

**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, March 20, 2014  
9:00 a.m. – 11:00 a.m.  
Oregon Gardens  
879 W. Main St.  
Silverton, OR 97381

**MEETING AGENDA**

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|---|------------------|
| 1. <b>Action Item:</b> Approval of minutes - PDSC meeting held on January 16, 2014 ( <i>Attachment 1</i> )                                    | Chair Ellis      |
| 2. Update: Regional Meetings with Contract Providers ( <i>Attachment 2</i> )  | Caroline Meyer   |
| 3. Update: 2014 Legislative Session<br>PDSC Budget & Key Performance Measures ( <i>Attachment 3</i> )   | Nancy Cozine     |
| 4. Statewide Survey ( <i>Attachment 4</i> )   | Paul Levy        |
| 5. <b>Action Item:</b> Commission approval of changes to OPDS Payment Policy and Procedure ( <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 <ul style="list-style-type: none"> <li>• Dependency Pilot Program</li> <li>• AD Update</li> <li>• IT Update</li> </ul> | OPDS Staff       |
| 8. Executive Session*: Executive Director Review  | Commission       |

**\*Executive Session:** *The Public Defense Services Commission will meet in executive session at approximately 9:30 a.m. The executive session is being held pursuant to ORS 192.660(2)(i).*

***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 Kepford at (503) 378-3349.***

***Next meeting: April 17, 2014, 10:00 a.m. - 2:00 p.m., at the Office of Public Defense Services. Meeting dates, times, and locations are subject to change; future meetings dates are posted at:***

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

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, January 16, 2014  
10:00 a.m. – 2:00 p.m.  
Office of Public Defense Services  
1175 Court St. NE  
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis  
Chip Lazenby  
Janet Stevens (by phone)  
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine  
Peter Gartlan  
Paul Levy  
Angelique Bowers  
Caroline Meyer  
Billy Strehlow

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

**Agenda Item No. 2      50<sup>th</sup> Anniversary of Oregon’s Public Defender Office**

Marc Brown provided an overview of his article in the Oregon State Bar *Bulletin*, outlining the history of Oregon’s state public defender office. He shared photos and documents obtained from Larry Aschenbrenner, the first state public defender and Director of the State Public Defender Office. The office, he explained, was authorized by the legislature in 1963 and opened in 1964, to provide representation at any “stage of a proceeding before any court, including the Oregon Supreme Court, for an individual who has been deprived of his liberty... in any proceeding other than habeas corpus or other proceeding for a civil or criminal contempt of court.” The first public defender committee included Roy Shields (founding partner of Cosgrove Vergeer Kester), Wallace P. Carson (Salem attorney and father of former Chief Justice Wallace Carson Jr.), Robert W. Chandler (editor and publisher of the Bend *Bulletin*), Robert B. Frazer (editor of the Eugene *Register-Guard*) and Orval N. Thompson (Albany attorney). Mr. Brown provided additional details and stated his intent to continue investigating the history of public defense in Oregon. Chair Ellis and Commissioner Lazenby provided additional historical background and encouraged Mr. Brown to continue his documentation of the history of public defense in Oregon.

**Agenda Item No. 1      Approval of minutes – PDSC meeting held on December 12, 2013**

**MOTION:** Honorable Elizabeth Welch moved to approve the minutes; Commissioner Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

**Agenda Item No. 3**

**US District Court Decision; *Wilbur v. City of Mount Vernon***

Paul Levy summarized the Federal District Court's opinion in *Wilbur v. City of Mount Vernon*. Originally filed by the ACLU in state court, it was moved to federal court, where the court found that the defendants, two municipalities, systematically deprived criminal defendants of their constitutional right to counsel as a result of deliberate decisions made in the course of contracting, funding, and monitoring public defense services. Principally it was that the cities knew they were contracting with only two lawyers, resulting in caseloads that were unmanageable. The consequence of having unmanageable caseloads, as the court found, was that the lawyers never talked to their clients in a confidential settings; all of the conversations happened in court. They didn't do any legal analysis. They did not investigate. There was, in the court's view, no adversarial testing of the government's case; it was a meet and plead system. Mr. Levy pointed out that while this is not the dynamic in Oregon, there are instances, like expedited dockets, that should give the Commission pause. While these are not akin to the deliberate indifference in the Mt. Vernon case, where cities were willfully blind based upon a pretext that oversight was impractical and would interfere with the attorney/client privilege, there is a risk of inadequate representation. In Washington, the cities knew, and the court found, that they were paying such a paltry amount that even a brief meeting at the outset of the representation would make the venture unprofitable for the attorneys. Mr. Levy noted that this dynamic is actually a problem for contractors in Oregon, who are sharing with OPDS at regional meetings, that in some parts of the state, if lawyers take the time to travel to meet clients or to go to the courthouse and back, they have consumed all of the proceeds from the representation that they would be earning from public defense. He noted that this is a big concern.

Mr. Levy explained that the court allowed injunctive relief and chose to impose what the court called "a public defense supervisor." The United States Department of Justice had intervened in the case, not to advocate for one outcome or another, but to recommend that the court impose a monitor if it found a constitutional violation. The court didn't structure the monitor as the Department of Justice envisioned it, but the public defender supervisor is charged with supervising and evaluating basically all aspects of the representation, and mainly the timeliness and quality of attorney/client contact and client advocacy.

Mr. Levy pointed out that this is relevant to the discussions on key performance measures and our efforts to improve monitoring and quality assurances protocols in Oregon. In Washington, the supervisor must collect and analyze data on the frequency of use of investigators and experts, motions filed and outcomes, dismissals and other non-conviction dispositions, pleas to lesser included offenses, and the number of trials and outcomes. He noted that it is a good list of things to watch and track.

Chair Ellis indicated his interest in exploring whether Oregon's KPMs could include a comparable caseload measure, but noted that, on the whole, he took some comfort in the fact that Oregon's statewide system isn't as vulnerable to the budget pressures that drove the municipalities in Washington. Mr. Levy also noted that Oregon has contractual language and qualification standards that caution lawyers and contractors not to accept caseloads that are not manageable. Commissioner Welch commented upon the obvious dynamic in the *Wilbur* case, where the municipalities were arguing that because nobody was complaining, the court should not interfere. She noted that this is a danger anywhere, even in Oregon, and that it is part of the problem Oregon currently has in juvenile delinquency cases. Commissioner Lazenby asked about the likelihood of the *Wilbur* case causing an avalanche of PCR claims. Mr. Levy explained that the opinion specifically cited the fact that it was not possible to identify which defendants received a bad outcome - it was a system that was designed to

disserve them systematically - and that it was unlikely to result in a significant number of PCR claims.

**Agenda Item No. 4                    Update: Regional Meetings with Contract Providers**

Caroline Meyer provided an update on regional meetings, noting that the analysts have been doing a great job getting these organized and scheduled. The first three of the six meetings are finished and went well. Contractors are making these meetings a priority, and if they are not able to attend in person they have someone there or appear by phone. She noted that there are some common themes, but also unique challenges in each region, and that the meetings have been very helpful, not just for budget building, but as an opportunity for providers to be in a room together, sharing problems and ideas. At the meeting with Eastern Oregon providers, on December 7<sup>th</sup>, the big issue there was mileage. The Central region (Crook, Deschutes, Gilliam, Hood River, Jefferson, Sherman, Wasco, and Wheeler ) met in Bend on January 10<sup>th</sup>, where the biggest concern was caseload reduction, recruitment and retention (especially in Bend where there is a high cost of living and significant pay disparity with the district attorney’s office), and training, mentoring, and professional development, which has been another common theme in all three regions. The North Coast region (Clatsop, Columbia, Lincoln, and Tillamook) met on January 14<sup>th</sup> in Astoria, where the biggest concern was poor compensation for juvenile dependency cases, and difficulty attracting qualified, new attorneys due to the low rates. This problem is compounded by a lack of placement resources close to home, which means that kids are in remote foster care placements, and it is more expensive for the lawyers to visit clients. Additionally, providers have difficulty attracting new lawyers due to high costs of professional development, PLF dues, CLEs, etc. They also expressed concern about the lack of experts in the area who will work for public defense rates, which creates case delays; in most cases they have to wait for a Portland expert to make the trip to their area. Providers are also experiencing increased discovery and IT costs. Commissioner Lazenby expressed concern about the cost shift of electronic discovery, from counties to the state. Ms. Cozine noted that OPDS has been looking at these costs.

**Agenda Item No. 5                    Discussion of PDSC Key Performance Measure; Report to the Legislature**

Ms. Cozine directed Commission members to the attachment, which is a draft report in response to the Legislature’s request that the PDSC examine its current KPMs and offer new KPM targets if appropriate. The memo describes the PDSC’s intent to request a modification of the existing appellate KPM, and requests additional time to develop a trial level KPM. Commissioner Welch offered a suggestion that the Commission move toward something that includes a measure of caseload numbers per lawyer. Ms. Cozine agreed to add that to the list, and to pursue a data sharing conversation with the Judicial Department (as the new eCourt system might offer an opportunity to more accurately measure caseloads). Commissioner Lazenby supported that idea, and encouraged adoption of a KPM that would help the Commission draw a correlation between the number of cases per attorney and the quality of representation. Chair Ellis expressed his support and optimism that something could be achieved in the near future.

**Agenda Item No. 6                    Proposed Revision of Certification Process for Non-Capital Providers**

Paul Levy directed the Commission’s attention to the attorney certification form that was recently revised to reflect the Commission’s adoption of a separate certification process for death penalty cases. Mr. Levy mentioned that as certification processes are developed for case types other than capital cases, the form will continue to be updated. He explained that the current system involves only the checking of a box that says, “I am qualified and want to do this work.” Mr. Levy indicated that the certification requirements for non-capital cases won’t be as onerous as what is required of capital providers, but that it will be something more than just checking a box. He explained that the changes implemented in capital cases

are yielding good information and a great deal more confidence that the people we are approving to do this work actually meet the qualifications and are capable of doing it.

**Agenda Item No. 7                    Amendment to PDSC Legal Representation Plan for Death Penalty Cases**

Mr. Levy reminded the Commission that it has directed OPDS to provide representation in capital cases in accordance with the ABA standards. He noted that OPDS has followed those standards, and requested that the Commission update the PDSC death penalty representation plan to conform with requirements of the ABA Guidelines with regard to the provision of counsel in the early stages of the investigation of a capital offense. Jeff Ellis expressed his support, noting that there is very little danger here of assigning lawyers in cases that never get charged – that where there is a murder and strong evidence of the suspect, charges will be filed, and that in those instances, particularly where there are delays in the filing of charges, there are important reasons to assign counsel at the earliest opportunity.

**MOTION:** Chip Lazenby moved to adopt the language; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

**Agenda Item No. 8                    Executive Director Review Process**

Cynthia Gregory outlined the Executive Director review process, and indicated that Commission members would receive a packet with graphical and narrative information before the Commission retreat in March.

**Agenda Item No. 9                    OPDS Monthly Report**

Mr. Gartlan began by providing Commission members with an update on changes in the Appellate Division, with one lawyer leaving the juvenile unit to pursue an opportunity at a private firm in Portland, and a recruitment for that vacancy posted. He also explained that lawyers are in the midst of their annual reviews, which he hopes to have completed by the end of February. He also arranged to have a Court of Appeals judge and a Supreme Court justice speak to Appellate Division lawyers: Justice Walters in December and Judge Schuman on January 15th. He also summarized the issues in Appellate Division cases being briefed for the Supreme Court.

Mr. Levy told Commission members that on Monday OPDS launched the seventh annual statewide public defense performance survey, which is sent to all circuit court judges, elected district attorneys, juvenile court directors, and managers of the Citizen Review Boards. Commissioner Welch asked whether OPDS tracks complaints regarding providers. Mr. Levy explained that there is a database to track complaints.

Ms. Cozine updated Commission members regarding legislative matters, which includes the potential restoration of the 2% holdback in February. She explained that the priority for the professional services account is being able to pay all contract obligations through the remainder of the biennium, without having to push costs to next biennium, and that the highest priority for OPDS is equipment replacement and restoration of funding to pursue quality assurance initiatives, including funding for service and peer reviews and continuing legal education courses. She noted that tomorrow there would be a meeting of the Dependency Work Group in the morning, and the House and Senate Judiciary Committees in the afternoon, regarding the Washington State Parent Representation Program. Ms. Cozine further indicated that she, Judge Welch, who is on the Dependency Work Group, and Judge Abernethy, the Juvenile Court Improvement Program Judge in residence, were also scheduled to visit legislators during the day in order to share additional information regarding dependency cases.

Ms. Cozine offered a few additional updates. The Public Defense Advisory Group (PDAG) will meet on January 31<sup>st</sup> to discuss possible approaches to a draft policy option package, as informed by information gleaned through regional meetings. The PDAG will also explore possible KPMs, eCourt, and other items of interest to contract providers. Ms. Cozine mentioned that Cynthia Gregory, OPDS Human Resources Manager, worked with the Appellate Division to post an electronic recruitment for the latest vacancy, and that Ms. Gregory would be working on updating information regarding the diversity among public defense providers. Ms. Cozine thanked both Cynthia Gregory and Cecily Warren, who just joined as the agency's Research and IT Director, for their work.

Commissioner Lazenby asked whether a restoration of the 2% would have an impact on the parity conversation. Ms. Cozine responded that restoration of the 2% would impact all providers equally by allowing them to keep the 2%, but that OCDLA is undertaking an effort to have a focused conversation on pay parity. She pointed out that there were contractors in the room who participate on OCDLA's pay parity committee, including Jennifer Nash. Ms. Nash said the first meeting of the committee was on Tuesday, and that there would be another before the OCDLA board meeting on February 1, but it seemed unlikely that state funding would be available for an increase above the 2%. Commissioner Lazenby stressed the importance of providers working together toward a common goal. Lynn Dickenson, who is also on the committee, indicated that consortia providers, who are very concerned, are at the table trying to work with everybody. Ms. Nash added that caseload is another piece of the puzzle, and that the committee would also be examining this aspect of contracting.

Chair Ellis thanked meeting participants and asked for other updates or a motion to adjourn.

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

**Meeting adjourned**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, January 16, 2014  
10:00 a.m. – 2:00 p.m.  
Office of Public Defense Services  
1175 Court St. NE  
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis  
Chip Lazenby  
Janet Stevens (by phone)  
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine  
Peter Gartlan  
Paul Levy  
Angelique Bowers  
Caroline Meyer  
Billy Strehlow

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

0:05 Chair Ellis Let's call the meeting to order. We are one shy of a quorum so we will defer the minutes until Chip gets here. Mark, you are first up on the agenda.

