers will experience if they move to an electronic case management system of the type that we are proposing. I think we heard very clearly throughout the course of discussion on these policy option packages that contract providers felt like this was a lesser priority even though it is a priority. I think that Mr. Bouck got it right. This is something that would resonate well with the legislature. A lot of the discussion happening in that building right now is around quality assurance. Anything that we can do to demonstrate that our providers are aware of what is quality and that they are addressing quality issues is a benefit. So we will be talking about it because it is one of our policy option packages, but given the feedback that we heard from our providers about the necessity for increased case rates, I tend to think that OCDLA's proposal addresses that.

2:00:38 Chair Ellis Okay. Any thoughts?

2:00:38 P. Ramfjord The only thing that I would add to that is it seems that to the extent we are able to get some money that increases case rates. That buys consistent case rates across counties. That increases hourly rates. That, in and of itself, is going to be a contribution to quality. I think that can be sold to some extent as such. I agree with what Nancy said and I think that is the right prioritization.

2:01:10 Chair Ellis So you would put that as No. 3.

2:01:10 P. Ramfjord Correct.

2:01:10 Chair Ellis Any disagreement on that? Okay. Then on the hourly rate increase we didn't hear from any of the capital contract attorneys. I am a little sensitive to making a decision without their....

2:01:34 P. Levy Ah, Your Majesty, Eve Oldenkamp is a capital contractor. I think she left.

2:01:50 J. Nash I can tell you that in the pay parity committee we talked about that. There were two capital contractors there. They really felt like increasing the capital contract rate was akin to POP 101.

2:02:07 Hon. Elizabeth Welch Janet can't possibly hear.

2:02:07 Chair Ellis Can you hear what is being said Janet?

2:02:11 J. Stevens Not terribly well.

2:20:11 Chair Ellis Jennifer Nash has returned to the witness stand.

2:02:20 J. Nash What I can tell you is there were two capital contractors on the pay parity committee. Both agreed that 103(a)(b) was really akin to 101 in terms of increasing that rate was similar to the parity with DAs rate. They really felt like that should take a secondary position to 100 and 103 (c) through (f).

2:02:53 Chair Ellis Thank you. That is very helpful. So is that satisfactory on a straw vote basis of the Commission. Then Nancy on 104, I would like more understanding of the third component, the program administration and quality assurance.

2:03:24 P. Ramfjord One question with respect to 103, do we have consensus that the elements (c) through (f) would be the first priority? Then (a) and (b) would be secondary? Is that where we are on that?

2:03:38 Chair Ellis That was what OCDLA was proposing and I thought that is what we were saying, but if there is any doubt.

2:03:52 Hon. Elizabeth Welch I am happy with that. I just didn't think we were doing that yet.

2:03:55 P. Ramfjord It is not a vote. I just wanted to make sure we were on the same page.

2:03:56 Chair Ellis So go back to 104. Can you give us a little more sense of what the third box there is? The program administration and the quality assurance.

2:04:13 N. Cozine Yes. That piece covers quite literally two positions in this office. One a deputy general counsel and program administrator for the dependency pilot program.

2:04:26 Chair Ellis Isn't that what Amy does now?

2:04:27 N. Cozine That is what Amy does now. We have sort of cobbled things together for Amy to do this right. We have similarly cobbled things together to have someone to help us with data entry and other functions - sort of the administrative pieces in the office.

2:04:50 Chair Ellis So it is the pilot. We would actually work with the data from the pilot.

2:04:57 N. Cozine Yes. The administrative person that we have right now we hired in as a temp because we had some flexibility. It is now on a limited duration agreement. Both of these are limited duration agreements. We would like to make them permanent positions. I think clearly with the deputy general counsel position there is quite a bit of work that is being done that is not only focused on the pilots, I mean that is the primary obligation, but we also have a lot of work being done with regard to improving quality statewide. So running the complaint system as it relates to juvenile complaints. Responding to the NRE requests in juvenile cases, and developing training and other resources to help improve representation statewide. So one of the things that is happening through this pilot is that we are really developing resources that we can then - training guides and policies that we can share with other counties to help them improve their representation even within existing resources.

2:05:52 Chair Ellis So I am getting a couple of take a ways. One is it is not connected to either the Clackamas or Multnomah piece, it is separate.

2:06:00 N. Cozine That is correct.

2:06:02 Chair Ellis Where are you on this in terms of relative priorities?

2:06:20 N. Cozine I think that piece has to be a No. 1.

2:06:26 Hon. Elizabeth Welch So broken out completely from 104? Maybe a new number with a higher priority?

2:06:26 N. Cozine I think if the Commission is not inclined to prioritize expansion of the pilot program, I would at least like to see the administration piece prioritized as a top priority because the funding we have for our existing pilot counties will continue. Continuing to run them and develop data then I think we will be in a world of hurt without permanent funding for that position.

2:06:58 Chair Ellis So if I hear Nancy and based on other input, one way to approach it would to put Clackamas and Multnomah as a No. 3, but the third box, which is happily the smallest amount, would be a No. 1. Is that consistent on a straw basis?

2:07:26 J. Potter I said in my remarks that I would make that component No. 2. I think I am still there at No. 2. One of the questions I would have for Nancy is in the pay adjustment package that we are going to talk about later, does that pay adjustment help the employees in that category?

2:07:50 N. Cozine They are in that comp plan change.

2:07:50 J. Potter So they would get some pay raise but it wouldn't add any new employees. This doesn't add new employees either, it just makes it more permanent?

2:07:59 N. Cozine It adds an employee. It adds two employees. We cannot hire....

2:08:06 J. Potter So this adds two employees.

2:08:07 N. Cozine To the Office of Public Defense Services. It is giving Amy a permanent position number in this office.

2:08:31 J. Potter So is Amy a limited duration position then?

2:08:31 N. Cozine Correct.

2:08:34 J. Potter So it adds in a sense of permanent - the positions already exist. It wouldn't add two brand new bodies other than the bodies that you have?

2:08:41 N. Cozine That is correct. The other alternative is we have to grind up - long term we have to grind up other positions that we would like to have to make this one happen. There are other reasons for succession planning that we ought to be thinking about this position.

2:09:04 J. Potter Even with that, Mr. Chair, my position would still be it remain at No. 2 in light of the more global importance of the ones that we currently have.

2:09:16 Hon. Elizabeth Welch You are referring to that one piece?

2:09:18 J. Potter Just to that piece of the component within the juvenile dependency. I would make that No. 2.

- 2:09:30 Hon. Elizabeth Welch I don't have any problem with what John is saying. I want to talk about the rest of POP 104. I think that we should ask for more money for the expansion of this program, without commenting on what I think is going to happen with that other bill, because I would rather not. I think the advocacy for Clackamas and Multnomah is nuts in simple terms for every reason that has been identified, but I don't want to throw the baby out with the bath. I think we should ask to expand it. I think we should ask to expand it in maybe a little bit - no counties named and less money. I don't know how much money it should be, Nancy. I just think the Chair's comments. This is a brand new pilot project that is three months old and we are already asking for \$6 million dollars to expand it starting in June or July.
- 2:10:44 N. Cozine Keeping in mind we asked for more money last session that we didn't get to improve juvenile representation, and that we have a lot of information from Washington State where the program has been very successful. So, yes, it is early in the process but I think we have reason to believe that the results will be positive.
- 2:11:09 Hon. Elizabeth Welch That is fudging with this more than we have fudged with anything else. I think it is crazy to be asking for Multnomah and Clackamas to get funded now.
- 2:11:25 Chair Ellis Well that sounds like you are accepting a No. 3 category.
- 2:11:32 Hon. Elizabeth Welch I really don't want to see it going forward in that form. I think it is a mistake.
- 2:11:44 Chair Ellis Per, where are you on John's issue on the third box?
- 2:11:53 P. Ramfjord I would make the third box a No. 1. I do feel like it is integral to the potential success of the pilot program that we already have started and are running. So I would do that. I also think there is some sympathy for that within the legislature based on Nancy's comments. I am little bit more torn with respect to the other two items, Clackamas and Multnomah. I could see those as either a No. 2 or 3. We have already designated a fair amount of money as a No. 3. I am also mindful of the considerations that the other commissioners have voiced, including yourself, Mr. Chair, so I would fine making those a No. 3.
- 2:12:47 Chair Ellis Janet, any thoughts?
- 2:12:49 J. Stevens I am just uncertain on how it all plays out. So I think I will just listen at the moment.
- 2:13:02 Chair Ellis I think I would tilt towards making the third box a No. 1 versus a No. 2. Then we go to POP 105. OCDLA has that as a No. 2. I am inclined to make it a No. 3, because I think we are making progress on that issue through the compensation plan. Judge Welch..
- 2:13:35 Hon. Elizabeth Welch Agreed.
- 2:13:35 J. Potter If I understood Nancy clearly that about half of this would be reduced in our POP anyway. I am assuming that we will adjust this compensation plan with money that is internal and it will take care of about half of this issue, so you will have a POP that is \$750,000 rather than \$1.5 million.
- 2:14:04 Chair Ellis What is your number?
- 2:14:04 J. Potter I could go with a No. 2 or a 3. I could be convinced that it be dropped down as a result if this other action the Commission takes goes forward then I could move it to a No. 3.

2:14:18 Chair Ellis Per?

2:14:18 P. Ramfjord That is exactly where I am.

2:14:30 Chair Ellis Janet any observation?

2:14:30 J. Stevens This all sounds like this gigantic group Goldberg thing with about a thousand gears going in about 50 directions. I would probably give this a No. 2 or 3.

2:14:48 Chair Ellis Okay. Then the last one is POP 106. I will just summarize it. I think all the comments I heard tended to support the OCDLA No. 3 description. Alright now let me try proposing what I think is, if not consensus, at least I heard a lot of support for this. I will identify it and then anybody who wants to modify it nobody is committed. POP 100 would get No. 1 priority. POP 101, half of it would be at the No. 2 and half at a No. 3. POP 102 would be a No. 3. POP 103 items (a) and (b) would be a No. 2 and items (c) through (f) would be a No. 1. POP 104 the first two boxes would be No. 3. The last box and I recognize that there is a division of opinion on this, but I would give it a No. 1. On POP 105 that would be No. 3. POP 106 would be No. 3. That is what I think I have heard and I personally would be comfortable with that outcome. I am trying to do this in a way that everybody gets a chance to revisit if they feel heartburn over what I just said.

2:16:41 J. Stevens Would you tell me again, Barnes, about what you said about 101.

2:16:47 Chair Ellis No. 101, half of it, which is \$10 million something would be a No. 2. Half of it would be a No. 3.

2:17:00 J. Stevens Okay.

2:17:04 P. Ramfjord I think that as a matter of putting it on the record, I would probably rather have POP 105 be a No. 2 than a No. 3. That is consistent with the OCDLA proposal. If we are going to move compensation changes across the board, even though we are going to get halfway with it in our proposal, it is going to be reduced by half. It is a relatively small amount. I would probably be more comfortable having that be a No. 2.

2:17:35 Chair Ellis Any thoughts on that?

2:17:35 Hon. Elizabeth Welch I don't agree. It belongs at a 3.

2:17:40 J. Potter It is a tossup of sorts. I would go with the majority. Either 2 or 3. I like 2 better. I think it fits in with the overall scheme better, but if we are going to make the program administration component of the juvenile dependency a No. 1, which I thought should be a No. 2, I would lead towards a No. 2 in the 105 and acquiesce to a No. 1 the juvenile dependency.

2:18:19 Chair Ellis Janet, are you following all that higher math?

2:18:21 J. Stevens For some reason you guys are breaking up a little bit occasionally. I am comfortable with the way it was just a moment ago. I am not sure I understand any reason to change that very well.

2:18:40 Chair Ellis So you are staying with the No. 3 on POP 105.

2:18:43 J. Stevens Yes.

2:18:47 Chair Ellis Alright. I will tell you what procedure I am going to suggest. If someone want to move what I outlined, then others can make a motion to amend that motion.

2:19:01 Hon. Elizabeth Welch I move that what you said should be. Janet Stevens seconded the motion.

2:19:14 Chair Ellis That being said, is there a motion to amend the pending motion?

2:19:21 Hon. Elizabeth Welch I am sorry. I don't have anything new to say. This is the only area of this process on POP 104, where there is a question about the actual nature of the proposal. That is the size and specificity, or at least the specificity, of Clackamas and Multnomah. If it were silent that would be keeping faith with Krieger and company. But, again, I don't know if that is out of order, Mr. Chairman, in terms of what you are trying to do.

2:20:05 Chair Ellis It probably is a little bit but I am flexible.

2:20:10 Hon. Elizabeth Welch Nobody else has commented on it.

2:20:10 Chair Ellis I think there has been a comment.

2:20:17 Hon. Elizabeth Welch I mean in terms of doing something.

2:20:18 Chair Ellis I think part of my thinking has been I would much rather see that issue addressed by the broader coalition behind LC 2058, then to spend what goodwill we have as a standalone agency pushing for it. So that is part of my thinking why I reduced its prioritization.

2:20:36 Hon. Elizabeth Welch But you would leave it saying Multnomah and Clackamas and the dollar amounts?

2:20:41 N. Cozine May I weigh in on that?

2:20:42 Chair Ellis Yeah.

2:20:43 N. Cozine The policy option packages were developed - you may recall the starting, much earlier this year. We selected these and we presented all policy option packages to the Commission. This is now what is in our budget binder. They were selected for a variety of reasons.

2:20:59 Hon. Elizabeth Welch So it is too late.

2:20:59 N. Cozine So it is too late to change the policy option package, but it doesn't mean that I can't have direction from this Commission to advocate for something different based upon the new information that we have. The legislature often makes adjustment to requested policy option packages. I want to be clear because what I think what I hear coming from the Commission is some authorization to continue working on the LC 2058 discussions and I am not sure where that fits into the priority scheme.

2:21:38 Chair Ellis Well we haven't been asked to prioritize between the bill out here and our POPs.

2:21:48 N. Cozine I appreciate that. I just want to make sure that I am not stepping out of line of what the Commission expects of me as the conversations continue. I do think that as a consequence of that group, we will be developing numbers regarding other counties. If LC 2058 doesn't go forward, but there are other counties identified, we will continue to have conversations with this Commission about what we are developing and what my marching orders ought to be.

2:22:10 Chair Ellis It could be like last session the legislature, who happens to have the authority to spend money, may do something that we are not even involved.

2:22:23 P. Ramfjord Well one possible alternative, which I think might take account of some of the unease that some of us have with respect to this, would be to simply say that we would make No. 3 a 1 and funding for at least one additional county, whether it be Multnomah or Clackamas or some other county a No 2. Funding for 2 would be not as significant. That would be a way of continuing to support that and also giving direction to Nancy to say use some judgment and flexibility in the advocacy process depending on where LC 2058 is going. I think we are all board that the principles behind this are very important. Our positions are colored somewhat by the notion that we all feel that achieving these goals through LC 2058 would be better than doing it otherwise. On the other hand, I could also say that expanding the pilot program to include an additional county and having one more year of positive performance would make passage of a bill like LC 2058 more likely in the future. It is something that I think we all ultimately would support. That might be an approach that would be a compromise on that that might be acceptable.

2:23:47 J. Potter I still go back to the notion of sort of the global approach that the pay parity committee took to this. This has legislative intent that we can't quite get our hands around. It may be developed separately from ours. I have a hard time moving it up to a No. 2, if we are going to have 105 a No. 3, for example. It seems like we should be trying to fund existing programs and existing employees and existing contractors at least at a slightly higher rate than we would brand new programs. For me it still stays as a No. 3, knowing that the legislature has something over here on the side. It has the momentum that we are told, we will get behind and push but not to the detriment. It is a separate deal from our prioritization directive right now on this. We have a No. 3, for example, as the second half of the public defense contractor parity. I don't want this to be a No. 2, juvenile dependency improvement project, to be higher ranked than funding in the existing defense contractor parity package.

2:25:27 Chair Ellis Alright. Procedurally there is a motion, which was the prioritization that I recited a few minutes ago and I can redo that if somebody needs it. That motion is pending and has been seconded. The invitation is if anyone wants to make a motion to amend the pending motion.

2:25:54 Hon. Elizabeth Welch Yes sir. I move to amend the pending motion to put the first two lines of priority POP program in the 2 category rather than the 3. I would like to make one final.

2:26:10 Chair Ellis This is in POP 104? So you would make Clackamas a No. 2?

2:26:15 Hon. Elizabeth Welch I would make something. Maybe just the concept, at this point, since we are saying that is all we are really talking about is the concept knowing that may change. I want to make one more comment that I am not repeating myself on. This body that we are members of, first priority is for the quality of representation for people who are caught up in the justice system in one or another. That they we fully and well represented and that justice be done. This is the only item that we are talking about, the 104, that also has some other issues besides that. The compensation of lawyers is not the issue here. The issue here is a long overdue recognition, the extent to which, this particular population is being abused and mistreated by our society. I am not going to say anything further than that. The reason I am torn is because this is a matter of principle that goes beyond the issue of how much lawyers are getting paid.

2:27:33 Chair Ellis Okay. Procedurally there is now a motion to amend the pending motion. If I understand it correctly it would be to have at least one of the two counties, Clackamas or Multnomah, moved up. Okay. Is there a second to that motion to amend?

2:27:50 P. Ramfjord I will second that.

2:27:56 Chair Ellis Any further discussion? All those in favor of the motion to amend say aye? Janet, where did you come out on that?

2:28:08 J. Stevens I haven't raised my hand.

2:28:13 Chair Ellis Those opposed?

2:28:19 J. Stevens I think I am opposed because I still not clear about what the legislature is going to do on its own.

2:28:28 Chair Ellis Okay. So the motion to amend failed. Are there any other motions to amend?

2:28:36 J. Potter I believe that you had in your original motion, Mr. Chair, POP 105 being a No. 3 priority.

2:28:41 Chair Ellis I did.

2:28:42 J. Potter I would move to make that a No. 2 priority.

2:28:45 P. Ramfjord I would second that.

2:28:49 Chair Ellis Any discussion on that motion to amend? Those in favor of changing the priority on 105 from 3 to 2, say aye. That was two in this room. Those opposed say aye. So that motion to amend failed. Any other motions to amend? I would entertain a call for the question.

2:29:24 J. Potter Call for the question.

2:29:24 Chair Ellis Alright. All those in favor of the pending motion say aye. Any opposed. I think we have done it. **VOTE 5-0.**

(Break)

0:01 Chair Ellis The contract revision piece, Paul do you want to address that?

0:04 N. Cozine I wonder if we should do the comp plan changes quickly because it requires a vote.

Agenda Item No. 7 Approval of Proposed Compensation Plan changes

0:14 Chair Ellis Alright. Go for it.

0:09 N. Cozine Chair Ellis, members of the Commission, in your packet, Agenda Item No. 7, you will see Attachment No. 7, which is the proposed compensation plan changes. Also attached is the legislative fiscal office analysis of the proposal. As I noted earlier, we met with virtually no resistance at the subcommittee level or at the full Ways & Means Committee. This does allows us to offer all of our employees that is approximately 7% - no more than approximately 7% below other state agencies. The one thing that I would note is that we do end - this agency has always had a significant level of compression within the management pay scale. The increases provide through this plan change actually creates very, very, very, little difference between senior level attorneys and our chief deputy defenders. Our chief defender has always had compensation steps that are actually lower than the deputy chief defenders until you get to last step. So that is something that as we continue to work on our compensation plan I will want to address. Those compression issues will end up making it difficult for us to continue to make gains all the way down. In my view this is a very good step forward. I would ask that the Commission approve the compensation plan changes.

1:58 Chair Ellis Any comments or questions on the compensation plan?

2:08 J. Potter So we don't have a compensation plan that is yet in compliance with the statute, this 151.216, right? The Commission has not come up with an outline that meets our statutory obligation yet. Is that something that should be on an agenda at some point? To say what is the compensation plan that meets statutory obligation that we are supposed to create?

2:42 Chair Ellis What I would like is at the next meeting to get some legal education from our general counsel on that subject.

2:54 P. Levy We have a deputy. I can ask them.

2:55 Chair Ellis No. I want it straight from the top. If you could advise us next time. I don't want the minutes reflecting that the Commission decided to go ahead in an illegal manner.

3:15 P. Levy Well it is always good to act under cover of legal advice. It is often a mitigating circumstance when it comes to punishment.

3:24 Chair Ellis I take it, Nancy, by voting "yes" we are diminishing the degree of non-compliance?

3:31 N. Cozine That is correct. We are moving you closer to the mark. We actually do have as part of our building of the policy option package, we did create a compensation plan that would be at parity.

3:49 Chair Ellis Okay. I can't remember is there a motion to adopt the plan?
MOTION: Hon. Elizabeth Welch moved to adopt the compensation plan; Per Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 9 Executive Director Annual Review – Schedule

4:17 Chair Ellis Item No. 9, every year we should do an executive director review. I won't bog down with the 10 minutes we have left on this particular schedule, but can you replicate essentially what we did last year in terms of scheduling?

4:33 N. Cozine Yes. It will be on your scheduled for either January or March depending when we can fit it in.

4:46 Chair Ellis Perfect. Then the item No. 6, contract revisions, what do we need to do there.

Agenda Item No. 5 Hurrell-Harring v. New York Update

4:50 P. Levy Well Item 5 and 6 are mine, Mr. Chair. Those are not action items, but if I can speak to both of these quickly. In a way they really go together. As has been observed earlier, all of these agenda items, including your long discussion on priorities, tie together. At the October meeting I talked to you about the pending lawsuit in New York concerning the quality of public defense services in upstate New York. Just since I had talked to you earlier about the suit in Washington in federal court where in both cases the U.S. Department of Justice weighed in with a statement of interest. Since October the case settled and we gave you in your materials the settlement. We keep updated on these national developments both so you can see what the challenges are elsewhere. How those challenges are being met and then to look at what we are doing here to measure ourselves against what is happening elsewhere. It is interesting when you look at the settlement what the key ingredients of that settlement are. For instance they are presence of counsel at arraignment, which has been a high priority of the Commission and the agency. It is still not universally achieved, but we are making progress. The parent/child representation program has very quickly achieved it in the dependency area in Linn County. Really significantly for the discussion the agreement calls for the state and the counties and the various entities that are involved in providing public defense and

supporting public defense services in these counties in New York, to development a method to track and report the caseloads of the lawyers doing the work, including the private retained caseloads to count the number of cases that those lawyers have so that the total workload that they have can be known. Then there is an agreement to development a method to track it and determining what those caseloads should be and taking into account the type of case, the travel requirements, the existence or non-existence of support staff or supervisory obligations. This should start to either sound familiar or make uneasy or make you very interested. These are actually things that we need to be doing here. I can tell you that our caseloads - I can say this with complete confidence. They are nowhere in the state anything like what the lawyers had in the Mt. Vernon. They had caseloads of 700 or 800. I am not sure what they are in New York. I think they are significantly higher than what our lawyers have here. But cannot tell you with confidence what the actual caseloads are of our lawyers here, except for a few exceptions. The parties are tasked in New York with determining what those caseloads should be, but in no event are they to exceed the 1973 caseloads, which are still sort of being national norm and which everybody agrees are outdated. They still sort of serve as the national bench mark which is 150 felonies and 400 non-traffic misdemeanors and 200 juvenile court cases. In Washington that is now 80, as it is with our pilot project. Those are the major components. There is also, of course, a plan to hire lawyers and staff to meet the reduced caseload requirements and then to develop other plans for training, use of experts and investigators, communication with clients and appropriate supervision of lawyers. Then a big component that was missing in New York that we have here, which is a method for determining eligibility for public defense services.

10:12 Chair Ellis We are running out of time here.

10:15 P. Levy Perfect. That leaves me five minutes to ...

10:22 Chair Ellis Two minutes. We want to do executive session too.

Agenda Item No. 6 Proposed 2016-17 Contract Revisions

10:30 P. Levy Let me just say that you have before a redline version of proposed contract changes. I talked to you in October about our plans to do this. We have worked with staff here on these proposals. We have presented them to our public defense advisory committee. We got feedback and adjusted them in some parts according to the feedback that we got. The aim here is to do what I said we wanted to do in October, which is to really strengthen the quality assurance roles and responsibilities of our contractors. To set out in a more cohesive way what the standard of representation expectations and where we expect that representation to be occurring in the process. What we have done is largely replace the existing section 7 with a new section. Some of it is the same old language. Most of the rest of it are housekeeping changes. We are getting rid of bolding and underlining for the provisions that we really need. It is Section 7 that is the big change here. This will be before you as an action item along with the RFP when we ask you approve that. We wanted you to see it ahead of time and I will answer questions if you have any about it now, but I know our time is limited.

12:14 Chair Ellis Any questions on the contract?

12:14 P. Levy It would be helpful to know if you have had a chance to look at already, if you think we are going in the right or the wrong direction.

12:24 Chair Ellis I read it and came away with confidence that a lot of careful thought had gone into it.

12:32 P. Ramfjord I would agree with that. The one thing that did come mind after reading the New York opinion right before it, was whether we should consider any mechanisms for being able to solicit data on number of cases or things like that.

12:50 P. Levy It is in here. It is a new provision on reporting. An obligation of contractors to report number and type of cases including any private retained cases.

13:07 Chair Ellis Great. Thank you.

13:07 ? Is there a timeframe that we are looking at when the language will be clarified and when you want input.

13:13 P. Levy If anybody has input or came here wanting to provide input, provide it to me because this is not finalized.

Agenda Item No. 8 OPDS Monthly Report

13:24 Chair Ellis Okay. Nancy, the executive report.

13:39 N. Cozine I think most items can be deferred until the next meeting. We are in the middle of recruitments as you know. We have an analyst position and a chief defender position. The Governor's budget came out. I don't know if you want an update on that or if you just want to hold it.

13:54 Chair Ellis I think let's hold it.

14:01 N. Cozine There are other agenda items. I don't think anything is urgent.

14:00 Chair Ellis Alright. Anything else someone wants to raise before we go into executive session? Okay. The Public Defense Services Commission will now meet in executive session for the purpose of conducting deliberations with persons designated by the governing body to carry on labor negotiations and to consider information on records that are exempt by law from public inspection. The executive session is being held pursuant to ORS 192.660(2)(d), which permits the Commission to meet in executive session for the purposes just stated. Representations of the news media and designated staff, and any staff that are in the room are designated, shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room. Any of you who are not designated staff thank you for your attendance.

Agenda Item No. 10 Executive Session

0:27 J. Potter We have now left the executive session and are reconvening the regular session. Is there anymore business in regular session? Do we hear a motion to adjourn the regular session?

MOTION: Per Ramfjord moved to adjourn the meeting; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Attachment 2



Oregon

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Public Defense Services Commission

Marion County Service Delivery Review Preliminary Report January 2015 (Draft December 2014)

I. INTRODUCTION

Background. In 2004, the Public Defense Services Commission (PDSC) began meeting in public session in various regions of the state as part of its commitment to evaluating the effectiveness and efficiency of public defense services in all counties of the state. Since that time, the Commission has met in every region of the state. Reports from these evaluations, based upon dozens of interviews and public testimony from local justice system stakeholders, have focused on the structure of public defense services. Some counties rely upon one consortium for all its representation needs, while others might also include a non-profit public defender office, a private law firm, or hourly attorneys, in order to provide sufficient services for the county. The goal of these “service delivery reviews” has been to ensure that the best type and number of public defense organizations are serving each county.

Parallel with the Commission’s service delivery review process, the Office of Public Defense Services (OPDS) has facilitated nearly 50 peer reviews of individual public defense providers since 2004. For each review, teams of public defense leaders from around the state spend several days in a county conducting interviews with justice system stakeholders in the course of examining the quality of representation provided by the entity under review. Among the primary aims of these reviews are identifying successful local policies and procedures that might be recommended to other public defense providers, and making recommendations for improvement where needed. The overarching purpose of these reviews is to assist each public defense provider in pursuing excellence. Until recently, peer review teams produced confidential reports provided only to contract administrators and managers at OPDS.

In 2013, OPDS merged the two review processes while preserving the core purposes of each review. Under the current practice, a peer review team will examine some or all providers in a county, much as it would in the past. As a part of the peer review, providers and other system stakeholders are informed that the Commission will visit the county under review to follow-up on the findings and recommendations of the peer

review report. Prior to the Commission's public meeting in the county under review, OPDS staff update the peer review report based on follow-up interviews with public defense providers and county officials. After the Commission's hearing, at which it receives testimony from stakeholders, a draft final report is prepared for Commission deliberation and approval.

Marion County Peer Review. The Marion County peer review team looked at the two public defense contractors providing representation in criminal cases. The Marion County Association of Defenders, Ltd. (MCAD) is a consortium of approximately 40 attorneys that contracts to provide representation in all criminal case types. The Public Defender of Marion County (PDMC) also contracts for these case types. The peer review team did not examine the work of the sole juvenile court contractor, the Juvenile Advocacy Consortium in Marion County.

The OPDS executive director asked David Audet to chair the peer review team, and asked attorneys Rosalind Lee, Alex Bassos, Morgen Daniels, and Tony Bornstein to serve as team members. Paul Levy, OPDS General Counsel, served as staff for the team.¹ The team's site visit was conducted in May, 2013, with a final report submitted in September 2013.

Prior to the review team's site visit, OPDS solicited information about each contract group. MCAD members and PDMC employees received an online survey about entity operations and the effectiveness of contract administration. The administrators of MCAD and PDMC also answered detailed questionnaires about their organization's operations. Both administrators cooperated fully with the evaluation, providing invaluable assistance in preparing for the evaluation and scheduling interviews for the site visit. Typically, peer reviews also employ an online survey of justice system stakeholders who are familiar with the work of a contractor. However, OPDS had asked all Marion County judges and the District Attorney for comments about MCAD and PDMC as part of its annual statewide performance review of all public defense conducted earlier in 2013. The peer review team reviewed results from the statewide surveys from 2010 to 2013.

A three-day site visit to Marion County was completed on May 3, 2013. During the site visit, team members met with judges, court staff, prosecutors, Sheriff's staff, MCAD and PDMC board members, attorneys and staff of each organization, and others, interviewing more than 35 people. At the conclusion of interviews, the team met separately with each administrator to discuss preliminary findings and conclusions. A draft report was then provided to each administrator for comments and corrections, after which the team approved a final report.

¹ David Audet, who has served on a previous peer review team, is in private practice in Hillsboro, where he is a member of the Oregon Defense Attorney Consortium. Previously, he was an attorney with the Metropolitan Public Defender. He is a past-President of the Oregon Criminal Defense Lawyers Association (OCDLA). Morgen Daniels is an attorney in the Appellate Division of the Office of Public Defense Services. Previously, she was with the Intermountain Public Defender in Pendleton. Alex Bassos is Director of Training at the Metropolitan Public Defender. Rosalind Lee is in private practice in Eugene, where she is a member of the Lane County Defense Consortium. Tony Bornstein is an attorney with the Federal Public Defender in Portland. He is also an alumne of the Metropolitan Public Defender.

Service Delivery Review Procedure. On October 29th and 30th, 2014, OPDS Executive Director Nancy Cozine, PDSC member John Potter, and OPDS Analyst Shelley Winn, conducted interviews with key Marion County justice system officials and contractors to determine what developments had occurred in the county in response to the peer review reports.

The key findings and recommendations of the peer review reports, and the information gained from the follow-up interviews and meetings, are related in the balance of this report. This report will be amended further in response to information gained during the PDSC meeting in Marion County on January 22, 2015. The report will be finalized following a subsequent PDSC meeting after deliberations on any specific findings and recommendations arising from the January meeting.

II. MARION COUNTY

Demographics. Marion County has a population of about 319,985, making it the fourth most populous Oregon county after Multnomah (759,256), Washington (547,672) and Lane (354,542). The total estimated population for Oregon in 2012 was 3,899,353². The county includes 20 incorporated cities, of which the largest are Salem and Woodburn.³

According to U.S. Census data, the county is significantly more diverse than the statewide population, with 68.2% identifying as white persons not of Hispanic or Latino origin (78.1% statewide); 1.4% identifying as black persons (2.0% statewide); 2.5% identifying as American Indian or Alaska Native (1.8% statewide); 2.1% identifying as Asian persons (3.9% statewide); and 24.8% identifying as persons of Hispanic or Latino origin (12.0% statewide). Census data also show the county has a slightly lower than statewide percent per capita of high school graduates (82.5%; 88.9% statewide), and a lower percent of college graduates (20.7%; 28.6% statewide). Nearly a quarter of persons over the age of five in the county speak a language other than English at home (14.6% statewide).⁴

Geographically, Marion County extends east from the Willamette River to the Cascade Mountains, covering the “promised land” that was the destination for Oregon Trail pioneers. The county is the largest producer of agricultural income among Oregon’s counties. The State of Oregon is the largest single employer in the county, with 38 state agencies based in and around Salem. Other major employers include food processors, manufacturers, schools and colleges, and tourism.⁵

² U.S. Census Bureau, State & County QuickFacts, 2012 Estimates.

<http://quickfacts.census.gov/qfd/states/41/41047.html>

³ The Salem Metropolitan Statistical Area (MSA), which consists of Marion and Polk counties, is the second largest in the state after the Portland-Vancouver-Hillsboro MSA, which consists of seven counties adjacent to or near Portland, and ahead of the Eugene-Springfield MSA, which consists of Lane County.

<http://www.pdx.edu/prc/2010-census-profiles-oregon-cities-alphabetically>.

⁴ <http://quickfacts.census.gov/qfd/states/41/41007.html>

⁵ <http://bluebook.state.or.us/local/counties/counties24.htm>.

Oregon State Police profiles of index crimes for Marion County show a steady decline over the five year period ending in 2010, with the numbers dropping from 15,389 in 2006 to 10,868 in 2010. Total reported crime for the county also declined each year over the same period.⁶

Justice System. Several features define the Marion County criminal justice system. First, its operations take place at two courthouses. While other large counties, such as Multnomah and Washington, also divide criminal court operations between two locations, in those places the facilities are separated by a short walk. In Marion County, the main Courthouse in downtown Salem is about five miles away from the Court Annex, where first appearances occur in all cases and where numerous other hearings can occur in many cases. The county jail is located adjacent to the Annex.

Another defining feature of the Marion County court system is the absence of central docketing. As discussed further below, if cases are not resolved at the Annex, they are assigned to one of the ten or so available judges at the Courthouse, each of whom manages his or her own docket. While this presents some logistical challenges for busy public defense attorneys, most lawyers report that they like the system because they know what to expect from a judge as a case proceeds toward resolution and because trials are rarely rescheduled due to other trials competing for the same time slot.

Twelve judges have offices in the Marion County Courthouse, including Presiding Judge James Rhoades. The building underwent extensive renovation after a 2005 arson fire and is now a comfortable, modern building with impressive accommodations for the court and public. The District Attorney's offices are located in a building across the street from the Courthouse.

Case processing. All criminal cases originate at the Annex, which is a court facility located near the Marion County Jail at 4000 Aumsville Hwy SE, Salem, about five miles from the downtown Courthouse. The Annex is served by two judicial officers: a referee, and a Circuit Court judge.

First appearances in criminal cases at the Annex are at 8:30 am for out-of-custody defendants; in-custody defendants appear at 3:00 pm. Jail staff provide in-custody defendants with a sheet of paper listing all MCAD and PDMC attorneys, with the name of the lawyer appointed to a particular defendant highlighted.

Discovery and plea offers are given to defense counsel at the first appearance in nearly all misdemeanor cases. In many felony cases, police reports and plea offers are available at first appearance if the defendant waives a "preliminary hearing." If it later appears that the case will proceed to trial, a defendant may request a preliminary hearing (which, as in most counties, simply means the deputy district attorney will take

⁶ Oregon State Police, 2010 Annual Uniform Crime Report, http://www.oregon.gov/osp/CJIS/Pages/annual_reports.aspx. The "Crime Index" was developed to measure crime on a national scale by choosing eight offenses that are generally defined the same by each state, which are: Willful Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny (Theft), Motor Vehicle Theft and Arson. Total reported crime was 40,942 in 2006 and 33,270 in 2010, the last year for which data are available and a low for the five-year period.

the case to grand jury), although many cases proceed to trial on an information of the district attorney.

The second appearance in criminal cases, called a “Rule 7” hearing, after Uniform Trial Court Rule 7.010, is also at the Annex. This proceeding is the occasion for defendants to enter a plea of guilty, or to enter a plea of not guilty and request a court date at the downtown courthouse. Those who plead guilty at the Annex can elect to be sentenced immediately or at a later date, and Rule 7 hearings may be continued to allow the parties to continue negotiations. In-custody cases must go downtown if a settlement is not reached within 30 days of arrest, unless there is a waiver of the defendant’s 60-day speedy trial right.

Typically, the first Rule 7 date is set within one or two weeks of the first appearance for in-custody defendants. For them, the appearance is at 8:30 am. For out-of-custody defendants, Rule 7 hearings are at 1:30 pm, about 30 days after the first appearance. The court limits the number of cases on any given day, and attorneys have some control over when the Rule 7 hearing will be held, so there is some variance on when these are scheduled.

When cases are transferred to the downtown courthouse after a Rule 7 hearing, the defense attorney asks Annex court staff at the service counter to assign a judge to the case. Any intention to file a motion for change of judge (“an affidavit”) must be announced at the counter, with motions filed by 5 pm the following day. This allows little or no time for client consultation, especially for those who are in custody. Court staff also provides defense counsel with a case status date with the assigned downtown judge. Each judge conducts case status hearings at regular times during the week, although the time and day is different for each judge.⁷

Once a case goes downtown, it is managed by the assigned judge. In Marion County, pretrial motions are, in fact, scheduled and heard on a date prior to the scheduled trial, unlike some other counties where motions are heard on the day of trial.