**Agenda Item No. 2 50<sup>th</sup> Anniversary of Oregon's Public Defender Office**

0:19 M. Brown Thanks. It is actually show and tell day. I brought items. I apologize for those on the phone, but there are some items being past out. They are just some random, historical items that I acquired. Some of them are from Larry Aschenbrenner who I had the pleasure of meeting. He was the first state public defender. I would like to start by welcoming you to the next 50 years of our office, and when I say that it is with the understanding that we are really talking about two different offices because the 50 year anniversary is for what is now the Appellate Division of our office. It is kind of like a marriage late in life of two individuals in that each comes with their own history. So you have what was Indigent Defense Services and is now Contract and Business Services coming together with the AD office back in 2003. Actually the history of indigent defense services as Chair Ellis knows is fascinating and that is another project that I am working on. That is the history of public defense in Oregon, which statutorily began in 1955. I think I have a statute in one of those. The original statute created the trial level public defense system in 55, but as the Supreme Court said in an opinion, it

always had the authority to appoint public defenders. Interestingly enough not under the constitution because the Supreme Court viewed Article I, section 11, as most states did prior to *Gideon*, as allowing for someone to have an attorney as opposed to requiring it. But the court said that attorneys are officers of the court and they help us in our job. So we always have the inherent authority to appoint an officer of the court to assist us, which included the Supreme Court appointing an appellate attorney. But in 1964, the legislature created this office and as you know I wrote an article, I think it is included in your materials, on the history of the State Public Defender's Office. How I got into that was an article that was in the OCDLA Defender magazine, the *Gideon* addition, and it the article written by Justice De Muniz. The footnote said that the early implementation of the *Gideon* promise was the creation of the State Public Defender's Office in 1965. He was actually a year off. It was 64. That kind of led me down the rabbit hole to find out how our office started. Another question that I always had was why we have kind of the bifurcated system? Why when in 83 when the state took over the trial level public defense that they didn't put it under the State Public Defender's Office. That was always a question that I have had and ultimately I think the conclusion was that it was part of the consolidation of the court system and the kind of administrative aspect of it was all over the court system so it just naturally went to the court system, whereas the State Public Defender's Office didn't have the administrative capability of overseeing the entire system. Chair Ellis knows more about that then I do having been involved with that. But in 63 the legislature created the State Public Defender's Office "to act as an attorney at any stage of the proceedings before any court, including the Oregon Supreme Court, for an individual who has been deprived of his liberty in the custody of the Warden of the Oregon State Penitentiary or the Superintendent of the Oregon Correctional Institution, and the proceeding is other than a habeas corpus proceeding or other proceeding for a civil or criminal contempt of court. Essentially when the legislature was creating the office in 64, the local counties – the local courts still had control of trial level public defense, so all the legislature could really do without taking control of that was create the office for appeals. The first public defender committee was made up of Wallace Carson, the father of former Chief Justice Wallace Carson, Robert Chandler, who was editor and publisher of the Bend Bulletin. Robert Frazer, editor of the Eugene Registered Guard, and Orval Thompson from Albany.

5:28 Chair Ellis

Janet, do you recognize your father's name in that description?

5:33 J. Stevens

I did hear that, yes.

5:32 M. Brown

So the committee got together, probably in a room not different from this, somewhere in Salem back in early 1964, and decided to hire Larry Aschenbrenner as the first state public defender. It is kind of funny because I tracked down Larry Aschenbrenner. Being attorneys it is very easy to track down other attorneys through state bar websites. So I tracked down Larry Aschenbrenner and contacted his daughter via email because he did not have an email and asked if Larry would be interested – Larry is now 86, and asked if he would be interested in talking to me about this. Wondering if he was going to be available and she said, "Well you know dad is in Hawaii right now with mom. When he gets back or give him a call on his cell phone." I called Larry and we talked for a few minutes on the phone and said I would like to interview him. I mentioned to him that I had worked up in Denali National Park in Alaska because he is in Anchorage. I mentioned this to bond with this Alaska connection. I told him I hadn't been there for about 10 years. He said you will have to come up to Alaska. I was like yeah. No, no you have to come up. I am talking to you unless you come up to visit me. I am like, "really"? He said, "sure." So off I went to Anchorage. Larry Aschenbrenner is a wonderful person. I don't know if anyone here knows Larry Aschenbrenner or has met him, but really a super nice person. It was really fun meeting with him and his wife. I am hoping to get him to come speak in our office next time he is in Oregon and will let everyone know when he is here. He is a wonderful person. He was born in Oregon. He grew up in Grants Pass. Prior to becoming the State Public Defender he had been in private practice. He was a justice of the peace in Grants Pass. Then he was the elected district attorney of

Josephine County. So the first State Public Defender went from being an elected DA to being the State Public Defender. He started in February of 64. He found office space. He hired Gary Babcock as his deputy and then went to work. Primarily what they were focusing on was PCR. The court was being flooded with PCR work at that point because of all these new criminal rights that were being articulated by the court, by the US Supreme Court. So they sent out word to the two prisons at that time that we are doing this. They got something like two to three thousand letters. They shifted through a lot of them pretty quickly either saying there is nothing here, or a lot of them were cases that had to do with not having representation, guilty pleas, and those were pretty easy. Some of them were more challenging. There is an article about Elmer Collins, which is a fascinating case because Elmer Collins was in prison in Oregon for 20 years as a habitual offender. One of the offenses was a rape conviction in Oklahoma. When Larry met with him he said, "it was my twin brother who did it." Yeah, sure, and then Larry met his twin brother. He tracked down his twin brother in California and met him and he said they were identical. The twin brother confessed to that but Larry couldn't overturn an Oklahoma conviction. He didn't have authority to do that, but he found out in Oklahoma at that time African-Americans were excluded from juries, which was later ruled to be unconstitutional. So he was able to say in Oregon that that conviction was void and therefore he was not a habitual offender. They just sort of were making it up as they went along. Another interesting case was a woman at OSP – Clarence Gladden, the superintendent at OSP at the time called him and said, "There is this woman who is here. She has a mental illness. She is burned all over. She lights fires and we don't know what to do with her. She needs to go to the State Hospital." Larry couldn't do any of that so he had no way to bring this case forward, but he met the woman and she was in this dark room. She had no clothes on because she burned everything. She had a mattress on the floor and it was wrong. So nothing being able to do anything legally he went to the newspapers and he said this is what is going on and exposed it. Clarence Gladden was kind of behind him on this. The Governor at that time, Mark Hatfield, and he called Larry into his office when it hit the news. Larry went and put on a suit and tie and went to visit the Governor. The Governor said, "Well, what are you doing about this?" He said, "This is the only way I could do it. I couldn't get a response from anyone." He said, "I knew about this." Larry said, "Well, why didn't you do anything? This needs to happen. This needs change." So the Governor was prompted by the article and had her transferred to the State Hospital. Larry visited her about six months later and she was perfectly well. She had gotten treatment. So, again, a way that he was figuring out how to do this within his power. Now Larry eventually left. There is a great letter when he announced his resignation from George Joseph, who was at that time with Morrison and Bailey. I will quote it because it is a great letter. "The news in your letter of November 10, 1967, was received with surprise, consternation, and not a little dismay. It is my off hand impression that you have popped your gourd at least. While I can appreciate your desire to take on something easier, i.e., fighting the whole state of Mississippi, I cannot understand how you can voluntarily leave Oregon even in the cause of justice." He goes on, "I am afraid there has already been a leak in security. As I read the first paragraph I was heard by people in this office to utter those deathless words 'My God, Aschenbrenner is resigning,' so by the time I got to your last paragraph confidentiality had already been blown." Larry went on to represent individuals in civil rights cases in Mississippi, which he had volunteered doing with the American Lawyers Committee for Civil Rights under Law. A number of Oregon lawyers had gone down there in the late 60s and volunteered to represent them, including Jacob Tanzer. There is an interesting aside I heard the other day. I ran into Jacob Tanzer at a party and he was a classmate of Larry Aschenbrenner's and after law school he went to D.C. and worked for the federal government for a bit. When he came back to Oregon he got two offers for work. One was from George Van Hoomissen, who was the DA in Multnomah County. The other one was from Larry. He kind of weighed the two and decided he wanted to live in Portland. That is why he ended up working there. But Larry ended up going to Mississippi as the general counsel for the American Lawyers Committee for Civil Rights under Law in 1967. At the time the committee appointed Gary Babcock to the top position of the State Public Defender. He was followed in 1990 by Sally Avera. Then in 1999 by David Groom. He was technically

the last State Public Defender. At that point the officers were combined and it became the Chief Defender title. Larry Aschenbrenner went on to the work for the State Department on Indian law issues, tribal issues, and at one point he was the Deputy Attorney General for the Navaho tribe in Arizona. He later ended up opening up the Native American Rights Fund Office in Anchorage which he ran for 25 years. He is a fascinating guy. If we get him to come here, I encourage folks to come and listen to him. It is a fascinating history and I look forward to working on the history of the trial level of public defense.

- 14:15 Chair Ellis      So I hope as you go forward with your history that you will include what I think is one of the proudest moments of the state. That is when the *Gideon* case was before the Supreme Court and the young attorney from Florida that was trying to defend it circulated the AGs around the country saying, “wouldn’t you like to file an *amicus* brief?” And the answer came back, “yes, but on the other side.” There were two briefs filed. One was lead by Walter Mondale who was then the AG of Minnesota. Oregon signed on to that but there was a separate *amicus* brief and I believe Robert Thornton was the AG here at the time and not viewed generally as a great civil libertarian. He had pretty strong views that from the integrity of state systems, *Gideon* would be, or what became *Gideon*, would be a far better outcome than the old *Betts against Brady* for special circumstances, which is very intrusive on the integrity of the state process. So I have always wanted to know more about the decision making that went on in the AGs office here with the respect to those two *amicus* briefs. So if it works for you include that in your research. I think it would be really quite interesting.
- 15:56 M. Brown      I will see if I can track those down.
- 16:00 Chair Ellis      There should be a pretty good record on it somewhere. Thank you, Marc. That is an interesting history and I am glad someone is recording it.
- 16:13 M. Brown      Thank you.
- 16:13 C. Lazenby      Marc, if you want more about the lawyers from Oregon that went to the south, the ACLU collectively gave those lawyers the MacNaughton Award about 10 years, which is their annual big civil liberties. There was a video that was done interviewing a lot of those lawyers that went south. There are some great stories there. I think there is some discussion about Aschenbrenner. My favorite anecdote is that there was an Oregon summing up to a jury and he said, “You know I am going to go back to Oregon. They have been targeted as an outside agitator. I am going to go back to Oregon but all of you have to live with what you said justice is worth in Mississippi.” About two hours later there was a knock on the door and the jury’s question was how many zeros are there in a million dollars? The answer is nine, by the way.
- 17:04 Chair Ellis      One of those is Don Marmaduke. I recommend you talk to Don. He is a wonderful guy. One who is no longer with us is Cliff Carlson.
- 17:17 M. Brown      It is a very interesting story. The numbers of Oregon attorneys that did go there at that time. People don’t realize the connection between the civil rights movement and Oregon, which was sort of thought of outside of that whole movement, but, in fact, it was the attorneys were very actively there. Yet another history to write.
- 17:42 Chair Ellis      Go for it.
- Agenda Item No. 1      Approval of minutes – PDSC meeting held on December 12, 2013**
- 17:45 Chair Ellis      We now have a quorum so we will move to approval of the minutes for December 12, 2013. Are there any additions in corrections?

17:58 J. Stevens Barnes, I found a mistake in the one but I can't find it this morning. There are two words in there where only one would do.

18:08 Chair Ellis When you do find it again do you want let – who should that be, Nancy, that she needs to let know?

18:21 N. Cozine She can send an email to me.

18:22 Chair Ellis Send an email to Nancy. Excepting without knowing exactly what Janet's issue is, is there a motion to approve?  
**MOTION:** Honorable Elizabeth Welch moved to approve the minutes; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

**Agenda Item No. 3 US District Court Decision; *Wilbur v. City of Mount Vernon***

18:45 Chair Ellis Okay. Paul, *Wilbur v. City of Mount Vernon*.

18:48 P. Levy Yes, good morning. I talked about this at the last meeting. You didn't have a copy of it in front of you and now you have had it. I don't know what more discussion you would like to have about it. I could summarize the points and lessons from this decision if that would be helpful. If you would like me to do that I would be happy to.

19:23 Chair Ellis Sure.

19:23 P. Levy I am sure you know this is a Federal District Court opinion out of Seattle on a case that was originally filed by ACLU in state court and then moved to federal court. The court found that the defendants, in these two municipalities, systematically deprived criminal defendants of their constitutional right to counsel as a result of deliberate decisions made in the course of contracting, funding, and monitoring public defense services in these two cities. Principally it was that the cities knew that they were contracting with only two lawyers and that would result in caseloads that were unmanageable. The consequence of having unmanageable caseloads, as the court found, was that the lawyers never talked to their clients in a confidential setting. All of the conversations happened in court. They didn't do any legal analysis. They did not investigate. There was, in the court's view, no adversarial testing of the government's case. It was a meet and plead system. You read the opinion and you think this is not Oregon, but there are little bells...

20:57 Chair Ellis But it was Oregon. The old Portland Municipal Court. You could just sort of feel it.

21:09 P. Levy And it does give one pause when you think about what goes on in some of the expedited dockets, some of which we actually contract to cover, and there is some pause there. What the court found, though, that I think sets us quite apart from what was going on there, is that the cities were deliberately indifferent. They were willfully blind to what was going on. In fact you specifically disavowed a monitoring obligation that they have on the pretext that it was impractical and also would interfere with the attorney/client privilege. So while they may have actually had actual knowledge of the caseloads were, they should have known and they didn't know because they didn't want to know. I may have quoted this at the last meeting. There is one line in the opinion and it is not really taken out of context. The cities knew the court found that they were paying such a paltry amount that even a brief meeting at the outset of the representation would make the venture unprofitable for the attorneys. This is actually something we are hearing in our regional meetings. In some parts of the state if you took the time to travel to meet your client or to go to the courthouse and back, you have consumed all of the proceeds from the representation that they would be earning from public defense. It is a big concern and it is something we are hearing about. Quite frankly having a federal district court in a neighboring state take a very close, hard look at public defense is not the worse thing for us in Oregon. The opinion is helpful and useful and interesting. The remedy is also

interesting. The court allowed injunctive relief and chose to impose on the system what the court called “a public defense supervisor.” The United States Department of Justice had intervened in the case. Specifically, not to advocate for one outcome or another as far as the merits of the case, but to say that if you do find a constitutional violation for all of the reasons that they said you might want to find one, we recommend that the court impose a monitor. The court didn’t actually choose a monitor as the Department of Justice envisioned it and they cited some examples of monitors who were instrumental in enforcing consent decrees in settlements over police department abuses around the country. But this public defender supervisor is charged with supervising and evaluating basically all aspects of the representation, but mainly the timeliness and quality of attorney/client contact and client advocacy. What I thought was very interesting was because this is relevant to our discussions on key performance measures and the work that we are doing here to try and improve our monitoring and quality assurances protocols, is that the court ordered that this supervisor collect and analyze data on the frequency of use of investigators and experts, motions filed and outcomes, dismissals and other non-conviction dispositions, pleas to lesser included offenses, and the number of trials and outcomes. It is a good list of things to watch and to track. I don’t know if you have any discussion or comments you would like to share among yourselves or with us?