Before a case resolves at the Annex or goes downtown, there may be other pretrial matters heard at the Annex, such as release hearings, and some trial-related motions, such as motions to suppress or motions in limine. (A short release pitch is typically made at first appearance, but more informed release hearings are heard separately.) Pretrial hearings at the Annex are heard at 10:30 am for in-custody defendants; 2:30 pm for out-of-custody.

Probation violation hearings are also held at the Annex unless a judge has made clear that he or she wants to preside over a particular defendant’s probation violations, which happens relatively rarely. After the first appearance on most PVs, there is an “Admit/Deny” date about 12 days after arrest. Contested hearings are set at the Annex

⁷ The trial judges each have slightly different practices once the case gets on their docket; most of the judges require one or more “status conferences” and a pretrial hearing. Some require only a pretrial. Most judges, but not all, have a standard Pretrial Order setting out their specific requirements and deadlines for such things as exchange of exhibits, etc. The content of the orders varies from judge to judge. Most of these matters are explained in a “Judicial Preferences” Manual maintained by the Court.

a couple days after the Admit/Deny date, in order to meet the statutory requirement to have a hearing within 14 days of arrest.

Marion County also operates a Drug Court, a Mental Health Court, and a Veterans Court. MCAD attorney Phil Swogger staffs the Drug and Mental Health Courts. Some cases are referred directly to these courts at the time of arraignment. If a case that begins on the regular case track is negotiated into one of these courts, Mr. Swogger is typically substituted as counsel when the client enters the specialty court. Judge Dennis Graves presides over the Drug Court, and Judge Mary James presides over the Mental Health Court.

Daniel Wren, an MCAD attorney and board member, staffs the Veterans Court, along with a PDMC attorney, a deputy DA, and representatives from the Veterans Administration, probation and parole, and treatment providers. Judge Vance Day presides over the Veterans Court.

Oregon Judicial Department (OJD) data shows that the Marion County felony trial rate is slightly higher than the statewide average, and the misdemeanor trial rate is slightly below the statewide average.⁸ The average age of criminal cases when closed is older than OJD targets but consistent the statewide average.⁹ The total number of criminal cases filed has declined slowly but steadily over the past five years.¹⁰

System Issues. Overall, defenders, prosecutors, the court, and other criminal justice system stakeholders in Marion County enjoy cordial and collegial working relationships. While the normal friction of adversaries is clearly present, the various parties express

⁸ Cases Tried data from the Oregon Judicial Department, at <http://courts.oregon.gov/OJD/OSCA/pages/statistics.aspx>.

	<u>Felony</u>	<u>Misdemeanor</u>
2011	5.2% (4.4% statewide)	2.3% (3.8%)
2010	4.9% (4.2%)	2.5% (3.7%)
2009	6.1% (5.7%)	2.6% (4.4%)

⁹ Age of Terminated Cases data from the Oregon Judicial Department, at <http://courts.oregon.gov/OJD/OSCA/pages/statistics.aspx>

	<u>Felonies Closed Within 120 Days (Goal is 90%)</u>
2011	71.7% (71.7% statewide; 70.5 Multnomah, 88.0 Lane, 88.1 Coos)
2010	72.6% (70.6% statewide; 67.1 Multnomah, 88.7 Lane, 88.9 Coos)
2009	71.3% (69.7% statewide; 61.9 Multnomah, 85.9 Lane, 89.3 Coos)
	<u>Misdemeanors Closed Within 90 Days (Goal is 90%)</u>
2011	79.1% (80.0% statewide; 86.6 Multnomah, 86.3 Lane, 87.4 Coos)
2010	76.1% (78.2% statewide; 82.8 Multnomah, 88.7 Lane, 86.3 Coos)
2009	77.7% (78.5% statewide; 79.5 Multnomah, 87.1 Lane, 88.8 Coos)

¹⁰ Cases Filed data from the Oregon Judicial Department, at <http://courts.oregon.gov/OJD/OSCA/pages/statistics.aspx>

	<u>Felonies</u>	<u>Misdemeanors</u>
2011	2,543	3,979
2010	2,705	4,044
2009	2,750	4,409
2008	2,791	4,364
2007	3,246	4,495

general satisfaction with the structure of the county's criminal justice system and work collaboratively on some policy and procedural matters. As noted above, difficulty with access to confidential meeting space for in-custody clients is a barrier to necessary communication between attorneys and clients. And the physical distance between the Annex and the downtown courthouse creates a strain on defenders who regularly find themselves needed in several places at or near the same time.

The peer review team explored in several interviews the findings of a 2011 Criminal Justice Commission report¹¹ on Measure 11 showing that 63 percent of Measure 11 defendants in Marion County are convicted of some Measure 11 charges. This is a higher percent than in other rural counties, which on average convict at a lower rate than larger populous counties. By way of comparison, though, the Measure 11 conviction rate in Multnomah County is 36 percent. The study also showed that while blacks who are indicted for Measure 11 offenses are about 15 percent less likely to be sentenced to prison than whites, Hispanics are about 40 percent more likely to be sentenced to prison than whites in Marion County. When the peer review team asked deputy DAs about the report, they were unaware of it but suggested the data simply reflects better case assessment and charging decisions by the Marion County DA's office than in those counties that convict in a smaller percentage of cases.

Statewide Survey Results for Marion County. As noted above, unlike most other peer reviews, OPDS did not send Marion County justice system stakeholders a survey specific to MCAD and PDMC because the annual statewide public defense performance survey had been sent to some of these officials just a couple months prior to the site visit. The peer review team did review the Marion County results for the statewide surveys for 2010 through 2013.

The statewide survey asks generally about public defense representation in Marion County. Some survey responses had suggestions aimed at both entities, but other comments did not identify whether it was true of one or both providers. Particular areas of concern for both entities included better management of lawyers, though the particular challenge areas for each group appear to be quite different. Some MCAD lawyers are criticized for not visiting clients frequently enough, or arriving to court unprepared. One respondent indicated that the "Public Defender in Marion County does a better job litigating pre-trial issues than the MCAD members," but that "MCAD membership (overall) does a much better job managing clients and getting clients to acknowledge the reality of their situation." Overall, most respondents to the statewide surveys reviewed by the peer review team rated public defense representation in Marion County as "good," with a few respondents over the years saying it was "excellent," some saying "fair," and none saying "poor."

III. OVERVIEW OF MARION COUNTY ASSOCIATION OF DEFENDERS (MCAD)

Background. The Marion County Association of Defenders, Ltd. is a consortium of attorneys formed in 1993 as a Section 501(c)(3) nonprofit corporation. Steve Gorham served as MCAD's first Executive Director until 2008, when Paul Lipscomb became the

¹¹The study attributed most of the disparity in application of Measure 11 to DA practices. The study is available at http://www.oregon.gov/CJC/docs/measure_11_analysis_final.pdf.

Executive Director after retiring as Presiding Judge in Marion County. Shortly after the finalization of the peer review report, Jon Weiner, a Salem attorney, became Interim Director of MCAD. He continues in that position as of the writing of this report.

In 2005, when MCAD was still the sole public defense provider in criminal cases in Marion County, the PDSC conducted a service delivery review of public defense in Marion County. Its 236-page report recognized that there were some very good attorneys on MCAD's active roster of between 50 and 55 attorneys, but found that the organization lacked structure and, in particular, did not have effective quality assurance and management mechanisms.¹² The report concluded that MCAD should undertake significant reforms if it wished to continue to contract with PDSC and that a new public defender office should be established with quality assurance and management structures that would "serve as models for other public defense providers across the state."¹³

In September 2006, MCAD reported to the Commission on progress toward reforms. Their 46-page report described a restructured board of directors that would include non-MCAD members appointed by outside entities; creation of a "communications plan" that required members, among other things, to check their voicemail; an "education plan" requiring mandatory membership in OCDLA and attendance at CLE programs; and the creation of a "work group" structure, which would be the core of MCAD's quality assurance program.¹⁴ As described in more detail later in this report, these structures remained in place at the time of the peer review.

In early 2009, Ingrid Swenson, then-executive director of OPDS, provided the Commission with a 12-page report summarizing the 2005 review and subsequent improvements at MCAD.¹⁵ By this time, Judge Lipscomb had become executive director of MCAD and the new public defender office was also in operation.

In 2010, the Commission again heard from MCAD and PDMC.¹⁶ The MCAD report described plans to become a "model of excellence" in public defense. The PDMC report described its basic office operations.

Operations. As noted above, MCAD is governed by a board of directors. There are nine board members, three of whom are non-MCAD members. The Marion County Circuit Court Presiding Judge, the local bar association and the dean of the Willamette Law School each select one of the non-MCAD board members. MCAD attorneys on the board have staggered three year terms. The non-MCAD members do not have limits to their length of service. The board meets monthly and considers major policy, personnel, and financial matters.

¹² *OPDS's Report to the Public Defense Services Commission on Service Delivery in Marion County* (February 2006),

<http://www.oregon.gov/OPDS/docs/Reports/MarionCountyReportwithappendices022106.pdf>.

¹³ *Id.*, at 34.

¹⁴ PDSC Agenda, September 14, 2006. <http://www.oregon.gov/OPDS/docs/Agendas/09-14-06.pdf>.

¹⁵ PDSC Agenda, January 22, 2009. <http://www.oregon.gov/OPDS/docs/Agendas/01-22-09.pdf>.

¹⁶ PDSC Agenda, June 17, 2010. <http://www.oregon.gov/OPDS/docs/Agendas/06-17-10.pdf>.

The MCAD Executive Director is selected by and serves at the pleasure of the board. When Paul Lipscomb began his service as Executive Director, he devoted a significant amount of time to MCAD business. He later moved from Salem to Sisters, Oregon. Although he always attended board meetings and remained available by phone and email to address MCAD matters as needed, the distance limited his day-to-day contacts in Marion County. As noted earlier, Jon Weiner became the Interim Executive Director in January 2014 and he continues to serve in this capacity.

The daily operations of MCAD are managed by the Office Manager, Lisa Richardson, who works full time, and Leslie Cross, who works on an intermittent part-time basis. They work with MCAD members and the court to track case assignments and manage payments to members. They also maintain a database, which members can access and update, to track attorney caseload and case-specific data, such as disposition by counts. A fine is imposed on members who are late in entering closing data about their cases.

Members of MCAD must apply for membership every two years, coinciding with the two-year period for MCAD's contract with PDSC. Each member signs an "MCAD Independent Contractor Attorney Agreement," which details the conditions of membership, including provisions regarding imposition of corrective actions and termination for unsatisfactory performance. Corrective measures and termination may be taken by the MCAD board of directors "or its designee."

Although the active roster of MCAD attorneys lists 41 members, that number includes some who accept very few or no appointments through the group, either because they have their own contracts with PDSC to provide representation in capital or PCR cases or because they have a busy practice of retained cases.

MCAD's written protocols include three main components to the group's quality assurance mechanisms. First, an education plan requires, among other things, membership in OCDLA and attendance at CLEs, including two MCAD-sponsored CLEs per year. Second, assigned mentors provide guidance to new MCAD lawyers regarding Marion County criminal procedure, as well as knowledge and skills for effective criminal defense. Third, a mandatory work group structure provides that each member will participate in a work group, headed by a group leader, which meets regularly to discuss legal and procedural developments affecting criminal defense in the county. In addition, according to the plan adopted by MCAD, the work groups "include oversight of attorney performance, routine performance reviews, and appropriate response to complaints."

According to the work-group plan description, complaints are handled within a three-level structure. At the first level, the work group will investigate complaints and develop an "action plan" to address specific concerns about a member's performance. Matters that cannot be resolved at the first level are referred to a "Committee of Working Group Leaders," which may place a member on probation for no longer than three months. At the end of that period, a "probation monitor" will report on the matter, recommending an end to probation if the report is good or referral to the next level. At the third level, the MCAD Executive Director receives reports about the matter and "will impose whatever resolution s/he deems appropriate," subject to a member's right to seek review by the MCAD board of directors.

MCAD members are appointed to cases through an “attorney of the day” structure that has been in place since well before the 2005 PDSC review of public defense in Marion County. At a monthly MCAD membership meeting, attorneys sign up for a rotation on a court calendar for misdemeanor and felony case assignments. On his or her designated day, the attorney is present in court for arraignments and personally meets new clients there and can make arrangements then for further meetings with the client. PDMC receives cases on the first work day of the week, and MCAD is present the other days of the week to receive case appointments. According to MCAD, its attorneys meet with all clients within the time periods required by its contract with PDSC. At the time of the peer review, lawyers were able to switch days and trade cases in ways that increased some attorney caseloads to unacceptably high levels. Since the peer review, MCAD reports that it has implemented case distribution oversight to even-out caseloads and prevent attorneys from carrying too many cases.

IV. SUMMARIZED FINDINGS OF THE PEER REVIEW & SYSTEM DELIVERY REVIEW UPDATES

Responses to Questionnaires Circulated in 2013. MCAD members were asked to complete an online survey about the operations of the consortium. Thirty-two members responded to that survey. In response to the member survey circulated at the time of the peer review, most MCAD attorneys expressed general satisfaction with how the consortium operated. However, in response to a question about how well MCAD addresses concerns about underperformance by lawyers, while most (16) said it was “good,” and five said “excellent,” five also described it as only “fair,” and five said “poor,” and comments suggested that MCAD needed to address the consistent under-performance of certain attorneys.

Information Obtained During Peer & Service Delivery Review Interviews. During the course of its three day site visit, the peer review team interviewed about 35 individuals involved with the Marion County criminal justice system, in addition to meeting twice with Paul Lipscomb. The Service Delivery Review team, which included OPDS Executive Director, Nancy Cozine, PDSC member, John Potter, and OPDS Analyst, Shelley Winn, interviewed stakeholders, as well as MCAD and PDMC lawyers and leaders, during October 29-30, 2014.

Most interviewees described overall satisfaction with MCAD attorneys and, more generally, with the functioning of the criminal justice system in Marion County. Attorneys from MCAD are seen as good partners in a number of collaborative efforts, such as standing committees on court operations and security, special projects such as an effort to streamline jury duty procedures, and in connection with a number of special courts, such as a new veteran’s court that requires good working relationships among prosecutors, defenders, the court, community corrections, and treatment providers. Marion County is also enthusiastically embracing evidence-based practices in its parole and probation operations, which are managed by the Sheriff’s Department. Likewise, the county has been active in grant-funded prison reentry programs.

Many interviewees did express some concern regarding the county’s Courthouse Annex and jail operations. The options for meaningful, confidential attorney visits with clients at

the jail are very limited. On the other hand, Annex personnel complain about attorneys showing up late and unprepared for proceedings. Moreover, the jail is at capacity, requiring routine releases for purposes of population control.¹⁷

Interviewees generally described the work of MCAD attorneys as very good, and many said that the quality of the group overall improved significantly when Paul Lipscomb became executive director. Stakeholders noted additional improvements when Jon Weiner became the Executive Director in January 2014. However, reports continued to suggest that a small number of low performers remain in the group. The concerns with these attorneys generally involved lack of adequate case preparation and poor client contact.

According to interviews, MCAD attorneys like being a part of the consortium and especially appreciate the support they receive from the MCAD office staff. Several attorneys described a high degree of satisfaction with the group's mentor program for lawyers new to MCAD. It appears that MCAD did some work to improve its training and mentoring program between the time of the peer review and the service delivery review visits.

V. RECOMMENDATIONS OF THE PEER REVIEW TEAM FOR MCAD & MCAD RESPONSE

Consortium Structure and Administration

The peer review team found that the consortium model generally, and MCAD's structure in particular, allows public defense clients to benefit from the knowledge and skill of experienced criminal defense attorneys who wish to engage in the private practice of law but are willing to accept public defense cases, and that the MCAD consortium includes some excellent attorneys. These attorneys, who generally maintain a substantial caseload of privately retained clients, enjoy the collegiality of the MCAD group and appreciate the efficiency of MCAD staff in handling the business end of public defense work.

The peer review team also found that MCAD has structures designed to assure quality representation. Its education plan is a model that can be recommended to other consortia, including MCAD's commitment to conduct its own CLE programs. The mentorship program is appreciated by members new to the group. The group's email listserv is an important and effective means of collaboration among members. And the work group structure is a good model for consortium lawyers to keep abreast of legal and procedural developments and to address particular issues and challenges that group attorneys may be facing. MCAD also has an excellent database that is capable of capturing and measuring important information about caseloads, case outcome, and attorney performance. MCAD's addition of caseload oversight and management is a very positive improvement.

¹⁷ Members of the peer review team observed an in-custody arraignment of a person charged with theft in the third degree, who was ordered held in custody. Asked about this afterward, the team was told the person would undoubtedly soon be released due to overcrowding.

Quality of Representation

MCAD took steps to improve overall representation and to address concerns regarding particular lawyers following the peer review report. Still, effective quality assurance remains a challenge for MCAD. Interviews indicate that there are a few lawyers in the group who continue to appear for court without being well prepared, effective advocates for their clients.

Peer Review Recommendations & MCAD Response

1. **Quality Assurance.** The peer review team recommended that MCAD review its procedures for ensuring quality representation by all of its members, and that the board review the OPDS *Best Practices for Oregon Public Defense Providers*¹⁸ and determine how best to implement procedures for training attorneys, monitoring and evaluating attorney performance and, where necessary, remedying performance deficiencies. The peer review team further encouraged MCAD to explore the prevalence of resolving cases at the Annex without pretrial litigation, including whether the practice is confined to particular attorneys, and determine whether each attorney is fulfilling the obligation to advocate for a client's cause with zeal, skill and loyalty. MCAD has clearly taken steps to address concerns regarding the quality of services provided, but has not yet found a way to address all concerns.
2. **Enhanced Database Capability.** The peer review team found that MCAD is well served by a strong office staff and a sophisticated database that enables the group to easily account for the work it performs, make required reports to and receive payment from OPDS, and distribute payment to its members. The peer review team recommended that the database be used to track additional information such as open public defense cases for each member, and case closing information such as the resolution by alleged counts and the manner in which the case was resolved. Again, MCAD has been responsive to the peer review team recommendations and has begun tracking attorney caseloads and other information.
3. **System Issues.** With the physical distance between the Annex and downtown courthouse, the peer review team found that public defense lawyers could spend much of each day literally running and driving around, with little time for client contact, case preparation, or litigation. The peer review team recommended that MCAD leaders explore the desirability of changing the current scheduling practice and work with PDMC and the court if a different approach appears to be preferable. This appears to be an area where MCAD could continue to focus.
4. **Measure 11 advocacy.** The peer review team recommended that MCAD review the findings of the 2011 Criminal Justice Commission report on

¹⁸ Available on the OPDS website at <http://www.oregon.gov/OPDS/CBS/pages/bestpractices.aspx>.