- 25:53 Chair Ellis I thought it was a very interesting opinion. Of course the thing that leaped out as I read it is Washington’s totally Balkanized system. So you have these two municipalities. There is nothing like the process that has emerged here in the last 10 years. So I thought that was quite interesting. I would be interested as we go forward on our KPMs whether we have a comparable measure to the caseload measure that they are talking about here. But on the whole, just from a protocol Oregon point of view, I felt very encouraged. I think there you had municipalities that are driven by their own budgetary interests. They are trying to do the minimum. Close their eyes to the process issues. As far as I could tell on the city side they didn’t have anybody with a defense awareness. So I took some comfort that our system is not vulnerable to the kinds of things that are described here.
- 27:17 P. Levy And there were municipal courts.
- 27:19 Chair Ellis Right.
- 27:19 P. Levy As in Oregon that has municipal courts as well prosecuting low level offenses. In the state courts, as in Oregon, where the more serious cases were being prosecuted as I understand it. Even on that level there system is very, very different from ours as well.
- 27:48 Chair Ellis It felt very like the municipal court system that we had back in the 60s. I think we have made good progress.
- 27:58 P. Levy And on the caseload issue here, we have contractual language and language in our qualification standards that caution lawyers and contractors not to accept caseloads that are not manageable. That interferes with the attorney’s ability to serve any one client competently. There is also a state bar formal ethics opinion to that same effect. But we do not have a good, reliable method of knowing what caseloads are at any time at any place in the state. We look at that when we do peer reviews and when we do system delivery reviews, but it is among the data points that we are looking at need to develop a way of reliably measuring.
- 28:57 Hon. Elizabeth Welch Mr. Chairman, I thought this decision was wonderful because it was so thorough in examining – I don’t know if it was literally every possible thing that could be examined but it certainly felt like a very encyclopedic approach. I think that struck me most, and lots of things did, but the most is there is a paragraph somewhere in the opinion where basically what the judge said was everybody thought that it was okay. Nobody is complaining and keep your nose out of

our business kind of tone. The court wasn't complaining and so on. I think that is very real. I don't think that we are in the slightest bit immune to that kind of thinking. I think it is pervasive. I can give you examples of situations where at least a variation on that theme was the response to talking about really fundamental issues about representation of children, for instance, in delinquency cases. If we did that what would the consequences to the system be and everybody is trying to do their job. There is a sort of tendency to have faith that everybody else is doing the best they can with their resources. Why should I be the SOB that complains? I think that is a big, big, big problem in this field. By the way I don't have any brilliant suggestions about what ought to happen with it. I think in itself is an issue that is worthy of some .....

30:58 P. Levy

I think you are absolutely right. We know that and you know this as well from our peer reviews that we do. We will go to some communities and there are others here who have been part of peer reviews who know this as well. You will go to some communities and people are anxious to tell you about what needs fixed. But you can go to some places and they will say everything is just fine. Goodbye. Nobody really wants a close look at what is going on.

31:37 Chair Ellis

You are not talking about Clackamas are you?

31:37 P. Levy

No. I like not talking about Clackamas.

31:43 C. Lazenby

On this juvenile issue we have heard this as we have gone around the state, especially around the issue of appointment of counsel for children so they can get independent legal advice about the consequences of what is happening to them as they go through the system. On a sort of pay me now, pay me later sort of basis, do you anticipate that the results of this case, Paul, is going to be that they are going to end up with an avalanche of PCR that they are going to have to deal with and pay for as a result of the ineffective assistance of counsel that seems to have been endemic up there?

32:17 P. Levy

I would actually doubt that. In part because it is a municipal court system where the sentences are short and people pretty quickly move on with their business and concerns. The opinion said that we can't say the defendants got in a particular case a bad outcome. If that were the case these people would be proceeding with ineffective assistance of counsel claims. But it was a system that was designed to disserve them systematically. There is a really eloquent quote in the opinion about it may look like a great deal and you may have been guilty and you got a great deal, but if you lawyer doesn't know and you don't know about the collateral consequences, the immigration consequences, if you happen to have not actually committed the offense. It starts looking like not such a great deal. I doubt that there actually will be that avalanche of PCR litigation. I haven't, other than reading the opinion as you have, followed up to find out what is actually happening in those towns. It would be interesting to do that.

33:50 Chair Ellis

Are the cities appealing?

33:54 P. Levy

I don't know the answer to that.

34:05 Chair Ellis

Anything else on *Wilbur*? Alright. Thank you, Paul.

#### **Agenda Item No. 4**

#### **Update: Regional Meetings with Contract Providers**

34:18 C. Meyer

As Nancy shared at the last meeting we have been holding regional meetings, we have scheduled six meetings across the state. At the December 12 meeting she had reported at the first meeting which happened up at the Benson on December 7. That was the eastern Oregon region. The analysts have been doing a tremendous job of getting these all organized and schedules. We are working on the 6<sup>th</sup> meeting which will be the Willamette Valley in early

February. We are still finalizing that. We have now completed the first three of the six meetings. The meetings are going well. Contractors are really making it a priority to get there. If the administrator can't be there they are sending someone from their office that can be there to share ideas and help brainstorm, or they are attending by phone. That is option. That has worked for some of our staff as well as contract staff. We are hearing some common themes, but we are also hearing that there really are some unique challenges in each of our regions that are specific to that region. It has been real helpful. In addition to the sharing of ideas about – the purpose of these is to share ideas about building the budget. What can we put into a policy option package that will help that region? It is also a great time for providers to share because they are in a room together. Not only do they have our ear but the (inaudible). It has been really good idea for them to sort of brainstorm with each other about just issues in general to that region. It may not necessarily end up in a policy option package, but it is a really good time to discuss those concerns and talk about that. As I mentioned the December 7 meeting that Nancy reported on and the big issue there was mileage. As Paul just mentioned to you when you spend your entire contract rate traveling between courthouses to attend different hearings it is tough. Central Oregon. January 10th we went to Bend. Central County has Crook, Deschutes, Gilliam, Hood River, Jefferson, Sherman, Wasco, and Wheeler. Again, we had very good attendance. One of the big issues there we talked about it as caseload reduction, but partially to address a docketing system that has been put into place that makes it really difficult for providers to practice in more than one area. So you can be a real benefit to the system. Sometimes the docketing is scheduled in individual courts. Individual counties don't allow for that. That was certainly one area that there was quite a bit of discussion about. Recruitment and retention was another one. You know the higher cost of living in Bend and just attracting new lawyers with the pay disparity. Even though they start at a lot higher starting salary in Bend than they do in say Portland, there is still a disparity between the DAs and defense attorneys. Training and mentoring and professional development is another one that we are hearing sort of a common theme. On January 14, which was two days ago, we had another road trip up to Astoria for the north coast meeting. That is Clatsop, Columbia, Lincoln, and Tillamook. The big theme there was juvenile dependencies. The difficulty attracting qualified, new attorneys out there for the rates that we are able to pay. There was quite a bit of discussion about that. Then in addition there was discussion about funding for social workers or dependency case managers, similar to the Washington system. In Klamath County we have a system where they utilize that and have had very good results with that. So high dependency rates again they talked about there is more family decision meetings to attend. Another issue that I think is really statewide is we are seeing lack of placement resources close to home, so more kids are being placed in foster care away from the home county. So attorneys and their staff have to travel great distances to visit their child clients, so that was another one. Again, professional development, PLF dues, CLEs, that kind of thing. They also talked at the north coast meeting about more accessible experts in rural areas. There was quite a bit of discussion about that. Having to pull from Portland and the other areas, both in terms of difficulty in getting them scheduled and then just being able to pay them what they want to charge doesn't always work for public defense rates. Then they talked about needing funding for increased discovery and eCourt costs. That is sort of universal coming up statewide as well. How the cost of discovery has sort of shifted. It used to be you would get everything in a hard copy and you would pay for that. Now you are paying for the electronic version and then you are also having to pay for your own print costs to print that out. In most cases attorneys are still wanting a hard copy of that discovery and certainly if you are printing it out for the client. So it is almost like they are being hit twice with the costs. That has been a real recurring thing. The north coast group also mentioned the increased health care costs. As we all know that is a big one. So those were the three meetings we have held so far. We have a southern Oregon meeting coming up January 28. That will be down in Roseburg. That is Coos, Curry, Douglas, Jackson, Josephine, Klamath, and Lake Counties. Then on January 30 we will be up in Portland for the tri-counties. The Clackamas, Multnomah, and Washington meeting. Then, as I mentioned, the Willamette Valley we are still trying to schedule that for the first week of February. We are hoping to get it in before we really get going with the session.

41:12 Chair Ellis I think this is terrific. Communication between this office and the providers can only be healthy. So I encourage what you are doing. That is good.

41:23 C. Meyer Yeah. It has been really good. OCDLA has joined on board with us, so Commissioner Potter has been attending meetings as well. I think he has personally been at all three of the meetings so far and they are sponsoring lunch. That has been very helpful.

41:41 C. Lazenby I raised at a previous meeting this whole issue of eCourt documents and how in theory that should be a cost savings. I think the conversation came out that what is happening in practice is that the counties are using it as a cost center, or revenue center, so that even if it is cheaper to produce, they are actually charging them to generate revenue for themselves. Are we discovering that it kind of a statewide practice where the counties are doing that as eCourt gets folded in?

42:11 C. Meyer I think there is a little bit of variation, but I know you had talked about that at the last meeting.

42:18 N. Cozine It does tend to vary from county to county in terms of whether or not discovery is being provided electronically or a paper copy. I think the vast majority are electronic. Those rates are set at the county level. It seems that some of our providers will use the information electronically, but the majority needs to print at least some of the information if not all of the information. When they go to trial it can be very difficult to access what they need at a moments notice if it is all stored electronically and there are thousands and thousands of pages. So when we prepared our budget for this last biennium for the discovery fees that are paid out of this office. OPDS pays those discovery fees and there had been a 24% increase. It is something we are looking at and we are talking about and need to work with our providers to figure out an efficient way ....

43:26 C. Lazenby I think that my own concern is that the more information we get on this it tends to be statewide. I would think the legislature would have some concern if the fees were related to actual costs and it was actually serving as a siphon of the state funds in the county coffers without any relation to costs. That has an impact on our budget overall and our ability to provide services to the people we are supposed to be providing it to, which our citizens accused of crimes. I think the last time we talked about this there was one or two counties we were talking about and saying there is no way to get in there. But as we are discovering this is more and more statewide then maybe it is something the legislature ought to take a closer look at and asked the counties to come in and show what costs they have relative to the 24% increase we are seeing in those costs.

44:20 Chair Ellis Okay.

44:21 C. Meyer So unless you have questions.

44:26 Chair Ellis No. Thank you.

**Agenda Item No. 5 Discussion of PDSC Key Performance Measure; Report to the Legislature**

44:29 Chair Ellis Nancy. KPMs.

44:46 N. Cozine I just handed you a draft version of a letter to the legislature. As you may recall – you have seen a draft of this. But as you may recall when our budget bill was passed, House Bill 5441(A), it came with an instruction that the Commission review its KPMs and report to the Legislative Assembly during the 2014 session on this outcome of this review and on any proposed legislative KPMs that would better measure the effectiveness and efficiency of the agencies’ programs. We talked about KPMs at several meetings since this our budget past in July, exploring various measures that might be used. In my conversations with Legislative

Fiscal office and with legislators, it is clear that what they really would like is something that hits at the trial court level representation, and in this memo I set forth some of the different areas we have explored. We have looked at ways that we might be able to collect that data. We feel that we would be in a better position to select a specific measure once we actually have our new IT and Research Director firmly rooted in her new position. I will introduce you to her. She is here today, Cecily Warren.

- 46:06 C. Warren                    Good morning.
- 46:06 Chair Ellis                    Welcome. Thank you for joining us. We are optimistic this will be a good relationship.
- 46:18 N. Cozine                    Cecily joins us from the legislature, so she has a very good understanding of the kinds of information that they are interested in hearing.
- 46:24 Chair Ellis                    The only downside that I know of is that the legislature is irritated that we got you.
- 46:33 N. Cozine                    Yes. So this memo sets forth our intention to continue exploring the potential KPMs with a commitment to coming up with something that we can put in our agency request budget which will be developed and examined by this Commission in June of 2014. So we are in the development process. We have talked to our legislative fiscal analyst and he understands what our position is. I have also met with Representative Williamson. I have a meeting in progress being scheduled with Senator Winters on this subject. I didn't want to submit this report to the legislature without further discussion with this Commission. If there is more work you think that needs to be done, or something needs to be selected before February, you know I would like to invite you to push us in that direction. I think my feeling is that if we measure twice and cut once we will come up with a stronger target.
- 47:43 Chair Ellis                    Any comments?
- 47:43 Hon. Elizabeth Welch                    Yes I do. A nice, crisp good job but as arbitrary blah, blah, blah as they are caseload numbers per lawyers is the ultimate issue here. Everything flows from that. Everything else flows from that. How many juvenile dependency parental cases can a lawyer handle and do a good job. I know even though you have to got to pull stuff out of the air and use stuff from ABA reports and blah, blah, blah, it is still everything else – it look at your wonderful list which everything is appropriate. It is just missing.
- 48:42 N. Cozine                    We can add caseload, certainly. The challenge we have had is that in OJIN we are not able to pull it up. I think in the new OECI that might be a possibility. The judicial department is understandably very focused right now on roll out. We have not begun the conversations about what data sharing may be available, but it is an important one and one that we can begin exploring.
- 49:17 C. Lazenby                    To sort of follow, I agree with you, Judge. The over arching and significant data is number of cases per attorney. I know you don't know the answer to this but it would be nice if we could end up drawing – this is going to get a little geeky but drawing a parallel between how adequately people do all these, and a relationship to the total number of cases that they have. So in other, we can moves towards establishing sort of statistically that there is an optima number of cases beyond which all of these factors start to suffer, right? Those data sort of start to feed in on themselves as you start to compile them. The only one of these that I had a question about was how having had a wonderful experience of scanning the courtroom and not seeing my client being there myself. How the number of failure to appear reflects on the attorney as opposed to client behavior. What is the rationale for doing that?
- 50:30 N. Cozine                    I think that is a very good question. One of the hypothesis is that when a lawyer is at the initial arraignment, as opposed to not at the initial arraignment, and the contact information is

collected and verified by the lawyer that that could have a positive impact on failures to appear. Additionally, the degree to which the lawyer follows up on that contact information would have an impact theoretically. But it is one of those where it depends upon the set of factors in the list. You would want to be able to compare, perhaps, in a jurisdiction where the lawyer wasn't at arraignment and didn't directly get contact information versus a county where that was not the case.