Measure 11, and determine if a different approach to these cases, either on a case-by-case basis or as a systemic challenge, is warranted by the data that show disproportionate conviction rates in Marion County for persons charged with Measure 11 offenses. This appears to be another area where MCAD could continue to implement improvements by ensuring that qualified lawyers are readily available for more serious case types.

VI. OVERVIEW OF PUBLIC DEFENDER OF MARION COUNTY (PDMC)

Background. As noted above, the October 21, 2005, Service Delivery Plan adopted by the Commission for Marion County called for the creation of a new public defender office with quality assurance and management structures that would “serve as models for other public defense providers across the state.”¹⁹ Thereafter, a steering committee that included members of the local community worked with OPDS to plan for the new office and recruit a board of directors, which held its first meeting in September 2006. The board met regularly to establish the new office and recruit an executive director. Tom Sermak, who had been a senior attorney with the Public Defender Services of Lane County, was selected as the Executive Director. He began working with the Board on April 2, 2007, to locate office space and furnishings and recruit an initial staff for the office, which opened in July 2007.

In Ingrid Swenson’s 2009 report to the Commission on Marion County, she described the efforts made to establish the PDMC. She reported that in 2008, the first full year of PDMC operations, the office received 1,877 appointments (MCAD received 6,319 appointments). She also wrote that “[w]hile the substantive legal work of the office is said to be good, there have been on-going issues related to the deployment of the office’s attorneys, timely appearances at court hearings, office management, and adequate training of new attorneys.”²⁰ Later, in an update before the PDSC in 2010, it appeared that many of the concerns identified earlier had been resolved. The office had expanded to eight lawyers, two investigators, a legal assistant and three other fulltime support staff, and was handling approximately 25% of the adult criminal caseload in the county.²¹

Operations. PDMC is a nonprofit corporation governed by a seven-member board of directors that meets monthly. One board member each is appointed by the Chief Justice of the Oregon Supreme Court, the President of the Oregon Bar Association, and the Chair of the Marion County Board of Commissioners. The board selects the remaining members. Among its duties, the Board approves an annual audit and report from the Executive Director, approves revisions to an employee manual, and conducts an annual review of the Executive Director. According to the employee manual, the board may also receive employee grievances, a process that had been followed in at least one instance at the time of the peer review.

¹⁹ OPDS’s *Report to the Public Defense Services Commission on Service Delivery in Marion County* (February 2006), at 34.

<http://www.oregon.gov/OPDS/docs/Reports/MarionCountyReportwithappendices022106.pdf>.

²⁰ PDSC Agenda, January 22, 2009. <http://www.oregon.gov/OPDS/docs/Agendas/01-22-09.pdf>.

²¹ PDSC Agenda, June 17, 2010. <http://www.oregon.gov/OPDS/docs/Agendas/06-17-10.pdf>.

At the time of the peer review, PDMC had budgeted for eight attorney positions in addition to the Executive Director, who handles his own caseload. Their work was supported by two investigators, two legal assistants, and several other support staff. As discussed more fully below, the Executive Director articulated a strong desire to add several new attorney positions, another investigator and another support person to the office staffing.

The PDMC negotiated for an increase in its 2014 contract in order to add attorneys and staff, and while the number of lawyers had increased to 10 by the time of the service delivery review, PDMC had not yet implemented any form of mid-level management as was recommended by the peer review team. Additionally, only one attorney who was employed at the time of the peer review remained by the time of the service delivery review. Seven of the lawyers interviewed at the time of the Service Delivery Review were relatively new to the office.

PDMC is the primary public defense contractor for new case appointments on the first workday of every week. An attorney from PDMC, usually the Executive Director, is present at criminal arraignments, at which time new clients and the court are given the name of the PDMC lawyer who will handle the matter. Lawyers are assigned on the basis of their qualifications to handle particular case types, with an effort to maintain balanced workloads. PDMC reviews the docket prior to arraignment to screen for obvious conflicts of interest. After arraignment, when discovery is received, the assigned attorney determines whether any conflicts of interest are present pursuant to a written conflict checking procedure.

Although a senior PDMC attorney holds the position of “assistant to the executive director,” Mr. Sermak has primary responsibility for supervising and training all staff attorneys. Training consists largely of an orientation to the office and the Marion County court system, the assignment of a mentor, and some case review during the early stages of employment. Thereafter, PDMC relies upon the resources of the Oregon Criminal Defense Lawyers Association (OCDLA) for most of its training and continuing legal education needs. The physical configuration of the PDMC office promotes frequent informal consultations among the firm’s attorneys, who also meet as a group once a week to discuss their cases and system issues. At the time of the peer review, and again during the service delivery review, Mr. Sermak was described as being spread too thin to offer sufficient supervision to newer lawyers in the office. Nonetheless, lawyers report that they enjoy their work, appreciate the excellent support staff, and feel supported in the office.

As part of its case closing protocol, PDMC seeks to provide each client with a survey asking about satisfaction with the firm’s services. Responses, which are rare, are reviewed by the case attorney and, in the event of critical responses, by the Executive Director. The responses are maintained in the client’s file. There is no tabulation of responses or other data maintained concerning the responses outside of the client’s file.

According to the Executive Director, “[a]ll staff is to be evaluated annually.” However, responses on the survey of all PDMC staff, discussed further below, indicate that regular performance reviews may not be occurring. Annual performance appraisals

were still not happening at the time of the service delivery review visit, but there had also been a significant turnover in lawyer staff.

PDMC is an active participant in justice system policy discussions. All PDMC attorneys are members of the Marion County Bar Association. The Executive Director is a member of the Local Public Safety Coordinating Council. He also meets regularly with the presiding judge to discuss issues concerning his office. He also represents the office at monthly meetings with judges, court staff, jail administration, community corrections and others regarding operations at the Courthouse Annex. All stakeholders described Mr. Sermak as an excellent resource who has fostered positive working relationships with all Marion County stakeholders.

VII. SUMMARIZED FINDINGS OF THE PEER REVIEW & SYSTEM DELIVERY REVIEW UPDATES

Responses to Questionnaires Circulated in 2013. In response to the survey of PDMC employees in 2013, there was strong endorsement for the clarity of the PDMC mission to provide high quality legal services²² and that PDMC is accomplishing its mission. Nearly all respondents to the survey said they were proud to work at PDMC, and that they were supported in their work by the office. Most respondents disagreed with the statement that “my compensation is about equivalent to others who do the same kind of work,” and, for reasons discussed further below, similarly disagreed with the statement “people stay in the same job assignment too long.”

Responses were somewhat mixed regarding PDMC supervisory functions, which was reflected as well in staff interviews conducted by the peer review team. While nearly all respondents strongly agreed that “my supervisor treats me with respect,” there was some disagreement that management priorities are consistent with the PDMC mission and that management decisions take into account the needs of PDMC staff. There was also somewhat weak support for the statement that the “current organizational structure is appropriate for PDMC’s mission and philosophy,” and mixed responses to whether supervision is helpful in accomplishing daily tasks. Nearly half of the respondents also disagreed with the statement that “I receive regular formal performance reviews by my supervisor.”

Information obtained during interviews. During the course of its three day site visit, the peer review team interviewed about 35 persons involved with the Marion County criminal justice system, in addition to meeting twice with Tom Sermak. As noted earlier, the Service Delivery Review team, which included OPDS Executive Director, Nancy Cozine, PDSC member, John Potter, and OPDS Analyst, Shelley Winn, interviewed stakeholders, as well as MCAD and PDMC lawyers and leaders, from October 29-30, 2015.

²² The firm’s mission statement reads: “The overall mission of the Public Defender of Marion County is to provide high quality, cost effective criminal defense to persons who qualify for our services while maintaining the confidence of the clients that they are receiving zealous and proficient legal representation.”
http://www.pdmarion.org/Public_Defender_of_Marion_County/PDMC_Home.html.

Most interviewees described overall satisfaction with both PDMC attorneys and, more generally, with the functioning of the criminal justice system in Marion County. Like MCAD, attorneys from PDMC are seen as good partners in a number of collaborative efforts, such as standing committees on court operations and security, special projects such as an effort to streamline jury duty procedures, and in connection with a number of special courts, such as the veteran's court that requires good working relationships among prosecutors, defenders, the court, community corrections and treatment providers.

Most interviewees recognized PDMC as an important player in the Marion County's criminal justice system. A number of people noted the difficulties that PDMC had when it began operating in a fairly closed and insular legal community. In this connection, one person described Salem as a "big farm town." Several judges acknowledged that Mr. Sermak had a "steep learning curve" when PDMC began operations and that there were a number of problems at first. Those issues have been largely resolved, although the fairly regular turnover at PDMC means a regular influx of attorneys new to the system who face challenges of mastering difficult work in a complex setting. Generally, though, judges and other court staff consider Mr. Sermak to be a very good manager. He is said to "check in" regularly about attorney performance, responds to specific performance concerns, and participates constructively in system policy discussions. One person said he does a "fantastic job" as a system partner.

Overall, PDMC attorneys are seen as zealous advocates for their clients. Some interviewees expressed concern that some attorneys were zealous to a degree that it was a disadvantage to the clients. Others noted appreciation for PDMC motion and trial practice. At the time of the service delivery review, PDMC lawyers were described as having consistently good client contact and arriving well-prepared for court hearings.

Several interviewees mentioned the turnover at PDMC, which means that judges, DAs and others regularly encounter inexperienced attorneys who are dependent upon training and supervision from Mr. Sermak. As mentioned earlier, there are concerns that Mr. Sermak spends too much of his time in court and on casework to devote sufficient time to supervision.

Interviews with PDMC attorneys and support staff reflect a group that is strongly committed to zealous client advocacy but frustrated with the barriers to effective advocacy. The relatively low compensation for attorneys is seen as the primary reason for high turnover at the office. At the time of the site visit, two senior attorneys had just resigned and another one, who said he loved his job there but needed to find better paying work, resigned shortly after the visit. As noted earlier, by the time of the service delivery review, only one attorney who was present during the peer review remained on staff. The peer review team heard complaints regarding leadership, but those concerns were not articulated during the service delivery review. A major friction point for many was office technology, which is based on Apple products. While Mr. Sermak has not made any immediate changes to the office system, he is exploring other options.

Peer Review Recommendations & PDMC Response

- 1. Quality of Representation.** The peer review team commended PDMC for having established itself in the Marion County criminal justice system as a strong and respected presence known for its zealous and effective advocacy on behalf of public defense clients. PDMC was also commended for having a strong and engaged board of directors that is clearly committed to responsible stewardship of PDMC and supportive of its role in the local legal community. Finally, PDMC, largely through its Executive Director, was noted as a valued partner in county criminal justice planning and responsive to concerns and needs of the court and other system stakeholders. Mr. Sermak is widely applauded for successfully establishing PDMC, and providing strong representation for public defense clients.
- 2. Office Management.** The peer review team found that PDMC's structure must evolve in order to sustain its good work, and recommended that it add several attorney and staff positions to allow establishment middle-level management. This recommendation was identified as necessary in order to relieve the Executive Director of sole responsibility for the training and supervision of PDMC attorneys, and promote closer and more meaningful supervisor involvement with attorney development. The team also recommended that Mr. Sermak and the PDMC board assess whether he can better meet the demands of successfully leading and inspiring the office employees. The team specifically recommended that PDMC provide more training for its attorneys, noting that the high turnover rate makes on-going training essential. It recommended that the Executive Director explore ways to offer a new lawyer trial skills curriculum and hour-long presentations at the PDMC office, on topics affecting criminal defense generally and in Marion County. Finally, the peer review team recommended that, to the extent that the firm is able to increase its salary scale, both the office and its clients will benefit significantly. PDMC has done a few trainings in the office, but nothing consistent, has not implemented any mid-level management structure despite addition of new lawyers at the start of 2014, and has not created a new lawyer trial skills curriculum.
- 3. System Issues.** With the physical distance between the Annex and downtown courthouse, the peer review team found that public defense lawyers could spend much of each day literally running and driving around, with little time for client contact, case preparation, or litigation. The peer review team recommended that PDMC leaders explore the desirability of changing the current scheduling practice and work with MCAD and the court if a different approach appears to be preferable. This appears to be an area where PDMC could continue to focus.
- 4. Measure 11 advocacy.** The peer review team recommended that PDMC review the findings of the 2011 Criminal Justice Commission report on Measure 11, and determine if a different approach to these cases, either on a case-by-case basis or as a systemic challenge, is warranted by the data that show disproportionate conviction rates in Marion County for persons charged with Measure 11 offenses. PDMC has, since the peer review, designated two experienced attorneys in the office who handle all of the Measure 11 cases.

VIII. Service Delivery Review – Recommended Areas of PDSC Inquiry

Both MCAD and PDMC serve as dependable public defense resources in Marion County. Both should be applauded for taking steps to act on recommendations made by the peer review team. At the same time, both have challenges that will require the continued efforts of leaders and lawyers in both organizations.

1. Quality Assurance.

The Commission will likely want to ask MCAD about its plans for addressing concerns regarding individual lawyers. While many MCAD lawyers are seen as having good client management skills, some are reported as failing to meet with clients in a regular and timely fashion, failing to adequately prepare for court, and settling cases without appropriate pretrial litigation. Addressing these matters should be considered a very high priority. The Commission may also wish to ask MCAD what it has done since the service delivery review interviews to be sure qualified lawyers are readily available for murder and other serious case types.

With regard to PDMC, the Commission might want to inquire about any additions to training available to new lawyers, and any efforts it is making to attract and retain lawyers.

2. Management.

MCAD was applauded for having a robust database capable of ascertaining not only caseload information, but also details regarding case outcomes. The Commission might want to inquire about any enhancements planned for its database.

The Commission will likely want to ask PDMC about any plans it has to implement a mid-level management structure, whether new attorneys are getting regular reviews, and what plans the office has for acquiring new case management systems.

3. Systems Issues.

As noted, both MCAD and PDMC are seen as dependable, valuable resources. The Commission might wish to ask both about their willingness to work together to address system issues, and about any efforts they have made to achieve more regular communication with each other and with other system stakeholders. Additionally, the Commission might want to ask whether there are system issues that could be addressed more effectively through a collaborative approach.

4. Structure.

Marion County's current public defense structure, with a consortium and a public defender office, was adopted in 2007. It has served the community well, and

seems to have improved the overall level of representation in the county. The Commission will likely want to know that both providers remain committed to the concept of excellence and that both have concrete plans to improve representation through regular training, enhanced monitoring of attorney performance, regular reviews, and immediate responses to concerns regarding representation.

IX. TESTIMONY AT JANUARY 22, 2015, PDSC MEETING

Attachment 3

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
GENERAL TERMS**

JANUARY 1, 2016 TO DECEMBER 31, 2017

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GENERAL TERMS

1 DEFINITIONS AND CASE CREDIT RULES

1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

1.4 Definitions

1.4.1 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

1.4.2 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

1.4.3 Public Defender

A "public defender" is a nonprofit organization employing attorneys and other staff established solely to provide contract services to persons qualifying for court-appointed legal representation.

1.4.4 Law Firm

A "law firm" is a sole practitioner, partnership, or professional corporation which provides contract services to persons qualifying for court-appointed legal representation and which may also engage in non-court-appointed legal representation.

1.4.5 Consortium

A "consortium" is a group of attorneys or law firms that is formed for the sole purpose of providing contract services to persons qualifying for court-appointed legal representation. In addition to participating jointly to provide contract services, Consortium members retain their separate identities and may engage in non-court-appointed legal representation.

1.4.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.7 Appointment

An "appointment" is the assignment of a contractor to represent or advise an eligible person on any matter under the terms of this contract.

1.4.8 Case

A "case" is any action in this state in which Contractor has been appointed to represent a client under the terms of this contract in a matter to which there is a right to appointed counsel at state expense. Specific definitions of case types are listed in Section 10.

1.4.9 Credit

A "credit" is an event or circumstance which counts toward Contractor's satisfaction of this contract.

1.4.10 Value

The "value" of a credit is the negotiated rate by type of credit as set forth in the Caseload and Case Value Matrix.

1.4.11 Complex Case

A "complex case" is an appointment on a case type valued at \$~~2,600~~00 or more. Withdrawal or substitution for any reason from a complex case changes the credit type to "Other" (OTHR).

1.5 Rules for Counting Appointments

An appointment is credited, according to the following rules/provisions:

1.5.1 Criminal Complex Case Credit

An appointment to a client indicted on a complex case is one credit. No extra credit may be taken for multiple incident dates or charges.

1.5.2 Criminal Appointment Case Credit (Non-Complex Case Credit)

(a) An appointment on criminal charges alleged to have occurred on specific calendar days is one credit for each count charged in the charging instrument alleged to have occurred on different specific calendar days, regardless of the number of victims involved, up to a maximum of

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five credits per case.

(b) An appointment on criminal charges alleged to have occurred on indeterminate dates (e.g., "on or between January 1, 1996, and July 1, 1996") is a credit for each count charged in the charging instrument which can be determined to allege different calendar days, up to a maximum of five credits per case.

(c) Separate counts in a charging instrument that allege alternative theories of criminal liability on the same date are only one credit.

(d) One additional OTHR credit may be claimed when Contractor is appointed on a criminal matter that includes one or more counts of criminal forfeiture.

(e) No additional credit may be taken due to the following circumstances:

- (i) more than one charging instrument (including Uniform Traffic Citation) is filed; or
- (ii) more than one case number is assigned.

1.5.3 Case Type Credit

Unless Section 1.4.11 applies, the case type credited is for the most serious offense alleged to have occurred on a specific calendar day, even if the charge is later changed to a different case type. For cases in which the most serious charge is a Class C felony, the most serious offense is assault IV domestic violence, DUII felony, or Class C felony, in this order.

1.5.4 Credit for Recommended Representation

Except for complex cases, if a contract case proceeding has been interrupted for the following reasons and time intervals, Contractor receives a new credit if:

(a) 365 Days After Aid and Assist Delay
~~more~~ More than 365 days have passed since the client was originally found unable to aid and assist and the client is brought before the court for a rehearing on the issue or trial; or

(b) 180 Days After Bench Warrant
~~more~~ More than 180 days have passed since a bench warrant was issued; or

(c) 18 Months with Repeated Bench Warrants
~~more~~ More than 18 months have passed since Contractor was originally appointed and the case is recommenced and no additional credit has been received because of Section 1.5.4(b); or

(d) 180 Days After ~~Pre-Indictment~~ Dismissal
~~on a felony case,~~ More than 180 days have passed since a dismissal of a case ~~pre-indictment~~; or

(e) After Appeal or Post-Conviction Relief
~~a~~ A new trial or sentencing follows an appeal or post-conviction relief; or

(f) After Interlocutory Appeal
~~a~~ A case resumes at the trial level, following an interlocutory appeal by the state; or

(g) After Mistrial or Hung Jury
~~a~~ A new trial is scheduled after a mistrial or hung jury; ~~or~~

~~(h) After Prosecutorial Misconduct~~
~~a case is refiled after dismissal without prejudice and 180 days have passed since the dismissal.~~

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1.5.5 Probation Violation Credit

An appointment on a probation violation proceeding arising out of a criminal or civil contempt sentencing(s) is one probation violation credit for each court case number to which Contractor is appointed. Provided, however, that if Contractor is appointed to more than one case number, additional credit is received ONLY-only for those case numbers in which the convictions involve different incident dates. Contractor receives no additional credit for appointments on new alleged probation violations if the original probation violation matter on which Contractor was appointed has not been adjudicated.