- 51:16 C. Lazenby Okay. Nice theory. There is a little closer examination as a war story footnote. Now Judge Edward Jones actually went to jail for refusing to disclose to the judge whether or not he had contacted his client about the court date. You may want to chat with him about how that came about.
- 51:42 N. Cozine I certainly will. Judge Jones is actually very interested in the use of data in terms of measuring performance. Maybe he will have some ideas as well.
- 51:48 C. Lazenby He was only there an hour or so.
- 51:54 Chair Ellis So, Nancy, one area that I was interested in is on the appellate KPM. I know Peter indicated last time that they were looking at including or not including *Balfour* briefs. I know he indicated it didn't affect the number that much. I still think it would be worth maybe keeping two sets of data including *Balfour* and not including *Balfour*. Because intuitively I would think that *Balfour* briefs would tend to automatically shrink the delay period. He says not. Maybe not, but I would do it both ways.
- 52:48 N. Cozine Okay.
- 52:52 Chair Ellis I thought your memo captured a lot of the discussions that we have had. I think the legislature will look at it as a good faith effort to respond to their requests. I was encouraged.
- 53:10 N. Cozine I truly think we have all the pieces in place now to move forward with something.
- 53:16 Chair Ellis And with our magical new IT, this is all going to fall into place. I mean anything like this you need a baseline to start from. I think trying to capture some of this data now will give us that.
- 53:34 N. Cozine Right. One of the things that we were encouraged to do was go ahead, even if the systems aren't in place statewide, if we can start on the counties that have already rolled into eCourt where more data is available and start on those counties. We will be moving in that direction.
- 53:48 C. Lazenby Can you remind what those counties are? Is it Lane?
- 53:55 N. Cozine Linn, Douglas, Yamhill, Clatsop, Jackson, Tillamook, Columbia, Benton and Polk. I think that might be it. Multnomah is scheduled for May/June of 2014, so it is coming right up. One of the other interesting things we have heard in our regional meetings, we have received more information about some of the challenges that our providers are having in terms of accessing information. I am part of a workgroup right now. It is a little off topic and I apologize. I am part of a workgroup that is looking at access to electronic records in juvenile cases. There are confidentiality provisions and with the statewide access it makes navigating for the judicial department who is allowing access, it makes navigating those to confidentiality rules somewhat challenging. Our providers we knew were only getting access to case to which they were personally assigned, which made things difficult in terms of coverage. In terms of accessing information about your client if your client had a case in another county. I think we have resolved much of that through this workgroup. I think some outstanding issues that still remain that we need to work through are access to the docket. Many of our providers are not actually getting the daily docket. It makes it very difficult to ensure that they are getting the notices that they need about all of the appearances that they need to be at. Some of the more systematic sharing of data that will need to happen within counties as they begin trying to

look at things like time to disposition. We are working through some of those details. It has been an interesting conversation and more work to be done.

56:08 Chair Ellis

Okay. Anything else on the KPMS?

**Agenda Item No. 6**

**Proposed Revision of Certification Process for Non-Capital Providers**

56:14 Chair Ellis

Paul, the proposed revision of certification process for non-capital providers.

56:22 P. Levy

Thank you. I actually have the next two items and the following one with Jeff Ellis, our capital resource lawyer is on that one. I will quickly talk about the first one. This is not an action item, although we took action. We decided that the Commission had already approved what we did. In your materials you see our certification form in process for non-capital offenses. What we did with that form recently was to take off capital murder from this form because the Commission had approved a separate process for that. Yet people both wanting to do capital cases and those who weren't, were still using the form and checking the box for capital murder on this little one pager here. What that tells me, among others things, and we have taken those boxes off because we have a separate process.

57:30 Chair Ellis

So this doesn't distinguish between Measure 11 qualified and not.

57:36 P. Levy

No. Measure 11 would fall under major felony and it doesn't distinguish between Measure 11 and non-Measure 11 major felony offenses. The reason this is on here was to tell you about that change but also to tell you, and this may speak to your question, that we are intending to change this non-capital process to be more similar to what we have done in the capital arena. Right now for non-capital offenses, and it use to be this way for capital, all you had to do was check a box and answer your questions that really are not relevant to your qualifications. Checking a box and saying, "I am qualified and want to do this work." The burden is on us to do investigation with very little resource and time to do that. We certainly do that in some instances, but what we did in the capital cases was we devised in place of two boxes what is now a 14-page document. I don't think we will make it quite as onerous for non-capital cases. There is not the same rationale for that. We are saying now in capital cases show us that you are qualified. Tell us about the five trials that you have had. Tell us about the training that you have had. Don't just check a box. Because, indeed, people are still checking on our old form capital murder and we know that they are not qualified. It is an invitation for problems. We are working a timetable, which is a way of saying that this project is not underway yet, as reducing these boxes to a series of questions where we will require that attorneys provide information to demonstrate that they actually meet your minimum qualifications to perform this work. Hopefully that will come sometime this year phasing in that process. As I have said in earlier meetings it has worked very well in capital cases. We are getting really good information and the process provides us with a great deal more confidence that the people we are approving to do this work actually meet the qualifications and are capable of doing it.

1:00:27 Chair Ellis

Do you want to talk about attachment 5?

**Agenda Item No. 7**

**Amendment to PDSC Legal Representation Plan for Death Penalty Cases**

1:00:30 P. Levy

Yes. This is an action item. I would like to think of this as housekeeping, quite frankly. We are trying to amend the capital representation plan just to ensure that it says what we actually have done. We have thought to have had the authority to do this because you have told us that we should manage our death penalty responsibilities in conformance with the requirements of the ABA Guidelines. That is what we have done. In some cases where persons were in custody and they were accused to have committed what would be capital offenses, but had not yet been formally arraigned in Oregon and were in serious need of legal representation probably. We felt it could not await the really vagaries of when that arraignment would occur in order to provide lawyers. The American Bar Association is quite

clear now, and I set out the history a little bit in the memorandum, that the early days of a capital case are critical and that counsel should be provided promptly even if charges have not yet been filed. What has happened in Oregon, and Steve Gorham could not be here today and he is quite familiar with this and wanted you to know that he very much supports this concept as well, is that with alleged killings within a prison there is no hurry for prosecutors to indict a case because the suspect is not going anywhere. There are various reasons why cases may not get charged and into court. It is not an intention to manipulate the system. Here in Marion County it is a resource to have only two lawyers only prosecuting capital cases and they are busy. They don't have time to start what are two more cases right now that have been waiting for months for an indictment. So it really is an important clarification of our authority to make sure there are lawyers. As I have said we have done this in the past and it has actually been helpful to the court system, even to the prosecution, that there be a defense attorney on the case.

- 1:03:34 Chair Ellis I know Jeff has talked to us in the past about the Washington practice that is different than the Oregon practice, where they defer making a decision whether to proceed with capital or not. We keep hoping that will happen here. That means that period between offense and decision to proceed capital is a very vulnerable time. So this makes a lot of sense to me.
- 1:04:12 P. Levy So I had Jeff here to speak about the importance of the early days in a case, but if you don't need to hear from him he is happy to sit quietly if you are prepared to take action on this item.
- 1:04:28 Chair Ellis Maybe he will talk us out of it.
- 1:04:32 J. Ellis I am going to take the Fifth on that. If you have questions please ask them. There is really very little danger here of making appointments, assigning lawyers in cases that never get charged. If there is a murder that happens and there is strong evidence of the suspect, then charges are going to be filed. What we are talking about is those cases where there is a delay usually because the suspect is already in custody for another matter. There are just very obvious advantages to making sure counsel is appointed at the earliest opportunity. The arraignment is sort of an artificial artifact. For good reasons it is used as sort of the starting point in other cases but shouldn't be here.
- 1:05:17 Chair Ellis You didn't dissuade us. Any questions?
- 1:05:21 C. Lazenby So if I have this right, Paul, you are asking us both for permission and forgiveness? I support it but that is what it sounds like.
- 1:05:30 P. Levy I actually wasn't asking for forgiveness.
- 1:05:34 Chair Ellis So unless there are other questions, I would entertain a motion to adopt the language that appears in the first paragraph of attachment 5.  
**MOTION:** Chip Lazenby moved to adopt the language; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**
- 1:05:56 J. Ellis Thank you.
- 1:05:56 P. Levy Thanks very much.
- 1:06:00 C. Lazenby Is that the symbolic foot of Shaun McCrea just kicking the chair.
- 1:06:07 Chair Ellis Let's take about a 10 minute recess and then we will pick up on the review process and the report.
- 1:06:14 P. Levy Mr. Chair ...

- 1:06:20 Hon. Elizabeth Well  
I can wait. The Chair moved to pass that prior topic a little bit fast for me. I just wanted to say on this revision of the application for certification, or whatever the proper terminology is, I am hoping that it is not going to be a single form. That it needs to be many different forms. Juvenile court is not the same as criminal court. Qualifications are not the same and I don't want to belabor it because you guys know that. For the record I just want to say there should be different attention and focus for the various populations.
- 1:07:05 P. Levy  
Absolutely. Our qualification standards actually are case type specific. Those need to be looked at as well while we are going through this updating of the forms. There are many challenges just logistically how to make this work. We do need to look at those qualification standards. They are your qualification standards and we will do that in this process.
- 1:07:37 Chair Ellis  
Okay. We will be back in session at 11:18.  
  
(Break)
- Agenda Item No. 8                    Executive Director Review Process**
- 1:07:59 Chair Ellis  
Cynthia, do you want to review with us where we are on the ED review.
- 1:08:03 C. Gregory  
I would be happy to do that. Chair Ellis, members of the Commission, we spoke at the last meeting about a survey for the staff at OPDS to review the performance of Nancy Cozine. A survey was sent out to the staff yesterday. It will be open for two weeks. We will gather the information, comments, and suggestions. I will gather that information along with that collected by Mr. Potter and present that to you.
- 1:08:29 Chair Ellis  
And the responses can be anonymous or not?
- 1:08:32 C. Gregory  
The responses are all done anonymously unless the employee chooses to include their name. They have an option to do that if they wish.
- 1:08:40 Chair Ellis  
Okay. Then your plan is to send that as a package to the Commission members before the retreat?
- 1:08:48 C. Gregory  
Correct. There will be some graphical information and there will be some commentary information.
- 1:08:56 Chair Ellis  
Part of this process we would like from you, Nancy, a self-evaluation of the year. Don't make it too hard on yourself, but your plan for the coming year.
- 1:09:20 N. Cozine  
Okay.
- 1:09:25 P. Levy  
Can I ask a question?
- 1:09:25 Chair Ellis  
Okay.
- 1:09:25 P. Levy  
Is it your plan to hear from the direct reports as well.
- 1:09:32 Chair Ellis  
Yes. At the retreat. That has always been an important part of the process from our point of view. Alright. Thank you.
- Agenda Item No. 9                    OPDS Monthly Report**
- 1:09:44 Chair Ellis  
Nancy, the monthly report. Aloha and Bon Jour.

1:09:51 P. Gartlan Mr. Chair, members of the Commission, I am a little offended because it sounded like you didn't trust my data with respect to the filing dates, but I want you to trust me because I am a lawyer.

1:10:17 Chair Ellis Fair enough.

1:10:17 P. Gartlan Or as my father would say in his Irish accent, "Your a liar." We have a personnel issue and that is Kimberlee Volm, who is one of the younger attorneys in the juvenile appellate section, announced that she is leaving at the end of this month. We are already in the process of recruiting and we will be interviewing people. Hopefully we will fill that position sometime early in February.

1:10:47 Chair Ellis What is the story on her departure?

1:10:47 P. Gartlan She is going to the Cosberry firm up in Portland. I think she just wants to broaden her experience base. Do something more than the juvenile law and she lives in Portland.

1:11:04 Chair Ellis Okay. So not a negative event?

1:11:06 P. Gartlan No. Not a negative event. We don't allow them to leave if it is for a negative reason. We are also in the evaluation season. The self-evaluations are due from the attorneys who are involved by tomorrow. We hope to have the whole process complete by the end of February. I don't know if you remember but it is a kind of a multi-stage process. There is the self-evaluation and then the team leader does an evaluation of the individual. They go over the team leader evaluation with the individual and then management follows up with the management evaluation. We have had two, one judge, one justice here over the last month and a half or so. Justice Walters was here in December. We have been having the regular practice of having meetings, we call them "PD coffee, pastry, and chit chats." We have an appellate judge typically come over and talk to us. We had some very interesting discussions with Justice Walters and Judge Schuman yesterday. Judge Schuman is leaving the Court of Appeals at the end of this month. A Supreme Court update. We are now briefing three cases. I can't remember if I have talked about these before but one involves the question about whether the emergency aid exception, which allows police to enter property in order to render aid to someone who is physical ill or in serious physical danger and whether or not that applies to animals. In this case it was an officer who was concerned about a horse that was emancipated and malnourished. The officer went onto the property and took possession of the horse and took it to a veterinary. Another is a question about the statute is reckless endangering and whether or not that would apply. The facts are a parent was driving around with two of her children in a car and the parent had possession of drugs in her handbag. The question is whether or not that is enough to constitute the crime of reckless endangerment. It is a really interesting issue. It is a statutory interpretation issue, so this is going to be above a possession charge because they are also recklessly endangering the children when the children are in the proximity of the parent. Finally, we have a case *State v. Bailey*, another search and seizure question and it has legs under both the Article I, section 9 and the Fourth Amendment. In that case officers were observing some reported gang members up in Portland. They were concerned they might be up to no good seeking revenge on someone who had recently been killed as part of their gang. They stopped them and the stopping officer thought he knew someone in the backseat but couldn't quite place him. So he held the people in the car, unlawful stop. The state acknowledges unlawfully for 30 minutes or so while another officer arrived to identify our client in the backseat. When the officer identified that client the police learned that there was an outstanding arrest warrant for him. So they arrested him on that and then he opened his mouth and he had so me drugs in his mouth. So the question is can the drugs be excluded. There are competing tensions. This is a valid arrest warrant, but then was preceded by an illegal stop. It has force under the Fourth Amendment because the purpose of suppressing evidence is to deter illegal police conduct. Here you clearly have illegal police

conduct. So what does the effect of the outstanding valid warrant have on that illegal police conduct? That is about it for the appellate division.

- 1:15:52 Chair Ellis           Okay. Any questions?
- 1:15:52 C. Lazenby           Are you seeing texting with children in the car as a reckless endangerment?
- 1:15:57 P. Gartlan           Oh. Why not.
- 1:16:04 C. Lazenby           I am just wondering if you have seen them. I assuming that they are going to get written up sometime soon.
- 1:16:10 P. Gartlan           I haven't seen any yet. That is really interesting. That case will be about how to limit the statute. Excuse me, how did the legislature intend to limit the statute.
- 1:16:28 C. Lazenby           That is correct and you want us to trust your data.
- 1:16:33 Chair Ellis           Thank you.
- 1:16:39 P. Levy               I have one item. Just to let you know that this Monday we launched our seventh annual statewide public defense performance survey. I was sort of shocked that it was our seventh because I have been involved in each one of them. We will report on the results of that.
- 1:17:01 Chair Ellis           Who do you include in the survey?
- 1:17:02 P. Levy               It is the same four groups that we started with. We have stuck with this group so we could compare the results over time. It is all of the circuit court judges in the state. All of the elected district attorneys. All of the juvenile court directors in each county and the managers of the CRBs, the Citizen Review Boards.
- 1:17:41 Chair Ellis           Okay.
- 1:17:41 C. Lazenby           You historically have gotten a better than statistical return on those for verification. In other words, if you send out a survey and get 3% back that is good. We are doing better than that.
- 1:17:55 Chair Ellis           I would think we would do much better than that.
- 1:17:56 P. Levy               The response rate fluctuates. This one we are on track to have a fairly decent response. We always report to you on the response. I would like to think the response rate will at least be as good if not better than the proceeding year. We have become very good about following up with judges in particular, and others who identify themselves on the survey or who we can identify and put a name to a comment. We follow up on those comments the analysts and I do. I think people know that we use this survey.
- 1:18:51 Hon. Elizabeth  
Welch                        I have a question that is kind of related. Do you keep track of complaints from trial judges about either law firms in general or lawyers in particular?
- 1:19:09 P. Levy               Yes. The legislature amended Chapter 151, the original version of the statute, to include that and we have a complaint system and we do. We keep track of all complaints from judges and clients. They are the biggest source. We do not get very many complaints from judges.
- 1:19:39 Hon. Elizabeth  
Welch                        It would be interesting to see if anything has changed at all. I am not trying to make work for you.

1:19:52 P. Levy                   Why not? Everybody else does.

1:19:52 Chair Ellis               Alright. Nancy.

1:19:53 N. Cozine               Chair Ellis, members of the Commission. Commissioner Lazenby, I am going to take your inquiry about texting with children in the car as a cautionary question in addition to a general question.

1:20:12 C. Lazenby              Cautionary to who?

1:20:17 N. Cozine               As you know there is a lot going on at the Office of Public Defense Services. The legislature is headed back to town in February and in addition to our key performance measure report, we also have been asked, like other state agencies, to provide a memorandum regarding restoration of the 2% holdback. The Co-Chairs are considering restoration of that 2%. We had been hearing that it was relatively unlikely in February and that the decision would likely be deferred until June or later. We are very hopeful that a decision will actually be made in February. In our restoration memo we addressed, as usual, the professional services account separately from the agency. With regard to the professional services account the legislature did take the 2% holdback. We have made it clear in all of our conversations with providers, our providers unanimous in their view that they really cannot manage with a 2% cut. In light of that we have put in the memo that in the event that the legislature does not restore that 2% holdback, we would be looking at an option that would move us back in the direction of what was called, "the 2/3 – 1/3 payment." The contract providers would keep their 3.25% rate increase, but the June payment, as much as necessary to meet whatever holdback isn't returned, would be pushed off into the next biennium. We have made it clear that if we have to do that it really puts public defense back in a relatively unstable position. That 2/3 – 1/3 payment structure was created back in what I have heard called back in the Bill Linden days. It was created to address a financial crisis in one biennium and as each biennium unfolded it was never corrected. So while that would have caused this Commission \$4 million to fix two biennia ago, it would have cost \$6.8 to fix this biennium, which it did cost us that. It would have cost \$7.4 if we carried forward to next biennium. So every biennium we are seeing that this is problem that becomes more and more expensive problem, and not only that it really makes it difficult for the legislature to understand what it is they are giving us for the biennium. Because we are using a larger and larger portion of our current biennium funding to fill the gap from the previous biennium. So they think they give us a particular increase, but it doesn't correlate because we are taking a tremendous portion and allocating that towards money that we did not pay in the previous biennium.

1:23:15 Chair Ellis              So are you making this clear to the legislature what the consequences are if we don't get the 2%?

1:23:21 N. Cozine               That is exactly what is outlined in our memorandum to the legislature. It goes to the legislative fiscal office, not the co-chairs, so we have been really clear about this and we have been clear that because of this 2/3 – 1/3 split, every other session when we run into these holdbacks, the only option left to us is to simply suspend services. We have already done everything we can to stretch our expenses across two separate biennia. There is significant interest in allowing us to retain the stability that we have created by eliminating the 2/3 – 1/3 payment. But we do understand that if we were required to hold to that 2%, our providers simply cannot take that 2% cut and manage to only a 1.25% increase over the course of this biennium. We are very hopeful that the legislature will go ahead and restore those funds so that we can give our providers some certainty moving forward. Within the office we are also asking for restoration of the 2%. We began an analysis of our current equipment within the office when it came to our attention that all of our copiers were out of warranty. When they go out warranty we actually have to pay for the repair ourselves. The last day of the warranty we had an issue with a printer and it would have been a \$3,000 bill had we not been in that last day of warranty. So with three printers now out of warranty and almost all of our

computers, we have a significant need in the agency to go ahead and replace equipment. We have computers that are from 2007. What is happening everything is running a little more slowly. Our servers also need to be replaced. We are asking for restoration of the 2% to address our needs to update our old equipment. Beyond that if there is additional funding available, we would like to restore professional development opportunities for our lawyers. The CLE budget was reduced to \$200 per lawyer, per year. When we look at CLE costs is about \$65 per credit. Our lawyers are getting very little to apply towards their required CLE obligations. We would like to increase that back to levels that it was in prior biennia. Additionally, we would like to be able to increase the number of peer reviews and service delivery reviews. We had ricketed that back last biennium. You may recall we were holding to a 3.5% holdback last biennium. It gave us a lot less flexibility in terms of our travel budget. So we have significant need and we understand that getting out of the community is really important for this Commission so that you have an opportunity to interact with our providers, and to really get a good look at what the representation is in each community. So those are our requests and I will circulate that. I actually should have circulated that memo to the Commission and I will do that. That is, of course, a big issue on all of our minds. Angelique is just here in the room and she has just done a wonderful job putting things together and communicating with our legislative fiscal office analyst. We are grateful to have her help. We have a meeting of the Public Defense Advisory Group coming up on January 31. We will talk a lot at the meeting about the draft policy option packages and the information that we gleaned from our regional meetings. We will also be talking about KPMs and other issues, eCourt, other hot topics that our providers are seeing. Tomorrow there is, as mentioned at the last meeting, an important meeting of both the House and Senate Judiciary Committees. They will be hearing from Brett Ballew, the managing attorney at the Washington State's Parent's Representation Program. That is the afternoon. In the morning Judge Welch and I have a meeting of the dependency workgroup. It will also be hearing from Brett Ballew. That will be in a more informal setting, but still in Hearing Room A over the legislature. All of these will be available through the web streaming at the legislature. In between those two meetings we have meetings with Senator Winters, Senator Kruse, and Representative Krieger and will be scheduling some additional meetings. We have one scheduled with Senator Steiner Hayward in February to talk about the outcomes they are getting in Washington and why that reduced caseload, involvement of a social worker, and increased communication with client – why that is so important. We are very excited about those upcoming meetings. I am really happy to have Commissioner Welch helping me share that message with those who have legislative interests. We have Cynthia in the room. She has been doing a wonderful job. Pete mentioned in his comments that we have a vacancy. She has done a great job working with the appellate division to put together an electronic recruitment. We are already getting great interest in that position. What was it 300 and something?

1:28:51 C. Gregory

This morning it is 500 discrete views and 12 applicants in less than a week.

1:29:06 Chair Ellis

That is amazing.

1:29:06 N. Cozine

What is nice about the electronic posting is that there are minimum standards that are set. In this particular posting it was posted that it was a recruitment for a Deputy II that we could under fill as a Deputy I. We are creating a nice pool for our juvenile appellate section which is wonderful. She has also been helping us create and update internal policies that are human resource related. That has been really helpful too. I think all of our staff has appreciated her level of communication and her willingness to take impact as we draft these policies. We are really getting into compliance in many areas, which is very nice. Cecily Warren I introduced earlier. We are just so thrilled to have her with us. She brings a great skill set and came with really, really high recommendations and great accolades. We were incredibly fortunate to have her. Finally, we had an inquiry from the Oregon State Bar regarding our most recent efforts to measure the diversity of our provider group. Our last survey went out in 2010. Mr. Levy provided those results to the bar. I will be working with their group. They are evidently

coming up with some systematic ways to measure, or that they would like to see people measure the level of diversity. I will get a little bit clearer understanding on what they are looking for. That may be something that we want to discuss as we look at our strategy plan and other initiatives when we have our retreat. Those are the big things on the horizon.

- 1:30:59 Chair Ellis           Okay. Any questions?
- 1:30:59 C. Lazenby           Is there any movement or change around the earmarked compensation for public defenders as opposed to consortia? Has there been further discussion about that at all, or does the restoration of the 2% have any impact on that at all? Is it just kind of dead in the water for awhile?
- 1:31:18 N. Cozine            The restoration of the 2% will not have any impact on that. Every single contract provider will be treated uniformly with regard to the 2%. OCDLA is undertaking an effort to have a very focused conversation on pay parity. They convened a group that consists of consortia members and public defenders to look at the issue of pay parity. That is an effort that they are really leading and we are available to them as a resource. Not so much as a participant, but simply as a resource. I think Jennifer is in the room that is on that committee. I don't know if you had anything that you wanted to share?
- 1:32:07 Jennifer            Just that we had our first meeting on Tuesday and we are meeting again before the OCLDA board meeting on February 1. Frankly, I think where we ended up realistically is that in this legislative session we are not going to be able to do anything. My understanding is that the legislature didn't even fund the current service level request, and then there was the POP on top of it. It is kind of the worst of both worlds in a way. We are exploring that and one of the ideas is to have Jennifer Williamson reach out to her and talk to her a little bit about those issues and what may or may not be able to happen, but it may be that we just don't have the ability because of the funding issue to do that. If we are able to get anymore than the 2%, or course we would afford professional development and all those other things, because we have those issues as well. We would like those funds to be looked at for the pay parity issue, but short of that it may be realistically that there is not a lot we can do. But we are talking about it.
- 1:33:19 C. Lazenby           My concerns are it reminds me of those Ukrainian dolls where you put one inside the other. We need to get this smaller doll done so that we are on the same page. There is a larger conversation about pay parity in the entire system that needs to happen.
- 1:33:37 Jennifer            We are having that.
- 1:33:39 C. Lazenby           That has been ongoing. We are getting some optimistic signs for the first time in maybe decades that we might be able to get that done. It is important for all of us in our community to be on the same page and moving forward together rather than being divided and conquered.
- 1:33:54 Jennifer            That is the main purpose of that group is to try to make that happen and to try to address those issues so we can have that a larger discussion and all of us be a part of that.
- 1:34:07 N. Cozine            Lynn, you are on that group too, right?
- 1:34:08 L. Dickenson        We did have a meeting. We had great attendance. Mr. Weiner was present as well as John Potter and Ann Christian, Kathy Berger. A number of very good people who are focused on making sure the actual results mirror what has been promised and said in the past. That is something that everybody is concerned about. At that meeting we had representatives from the public defender's office. We had a number of consortia members and OCDLA. We are hoping it is going to come out with some very good information. John Potter has been charged with the duties of getting all the contracts for everybody, both the public defenders and the consortium, gathered together so we all can look at them. That is one of the issues

that we are going to be looking at. There are a lot of broader issues that we have to hammer out. I didn't mind telling them, and I certainly don't mind telling you, that there are members of consortiums that are very concerned and want to delve further into this. We are at the table now trying to work with everybody.

- 1:35:30 Jennifer And Judge Welch to your point the issue about getting the contracts together really is to look FTEs and caseload and figure out whether or not we can just shot in the dark, quick little calculation, figure out what those look like if it is even possible to do that. Of course figuring out what those measures are to start with is difficult to figure out what the caseload is. That is why we have requested the RFPs and the contracts so that we can try to figure out that issue to make a calculation based on the Washington standards which are based on the ABA Standards.
- 1:36:11 Chair Ellis Okay.
- 1:36:11 C. Lazenby One more question. So Ms. Warren what were you doing at the legislature that we stole you away from?
- 1:36:14 C. Warren I was their Enterprise Applications Manager.
- 1:36:21 Hon. Elizabeth Welch What does that mean?
- 1:36:21 C. Warren All the computer applications that the legislature runs, I was the manager of the developers that created those and managed and maintained those.
- 1:35:35 N. Cozine Yes, the legislature just implemented their new Oregon Legislative Information System, OLIS, and one of the advantages we now have is someone who knows inside and out and can help us navigate the new system with relative ease. It is good. I do think with regard to the pay parity issue that is clearly something that this Commission needs to undertake in terms of conversation. We have talked about various points in time about moving towards a more administrative where rates are the same regardless of provider type. We have some interest within the legislature of moving to a model where we do have consistent rates and we do actually having funding for fixed costs, so that are providers aren't trying to pay fixed costs like health, building, IT, and all of these very expensive overhead costs out of a contract rate when the number of cases is inconsistent. It can rise and fall and if you have fixed costs and you think you are getting one number of cases and it ends up being far lower, it really can impact your ability to meet your over costs. That is what we have been hearing. Continuing the conversation with our public defense advisory group, with this Commission, and trying to come up with a model that reflects the needs of our providers will be an important conversation. It certainly isn't lost and forgotten. It is very keen in everyone's mind. There are a variety of approaches to how we might address it.
- 1:38:17 Chair Ellis Okay. Any other issues? If not, I think we are ....
- 1:38:26 Hon. Elizabeth Welch Is Janet still on the phone?
- 1:38:26 Chair Ellis Janet, you still there?
- 1:38:26 J. Stevens I am.
- 1:38:29 Chair Ellis Anything you want to add, or are we ready to adjourn?
- 1:38:32 J. Stevens I am ready to adjourn.

1:38:35 Chair Ellis

Alright. I will entertain such a motion.

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

**Meeting adjourned**

# Attachment 2

## **Contractor Needs as Identified in Regional Meetings - 2014**

### **Eastern Oregon (Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union, Wallowa)**

1. Geographic challenges (mileage reimbursement)
2. Paperless Systems
  - a. Qualified staff (technology proficient)
  - b. Efficient Case Management Systems
  - c. Discovery Costs/Efficiencies
3. Recruitment/Retention
  - a. More options for loan forgiveness
  - b. Potential changes to tax code to deal with income side

### **Central Oregon (Crook, Deschutes, Gilliam, Hood River, Jefferson, Sherman, Wasco, Wheeler)**

1. Caseload Reduction
2. Recruitment/Retention
3. Training and Mentoring
4. Professional Development (OCDLA membership, reduced PLF)

### **North Coast (Clatsop, Columbia, Lincoln, Tillamook)**

1. PLF rates and CLE costs
2. Dependency Rates
  - a. Increased time for court hearings and non-court mandatory meetings
  - b. Difficulty attracting new attorneys
  - c. Visiting clients out-of-county due to lack of placements locally.
  - d. DHS providing discovery electronically
  - e. Funding for social workers or dependency case managers
3. Lack of providers for services. Especially for mental health, drug and alcohol, domestic violence and psycho-sexual evaluations.