1.5.6 Show Cause Hearing for Diversion or Conditional Discharge Agreement

An appointment for a show cause hearing to address non-compliance issues related to a diversion agreement, conditional discharge agreement or any other type of deferred or delayed adjudication agreement is an SCDV credit if:

- (a) Contractor did not receive a credit for the underlying charge; or
- (b) more than 180 days have passed since Contractor represented the eligible person at a previous court appearance.

1.5.7 Juvenile Case Credit

1.5.7.1 General Provisions

A petition which is amended from or to a delinquency or dependency petition or the dismissal of one type of petition and refiling of another type of petition is not a new credit.

1.5.7.2 Prepetition Matters

~~An appointment to represent a child who is in custody and being interrogated or is otherwise detained is a credit, even if no petition is later filed on the allegations involved.—The prepetition appointment to represent a youth in a delinquency matter or a child in a dependency matter continues through disposition on any petition that is later filed on ~~these~~ the prepetition allegations and no additional case credit is received.~~

1.5.7.3 Delinquency Petitions

An appointment on a delinquency case is credited under the ~~rules~~ provisions set out in Sections 1.5.2 - 1.5.4.

1.5.7.4 Dependency and Termination Petitions

An appointment to represent children, parents, or legal guardians on a dependency petition is ~~generally~~ one credit regardless of the number of petitions filed (see Section 1.5.7.4.1 for exceptions). Case credit in a dependency proceeding covers representation from appointment to the court's entry of the dispositional order required under ORS 419B.325, or as otherwise authorized by PDSC. An appointment to represent

children, parents, or legal guardians on a termination of parental rights petition is always one credit.

1.5.7.4.1 Representation of Multiple Children

An appointment to represent two or more related children in a dependency proceeding is a maximum of two credits if:

(a) the petition names as parents different mothers of different children; or

(b) the petition names as parents different fathers of different children, not including any putative father unless the putative father also appears in the case; or

(c) the children are living in more than one location.

1.5.7.4.2 Maximum Credit for Representing Parents

The maximum number of credits that may be counted when a Contractor attorney represents more than one parent or legal guardian in a dependency proceeding is one.

1.5.7.5 Postdispositional Juvenile Hearings

A postdispositional juvenile hearing is limited to a hearing before the court or Citizen Review Board (CRB) that is held after the juvenile court enters the dispositional order required under ORS 419B.325 or ORS 419C.440, or as otherwise authorized by PDSC. Postdispositional juvenile matters are a new credit for each hearing attended by Contractor. A single postdispositional hearing, even if it involves matters relating to more than one original juvenile petition, counts as only one postdispositional credit. Postdispositional hearings do not include probation violation hearings.

1.5.7.6 Juvenile Probation Violation Hearings

Juvenile probation violation hearings are governed by Section 1.5.5.

1.5.7.7 Waiver Proceedings

Contractor shall receive one additional "Juvenile Other" (JUDO) credit beyond that assigned for the original appointment for each waiver proceeding under ORS 419C.349.

1.5.8 Mental Health Case Credit

An appointment to represent an allegedly mentally ill, pursuant to ORS 426.070, or a person alleged to have an intellectual disability, pursuant to ORS 427.235, mentally retarded person is a-one credit. The appointment ends at the original disposition of that matter.

1.5.9 Contempt Case Credit

An appointment to represent a client on a contempt case is one credit. Contractor receives no additional credit for appointments on new allegations of contempt if the original contempt allegation on which Contractor was appointed has not been adjudicated.

1.5.10 Post-Conviction Relief Case Credit

An appointment to represent a client on petitions filed at

the same time or petitions with sequential numbers counts as one credit for each separate prosecution that is challenged by the petitions, with a maximum of five credits. The appointment ends at the original disposition of that matter.

1.5.11 Habeas Corpus Case Credit

An appointment to represent a client on a petition for a writ of habeas corpus is one credit if Contractor does not represent the petitioner on the charge to which the habeas corpus case is related. Petitions filed at the same time or petitions with sequential numbers count as one credit. The appointment ends at the original disposition of that matter.

1.6 Appointments That Do Not Qualify for Credit

1.6.1 Verification Removal

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case credit where:

(a) Finding of Ineligibility

~~the~~The court finds, after screening or verification, that the client is not financially eligible for appointed counsel at state expense; or

(b) Withdrawal of Application for Counsel

~~the~~The court withdraws counsel because the client withdraws the application for appointed counsel before the court completes verification.

1.6.2 Client Retains Counsel

An appointment to represent a client who later retains Contractor or, in the case of a consortium, retains the same consortium member, on the same case does not qualify for credit.

1.6.3 Reassignment Within Consortium

If a case is reassigned within a consortium for any reason, no new credit may be claimed.

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2 MUTUAL RIGHTS

2.1 Waiver

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

2.3 Termination

The parties may agree in writing to terminate this contract

at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts

Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

3.3 PDSC ~~Powers~~ Rights for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
 - (i) for ~~willful or habitual~~ repeated instances of failure to comply; or
 - (ii) for failure to comply within 30 days after PDSC suspends this contract.

3.4 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document. (See

Section 6.1)

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of ~~this any duty or obligation under this~~ contract-including material misuse of contract funds;
- (b) Contractor's willful or ~~habitual-repeated~~ disregard of the procedures required by the courts in which Contractor provides services; provided, however, that good faith actions of counsel undertaken to advance or preserve a constitutional or statutory right of a client shall not be deemed cause for termination;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate legal services under this contract or fulfill the obligations of this contract.

3.5.2 No Appointments After Notice

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

3.6 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably ~~believes-determines~~ that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

3.7 Increasing Workload: Renegotiation at PDSC Option

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the probable number of available cases increases substantially;

(b) Contractor demonstrates that it has a sufficient number of attorneys and other staff to manage the additional workload; and

- ~~(c)~~ PDSC determines that renegotiation is in the state's interest.

PDSC will not pay Contractor for credits in excess of the

maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor's assignment to such excess cases.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval. PDSC and its agents will comply with the American Bar Association's "Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor" (2002) when conducting any fiscal or performance audit or review.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

3.8.3 Other Information

Upon the PDSC's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.4, 4.5 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the question or concern identified.

3.8.4 Timely Reports by PDSC

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

3.9 Use of Equipment Purchased with Contract Funds

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this

contract. Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.

3.10 Return of Equipment Purchased with Contract Funds

Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:

- (a) Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;
- (b) had an original dollar value of \$500 or more; and
- (c) whose useful life exceeds the term of this contract.

3.11 Limit on Return of Equipment to PDSC

Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

4.2 Court Appointments Outside Contract

Contractor may accept additional court appointments to cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional appointments do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "representation", set forth in Section 7.1, for cases assigned under this contract.

4.3 Request for Additional Credit

Contractor may make a written request for additional credit for cases Contractor believes required an extraordinary amount of time, effort, or expense, ~~etc.~~ on cases closed since the preceding periodic review (see Section 5.7). Only PDSC may approve additional credit for cases assigned under this contract. Contractors shall not make requests of the court or court staff to approve additional credit.

4.3.1 In General

Contractor shall submit in writing any materials needed to show extra services beyond the contract and the amount of additional credit proposed.

4.3.2 Complex Cases in Which Contractor Withdraws

Contractor shall submit any materials needed to show extra services performed prior to a withdrawal for any reason on a complex case and the amount of additional credit proposed beyond one OTHR credit.

4.4 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe attorney/client consultations or to review information in case files that is:

(a) privileged because of the attorney/client relationship; or

(b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.5 Personnel Records

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.2 Compliance with Applicable Law

5.2.1 In General

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and

independent contractor status.

5.2.2 Laws Incorporated by Reference

The provisions of ORS 279B.220, 279B.230, and 279B.235 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

5.3 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall:

(a) be in writing;

(b) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;

(c) become effective for willful breach not less than 14 days from delivery ~~by certified mail or in person~~; and

(d) become effective not less than 60 days from delivery ~~by certified mail or in person~~ for non-willful breach.

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Caseload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

5.6 Renegotiation Shall Minimize Reductions in Staff

PDSC shall renegotiate with all Contractors affected by case decreases to apportion decreases in a manner that minimizes reductions in staff. Such renegotiations shall:

(a) reduce the total number of cases for the contract period and adjust the monthly payments to Contractor accordingly; or

(b) have Contractor refund or otherwise repay to the State any moneys saved.

5.7 Periodic Review

At the request of either party, PDSC and Contractor will periodically review case assignment trends, requests for additional credit and any other matters needed to determine contract compliance or any necessary contract

modifications.

5.7.1 Review of Assignments to Multiple Contractors and Mixture of Cases

In counties where more than one Contractor provides legal services, periodic review shall include a review by PDSC, ~~the court, and the Contractors~~ of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates and the rates contemplated under the contracts, PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected, to the extent total cases are available. Similarly, if the periodic review discloses a substantial disparity between the case mix under the contract and the case mix actually assigned to Contractor, PDSC ~~will~~ shall notify the court and Contractors that appointment case mix must be adjusted and corrected, to the extent total cases are available. (See Section 7.8.2.5)

5.7.2 Fungibility

The parties agree that PDSC is contracting for the provision of legal representation by Contractor, as measured by value, and that the estimated workload, by case type, is the parties' expectation as to the distribution of the cases which may be available during the contract period. The parties expressly agree that Contractor may substitute one type of case for another, for the purposes of contract performance, with cases being fungible, except as specifically provided to the contrary in this contract.

5.8 Other Contractors and Vendors

PDSC may undertake or award other contracts for additional or related work. Contractor shall cooperate with PDSC and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for public defense services.

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

5.9 Management Conference

~~Contractor's administrator or administrator's designee shall attend an educational conference on the topic of public defense management each year one is sponsored by either the Oregon Criminal Defense Lawyers Association, the Office of Public Defense Services (OPDS) or another sponsor approved by PDSC. If no representative of Contractor is available to attend such a conference, Contractor will make arrangements, in consultation with the assigned OPDS contract analyst to ensure that the community served by Contractor is represented at such a management conference.~~

~~PDSC expects contract administrators, and any staff the administrator deems necessary, to attend a public defense management conference each year of the contract, whether the conference is sponsored by OCDLA, OPDS, or another Oregon State Bar approved~~

~~provider. If the contract administrator is unable to attend, the Contractor agrees to contact the assigned contract analyst to discuss alternative options so that the community served by that provider is not without representation at a public defense management conference.~~

6 OBLIGATIONS OF PDSC

6.1 ~~De Minimis Changes in Contractor Reports/Documents~~

~~PDSC shall not make any change that would cause more than a de minimis increase in cost or time required to perform the contract except by written agreement signed by both parties. (See Section 3.4)~~

6.12 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers, including the private bar. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider ~~both the funds available, the requirement to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct~~ cost and the level of representation that meets minimum allowable professional standards. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

6.23 Contract Payment

Payment under this contract shall be based on the Payment Schedule included in the Specific Terms.

6.34 Payments in Addition to Contract Price

PDSC shall pay for the following case expenses from funds available for the purpose:

(a) Discovery

Discovery expenses include material provided by DHS or a county juvenile department for representation in a juvenile case. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, district attorney or court files pertaining to the underlying case;

(b) Preauthorized Non-Routine Expenses

Non-routine case expenses requested by Contractor and preauthorized by PDSC or other authority designated to approve non-routine expenses in compliance with the requirements of ORS 151.216 and ORS 135.055(3). Unless the services are performed by Contractor's staff or subcontractors, non-routine expenses include, but are not limited to:

- (i) medical and psychiatric evaluations;
- (ii) expert witness fees and expenses;
- (iii) interpreters who charge a rate above the guideline

amount as shown in the payment policy, or interpreters for services other than attorney/client communication; (iv) polygraph, forensic and other scientific tests; (v) investigation expenses; and (vi) any other non-routine expenses PDSC or other authority designated to approve non-routine expenses preauthorizes and finds necessary and proper reasonable for the investigation, preparation, negotiation, and presentation of a case;

(c) Lay Witness Fees

Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

(d) Copying Clients' Files

The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

(e) Copying Direct Appeal Transcripts for PCR Trial-Level Representation

The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;

(f) Records

Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and

(g) Process Service

The cost for the service of a subpoena as long as the rate per location does not exceed the guideline amount as shown in the payment policy.

7 OBLIGATIONS OF CONTRACTOR

7.1 Performance Obligations of Appointed Counsel To Appointed Clients

7.1.1 Standard of Representation

Appointed counsel shall fulfill applicable state and national standards of performance, including those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center and National Legal Aid and Defender Association. Counsel shall also satisfy applicable state and federal constitutional requirements for the provision of adequate and effective assistance of counsel, and meet state and federal statutory requirements for counsel in the applicable proceedings. And counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

7.1.2 Representation at all Stages of a Proceeding

Contractor shall provide representation in all proceedings related to the legal matter that is the subject of the representation, including but not limited to proceedings below. Representation under this contract does not include related Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations and probate proceedings, and other civil proceedings not otherwise provided for under this contract.

7.1.2.1 Pre-appointment representation

Subject to the express prior approval of PDSC, where an individual would be eligible for appointed counsel at state expense if charged with a crime or served with a petition in juvenile court but exigent circumstances preclude an appointment order, contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of a client.

7.1.2.2 Appearance at first proceedings

(a) Contractor shall provide representation at all scheduled arraignments, shelter hearings and other initial appearances in criminal and juvenile cases.

(b) Notwithstanding subsection (a), Where PDSC has approved in writing other arrangements for representation at first proceedings, contractor is not required to provide representation.

(c) Contractor shall establish and follow procedures to ensure prompt notification to the court and client of the specific attorney assigned to each case.

7.1.2.3 Representation following the commencement of proceedings

Contractor shall provide representation, meeting the standard of representation set forth in Section 7.1.1 of the contract, during the pendency of a case through judgment or other final order of the court on the case, including but not limited to:

(a) Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions;

(b) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705;

(c) Filing a petition for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,

(d) To the extent ethically permitted, representing a client at a show cause hearing to determine the client's financial eligibility for appointed counsel.

7.1.2.4 Post-judgment proceedings

Following the entry of judgment or other final order in a case, counsel shall:

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(a) Seek modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order.

(b) Complete questionnaires, forms or other process necessary to obtain appellate counsel for clients requesting an appeal.

(c) Seek court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;

(d) Consult with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and

(e) Upon request, provide copies of the entire file to appellate or post-conviction relief counsel.

7.1.3 Client Contact

7.1.3.1 In-custody Initial Contacts

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, or if the day following the appointment is a holiday.

7.1.3.2 Out-of-Custody Contacts

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 the client must do to schedule an interview time.

7.1.4 Contractor Responsibilities Regarding Financially Ineligible Clients

Contractor shall consult Oregon State Bar Formal Ethics Opinion 2005-34, in conjunction with state and federal constitutional provisions, in determining what course to follow if Contractor learns that a client is ineligible for state-funded legal services under this contract.

7.1.5 Withdrawal From Case Only on Court Approval

Contractor may withdraw from representation following appointment by the court only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course. Contractor shall ensure continuous representation of a client until withdrawal is approved and then assist in the prompt establishment of a new attorney/client relationship.

7.2 Quality Assurance Obligations of contract administrator,

7.2.1 Training and Supervision

Contractor shall establish and implement, as appropriate for contractor's entity structure, written quality assurance procedures consistent with the practices set forth in the Office of Public Defense Services Best Practices for Oregon Public Defense Providers (2010), including but not limited to procedures for recruiting high quality attorneys and staff, procedures for training and supervising contract attorneys and staff, regular performance evaluations of contract attorneys and staff, procedures to receive and promptly address complaints about the performance of contract attorneys and staff, and procedures to remedy performance deficiencies by contract attorneys and staff.

7.2.2 Case Assignment and Workload

Contractor shall ensure that the attorney assigned to represent a client under this contract:

(a) Possesses the qualifications for representation of the case-type involved, as set forth in the PDSC's Qualification Standards for Court-Appointed Counsel, and has been approved for appointment to the applicable case type by PDSC. Contractor shall provide to PDSC the name and current qualifications, including a Certificate of Attorney Qualification and Supplemental Questionnaire, of any attorney providing representation under this contract, including attorneys who begin providing representation during the term of the contract.

(b) Has a current workload, including private practice cases not covered by this contract, that will not interfere with competent and diligent representation that fulfills the Standard of Representation set forth in Section 7.1.1 of this Contract.

(c) Will provide continuous representation by the same attorney, when possible, from the commencement of proceedings continuously until the final disposition of the case.

7.2.3 Continuing Legal Education Requirements

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Contractor shall ensure that all contract attorneys providing representation under this contract:

- (a) Obtain 12 hours of continuing legal education credits related to the practice of juvenile law during each year of this contract, if the attorney is handling juvenile court cases;
- (b) Obtain 12 hours of continuing legal education credits related to the practice of criminal law during each year of this contract, if the attorney is handling criminal court cases; and
- (c) For attorneys with mixed caseloads including both juvenile and criminal cases, obtain 12 hours of continuing legal education credits during each year of this contract, apportioning those credits between programs related to juvenile and criminal law according to the percentage of the attorney's cases assigned under this contract in each of those practice areas.

~~arraignments or other initial appearance;~~

~~(b) establishing and following procedures to ensure prompt notification to the court of the specific attorney assigned to each case;~~

~~(c) filing all necessary motions, including pre and post-judgment motions;~~

~~(d) representation through judgment or other final order of the court on the case, including but not limited to:
—(i) filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions;
—(ii) filing necessary paperwork under ORS 161.705 ("reduction of certain felonies to misdemeanors"); and
(iii) all prejudgment proceedings arising from a petition for a writ of mandamus or habeas corpus related to the case on which counsel was appointed;~~

~~(e) legal assistance to individuals who would be eligible for counsel at state expense if charged with a crime and where exigent circumstances preclude an appointment order (e.g., interrogation);~~

~~(f) preparing all documents, letters, research and referrals to appropriate agencies;~~

~~(g) continuous legal and support staff services, during case substitutions, to the extent necessary to ensure continuous representation and the establishment of the new attorney/client relationship;~~

~~(h) consulting with clients regarding appellate review;~~

~~(i) upon request, assisting in filing a notice of appeal and motion for appointment of appellate counsel and timely responding to appellate counsel's questionnaire or questions regarding the case;~~

~~(j) to the extent ethically possible, representing a client at a show cause hearing to determine client's financial eligibility;~~

~~(k) to the extent ethically possible, consulting with appellate or post-conviction relief counsel on an appeal or post-conviction relief proceeding; and~~

~~(l) upon request, providing copies to appellate or post-conviction relief counsel in a timely manner.~~

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7.2.4 Report to PDSC

Upon request, Contract shall provide to PDSC copies of its written quality assurance procedures, including documentation demonstrating current compliance with those procedures; provided, however, that PDSC shall not have access to client information that is privileged because of the attorney/client relationship, or confidential personnel information, unless the client or Contractor personnel expressly, knowingly, and voluntarily provides such access in writing or unless such permission is not legally required.

7.1.1 — Representation At All Court Proceedings in the Relevant Court

~~Contractor shall provide representation at all stages of a case assigned under this contract as limited by this contract. Representation means the provision of competent legal advice and assistance by appointed counsel to a person that a state court has determined to be financially eligible and entitled to appointed counsel at state expense on all matters related to the appointment, except DMV license suspension hearings, civil forfeiture proceedings, domestic relations proceedings and other civil proceedings.~~

7.1.2 — Standards of Representation

~~Representation further means providing a level of legal service that meets Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice.~~

7.1.3 — Specific Representation Services

~~Contractor shall provide services on any and all matters necessary to provide adequate representation of the client, including but not limited to:~~

- ~~(a) having an attorney present at regularly scheduled~~

7.1.4 — Client Contact

7.1.4.1 In-Custody Initial Interviews

~~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.~~

~~7.1.5 Contractor Responsibilities—Financially Ineligible Clients~~

~~Contractor shall comply with the requirements of federal and Oregon constitutions, the Oregon Rules of Professional Conduct, and consider OSB Ethics Opinion 2005-34 if Contractor learns that the client is ineligible for state-funded legal services under this contract.~~

~~7.2 Withdrawal From Case Only on Court Approval~~

~~Contractor may withdraw only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course.~~

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor, Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its

subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter ~~659A-656~~ and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor and each law firm or sole practitioner member of a consortium shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these

insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

7.3.6 Malpractice Insurance

During the entire contract period, and at the Contractor's own expense in whole or in part from contract funds, Contractor shall ensure that each of its attorneys has malpractice insurance coverage in the minimum amount required by the Oregon State Bar. Contractor shall provide proof of such insurance to PDSC on request.

7.3.7 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly received, expended, and accounted for.

7.3.8 Oregon Judicial Information Network Oregon Judicial Case Information Network (OJCIN)

For juvenile cases, Contractor shall limit use of OJCIN, including the Oregon Judicial Information Network (OJIN) and the Oregon eCourt Case Information Network (OECI) to access only those cases that involve parties Contractor represents.

7.3.9 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Staff and Equipment

7.4.1 Staffing Levels

Contractor ~~has shall~~ secured, ~~or will secure at~~ at its own expense in whole or in part from contract funds, all personnel or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support staff to perform its contract obligations.

7.4.2 Assigning and Associating Attorneys

7.4.2.1 Diligence in Hiring

~~Contractor shall use due diligence to hire, assign, or associate attorneys for this contract who are qualified to provide competent and effective services to their clients and the courts.~~

7.4.2.2 Supervision

~~Contractor shall have more experienced attorneys closely supervise lesser experienced attorneys' performance. Contractor shall provide information on the extent of supervision on PDSC's request. However, Contractor shall not provide to PDSC or any other person the contents of any employee's personnel files unless~~

~~Contractor's employee expressly, knowingly, and voluntarily agrees in writing.~~

7.4.2.3 Certification to PDSC

~~Contractor shall provide to PDSC the name and qualifications of any attorney added during the contract term to perform contract services. The newly added attorney shall meet the qualification standards established by PDSC, for the type of cases that will be assigned. A "certificate of attorney qualification" shall be provided to PDSC for each newly added attorney.~~

Contractor shall provide a certification from any attorney added during the contract that the attorney has read this contract, including the payment schedules and other specific terms, and understands the obligations of attorneys providing services under the contract and the duties and responsibilities of the contract administrator.

7.4.3 Interpreters

For out-of-court attorney/client communications, Contractor may use staff who are either qualified, as defined by ORS 45.275(9)(c), or who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. ~~For in-court interpretation,~~ Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor ~~and provide in-court interpretation~~ comply with all certification requirements established by OSCA and the Code of Professional Responsibility for Interpreters in Oregon.

7.4.4 Limit on Contractor and Staff Noncontract Work

~~Contractor and Contractor's staff shall not let noncontract work interfere with adequate representation of court-appointed clients under this contract.~~

7.5 Record Keeping

7.5.1 Case Records

Contractor shall preserve all case documents, notes, files, physical evidence or any other items created or received in the course of the representation of a client in an orderly and organized manner such that it can readily be made available to successor counsel, if one is appointed or retained. ~~maintain current information, including case log notes, on individual contract cases.~~ To the extent ethically possible, records shall be kept in a manner to be available on request for inspection by PDSC, or PDSC's designee or agent.

7.5.2 Financial Records

Contractor shall maintain financial records on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

7.5.3 Retention Period

For purposes of this contract only, Contractor agrees to

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preserve all appointment, service and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to preserve all case files a minimum of ten (10) years from the date the case is closed for all cases except aggravated murder and Measure 11 cases. Case files in aggravated murder and Measure 11 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to PDSC

7.6.1 Case Inventory

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly case inventory report for the preceding month. Contractor may submit amended case inventory reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly case inventory report to be amended.

7.6.2 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by PDSC, to track the disposition of, or withdrawal from, all cases reported under the contract. Contractor shall maintain data on other case activity upon the request of PDSC. Contractor ~~will~~ shall make the data available for PDSC ~~to~~ review upon request.

7.6.3 Caseload Reports

Contractor shall maintain data, at the request of PDSC and in a format authorized by PDSC, on the current number and type of open cases of each contract attorney, including any private practice noncontract cases. Contractor shall make the data available for PDSC review upon request.

7.6.43 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment until PDSC receives the report and supporting documentation.

7.6.54 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

7.7 Costs, Expenses and Client Clothing

7.7.1 Costs and Expenses

Except for the expense items listed in Section 6.4, Contractor shall pay for:

(a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;

(b) all other routine expenses related to case preparation and trial; and

(c) staff services, including routine travel expenses, if Contractor has staff investigators, interpreters, or polygraphers.

Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express written authorization of PDSC.

7.7.2 Client Clothing

Prior to requesting preauthorization to purchase clothing for a client's court appearance, Contractor agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is available. (Contact PDSC for a current list.) If Contractor receives preauthorization to purchase clothing for a client, that clothing shall be provided to a "clothing room" upon completion of the case.

7.8 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

(a) Contractor's ability to carry out this contract, including changes in staff attorney names, staffing levels and office location;

(b) Contractor's ability to meet financial obligations; and

(c) matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

7.8.2 Specific Notices and Responses Required

7.8.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 - 7.3.6 and immediate notice of the cancellation of any such policies.

7.8.2.2 Staffing

Contractor shall provide, to PDSC and the affected court, notice of the names of attorneys who are hired or leave Contractor's employ and any other substantial staffing changes. Upon request by PDSC, Contractor shall provide a current list of attorneys and staff positions by full time equivalent, and provide timely responses to PDSC surveys or other inquiries concerning the diversity of attorneys and staff employed by or otherwise performing services for Contractor.

7.8.2.3 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall ~~assure~~ demonstrate to PDSC ~~of~~ its continued ability to meet contract requirements or shall propose reductions in caseload and or price value if Contractor is unable to

meet contract requirements because of such organizational change.

7.8.2.4 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

(a) Criminal Charges

A member of Contractor's attorney or investigator staff has been charged with a crime.

(b) Criminal Conviction

A member of Contractor's attorney or investigator staff has been convicted of a crime.

(c) Formal Bar Complaint

A formal accusation of misconduct, ~~that is alleged to have occurred with respect to representation provided in a contract case~~, has been filed by the Oregon State Bar against a member of Contractor's attorney staff.

(d) Bar Discipline

Disciplinary action is taken by the Oregon State Bar against one of Contractor's attorney staff.

(e) Uninsured Practice of Law

A member of Contractor's attorney staff has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

7.8.2.5 Nonassignment of Available Cases or Early Quota

Contractor shall notify PDSC immediately upon determining that:

- (a) the court is not assigning Contractor to cases available for appointment; or
- (b) Contractor will reach its total contract quota before the expiration of the contract.

Within forty-five (45) days of notification to PDSC that the court is not assigning Contractor to cases available for appointment, PDSC shall propose a plan to Contractor and the court to ~~remedy-resolve~~ the nonassignment of available cases.

7.9 No Dual Payments for Contract Work

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract ~~without PDSC authorization~~;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) accept or keep credit for a case for which Contractor's attorney is subsequently retained.

7.10 Independent Audit Required

Contractor shall, from contract funds, be subject to an annual independent audit by a CPA firm and shall provide a copy to PDSC.

7.11 Limits on Full Time Public Defender Attorneys

Attorneys employed full time by nonprofit public defender offices shall not accept employment for legal services on a retained basis and shall not accept appointment to a public defense case outside this contract without the authorization of PDSC.

7.12 Limits on Pro Bono Work

Nonprofit public defenders may provide pro bono representation only for:

- (a) cases covered by contractor's or another's malpractice insurance; and
- (b) cases that are:
 - (i) related to cases to which contractor's attorneys have been appointed; or
 - (ii) unrelated to contract cases, provided the pro bono services are rendered outside of the contract.

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

9 RISKS OF CONTRACTOR

9.1 Refund for Shortage

If Contractor's actual caseload value, at the expiration or termination of the contract, is less than the workload value ~~set forth in this contract~~, Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

9.2 Wind-Down Procedures

Unless PDSC agrees in writing, if either party suspends or terminates the contract, or the contract expires,

Contractor shall complete timely and adequate legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination.

9.2.1 Negotiations

If the contract expires or terminates, PDSC and Contractor shall negotiate wind-down procedures. Whenever possible, Contractor shall wind down pending cases within three months of contract expiration or termination by completing or, with PDSC's agreement, reassigning the cases.

9.2.1 Negotiations

Except when PDSC terminates the contract for cause under Section 3.5 and unless otherwise agreed, the parties shall, whenever possible, agree on wind-down procedures before the contract expires or terminates. If the parties cannot agree on wind-down procedures, PDSC alone shall decide what state funds, if any, will finance wind-down procedures based on what PDSC reasonably believes is necessary to ensure that the clients' right to adequate assistance of counsel and that Contractor's legal obligations are met.

9.2.2 Reduction in Contractor's Caseload

If Contractor's caseload or contract amount is reduced significantly resulting in layoffs, whether as a result of contract modification or contract renewal, PDSC and Contractor may negotiate wind-down procedures.

10 APPOINTMENT TYPE DEFINITIONS

() denotes the applicable appointment code.

10.1 CRIMINAL CASES

10.1.1 Appointments After Diversion or Conditional Discharge Agreement (SCDV)

For all criminal cases, Contractor shall report separately on cases where Contractor is first appointed:

- (a) after the defendant enters into a diversion or conditional discharge agreement or any other type of deferred or delayed adjudication agreement, and
- (b) when the court orders the defendant to show cause why the agreement should not be terminated.

Contractor shall report these cases as SCDV rather than as the original case type.

10.1.2 Capital Murder Case (CMUR)

A capital murder case is any appointment to represent a person charged with aggravated murder as defined by ORS 163.095 except as provided under paragraph 10.1.3., below.

10.1.3 Noncapital Murder Case (MURD)

A noncapital murder case is any appointment to represent a person charged with:

(a) murder as defined by ORS 163.115; and

(b) aggravated murder where the person is a juvenile under 15 years of age who is waived to circuit court on the charge (a convicted juvenile cannot be sentenced to death or life without parole under ORS 161.620) or aggravated murder where the person was 15, 16 or 17 years of age on the date the crime is alleged to have occurred (no death sentence may be imposed under ORS 137.707(2)).

10.1.4 Felony Case

A felony case is any appointment to represent a person charged with one or more crimes described by ORS 161.525, excluding capital murder and noncapital murder. It includes manslaughter and negligent homicide. A case is a felony case if it includes a felony charge at any time after defendant appears in circuit court, even if later reduced to a misdemeanor.

10.1.4.1 Measure 11 Felony (AM11, BM11, JM11)

Other than murder, a felony that is the subject of ORS 137.700 or ORS 137.707. AM11 is a Class A Measure 11 felony with an adult defendant; BM11 is a Class B Measure 11 felony with an adult defendant; and JM11 is a Class A or Class B Measure 11 felony where a 15-, 16- or 17-year-old is indicted as an adult in circuit court.

10.1.4.2 Class A Felony (AFEL)

A Class A felony is a crime that a statute expressly designates as a Class A felony, other than an AM11 case.

10.1.4.3 Class B Felony (BFEL)

A Class B felony is a crime that a statute expressly designates as a Class B felony, other than a BM11 case.

10.1.4.4 Class C Felony (CFEL)

A Class C felony is a crime that a statute expressly designates as a Class C felony, other than a DUII felony (DFEL), or domestic violence Class C felony (DVIO).

10.1.4.5 DUII Felony (DFEL)

A DUII felony is a DUII case in which an element of the crime charged is that the defendant has at least three prior DUII convictions within the past ten years (ORS 813.010(5)).

10.1.4.6 Domestic Violence Class C Felony (DVIO)

An Assault IV case which is elevated to a Class C felony under ORS 163.160(3).

10.1.4.7 Unclassified Felony (UFEL)

A felony crime that the statute(s) do not expressly designate as a Class A, B, or C Felony.

10.1.5 DUII (DUIS)

A DUII case is any appointment to represent a person charged with driving under the influence of intoxicants, other than DUII felony (DFEL).

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10.1.6 Misdemeanor Case (MISS)

A misdemeanor case is any appointment to represent a person charged with one or more crimes described by ORS 161.545 or by local ordinance as a misdemeanor, excluding DUII, misdemeanor contempt and the misdemeanor traffic cases defined below.

10.1.7 Misdemeanor Traffic Case

A misdemeanor traffic case is any appointment to represent a person on a misdemeanor traffic charge for which a convicted defendant may be incarcerated as an original sentence under the Oregon Vehicle Code, other than a traffic offense charged as a felony or DUII. For statistical purposes, report cases in the following categories:

- (a) Misdemeanor Driving While Suspended (DWSS).
- (b) Other Traffic Misdemeanor (OTMS).

10.1.8 Extradition Case (EXTR)

An extradition case is any appointment to represent a person in a proceeding under the Uniform Criminal Extradition Act, ORS 133.743 - 133.857. It includes representation on a writ of habeas corpus filed in a pending extradition proceeding.

10.2 PROBATION VIOLATIONS

10.2.1 Probation Violation

A probation violation is any appointment or reappointment to represent a person in a proceeding concerning an order of probation, including but not limited to the revoking thereof, arising out of a criminal or civil contempt conviction(s) and sentencing(s), under Section 1.5.5. For reporting purposes, Contractor shall report each type of probation violation case by the following subcategories:

10.2.1.1 Felony Probation Violation (FPV)

A felony probation violation case is any appointment to represent a person in a probation proceeding arising out of a felony conviction.

10.2.1.2 Misdemeanor Probation Violation (MPV)

A misdemeanor probation violation case is any appointment to represent a person in a probation proceeding arising out of a contempt case, or a misdemeanor conviction, except DUII.

10.2.1.3 DUII Probation Violation (DPV)

A DUII probation violation is any appointment to represent a person in a DUII probation proceeding arising out of a DUII conviction.

10.3 CONTEMPT CASES

10.3.1 Contempt Case

A contempt case is any appointment to represent a person charged with contempt of court. For statistical purposes, report cases in the following three categories:

10.3.1.1 Family Abuse Prevention Act (FAPA)

Contempt for violating a Family Abuse Prevention Act (ORS 107.700 - 107.735) restraining order.

10.3.1.2 Support (SUPP)

Contempt for failure to comply with an order or judgment in domestic relations or juvenile court proceeding for the payment of suit money, attorney's fees, spousal support, child support, maintenance, nurture, or education.

10.3.1.3 Contempt (CONT)

Misdemeanor contempt or any other contempt that is not a FAPA or SUPP contempt.

10.4 CIVIL COMMITMENT CASES

10.4.1 Civil Commitment Case (MHMI)

A civil commitment case is any appointment to represent a person in a proceeding brought under ORS Chapter 426 or 427.

10.5 JUVENILE CASES

10.5.1 Juvenile Case

A juvenile case is any appointment or a reappointment to represent a person(s) in a proceeding brought under ORS Chapter 419B or 419C. For statistical purposes, report juvenile cases in the following categories:

10.5.1.1 Juvenile Felony (JUDF)

If committed by an adult, alleged act would constitute a felony.

10.5.1.2 Juvenile Misdemeanor (JUDM)

If committed by an adult, alleged act would constitute a misdemeanor.

10.5.1.3 Juvenile Other (JUDO)

(a) if committed by an adult, alleged act would constitute a violation or infraction;

(b) alleged act is a status offense;

(c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);

(d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340);

(e) appointments under ORS 420A.203 (Eligibility for second look; report to sentencing court; hearing; disposition);

(f) appointments under ORS 181.823(12) (Relief from reporting requirement; juvenile offenders); and

(g) appointment to a juvenile case for which no other juvenile case type applies.

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10.5.1.4 Probation Violation or Motion to Modify (JPV)

Proceeding based on allegation(s) that the child has violated the terms of probation or a proceeding based on a motion to modify a disposition.

10.5.1.5 Juvenile Dependency Case

A juvenile dependency case is any appointment to represent a person based on a new petition alleging that a child is within the jurisdiction of the juvenile court under ORS 419B.100(1)(a) - (h).

(a) Parent (JDEP): Appointment to represent parent(s) or guardian(s).

(b) Child (JDEC): Appointment to represent child(ren).

10.5.1.6 Postdispositional Proceeding

A postdispositional proceeding is any appointment in a juvenile court proceeding to represent a person at a court or CRB review hearing and shelter care hearings held after the original disposition. It does not include probation violation proceedings or family unity meetings. Probation violation proceedings are a separate category under delinquency.

(a) Parent (JPDP): Appointment to represent parent(s) or guardian(s).

(b) Child (JPDC): Appointment to represent child(ren).

10.5.1.7 Termination of Parental Rights Case

A termination of parental rights case is any appointment to represent the parent or child in a proceeding under ORS 419B.498 - 419B.530 ~~OR-or~~ in a contested adoption matter (Zockert v. Fanning) ~~OR-or~~ in a contested permanent guardianship proceeding under ORS 419B.365. Guardianship proceedings under ORS Chapter 125 are excluded.