### **Southern Oregon (Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lake)**

1. Increase dependency funding for:
  - a. Attending numerous non-court meetings
  - b. Hiring social workers/dependency case managers
  - c. Lowering caseloads
2. Better access to mental health experts (timely aid & assist evals)
3. Bulk purchasing through OPDS for hardware, software, IT support and PLF
4. Designated investigators for pre-trial release

### **Tri-County (Clackamas, Multnomah, Washington)**

1. Restructure funding of contracts based on caseload/workload rather than case count model
2. Establish caseload limits
3. Increased funding for investigators and staff
4. Increased funding for dependencies (more Family Decision and Child Safety meetings)
5. Increased travel due to distant foster placements and travel between courthouses
6. Bulk purchasing through OPDS for case management systems

### **Willamette Valley (Benton, Lane, Linn, Marion, Polk, Yamhill)**

1. Increased mileage for visiting PCR and child clients
2. Need line item for administration
3. Recruitment/Retention
4. IT Costs (e-discovery, increased printing, client copies)
5. Reduced caseloads but increased workloads

### **Statewide Contractors (PCR/HC Trial Level and Appeals)**

1. Administrative Costs
2. Training (specialized area of practice)
3. Recruitment (need experienced attorneys for specialized area of practice)
4. Shared Services (brief bank, document distribution, bulk purchasing)
5. Obtaining copies of trial attorneys' files and trial court files

# Attachment 3



To: Co-Chair Devlin; Co-Chair Buckley

From: Nancy Cozine, Executive Director

Date: January 21, 2014

Re: PDSC Key Performance Measures – Report to the Legislature

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### Request

Currently, the Public Defense Services Commission has three Key Performance Measures: Commission adherence to best practices of boards and commissions; median days to filing of the opening brief in appellate cases; and customer satisfaction. The agency's Annual Performance Progress Report for Fiscal Year 2012-13 is attached for reference. The Commission requests permission to continue these three measures, with one modification to the appellate KPM. The Commission further requests permission to submit in the agency request budget new KPM proposals that will offer a meaningful measure of trial court representation.

### Background

In July 2013, the Oregon Legislature passed the Public Defense Services Commission budget bill, House Bill 5041-A, with a request that the agency “review its KPMs and to report to the Legislative Assembly during the 2014 Session on the outcome of this review and on any proposed revisions to its KPMs that would better measure the effectiveness and efficiency of the agency's programs.”

The Public Defense Services Commission and staff at the Office of Public Defense Services have been diligently examining existing KPMs and exploring possible new KPMs.

### Suggested Change to Appellate KPM

The current appellate KPM targets 210 days as the median date following record settlement for filing the opening brief in agency appeals. The time to filing of the opening brief is an important measure, as delays in the appellate process can adversely impact the agency's clients, who are often incarcerated during an appeal, and others involved in the case, and cause injury to the integrity of the criminal appellate process. For several years the criminal appellate attorneys at OPDS have been working toward the goal of filing within 210 days of record settlement, and in 2013 reached the median filing date of 223 days. While the goal of 210 days was not met, OPDS believes that with the elimination of furlough days and filling of positions that were temporarily held vacant in order to meet the 3.5% holdback in 2011-13, it will reach the 210 target in 2014 (this assumes that the agency will not have to again hold vacant positions in order to manage budget reductions). Given the systemic importance of reducing delays, the likelihood of reaching the 210 day target in 2014, and the beneficial effect of having and achieving a landmark

goal, the agency would like to reduce the KPM target to 180 days in order to better serve clients, the judicial system, and the citizens of Oregon.

### Trial Level KPM Discussions

The Commission is aware that the existing KPMs do not provide a measure of the quality of representation at the trial court level, and is very interested in adopting a KPM that will provide such a measure. Possible KPM measures explored by OPDS staff and the Commission since July 2013 include:

- Number of hours of attorney training
- Substitutions of attorney
- Peer reviews completed
- Post-conviction relief claims involving public defense providers
- Number of failures to appear
- Continuances in dependency cases
- Number of public defense cases in which the lawyer is present at the client's first appearance in dependency and criminal cases
- Number of delinquency cases in which a lawyer is appointed when the petition is filed
- Length of time between lawyers' appointment and the first client visit
- Frequency of client communication
- Contractor adherence to Best Practices for Oregon Public Defense Providers
- Number of cases per attorney

### Challenges

While each of the potential trial level representation measures has some bearing on trial court case outcomes and quality of representation, no one measure is in and of itself indicative of quality services, and at this point, there is no available means of collecting the data necessary for implementation of a statewide measure. Unfortunately, current court and provider data systems are not structured to capture the data necessary to measure suggested performance criteria.

### Plans for the Future

Three factors should increase the agency's ability to develop and begin measuring trial court outcomes within the next several months.

First, OPDS is in the process of increasing its ability to collect and analyze data. After a decade without dedicated on-site information technology (IT) expertise, the agency developed a Research and Information Technology Director position, which was filled on January 13, 2014. One of the agency's expectations for the person in this role is development of data sets to support new KPMs. While OPDS uses one case management system for appellate cases, that system has not been significantly updated in many years and must be modified in order to adopt new appellate KPMs. Additionally, contract providers across the state do not use a standard case management system. OPDS began discussions regarding uniformity in data collection during the Public Defense Management Conference in October 2013, and expects to continue working with

providers to support their increased need for electronic case management and data collection. The agency is now exploring available case management systems, and hopes to help public defense providers acquire case management systems that collect standardized information. Additionally, the agency is exploring other ways to effectively collect and analyze relevant data.

Second, full implementation of the Oregon eCourt Case Information (OECI) System could provide the agency with data that is helpful in assessing outcomes in public defense cases. The court's current system, OJIN, does not allow OPDS to sort cases. OJIN statistical reports available on the OJD website include all cases within a particular case type, and it is not possible to separate public defense cases from privately retained cases for meaningful analysis. The new OECI System should have more ways to filter data so that public defense cases can be analyzed separately from cases in which the attorney is privately retained, and with a full time research and IT person on staff, the agency expects to have more capacity to explore possible data sharing and analysis opportunities.

Third, there are efforts at the national level to develop reliable measures of representation at the trial court level. The National Legal Aid and Defender Association established a Research and Data Advisory Committee for the purpose of developing specific measures, and the Office of Public Defense Services is participating in the work of this Committee. The first phase of this grant-funded project will be completed in June 2014, and should yield some helpful information about what data points are necessary to complete specific measures that are indicative of quality representation.

With these pieces currently in progress, the agency intends to dedicate available resources to development of critical foundational structures necessary for data collection and analysis. Once the foundational structures are in place, the agency will be able present to the Legislature new KPMs specifically targeting trial level representation, and expects to have made enough progress toward that goal to have new targets identified for inclusion in the 2015-17 agency request budget.

# Attachment 4

**Report on the Seventh Annual OPDS Statewide  
Public Defense Performance Survey**  
Paul Levy, OPDS General Counsel  
March 20, 2014

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In early January 2014, the Office of Public Defense Services (OPDS) conducted its seventh annual statewide public defense performance survey. A summary of the survey results, along with some results from preceding annual surveys, is attached to this report.

As with surveys from previous years, the 2014 survey shows general satisfaction with the quality of public defense representation in Oregon. The responses show a particularly favorable opinion of the work of public defense providers in juvenile, civil commitment, and death penalty cases. As with previous surveys, the narrative comments included in responses to the 2014 survey are among the most helpful features of our survey effort. A significant number of the approximately 200 comments identified specific concerns with the quality of public defense services. OPDS staff is able to associate responses and comments with particular judicial districts and, where a respondent has provided a name, with a specific person. This allows OPDS to follow up on concerns with local justice system stakeholders, and to provide contractors with feedback about the services they are providing.

### **Conduct of Survey**

OPDS uses an online survey tool to collect and tabulate responses. OPDS sends a link to its online survey to all Circuit Court judges, all elected district attorneys, the director of each county juvenile department, and to all coordinators of local Citizen Review Boards. As with the survey last year, Chief Justice Thomas Balmer sent an email message to all Circuit Court judges endorsing the survey and urging them to respond. The overall response rate this year was better than any previous survey, with the exception of the record high response rate in 2012 when over 30 deputy district attorneys in Multnomah County responded to the survey. This year a record number of judges (116) responded to the survey.

### **Criminal Representation**

As in previous surveys, most respondents (90%) report that overall representation in criminal cases is good (70.8%) or excellent (19.2%). Most respondents say the quality of criminal representation has remained about the same, while 17.1% say it improved in the past year and 6.2% say it has gotten worse. As in each previous survey, most respondents say that criminal caseloads are too large. Unlike most previous surveys, less than half of all respondents indicate that they question the competence of any

defense attorney handling criminal cases. In connection with this information, the 60 comments from respondents are especially helpful. The themes of these comments are similar to those in prior surveys: lack of client contact, inadequate case preparation, lack of professionalism, and insufficient or ineffective attorney training and supervision by contractor administrators. As mentioned above, OPDS is in the process of following up on comments concerning specific counties and providers. Some comments noted specific improvements in areas where there had been concerns in the past.

### **Juvenile Representation**

Representation in both dependency and delinquency cases is said to be good or excellent by most respondents. Consistent with results for past years, a significant majority of respondents do not question the competency of any attorney providing representation in either dependency or delinquency cases, although the comments provided in connection with this question provide useful information for further inquiry and work by OPDS. A significant number of respondents, though less than a majority, said dependency caseloads were too large. Most respondents said delinquency caseloads were about right.

### **Death Penalty Representation**

Each year the survey presents one open-ended question concerning death penalty representation, inviting any comments concerning representation in those cases. There were 31 comments from those who said they were familiar with the quality of representation in death penalty cases. The comments generally remark upon the high quality of the work now being performed. Several comments noted concerns about the expenses incurred by attorneys handling these cases, expressing the view that some costs were unnecessary. Comments also specifically praised some attorneys and expressed concerns about others.

### **Civil Commitment Representation**

As with responses from earlier surveys, the results in 2014 show a very high level of satisfaction with public defense representation in these cases.

### **Conclusion**

While not a comprehensive or scientific measure of the quality of public defense services, survey results do permit OPDS to track significant changes in reported quality from year to year in specific areas of the state and types of practice. The overall favorable opinion about the quality of public defense services, including the indication that some respondents see improvement in these services, supports the conclusion that PDSC is largely fulfilling its principal responsibility to deliver quality public defense

services in Oregon. At the same time, many respondents identified specific concerns about the quality of representation in their counties. These comments, which are similar to ones received in past surveys, point to the need for continued efforts to improve provider management and the importance of ongoing PDSC engagement with all justice system stakeholders in Oregon.

# 2014 Annual Statewide Public Defense Performance Survey



## 1. Please tell us your role in your county's justice system.

	('09)	('10)	('11)	('12)	('13)	Response Percent	Response Count	
Judge	95	92	109	104	97	66.7%	116	
Prosecutor	11	13	20	45	12	9.2%	16	
Juvenile Department	16	25	14	20	17	17.8%	31	
Citizen Review Board	14	10	11	10	12	4.6%	8	
Other						1.7%	3	
Other (please specify)								4
answered question								174
skipped question								2

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

	Response Percent	Response Count
1 to 3 years	8.1%	14
3 to 5 years	3.5%	6
5 to 10 years	11.6%	20
10 years and more	76.7%	132
answered question		172
skipped question		4

### 3. Please tell us where you work (Judicial District).

		Response Percent	Response Count
JD 1 Jackson County		5.7%	10
JD 2 Lane County		4.5%	8
JD 3 Marion County		6.8%	12
<b>JD 4 Multnomah County</b>		<b>12.5%</b>	<b>22</b>
JD 5 Clackamas County		6.3%	11
JD 6 Morrow & Umatilla Counties		4.5%	8
JD 7 Hood River, Wasco, Sherman, Wheeler, Gilliam Counties		4.5%	8
JD 8 Baker County		1.1%	2
JD 9 Malheur County		1.7%	3
JD 10 Union & Wallowa Counties		3.4%	6
JD 11 Deschutes County		8.0%	14
JD 12 Polk County		4.5%	8
JD 13 Klamath County		2.8%	5
JD 14 Josephine County		2.8%	5
JD 15 Coos & Curry Counties		4.0%	7
JD 16 Douglas County		1.1%	2
JD 17 Lincoln County		1.1%	2
JD 18 Clatsop County		2.3%	4
JD 19 Columbia County		1.7%	3
JD 20 Washington County		6.8%	12
JD 21 Benton County		1.7%	3
JD 22 Crook & Jefferson Counties		1.7%	3

JD 23 Linn County		3.4%	6
JD 24 Grant & Harney Counties		1.1%	2
JD 25 Yamhill County		2.8%	5
JD 26 Lake County		1.1%	2
JD 27 Tillamook County		1.7%	3
<b>answered question</b>			<b>176</b>
<b>skipped question</b>			<b>0</b>

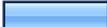
#### 4. Are you able to comment on the quality of public defense representation in adult criminal cases?

		Response Percent	Response Count
Yes		73.7%	129
No (the survey will skip questions related to these cases)		26.3%	46
<b>answered question</b>			<b>175</b>
<b>skipped question</b>			<b>1</b>

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

	( '09 )	( '10 )	( '11 )	( '12 )	( '13 )	Response Percent	Response Count
Excellent		13.4	20.7	16.9	23.2	19.2%	25
Good				66.9	63.6	70.8%	92
Fair		12.4	13.8	14.7	12.1	9.2%	12
Poor						0.8%	1
<b>answered question</b>							<b>130</b>
<b>skipped question</b>							<b>46</b>

**6. Within the past year, has the quality of public defense representation changed in adult criminal cases?**

		Response Percent	Response Count
Improved significantly		1.6%	2
Improved somewhat		15.5%	20
<b>Remained about the same</b>		<b>76.7%</b>	<b>99</b>
Worsened somewhat		3.9%	5
Worsened significantly		2.3%	3
<b>answered question</b>			<b>129</b>
<b>skipped question</b>			<b>47</b>

**7. Do public defense attorneys in your judicial district provide satisfactory representation of clients in adult criminal cases?**

		Response Percent	Response Count
Always		26.9%	35
<b>Often</b>		<b>66.9%</b>	<b>87</b>
Sometimes		5.4%	7
Rarely		0.8%	1
Never		0.0%	0
<b>answered question</b>			<b>130</b>
<b>skipped question</b>			<b>46</b>

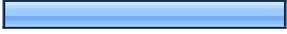
**8. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in criminal cases?**

		Response Percent	Response Count
Yes		46.5%	59
No		53.5%	68

If "yes," please describe your concerns. 60

answered question	127
skipped question	49

**9. How would you describe the adult criminal caseloads of public defense attorneys in your judicial district?**

		Response Percent	Response Count
Significantly too large		8.1%	10
<b>Somewhat too large</b>		<b>48.0%</b>	<b>59</b>
About right		42.3%	52
Somewhat too small		1.6%	2
Significantly too small		0.0%	0

answered question	123
skipped question	53

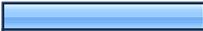
**10. Are you able to comment on the quality of public defense representation in juvenile dependency cases?**

		Response Percent	Response Count
Yes		63.2%	110
No (the survey will skip questions related to these cases)		36.8%	64
<b>answered question</b>			<b>174</b>
<b>skipped question</b>			<b>2</b>

**11. Please rate your overall impression of the quality of public defense representation in juvenile dependency cases.**

	('09)	('10)	('11)	('12)	('13)	Response Percent	Response Count
Excellent	<del>24.4%</del> 	29.5	31.8	26.3	42.5	39.1%	43
Good	<del>61.0%</del> 	61.5	60.0	64.6	52.5	54.5%	60
Fair	<del>14.6%</del> 	7.7	8.2	9.1	5.0	6.4%	7
Poor						0.0%	0
<b>answered question</b>							<b>110</b>
<b>skipped question</b>							<b>66</b>

**12. Within the past year, has the quality of public defense representation changed in juvenile dependency cases?**

		Response Percent	Response Count
Improved significantly		0.0%	0
Improved somewhat		30.3%	33
<b>Remained about the same</b>		<b>69.7%</b>	<b>76</b>
Worsened somewhat		0.0%	0
Worsened significantly		0.0%	0
<b>answered question</b>			<b>109</b>
<b>skipped question</b>			<b>67</b>

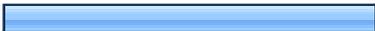
**13. Do public defense attorneys in your judicial district provide satisfactory representation of clients in juvenile dependency cases?**

		Response Percent	Response Count
Always		43.5%	47
<b>Often</b>		<b>48.1%</b>	<b>52</b>
Sometimes		7.4%	8
Rarely		0.9%	1
Never		0.0%	0
<b>answered question</b>			<b>108</b>
<b>skipped question</b>			<b>68</b>

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

		Response Percent	Response Count
Yes		20.8%	22
No		79.2%	84
If "yes," please describe your concerns.			21
answered question			106
skipped question			70

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

		Response Percent	Response Count
Significantly too large		6.7%	7
Somewhat too large		35.2%	37
<b>About right</b>		<b>56.2%</b>	<b>59</b>
Somewhat too small		1.9%	2
Significantly too small		0.0%	0
answered question			105
skipped question			71

**16. Are you able to comment on the quality of public defense representation in juvenile delinquency cases?**

		Response Percent	Response Count
Yes		61.0%	105
No (the survey will skip questions related to these cases)		39.0%	67
<b>answered question</b>			<b>172</b>
<b>skipped question</b>			<b>4</b>

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

	( '09 )	( '10 )	( '11 )	( '12 )	( '13 )	Response Percent	Response Count
Excellent			32.9	28.4	41.0	33.7%	35
Good				66.7	52.5	58.7%	61
Fair		8.8	10.0	4.9	6.6	7.7%	8
Poor						0.0%	0
<b>answered question</b>							<b>104</b>
<b>skipped question</b>							<b>72</b>

**18. Within the past year, has the quality of public defense representation changed in juvenile delinquency cases?**

		Response Percent	Response Count
Improved significantly		1.0%	1
Improved somewhat		26.0%	27
<b>Remained about the same</b>		<b>71.2%</b>	<b>74</b>
Worsened somewhat		1.0%	1
Worsened significantly		1.0%	1
<b>answered question</b>			<b>104</b>
<b>skipped question</b>			<b>72</b>

**19. Do public defense attorneys in your judicial district provide satisfactory representation of clients in juvenile delinquency cases?**

		Response Percent	Response Count
Always		41.3%	43
<b>Often</b>		<b>52.9%</b>	<b>55</b>
Sometimes		4.8%	5
Rarely		1.0%	1
Never		0.0%	0
<b>answered question</b>			<b>104</b>
<b>skipped question</b>			<b>72</b>

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

		Response Percent	Response Count
Yes		14.4%	15
No		85.6%	89
If "yes," please describe your concerns.			11
answered question			104
skipped question			72

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

		Response Percent	Response Count
Significantly too large		4.0%	4
Somewhat too large		12.0%	12
<b>About right</b>		<b>80.0%</b>	<b>80</b>
Somewhat too small		4.0%	4
Significantly too small		0.0%	0
answered question			100
skipped question			76

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

		Response Percent	Response Count
Yes		20.1%	35
No (the survey will skip questions related to these cases)		79.9%	139
answered question			174
skipped question			2

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

	Response Count
	31
answered question	31
skipped question	145

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

		Response Percent	Response Count
Yes		44.1%	75
No (the survey will skip questions related to these cases)		55.9%	95
answered question			170
skipped question			6

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

	('10)	('11)	('12)	('13)	Response Percent	Response Count
Excellent	23.4%	35.7	37.1	41.9	32.9%	26
Good	70.2%	51.4	52.9	56.5	53.2%	42
Fair	6.4%	11.4	10.0	1.6	13.9%	11
Poor					0.0%	0
<b>answered question</b>						<b>79</b>
<b>skipped question</b>						<b>97</b>

**26. Within the past year, has the quality of public defense representation changed in civil commitment cases?**

		Response Percent	Response Count
Improved significantly	<input type="checkbox"/>	2.6%	2
Improved somewhat	<input type="checkbox"/>	16.9%	13
<b>Remained about the same</b>	<input type="checkbox"/>	<b>79.2%</b>	<b>61</b>
Worsened somewhat	<input type="checkbox"/>	1.3%	1
Worsened significantly		0.0%	0
<b>answered question</b>			<b>77</b>
<b>skipped question</b>			<b>99</b>

**27. Do public defense attorneys in your judicial district provide satisfactory representation of clients in civil commitment cases?**

		Response Percent	Response Count
Always		48.1%	38
Often		46.8%	37
Sometimes		5.1%	4
Rarely		0.0%	0
Never		0.0%	0
<b>answered question</b>			<b>79</b>
<b>skipped question</b>			<b>97</b>

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

		Response Percent	Response Count
Yes		7.9%	6
No		92.1%	70
If "yes," please describe your concerns.			7
<b>answered question</b>			<b>76</b>
<b>skipped question</b>			<b>100</b>

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

		Response Percent	Response Count
Significantly too large		0.0%	0
Somewhat too large		1.3%	1
<b>About right</b>		<b>93.6%</b>	<b>73</b>
Somewhat too small		5.1%	4
Significantly too small		0.0%	0
<b>answered question</b>			<b>78</b>
<b>skipped question</b>			<b>98</b>

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

	Response Count
	75
<b>answered question</b>	<b>75</b>
<b>skipped question</b>	<b>101</b>

**31. Your name (optional)**

	Response Count
	62
<b>answered question</b>	<b>62</b>
<b>skipped question</b>	<b>114</b>

# Attachment 5

OPDS updated the Public Defense Payment Policies and Procedures effective February 18, 2014. The policy clarification defines an original receipt to include electronic or paper formats.

**Public Defense Payment Policies and Procedure update:**

**3.1.2 Receipts**

In general, providers must submit an original receipt for an expense unless otherwise stated in this policy. An original receipt may be electronic (scanned and submitted by email or fax) or in paper format. A copy of the providers credit card statement or cancelled check may be submitted if an original receipt is not available. If the provider has no documentation to support the expense, the provider must state in writing:

- a) what the expense was for;
- b) the amount of the expense and to whom it was paid; and
- c) why the provider does not have a receipt.

The provider must sign and date this statement and submit it with the payment request. The provider must keep reasonable underlying records in case OPDS requires further documentation.

# Attachment 6

**Public Defense Services Commission**  
**The Executive Director's Annual Report**  
**March 2014**

**Introduction**

The Public Defense Services Commission (PDSC) experienced significant change and achieved some notable successes in 2013. Employees at the Office of Public Defense Services (OPDS) began the year with a continued freeze of employee merit increases, and the agency operated with reduced spending in place to manage the 3.5% budget holdback imposed during the 2011-13 biennium. In mid-May, two of the agency's long-time managers retired: the Business Services Manager, and the Contract and Business Services Division Director, who functioned as the agency's manager for information technology, contracting, operations, human resources, and budget, in addition to serving as the agency's Chief Financial Officer. These departures required an immediate shift to interim leadership, increased responsibilities for employees within that Division, and a rapid acceleration of the agency's effort to create succession plans and realign its structure to better serve agency employees and customers.

The agency reorganization was a time-consuming but necessary process, and through close examination and a reallocation of resources, the agency was able to implement a structure that will serve the agency needs, including those of customers and employees. The first step was the immediate recruitment of a Budget and Financial Services Manager. Later, a Human Resources Manager and a Research and Information Technology Director were added to the team. Additionally, the agency promoted from within to fill a Contract Manager position. Throughout the change, the agency was able to fulfill its statutory obligations, continue to meet or almost meet its Key Performance Measure targets, and execute new statewide contracts for representation in trial level and capital cases effective January 2014. As 2013 drew to a close, the agency was operating under a new structure, with final personnel pieces completed in early 2014. The agency is now moving forward with an examination and modification of existing Key Performance Measures, and will request new performance measures targeting trial level

representation when it submits its budget for the 2015-17 biennium. The Public Defense Services Commission will meet for a full day in March 2014 to update its strategic plan and explore ways in which it might better meet its statutory mandate to “maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.”

## **PDSC’s Accomplishments in 2013**

### **1. Agency Restructure**

The agency’s structure was originally developed in 2003. It included an Appellate Division<sup>1</sup> (AD) for direct client services in criminal and parole appeals, and the Contract and Business Services Division (CBS) for statewide contracting of trial court representation and administrative support for the entire agency. Following the May 2013 retirements of two critical managers within CBS, the CBS Director and the Business Services manager, two individuals were selected to operate in an interim capacity. Paul Levy, OPDS General Counsel, served as Interim CBS Director, and Erica Robinson, Accountant and Human Resources Analyst, served as Acting Business Services Manager. Both dedicated significant hours and energy to learning new tasks and guiding the work of others in the Division in order to preserve business operations from May through December 2013. The agency was also fortunate to arrange a job rotation with the Department of Administrative Services, allowing Angelique Bowers to assist OPDS with budget matters during the final stages of the 2013 legislative session and start of the new biennium. As a former OPDS employee, Ms. Bowers brought a familiarity with the office, along with a wealth of knowledge in budget and accounting gleaned through service to other state agencies. With these pieces in place the agency was able to work with a consultant to determine whether the original structure allowed the agency to meet existing needs and future expectations.

In September 2013 the agency began moving toward a new structure by eliminating old positions, creating new positions, and hiring a Human Resources Manager. A Contract Manager position, filled by Caroline Meyer,

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<sup>1</sup>Formerly referred to as the Legal Services Division.

was created in order to bring continued strategic development to the agency's existing contracting model, and Cynthia Gregory joined OPDS as the Human Resources Manager to help define and document roles and responsibilities, and to provide increased human resources support for OPDS employees. The Public Defense Services Commission approved a new structure in October 2013 (included below) and the agency began recruiting for a Research and Information Technology (IT) Director. This position was determined to be essential not only for maintaining functionality of existing databases, but also to explore new systems for data collection and research, to improve functionality of the agency's existing website, and to explore development of an agency intranet. OPDS continues to lag behind most state agencies in its ability to collect and analyze statewide data, and with 54 percent of its employees living more than 45 miles outside of the Salem area, access to necessary work documents via readily available technology is becoming increasingly important. The redistribution of agency resources in order to create the Research and Information Technology Director position will enhance the agency's ability to provide employees with appropriate IT services, and the agency's ability to monitor the performance of statewide public defense services through improved data collection and analysis.

## **2. The Commission**

The Public Defense Services Commission met nine times in 2013. The Commission dedicated much of its energy to review and approval of the 2013-15 budget process, a revised certification process for capital providers, two service delivery reviews, and new statewide contracts that took effect in January 2014.

### **A. Service Delivery Reviews**

Budget reductions imposed during the 2011-13 and 2013-15 biennia reduced agency resources available for all types of travel, including service delivery reviews. As one strategy for more efficient use of agency resources, the Commission revised the peer review and service delivery review systems during 2013. In the past, these two review systems were entirely separate; the peer review was a confidential review of the quality of services of individual contracting entities, while the service delivery review involved a Commission

investigation and public hearing focused on the health of the entire contracting system within a particular judicial district. The Commission elected to combine the reviews into one, two-stage process in order to more fully measure the degree to which recommendations of the peer review team are implemented by reviewed entities. Along with this shift, peer review concerns and contractor responses were shared with the Commission prior to the Service Delivery Review, which enabled the Commission to consider quality of representation issues as it examined the health of the contracting model. The Commission completed two service delivery reviews in 2013: Linn County and Clatsop County. The Linn County review was performed independent of the peer review process, while the Clatsop County system delivery review was held eleven months after the peer review team visited the jurisdiction.

The Commission visited Linn County and heard testimony from criminal and juvenile justice system partners in December 2012, discussed the service delivery plan in January 2013 and approved the plan in March 2013. While the Commission did find that the structure in Linn County was appropriate, the Commission had several areas of concern. First, the Commission encouraged the Linn County Legal Defense Corporation (LCLDC) to continue development of its structure and succession planning, and to implement a fiscal management system that holds in reserve compensation credits in excess of those actually earned.<sup>2</sup> Additionally, both LCLDC and the Linn County Juvenile Defense Corporation (LCJDC) were encouraged to work with the court to ensure that financially eligible individuals have a lawyer present at the first court appearance in criminal and juvenile dependency cases, and when the petition is filed in juvenile delinquency cases.

The Commission visited Clatsop County in July 2013. Though the initial peer review report identified a variety of concerns regarding the primary consortium provider, by the time the Commission visited in July 2013 the most significant concerns had been addressed by the consortium administrator and the court. As in Linn County, though the Commission did not find reason to change the service delivery

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<sup>2</sup> LCLDC was succeeded in January 2014 by a new organization, Linn Defenders, Inc., under new leadership but with substantially the same membership.

structure in Clatsop County, it did note some areas that remain a concern. First, a number of defendants resolve charges without access to a lawyer. These instances arise in the context of an Early Disposition Program (EDP) where defense attorneys have declined to participate because they do not have adequate time to review police reports and thoroughly advise clients. Second, the Commission was concerned that there might be a high rate of waivers of counsel in juvenile delinquency proceedings. The Commission encouraged OPDS to work with providers, the court, and other stakeholders in Clatsop County so that lawyers are appointed to represent children in juvenile delinquency cases, and are able to provide legal advice to participants in the EDP before the court accepts a plea.

## **B. PDSC Budget**

The PDSC approved the agency budget in September 2012, and the final budget was presented to the Legislature in October 2012. The budget request included funding for the current service level (funding to continue with current services), estimating no increase in the public defense caseload, and three policy option package (POP) requests. POP 100 requested one third of the funding necessary to reduce dependency caseloads to recommended levels. POP 101 requested one third of the amount necessary to provide OPDS Appellate Division attorneys with pay comparable to lawyers at the Department of Justice. POP 102 requested one third of the amount necessary to increase compensation for non-profit public defenders, hourly attorneys, and hourly investigators.