(a) Parent (JUTP): Appointment to represent parent(s) or guardian(s), including contested adoption proceedings.

(b) Child (JUTC): Appointment to represent child(ren), including contested adoption proceedings.

10.6 OTHER CIVIL CASES

10.6.1 Habeas Corpus Case (CVHC)

A habeas corpus case is any appointment to represent a person in a proceeding for a writ of habeas corpus under ORS 34.355, excluding:

(a) habeas corpus petitions filed in a pending extradition proceeding; and

(b) habeas corpus petitions filed for a client whom Contractor represents on a related matter (not a separate appointment under the contract).

10.6.2 Post-Conviction Relief Case (CVPC)

A post-conviction relief case is any appointment to represent a person under ORS 138.510 - 138.686.

10.6.3 Psychiatric Security Review Board Case (PSRB)

A Psychiatric Security Review Board case is any appointment by the PSRB to represent a person under ORS 161.346(11).

10.7 OTHER CASES (OTHR)

An other case is: a complex case from which Contractor withdraws; an appointment under ORS 136.611 (Material Witness Order); an appointment under ORS 137.771(2) (Sexually Violent Dangerous Offenders); an appointment under ORS 138.694 (DNA testing); a criminal forfeiture credit; or an appointment to a case for which no other case type applies.

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SPECIFIC TERMS

1 PARTIES TO CONTRACT

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and _____ ("Contractor").

2 TERM OF CONTRACT

The contract term shall be from January 1, 2016 through December 31, 2017.

3 NOTICE

Each party shall provide to the other all notices regarding this contract:

- (a) in writing, and
- (b) delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:
mail@opds.state.or.us

Contractor:
(Contract Administrator email address)

4 TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$_____ during the term of this contract. PDSC shall pay the total workload value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct

8 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONTAINED IN THE 2013 REQUEST FOR PROPOSALS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

NANCY COZINE, EXECUTIVE DIRECTOR
PUBLIC DEFENSE SERVICES COMMISSION

DATE

CONTRACTOR

DATE

TITLE OR REPRESENTATIVE CAPACITY

deposit into the account designated by Contractor.

5 CASE TYPES

Contractor shall provide legal representation in the Circuit Court of _____ County for the types of cases included in the Caseload and Case Value Matrix.

6 WORKLOAD

6.1 Estimated Number of Cases

Contractor's workload is estimated to be _____ cases for the contract term.

6.2 Caps, Limitations, or Parameters on Number of Certain Cases

[Describe here as needed.]

7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

All lawyers representing children, parents, or guardians in dependency cases are required to attend at least 16 hours of continuing legal education related to the practice of juvenile law during the term of this Contract.

[Add additional agreements as needed.]

**CONTRACT BETWEEN PDSC AND
CONTRACTOR PAYMENT SCHEDULE**

End of Month (Unless noted)	Monthly Payment
January 2014	
February 2014	
March 2014	
April 2014	
May 2014	
June 2014	
July 2014	
August 2014	
September 2014	
October 2014	
November 2014	
December 2014	
<i>First-Year Subtotal</i>	\$0
January 2015	
February 2015	
March 2015	
April 2015	
May 2015	
June 2015	
July 10, 2015	
July 2015	
August 2015	
September 2015	
October 2015	
November 2015	
December 2015	
<i>Second-Year Subtotal</i>	\$0
Total Payments	\$0

**CONTRACT BETWEEN PDSC AND CONTRACTOR CASELOAD
AND CASE VALUE MATRIX**

Case Types 1/1/14 - 12/31/14	Value	Number of Cases	Total Value
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
First-Year Total		0	\$0
1/1/15 - 12/31/15			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0

Attachment 4

SPECIFIC TERMS

1 PARTIES TO CONTRACT

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and Sage Legal Center ("Contractor").

2 TERM OF CONTRACT

The contract term shall be from January 1, 2015 through December 31, 2015.

3 NOTICE

Each party shall provide to the other all notices regarding this contract:

- (a) in writing, and
- (b) delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:

Public Defense Services Commission
mail@opds.state.or.us

Contractor:

Ms. Kristy Barrett
Sage Legal Center
kristy@sagepdx.org

4 TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$324,278 during the term of this contract. PDSC shall pay the total workload value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

8 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONTAINED IN THE SUMMER 2013 REQUEST FOR PROPOSALS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

NANCY COZINE, EXECUTIVE DIRECTOR
PUBLIC DEFENSE SERVICES COMMISSION

DATE

KRISTY BARRETT
SAGE LEGAL CENTER

DATE

TITLE OR REPRESENTATIVE CAPACITY

5 CASE TYPES

Contractor shall provide legal representation in the Circuit Court of Multnomah County for the types of cases included in the Caseload and Case Value Matrix.

6 WORKLOAD

6.1 Estimated Number of Cases

Contractor's workload is estimated to be 592 cases for the contract term.

6.2 Caps, Limitations, or Parameters on Number of Certain Cases

7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

1. All lawyers representing children, parents, or guardians in dependency cases are required to obtain at least 16 hours of continuing legal education credit related to the practice of juvenile law during the term of this Contract.
2. Section 7.5.2 of the General Terms does not apply to this contract.
3. Pursuant to legislative directive in HB 5009 (2013) requiring the PDSC to reduce by two percent funds within the professional services account, case rates may be reduced by up to two percent if funding is not restored to the PDSC budget in the February 2014 session due to improved statewide economic conditions.

CONTRACT BETWEEN PDSC AND SAGE LEGAL CENTER

PAYMENT SCHEDULE

End of Month (Unless noted)	Monthly Payment
January 2015	\$27,014
February 2015	\$27,024
March 2015	\$27,024
April 2015	\$27,024
May 2015	\$27,024
June 2015	\$27,024
July 2015	\$27,024
August 2015	\$27,024
September 2015	\$27,024
October 2015	\$27,024
November 2015	\$27,024
December 2015	\$27,024
<i>Total Payments</i>	\$324,278

CONTRACT BETWEEN PDSC AND SAGE LEGAL CENTER
CASELOAD AND CASE VALUE MATRIX

1/1/15 - 12/31/15			
JDEC/JDEP	\$1,144	68	\$77,792
JPDC/JPDP	\$426	516	\$219,816
JUTC/JUTP	\$3,640	8	\$29,120
5% Services & Supplies Reduction			(\$2,450)
Contract Total		592	\$324,278

Attachment 5

EXHIBIT 3. SCHEDULE OF GUIDELINE AMOUNTS

ATTORNEY FEES - TRIAL AND APPELLATE LEVEL CASES		
Non-capital Case	\$46 per hour	Includes juveniles charged with aggravated murder.
Capital Case, Lead Counsel	\$61 per hour	See definition in section 2.1.2
Capital Case, Co-counsel	\$46 per hour	Initial cap of 300 hours for trial-level cases. See definition in section 2.1.2.
Out-of-State	\$46 per hour	Or the minimum public defense hourly rate of the state in which the attorney resides, whichever is more.
NON-ATTORNEY FEES (Must be preauthorized by OPDS)		
Paraprofessional	\$10 per hour	
Transcription	\$3.00 per page for original	Electronic submission-no postage paid.
Guardian Ad Litem	\$45 per hour maximum	For attorney and non-attorney providers
Handwriting Expert	\$90 per hour	
Forensic Expert	\$90 per hour	Mileage paid without specific preauthorization.
Investigator	\$29 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Fact Investigator - Capital Case (See definition for capital case in section 2.1.2)	\$40 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Mitigation Investigator - Capital Case (See definition for capital case in section 2.1.2)	\$45 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Psychiatrist, Psychologist, Physician, Other Expert	\$110 per hour	Travel expenses must be specifically preauthorized.
Polygraph Exam	\$200 - in office \$300 - in custody, in county \$350 - all others	Flat fee for exam and report.
INTERPRETER FEES (For attorney/client communication, does not require preauthorization by OPDS)		
Qualified Interpreter	\$25.00 per hour	Travel time at one-half the hourly rate and mileage at the guideline rate.
Certified Interpreter	\$40.00 per hour	
ROUTINE CASE EXPENSES FOR COUNSEL & INVESTIGATORS (Preauthorization not required)		
Blank CD/DVD, case and label	\$1.00 each	For media, case and label
Film Developing/Photograph Production, In-house and Vendor	Actual cost if vendor. Photos in-house at \$0.40 for 3 x 5 or 4 x 6. \$1.20 for full page.	Receipt required if produced by vendor.
Photocopies and Scanning, In-house	Maximum \$0.05 per page	Also applies to in-coming faxes.
Photocopies and Scanning by Vendor	Maximum \$0.10 per page	Receipt required.

Photocopies, State Court/Other Government Entities	Maximum \$0.25 per page	Certification costs also paid if necessary. Receipt required.
Mileage from 2/1/09 through 12/31/09 From 1/1/10 through 12/31/10 From 1/1/11 to 4/16/12 From 4/17/12 to 12/31/2012 From 1/1/2013 to 12/31/2013 From 1/1/2014 to 12/31/2014 From 1/1/2015 to present	Maximum \$0.55 per mile Maximum \$0.50 per mile Maximum \$0.51 per mile Maximum \$0.555 per mile Maximum \$0.565 per mile Maximum \$0.56 per mile Maximum \$0.575 per mile	Excludes counsel's trips between office and courthouse unless specifically authorized.
Parking - routine travel	Actual cost	If trip qualifies for mileage payment. Receipt required if over \$10 per period.
Telephone	Actual cost	Long-distance charges, including those for faxes, and charges for collect calls from client held at an institution.
Discovery	Actual cost when supported by a receipt	Material obtained from district attorney, DHS or county juvenile department.
Postage	First-class mail	
Computerized Legal Research	Actual cost when supported by receipt or \$0.40 per minute	Only actual on-line usage paid. No payment for monthly service fees. Provider may submit log of actual on-line time.
OJIN Online Searches	\$0.25 per minute of usage	When provider has subscription for OJIN.
Service of Process	\$30 per location of service	Use of sheriff's office is encouraged.
Special Delivery	UPS, Federal Express, USPS Express mail, messenger service	Explanation and receipt required. See Section 3.2.2 of policy for details.
Other Items		See Section 3.2.2 of policy for details.
TRAVEL EXPENSES (Must be preauthorized by OPDS)		
Meal Allowance Amounts - When on overnight business and departure and return times are not reported	\$20 for first day of travel \$19 for last day of travel \$39 for each full day between first and last	May qualify for additional allowance for first and last day depending on time of departure and return if traveler notes times on worksheet. <u>Receipts are not required.</u>
Breakfast - When on overnight trip	Maximum \$9.00	If leaving home or office prior to 6:00 a.m. or return is after 9:00 a.m.
Lunch - When on overnight trip	Maximum \$10.00	If leaving home or office prior to 11:00 a.m. or return is after 2:00 p.m.
Dinner - When on overnight trip	Maximum \$20.00	If leaving home or office prior to 5:00 p.m. or return is after 8:00 p.m.
Mileage (other than routine mileage for counsel, investigators and forensic experts)	See date ranges and rates listed above.	Must be preauthorized for providers other than attorneys, investigators and forensic experts.
Parking	Actual cost	Receipt required if over \$10.
Rental Car	Various	Mid-size vehicle plus fuel with submission of original receipts. Insurance costs will not be reimbursed.

Airfare	Various	Through state contract. Contact OPDS.						
LODGING, MAXIMUM PER NIGHT, INCLUDING TAX (Must be preauthorized by OPDS for all providers)								
Maximum \$90			Maximum \$100			Maximum \$110		
Baker	Jefferson	Sherman	Clackamas	Jackson	Lincoln			
Benton	Lake	Umatilla	Clatsop	Josephine	Multnomah			
Crook	Linn	Union	Columbia	Klamath				
Douglas	Malheur	Wasco	Coos	Lane				
Gilliam	Marion	Wallowa	Curry	Tillamook				
Grant	Morrow	Wheeler	Deschutes	Washington				
Harney	Polk	Yamhill	Hood River					
Out-of-state Lodging	A rate for a standard room that would be within the guidelines for in-state lodging and for which the cost would be deemed reasonable for the area. Traveler should request government or commercial rate.							
Non-commercial Lodging	\$25 allowance when traveler uses alternative accommodations. Provide a short written explanation.							

Attachment 6

Public Defense Services Commission

The Executive Director's 2014 Annual Report (January 2015)

Introduction

It was another year of change and accomplishment for the Public Defense Services Commission. The agency made progress toward some of its long-term goals while also maintaining core services. Some of the most notable accomplishments were the launch of the Parent Child Representation Program; compensation improvements for attorneys in non-profit defender offices and for employees of the Office of Public Defense Services; and the development of policy option packages that offer rate increases to consortium and small firm providers in Oregon's 36 counties and specifically address the biggest challenges in providing quality public defense services. Of additional note, the Appellate Division's long-time Chief Defender, Peter Gartlan, announced his intent to retire in the spring of 2015. Following a national recruitment, Ernest Lannet, a well-respected Deputy Chief Defender within the Appellate Division, was selected to be the next Chief Defender. The agency will spend the first half of 2015 concentrating on the legislative session and ensuring a smooth transition for management and staff in the Appellate Division. These and other accomplishments will be explained in greater detail in the remainder of this report.

PDSC's Accomplishments in 2014

Parent Child Representation Program (PCRP)

The PCRP became a realistic possibility at the close of the 2013 session, when the Legislature provided partial funding for improved quality of representation in juvenile court.¹ For years, the agency has closely monitored efforts in Washington State to improve the quality of legal services in juvenile dependency and termination of parental rights cases.² Following the 2013 legislative directive, OPDS evaluated options, conducted research, and elected to implement a pilot program similar to that of Washington State.

¹ Policy Option Package 100, Juvenile Dependency Representation, requested \$3.8 million for the 2013-2015 biennium for the purpose of reducing trial-level dependency caseloads in order to address chronic and serious quality of representation issues. The requested amount was one third of what would be required to address disproportionately large caseloads statewide, and the Legislature was able to fund only a portion of the requested amount during the 2013 session.

² The Washington State Parent Representation Program was launched in 2000 as a pilot program. Since that time, it has expanded to 36 counties. Program evaluations have shown that children served by the

The key components of the PCRCP are reduced caseloads for lawyers, additional training opportunities, greater oversight of attorney use of best practices, and the availability of social work support for parent and child clients. Through these four elements, the PCRCP seeks to improve the quality of representation for parents and children. Quality legal representation has been shown to lead to higher rates of permanency for children.³ Initial results of PCRCP are positive: attorneys are spending over a third of their time with clients, attorneys regularly attend juvenile law trainings, the use of investigators and experts has increased by 68%, attorneys are present at all court proceedings including initial shelter hearings, and local system improvements have been implemented in both pilot counties.⁴

Diversity Study

The Office of Public Defense Services has developed, in collaboration of public defense leaders from across Oregon, a set of best practices for all public defense providers.⁵ One recommended best practice is for each provider organization to “achieve a diverse and culturally competent organization that meets the needs of the community in which it operates.” In 2014, OPDS completed a survey of contract providers to measure the diversity of their workforces.

Of the 112 contractors surveyed, nearly 90% responded to the request for information, and the responses show some indicators of diversity within the practice. The gender distribution is 65% male and 35% female. In comparison to the 2010 Contractor Diversity survey, we find a decrease in representation provided by African American and Asian attorneys. Representation provided by Hispanic/Latino remained nearly the same and there is an increase in Native American attorneys. Diversity of support staff at contract provider offices is showing a decline for the African American, Native American and Asian groups. There is a significant increase in support staff identifying themselves as Hispanic/Latino. Nearly ten percent of provider offices have attorneys or support staff who are bilingual and able to serve clients who are non-native English speakers. Spanish is predominantly the language spoken.

program return home one month sooner than children in non-program counties and reach other permanency outcomes one year sooner. In 2013, the program saved \$7.5 million in foster care and adoption subsidy costs. See Washington Partners for Our Children, *Washington’s Parents Representation Program helping children in child welfare systems reach permanency*, Partners for Our Children Issue Brief (February 2011). ABA Center on Children and the Law, *ABA National Project to Improve Representation for Parents*, <http://schubert.case.edu/files/2014/02/ABAFactsheet.pdf>.

³ Courtney, Hook & Orme, *Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes*, Partners for Our Children (Discussion Paper Vol. 1(1)) (2011).

⁴ System improvements include: PCRCP attorneys providing training for CASA volunteers, development of a process for receiving discovery from DHS in a timely manner, addressing indiscriminate shackling of youth offenders through in and out of court advocacy, and working with the court to increase the number of dependency cases reaching jurisdiction within 60 days.

⁵ *Best Practices for Oregon Public Defense Providers* (March 2010), <http://www.oregon.gov/OPDS/CBS/pages/bestpractices.aspx>.

The average age of attorneys is almost equally distributed among the age groups of 30-39, 40-49 and 50-60, though attorneys under the age of 30 represent only 6% of the provider community, while 19% are over the age of 60. The low percent of attorneys under the age of 30, with almost 50% over the age of 50, serve as a reminder to the Commission that it must work to attract a new generation of public defense lawyers.

The Commission

The Public Defense Services Commission held eight meetings in 2014, as well as a retreat on March 20, 2014. Much of the Commission's work focused on agency efforts to improve representation in Oregon, including discussion of the agency's key performance measures, contractor performance expectations, and budget building for the 2015-17 agency request budget.

Development of the 2015-17 agency request budget began in October 2013, when contract providers were asked to identify the biggest barriers in providing quality representation. The agency held eight separate regional meetings between December 2013 and April 2014 to gather information specific to each region of the state, as well as to specific practice areas (e.g. post-conviction relief and death penalty representation). In addition to regular updates regarding information gathered at regional meetings and testimony from providers across the state, the Commission reviewed draft policy option packages in April and May before approving the 2015-17 policy option packages in June 2014. The Commission approved the completed agency request budget in September 2014.

The Commission's examination of agency key performance measures was similarly lengthy, with discussions in January, March, June, and September. After significant debate and exploration of alternatives, the Commission chose to request the adoption of two new measures focused on provider education and attorney-client contact time in the Parent-Child Representation Program. While these were not seen as the best measure of quality representation, they are critical components that must be present in order to provide quality representation. Without appropriate continuing education, and without sufficient client contact, lawyers cannot provide the kind of representation that is expected by the Commission. Finally, the Commission reduced the target for its Appellate Division measure of days from the date of transcript settlement to filing the opening brief from 210 days to 180 days.

As part of the Commission's effort to ensure quality representation, it focused some of its time discussing litigation in other jurisdictions across the country.⁶ This subject will be further explored in the quality assurance portion of this report, but it is worth noting here that in other jurisdictions, the United States Department of Justice has intervened in litigation challenging the sufficiency of public defense services. Oregon's system, with statewide oversight that focuses on quality of representation and regulation of contract providers, differentiates it from jurisdictions where problems arise. Nonetheless, those

⁶ For more information on this litigation, go to: <https://www.ils.ny.gov/content/hurrell-harring-settlement-information>, and http://www.opd.wa.gov/documents/0181-2013_WilburDecision.pdf

cases offer important lessons about why investment in public defense systems, and regular monitoring of the quality of services, are essential component of all public safety systems.

When the Commission met in January 2014, it recognized the 50th anniversary of Oregon's Public Defender Office. Stories of the office history revealed chronic underfunding with gradual implementation of improvements in representation. In comparing today's office to what existed even twenty years ago, it is clear that the agency has made great strides in its ability to protect the rights of some of Oregon's most vulnerable citizens. And yet, this essential component of Oregon's public safety system still lags behind its counterparts in the state. The Commission must continue to make gains to ensure the continued preservation of constitutional rights for all Oregonians.

Contracts

In 2014, OPDS analysts managed 98 statewide contracts. Total contract payments for 2014 were approximately \$90,436,643, with representation provided in approximately 167,281 criminal and juvenile case proceedings. In 2014 there were 17 new death penalty cases filed, adding to the number already in the system pending resolution in the trial courts, in post-conviction proceedings and in the state appellate courts.

In an effort to get input from contractors across the state regarding budget priorities for public defense, and to better understand the challenges associated with representation as a public defense contract provider, OPDS scheduled a total of six regional meetings around the state, between December 7, 2013 and March 21, 2014. Two additional meetings were scheduled with death penalty and post-conviction relief contractors. Ultimately, the agency was able to get feedback from all of its trial-level providers in criminal and juvenile cases, as well as our contractors who provide specialized representation in post-conviction relief, habeas corpus and capital murder cases. Although public defense priorities and concerns varied around the state, and among different providers, some common themes emerged. One of the most common themes was concern about the lack of predictability in funding for public defense work. When fixed costs such as rent, technology, and professional expenses continue to increase, compensation based exclusively on low case rates becomes a bigger challenge. Another common concern for contractors is attempting to manage costs associated with running private businesses while relying upon contract rates that are much lower than what most private sector lawyers earn. Combined with this concern is the inability to recruit and retain good lawyers to continue doing this work at the low levels of pay offered. OPDS has proposed policy option packages to address the funding concerns and priorities raised by contract providers.

Financial Services

Contract and hourly providers, as well as experts retained by counsel, must submit information to the Office of Public Defense Services in order to be paid for their work. The Financial Services unit processed 19,406 nonroutine expense requests and 38,168 billings in 2014. Each expense requested, and billing submitted, is reviewed before authorization to ensure that expenses are necessary and reasonable for defending the case.

Quality Assurance

General Counsel, in collaboration with others at OPDS, continued to pursue a number of quality assurance measures in 2014.

In 2014, OPDS General Counsel planned and staffed a peer review of the six entities providing public defense representation in criminal and juvenile cases in Washington County. The review team included administrators of four other public defense contractors, representing a public defender office, consortia and a law firm, a senior judge, and staff from OPDS, including a lawyer handling juvenile appellate cases. OPDS intends to follow up on the review with a Commission service delivery review in Washington County in 2015.

In October 2014, the OPDS Executive Director, along with an OPDS analyst and PDSC Commissioner John Potter, conducted interviews with justice system stakeholders in Marion County, as a follow-up to the 2013 peer review of providers there handling criminal cases. A report of those interviews will be presented to the Commission in January 2015 as part of a new service delivery review for Marion County.

Also in 2014, General Counsel completed work, begun in 2012, as chair of a small task force formed by the Oregon State Bar Board of Governors (BOG) to update that organization's performance standards for defense representation in criminal and delinquency cases. General Counsel appeared before the BOG to explain the recommended revisions, which were formally adopted on May 23, 2014. Other OPDS staff, including Deputy General Counsel, worked to complete revisions to the OSB performance standards for juvenile dependency representation, which were also adopted by the BOG. The PDSC has adopted the standards promulgated by the Oregon State Bar as the performance standards for public defense attorneys in Oregon, pursuant to ORS 151.216(1)(e)(G).

As in preceding years, in early 2014 General Counsel conducted a statewide survey of public defense performance. He then participated in follow-up contacts, along with OPDS Analysts, to speak personally with survey respondents who provided their name and expressed specific concerns about public defense services in their counties. General Counsel reported to the Commission on survey results at its March 2014 meeting.

In 2014, OPDS received approximately 80 complaints concerning public defense services, which is about the same number received in 2013. Many complainants are referred to OPDS by the Client Assistance Office (CAO) of the Oregon State Bar. In 2014, General Counsel met with the new director of the CAO to discuss the handling of these referrals. In most instances, telephone and email complaints concern problems with attorneys not responding to client requests for case information and assistance. General Counsel is usually able to quickly resolve these matters through telephone or email contact with the appointed attorney and the administrator of the contract entity with whom the attorney works. General Counsel also devoted significant attention to several matters where corrective measures were taken through the Commission's complaint policy and procedure.

General Counsel continued work with the Oregon Criminal Defense Lawyers Association Education Committee, which plans seminars for the organization. He also spoke about OPDS quality assurance matters at the OCDLA Juvenile Law seminar in 2014, and at a seminar sponsored by the public defense contractor in Yamhill County. He also moderated one day of the OCDLA annual seminar in June.

General Counsel, along with the OPDS Executive Director, Human Resources Manager and others, worked to create the position description for a Deputy General Counsel, and then recruit, hire and train a person for that limited duration position. The primary work of Amy Miller, Deputy General Counsel, is management of the Parent Child Representation Program. She also has other quality improvement responsibilities focused on monitoring and improving the quality of legal representation of parents and children in juvenile court cases. She investigates and resolves complaints related to juvenile matters, handles all juvenile nonroutine expenditure requests, and regularly consults with trial practitioners.

Ms. Miller coordinated the 2014 Juvenile Law Training Academy, which had a record number of attendees and was well-received. She presented to Citizen Review Board Managers and to CRB board members in Washington and Multnomah County on the revised performance standards for juvenile dependency practitioners. She serves on the OCDLA Juvenile Law Committee and has contributed articles to the Juvenile Law Reader, the Oregon Defense Attorney Magazine, and the Oregon State Bar Juvenile Law Section Blog.

As indicated, reviewing funding requests for nonroutine expenses is an important component of monitoring attorney performance, and is a function shared by General Counsel, Deputy General Counsel, and the contract analysts. From this review, OPDS staff gains information about the quality of case investigation and preparation conducted by attorneys and can address specific concerns that come to light during the review of funding requests. The review also assists in cost containment efforts and in predicting cost trends related to the preparation of particular case types.

General Counsel continued his responsibility for reviewing certificates of attorney qualification submitted by lawyers wishing to provide public defense services. This year marked the use of a new enhanced certificate questionnaire for attorneys handling capital cases. General Counsel also began work on the design of an enhanced certificate form for other case types.

Finally, General Counsel tracked and reported to the Commission developments in litigation outside of Oregon concerning the responsibility of public bodies to provide constitutionally sound public defense services. Such information is important for OPDS staff and the Commission to understand the public defense challenges facing other jurisdictions, how those challenges are being met, and to measure our work in Oregon in light of those developments.

Appellate Division

The Appellate Division (AD) is comprised of a Criminal Section and a Juvenile Appellate Section (JAS).

A. Criminal Section

The Criminal Section (with 36 attorneys) is significantly larger than the JAS (5 attorneys). The Criminal Section represents individuals on direct appeal in misdemeanor and felony criminal cases (including capital cases), parole appeals, denial of applications for DNA testing, and victim's rights challenges, and acts as a resource for mandamus actions.

The Chief Defender and three Chief Deputies manage the Criminal Section, with each Chief Deputy responsible for a discrete aspect of the practice (outreach, operations, and personnel). AD management meets regularly with the Chief Judge of the Court of Appeals and the Solicitor General to address systemic issues, and meets with the Chief Justice or a justice of the Oregon Supreme Court on an as-needed basis.

The Criminal Section trains, supervises, and regularly evaluates its 33 non-management attorneys, sets caseload expectations, allocates and redistributes manageable individual caseloads, and maintains documentation of its workflow.

Four entry-level attorneys joined the section in 2014, replacing attorneys with several years of experience. All attorneys work in teams, led by a senior attorney, that meet weekly to review pending cases, discuss briefs and prepare for oral argument. With the addition of a new Court of Appeals panel, and a number of newer attorneys in AD, and more argument days for public defense lawyers, AD teams were struggling to edit briefs quickly enough. A sixth team was recently created to improve the Criminal Section's case processing time.

Case Referrals. During 2014, the Criminal Section processed 1,574 incoming criminal case referrals (versus 1633 in 2013) and filed 1058 notices of appeal (versus 1079 in 2013).

In 2014, the Criminal Section filed 779 merit briefs in the Court of Appeals. By comparison, the section filed 807 merit briefs in 2013; 720 merit briefs in 2012; 654 merit briefs in 2011; and 690 merit briefs in 2010.

Filing Dates. The Criminal Section's Key Performance Measure (KPM) is tied to the median age for its opening brief. In February, 2014, at the agency's request, the legislature reduced the KPM from 210 days to 180 days.

At the end of 2013, the Criminal Section had reduced the median filing date to 224 days. At the end of 2014, the median brief filing date was 223 days. The agency expects the number of days to decrease as newer attorneys gain experience.

Supreme Court Practice. The Division has an active practice in the Oregon Supreme Court. In 2014 the Oregon Supreme Court issued 15 opinions in cases litigated by the criminal section plus one opinion in which the Court sought AD's appearance as amicus.

In 2014, the Supreme Court again requested the Appellate Division to appear as amicus in two cases that have been briefed but not yet been argued. One case involves post-conviction relief and the other involves sentencing. The Court's requests signal the recognition of AD's institutional role in the appellate system and the Court's confidence in AD's practice.

Practices and Procedures Manual. AD management revised the AD Practices and Procedures Manual and released it to the Criminal Section in October 2014. The 163-page manual is a desktop resource for AD employees and management. It describes the office structure, documents office policies and procedures for routine issues confronting criminal section attorneys, and identifies attorney performance expectations.

In-house CLE Programs. Most notably, national appellate expert Bryan Garner presented his day-long "The Winning Brief" seminar to the division in October 2014. The Appellate Division produced its annual "Holidaze" half-day CLE program, as well as several brown bag CLE presentations on various topics throughout the year, including an overview of China's criminal justice system (from Deputy Defender Marc Brown), how to respond to the suicidal client, and an introduction to the Supreme Court's reconstruction of the exploitation doctrine in search and seizure law. The office also held several "PD Coffee, Pastry, and Chit-Chat" sessions featuring judges from the Court of Appeals and Supreme Court.

Outreach. AD changed internal practice in an important respect in 2014. Historically, when a case was first assigned, the appellate attorney would contact the trial attorney only if the trial attorney requested contact when referring the case for appeal. Now, when a case is first assigned, the criminal section appellate attorney contacts the trial attorney to discuss the case and the client, unless the trial attorney affirmatively indicates otherwise.

AD attorneys have regular contact with the criminal defense bar and the public. A designated "officer of the day" is available to field inquiries from the trial bar and the public every business day; attorneys participate on OCDLA's "pond" listserv exchanges; several AD attorneys telecommute several days a month at Public Defender firms in Portland and Eugene and provide occasional noon-time "brown bag" CLE presentations at the firms; and the Criminal Section issues media releases for prominent opinions.

Appellate Division attorneys present regularly at the annual Oregon State Bar (OSB) Criminal Law Section CLE, the OSB's Appellate Section CLE, the OCDLA annual conference, and at various OCDLA-sponsored CLE programs. Deputy Defender David Sherbo-Huggins co-edited OCDLA's Search and Seizure Manual and Deputy Defender Morgen Daniels contributed a chapter. The division regularly submits an appellate perspective column for the OCDLA newsletter.

In June, the section sent Senior Deputy Dan Bennett to New York for a several-day training seminar through the Innocence Project at the Cardozo School of Law at Yeshiva University in New York City.

Legislative Activity. Chief Deputy Shawn Wiley served as a resource to OCDLA's substantive lobbyist and stayed current with the Department of Justice's legislative agenda through meetings with DOJ's legislative director Aaron Knott.

B. Juvenile Appellate Section

The 2007 legislature funded the creation of the Juvenile Appellate Section (JAS) in AD. The section represents parents in juvenile dependency appeals. The five-attorney section is an unqualified success, thanks in large part to the section leader, Chief Deputy Shannon Storey.

The section provides superior representation to its clients and affects Oregon dependency practice statewide by litigating cases and issues that prompt appellate opinions, which, in turn, bring clarity and consistency to the interpretation and application of Oregon's dependency laws. In 2014, the unit obtained seventeen opinions from the Court of Appeals and its second opinion from the Oregon Supreme Court (*Department of Human Services v. S.M.*, 355 Or 241 (2014)). In another important case, *Department of Human Services v A.R.S.*, 258 Or App 264 (2013), the section successfully defended the Court of Appeals holding that the department has the burden at review hearings to show a continuing basis for jurisdiction. After the Supreme Court allowed the child's petition for review and after full briefing by the several parties, the section successfully moved the Supreme Court to dismiss review as improvidently allowed.

Case Referrals and Briefing. The Juvenile Appellate Section processed 312 case referrals in 2014 (versus 283 in 2013), filed 258 notices of appeal (versus 262 in 2013), and assigned 191 cases internally (versus 224 in 2013), and filed 102 briefs (versus 121 in 2013).

Juvenile dependency cases are on an expedited appellate timeline. The Oregon Rules of Appellate Procedure allow a maximum 42-day limit per party for filing the appellate briefs. The expedited schedule produces a frenetic pace for the unit, particularly in those cases where the exhibits are not timely made available.

Outreach. The juvenile section attorneys regularly serve as a resource to the trial bar, providing daily consultation and support. Because most dependency cases are ongoing at the trial and appellate levels, the JAS unit often consults with trial attorneys and, on occasion, drafts motions and memoranda for trial attorneys. The unit has worked successfully with trial counsel in several cases to obtain favorable outcomes in the trial courts that obviate the need for appeal.

JAS attorneys are recognized leaders in the juvenile dependency community. They presented at various CLE presentations in 2014, including the Oregon State Bar Juvenile

Law CLE, the OCDLA annual conference, the annual OCDLA Juvenile Law Training Academy in Eugene, and before juvenile dependency providers at the county level.

Notably, in June 2014, Shannon Storey was a member of the faculty that presented on juvenile dependency issues to judges as part of the Juvenile Court Improvement Program (JCIP).

Finally, Ms. Storey served on the Oregon State Bar task force that ultimately published revised performance standards for juvenile practitioners in June 2014.

Appellate Panel. By February 2014, OPDS established a panel of juvenile appellate practitioners to represent parents and children in overflow and conflict cases that did not remain in the unit. Like the criminal panel, the panel members are pre-approved to serve on the panel and are compensated pursuant to a prescriptive administrative model that reflects case type and transcript length.

Executive Director

In 2014, the Executive Director continued to focus on finalization of the office reorganization started in 2013, continuation of smooth office operations, and on external affairs. As part of the effort to ensure smooth office operations, the Executive Director held weekly meetings of the OPDS Executive Team, bi-monthly OPDS All Staff meetings, and dedicated significant time to process changes necessitated by unionization of the Appellate Division's non-management lawyers. The agency also continued in several important traditions, including the Food Drive, Charitable Fund Drive, and Toy Drive. The agency is very grateful to the OPDS employees who coordinate and contribute to these events, as they unite staff in pursuits that complement the Commission's mission and benefit OPDS's client population.

In an effort to better understand the challenges facing contract providers, the Executive director participated in over a dozen meetings with providers throughout the year. The Public Defense Advisory Group (PDAG), comprised of contract administrators who are viewed as leaders in their communities, met in January, April, June, and November, and offered valuable insight and assistance during development of the agency budget and proposed key performance measures, as well as information about transitioning to the Oregon eCourt system, and other matters of importance to contract providers. As noted earlier, the Executive Director also participated in regional meetings with contract providers to ensure a thorough understanding of provider and client needs during the budget-building process. In addition to these meetings, the Executive Director participated in meetings with Oregon Circuit Court judges and administrators and other public safety system partners to discuss justice system issues and get feedback about the performance of public defense providers.

The Executive Director also dedicated time to scheduling and convening Commission meetings, communicating with members and staff of the Oregon State Legislature, and participating in work groups, committees, and continuing legal education planning. Work

group and committee activities included regular meetings of the Juvenile Court Improvement Program, All Agency Directors meetings, the Uniform Collateral Consequences Act Work Group, Governor's Public Safety Team, OJD Audit Committee, *Juvenile Law Reader* (as a contributing editor), JR Justice Loan Review Panel, OCDLA's Juvenile Law Committee, American Council of Chief Defenders System Development and Reform Committee, House Bill 3363 Juvenile Task Force, the Multnomah County Courthouse Reference Design Committee, and the Oregon State Bar's Bar Press Broadcasters Council.

Challenges for 2015

There is no doubt that 2015 will bring new challenges, including the familiar challenge of securing adequate funding for the statewide public defense system. While the agency is always grateful for the legislative support it receives, lawyers and staff who provide services in public defense cases are compensated below their public safety system counterparts. The ripple effect of low case rates can be observed in several ways. First and foremost, many providers are not able to attract and retain qualified lawyers and staff. Staff turnover in some public defender offices is extraordinary. In Marion County, the public defender office has had complete lawyer turnover (seven lawyer positions vacated and filled) on an almost annual basis. The most common reason cited for attorneys leaving the office is inadequate compensation. Many lawyers in consortium and law firm groups typically receive a lower rate for each case than non-profit public defender groups, and while some make up the difference through privately retained cases, others simply take too many cases. As the Commission continues to develop its methodology for gathering information about provider caseloads, contract administrators must be prepared with business models that will sustain a drop in caseload. In most instances, this will require an increase in case rates. The Commission has made increasing case rates for consortia and law firm providers its top priority for the 2015 legislative session.

Continued efforts to improve the quality of public defense services are also a top priority. Several agency performance measures and initiatives focus on this critical goal, and the agency must secure permanent resources to ensure the success of these efforts. Peer reviews, system delivery reviews, performance reports and monitoring, and the provision of educational tools and training all require significant time and resources, but are essential components of a stable public defense system.

The agency will also continue to improve its internal operations. Early adoption of a paperless office model benefitted the agency significantly, but current programs will need to be replaced in order to avoid unexpected data losses and unacceptably slow processing speeds. The agency has been approaching this transition with caution and a thorough investigation of available options. Additionally, with an almost complete shift in leadership over the last three years, the management team will engage in training to ensure that managers have the skills and strategies necessary to develop and support the work of all agency employees.

Conclusion

The agency expects to spend the majority of 2015 focused on the legislative session, continued development and implementation of quality assurance mechanisms, improved office operations, development of a statewide contracting plan for 2016-17, and a harmonious transition to a new leadership team within the Appellate Division.