The 2013 Legislative Session began on February 4, 2013. Both before and after its start, the OPDS Director worked closely with staff, legislators, and system partners to build understanding regarding funding needs for public defense providers.

The PDSC Budget presentation to the Joint Ways and Means Subcommittee on Public Safety took place on March 25 and 26, 2013. Chief Justice Balmer and PDSC Chair Ellis introduced the budget and provided critical background information regarding the importance of public defense services. The remainder of the first day included

information about the agency's mission, history, vision, and values, the work of each agency division, discussion of key performance measures, and review of the agency's quality assurance efforts. The second day covered budget drivers, challenges, and an overview of budget development. The second day ended with presentations from criminal and juvenile justice partners: the Honorable Judge David Schuman, Oregon Court of Appeals; the Honorable Judge Nan Waller, Presiding Judge for the Fourth Judicial District; Attorney General Ellen Rosenblum, and Walt Beglau, Marion County District Attorney. These presenters shared their views on the important role of public defense services. Public defense providers Jack Morris, from the Seventh Judicial District, and Angela Sherbo, from Youth, Rights, and Justice in the Fourth Judicial District, along with former clients from juvenile dependency cases, stressed the need for funding to compensate public defense lawyers and reduce caseloads. Finally, Brett Ballew, Managing Attorney at the Washington State Office of Public Defense Parent Representation Program shared statistics regarding reduced foster care rates attributable to improved representation for parents with children in the child welfare system.

At the close of the 2013 session, two POPs received partial funding: \$3 million for compensation increases to non-profit public defenders, hourly attorneys, and hourly investigators, and \$2.4 million to reduce dependency caseloads. The Legislature also imposed a 2% holdback and a 5% reduction to services and supplies to all state agency budgets. With these reductions, the final funding package was below the current service level request.<sup>3</sup>

While the partial funding of POP 100 and 102 were considered tremendous successes, the cuts imposed continue to pose challenges for PDSC providers, and limited rate increases are a source of frustration for non-profit public defender support staff who did not receive the same increases as lawyers, and consortia and private law firm providers who were also in need of compensation increases.

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<sup>3</sup> A March 2014 restoration of the 2% holdback to the Professional Services Account, which funds trial level services, brings the total amount allocated (excluding policy option funding) to just under the amount requested for current service level. The remaining reduction reflects the 5% services and supplies reduction imposed upon all state-funded entities.

The agency continues to explore ways to mitigate these impacts and plan for increased funding in the 2015-17 biennium.

The Office of Public Defense Services is developing plans for distribution of dependency policy option package funding that will improve representation in juvenile dependency cases within the identified counties. The agency hopes to identify two pilot counties where caseloads can be reduced and additional monitoring and training resources can be provided to improve the quality of representation and outcomes for Oregon families. The agency is working closely with the Department of Human Services and Oregon Judicial Department, as these entities will also be participating in the pilot program.

The PDSC began the process of building policy option packages for the 2015-17 biennium that address the needs of all provider types. The framework for building requests began at the OCDLA Management Conference in October 2013, and continues into 2014 through regional meetings with all PDSC contract providers, Commission meetings, and opportunities for contractors' public comment regarding proposed policy option packages.

### **3. Statewide Contract and Financial Services**

#### **A. Leadership**

Following CBS Division Director Kathryn Aylward's May 2013 departure, Nancy Cozine, Executive Director, and Paul Levy, General Counsel and Interim CBS Division Director, worked with OPDS contract analysts to guide the process of statewide contracting. Angelique Bowers assisted with budget information. Once the statewide plan had been reviewed and approved by the Commission, the agency began the transition into new leadership for contract services. In September 2013, Caroline Meyer took the role of Contracts Manager, and Billy Strehlow became the Senior Contract Analyst. With the expertise of Ms. Meyer, Mr. Strehlow, and contract analysts Amy Jackson and Shelley Winn, all contract services were completed as expected in 2013. OPDS analysts continue to receive high praise for consistently providing

accurate, timely information and assisting contract providers and courts as needed to keep the trial level public defense system functioning smoothly.

## **B. Contracts**

### **i. January through December 2013**

In 2013, OPDS analysts managed 98 statewide contracts. Total contract expenses for 2013 were approximately \$86,529,280, with representation provided in approximately 166,962 criminal and juvenile case proceedings. In 2013 there were 18 new death penalty cases filed, adding to the number already in the system.

### **ii. Preparation for Contract Cycle Beginning in January 2014**

The contracting process for non-capital, trial-level cases began on May 3, 2013, with release of the 2013 PDSC Request for Proposals. Contract proposals for non-death penalty trial level representation were due by June 17, 2013. These proposals were reviewed by OPDS analysts who then developed a statewide plan for non-capital contract services. The Commission reviewed the statewide plan on July 17 and July 31, 2013. Proposals for capital representation were due on July 15, 2013. The Commission reviewed the plan for representation in capital cases on September 24, 2013, and the statewide contracting plan (for both death penalty and non-death penalty cases) was approved by the Commission at its meeting on October 25, 2013.

## **C. 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 department processed 17,166 non-routine expense requests and

40,963 billings in 2013. In addition to processing a high volume of work, this group continues to implement procedures that create efficiencies for the agency and providers.

#### **4. Quality Assurance**

General Counsel, in collaboration with others at OPDS, continued to pursue a number of quality assurance measures in 2013.

In 2013, OPDS General Counsel planned and staffed a peer review of the two criminal defense providers in Marion County. This was the first in-depth look at the operations of the Public Defender of Marion County since it was established at the direction of the Commission in 2007. OPDS intends to follow up on that review with a Commission service delivery review of Marion County in 2014.

General Counsel, along with the OPDS Executive Director and an OPDS Analyst, conducted a detailed follow up in 2013 of the 2012 peer review in Clatsop County. As noted above, the Commission later held a public hearing in Clatsop County to address issues raised by the initial peer review and developments in the county following the review.

In 2013, planning began for the next peer review, which is scheduled for mid-June 2014 in Washington County.

General Counsel also continued work, begun in 2012, as chair of a small task force formed by the Oregon State Bar Board of Governors to update that organization's performance standards for defense representation in criminal and delinquency cases. The PDSC has adopted the standards promulgated by the Oregon State Bar for the performance of public defense attorneys in Oregon, pursuant to ORS 151.216(1)(e)(G).

Also in 2013, General Counsel presented the Commission with a proposed revision of the attorney certification procedure in capital cases, which the Commission adopted at its March 2013 meeting. A new form was then employed for responses to the Request for Proposals for representation in capital cases for 2014-2015. General Counsel reported later in 2013 that the new procedure allowed for much more meaningful review of the attorneys seeking contracts in capital cases. In early 2014, he told the

Commission that OPDS intends to revise the certification procedure for all case types.

As in preceding years, in early 2013 General Counsel conducted a statewide survey of public defense performance. He then participated in follow up contacts, along with the four 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 2013 meeting.

In 2013, OPDS received approximately 80 complaints concerning public defense services, which is about the same number received in 2012. While most complaints were received by mail from persons serving time in custody following a conviction for a crime, General Counsel receives a significant number of telephone calls each week from people with concerns about public defense representation, many of them referred to OPDS by the Client Assistance Office of the Oregon State Bar. In most instances, the telephone 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. As a result of complaints received by OPDS, in 2013 General Counsel devoted significant attention to nine matters where corrective measures were taken through the Commission's complaint policy and procedure.

General Counsel spoke about OPDS quality assurance measures and new initiatives at both the Juvenile Law Training Academy and the Public Defense Management Seminar.

Finally in 2013, General Counsel organized a half day diversity program, focused on recognizing implicit bias, for all OPDS staff. The day began with reflections from a young woman who spent significant time in custody with the Oregon Youth Authority (OYA), went on to earn a college degree, and is now an employee at OYA. Following her presentation, April Lewis and Carol French, from Figure 8 Consulting, provided OPDS employees with a series of exercises and discussions centered specifically on implicit bias, and raising individual awareness around immediate reactions to people and situations, many of which are guided by implicit biases.

## 5. Appellate Division

The Appellate Division (AD) is comprised of a criminal section and a juvenile section.

The criminal section is significantly larger and is managed by the Chief Defender and three Chief Deputies, who are each responsible for a discrete aspect of the practice (outreach, operations, and personnel). The criminal section represents financially eligible individuals on direct appeal in misdemeanor and felony criminal cases (including capital cases), parole appeals, denial of applications for DNA testing for exoneration, and victim's rights challenges. The criminal section also acts as a resource for mandamus actions. The criminal section trains, supervises, and evaluates its 36 attorneys, articulates caseload expectations, allocates and redistributes manageable individual caseloads, and maintains documentation of its workflow.

The 2007 legislature funded the creation of the Juvenile Appellate Section (JAS) in AD. The section now has five attorneys representing parents in juvenile dependency appeals. Senior Attorney Shannon Storey leads the section. The section both provides superior representation to its clients and helps improve Oregon dependency practice statewide by obtaining appellate opinions that bring clarity and consistency to Oregon's dependency laws. In 2013, the unit argued its second case in the Oregon Supreme Court, *Department of Human Services v. S.M.*, 256 Or App 15, *rev allowed*, 353 Or 867 (2013).

Case Referrals. During 2013, the criminal section processed 1633 incoming criminal case referrals (versus 1642 in 2012) and filed 1079 notices of appeal in 2013 (versus 1140 in 2012).

In addition, the Juvenile Appellate Section processed 283 case referrals (versus 299 in 2012), filed 262 notices of appeal (versus 264 in 2012), and assigned 224 cases internally (versus 201 in 2012).

Practices and Procedures Manual. AD management revised the AD Practices and Procedures Manual over the course of several months and distributed it in October 2013. The 157-page manual is a critical, desktop

resource for AD employees and management. It describes the office structure, documents office policies and procedures for most issues confronting criminal section attorneys, and articulates performance expectations for every category of attorney personnel. In 2013, the JAS unit published its own policies and procedures manual to address issues and practices unique to the juvenile unit.

Filing Dates. The Division's Criminal Section incrementally reduced the median filing date for merit briefs in the Court of Appeals. At the end of 2013, the median brief filing date was reduced to 224 days. (Note: In February, 2014, OPDS reduced the Key Performance Measure tracking the median brief filing date for criminal appeals from 210 days to 180 days.)

The Oregon Rules of Appellate Procedure impose an expedited briefing schedule (42 days maximum) for juvenile dependency appeals.

Supreme Court Practice. The Division continues to have an active practice in the Oregon Supreme Court. In 2013 the Oregon Supreme Court issued 18 opinions in criminal cases litigated by AD's criminal section.

Outreach. Attorneys from both the criminal and juvenile sections have regular outreach to the trial bar through, *inter alia*, the Attorney Regional Contact Program, by responding to an increasing number of daily inquiries from the trial bar, through participation on the OCDLA "pond" discussion listserv, by writing an appellate perspective column for the OCDLA newsletter, and by providing numerous CLE presentations. AD criminal section attorneys gave presentations at the annual Oregon State Bar (OSB) Criminal Law Section CLE, the OSB's Appellate Section CLE, and at multiple "brown bag" presentations for trial level providers. Deputy Chief Defender Ernie Lannet co-edited the three volume OSB CLE publication on criminal law, and several criminal section attorneys authored or co-authored chapters for the same publication. Finally, several AD attorneys typically spend two or more "telecommute" days per month interacting with attorneys at the public defender office in Lane County, at the Metropolitan Public Defender in Portland, and occasionally at Multnomah Defenders, Inc.

Similarly, the juvenile section attorneys serve as a resource, providing regular consultation and support to the trial bar. They also presented at various CLE presentations, including the annual Oregon State Bar Juvenile

Section CLE, the annual Juvenile Law Training Academy in Eugene, and the OCDLA Juvenile Law Section CLE. In addition, Shannon Storey presented on three topics at the ABA Parents' Attorneys Conference held in Washington, D.C. Ms. Storey also participated on the Oregon State Bar task force which is in the process of revising performance standards for juvenile dependency practitioners.

AD inaugurated its first attorney exchange program with the trial bar in 2013. Jed Peterson of OPDS represented a client in the Marion County Circuit Court, and Drew Jackson of the Public Defender of Marion County participated in OPDS team meetings and ultimately argued a case in the Oregon Court of Appeals.

AD hosted an extern from the Willamette University School of Law during the summer of 2013 and plans to institute year-long externships in coming years.

With the recent addition of a Research and IT Director at OPDS, the Appellate Division hopes to expand its outreach to trial practitioners through webinar programs and materials uploaded to the OPDS website.

Legislative Activity. Both the criminal and juvenile sections served as a resource to the 2013 Legislature. Three bills were introduced at the behest of the Appellate Division during the 2013 Legislative Session. Senate Bill 42 provided an appeal provision to the statutory scheme that allows persons convicted of serious felonies the opportunity to obtain DNA testing of evidence. Senate Bill 44 provided a legislative fix to a continuing source of appellate litigation and logistical headaches for the Appellate Division - affixing a due date for filing an amended notice of appeal from amended and supplemental judgments. AD attorneys completed most of the drafting of those provisions, educated stakeholders and legislators regarding the need for the legislation, and testified before both the House and Senate Judiciary Committees in favor of the bills. Both bills easily passed through both chambers and were signed into law by the Governor.

A third bill was drafted and introduced that would have modified the application of Rule 59H of the Oregon Rules of Civil Procedure to criminal cases. The bill was tabled when the rule was independently amended to produce the desired change. A fourth bill relating to a criminal defendant's

eligibility for diversion in driving under the influence cases was discussed with legislative counsel and received favorably; however, the bill was not introduced because a more comprehensive overhaul of the diversion statutes was in progress.

In addition to AD bills, AD lawyers participated in the consideration of a number of criminal bills before the legislature, primarily to provide information to legislators and interested stakeholders. For example, Chief Deputy Shawn Wiley testified (neutrally) during Judiciary Committee hearings on Senate Bill 39, which substantially overhauled a trial court's authority to issue stays of sentence pending appeal in criminal cases. And AD lawyers played a substantial role in discussions concerning efforts to amend or repeal the statute governing speedy trial, providing systemic information and legal analysis as stakeholders negotiated a compromise bill.

Finally, Ms. Storey worked with the Oregon Law Commission to pass SB 622, concerning the confidentiality of juvenile records.

## **6. Executive Director**

In addition to organizing PDSC meetings, service delivery reviews, the office restructure, budget hearing testimony, communication with the Oregon Legislature, weekly meetings of the OPDS Executive Team, bi-monthly OPDS All Staff meetings and providing oversight of statewide contracting and planning for regional meetings with providers across the state, the Executive Director lead and participated in several committees and work groups throughout 2013.

The Public Defense Advisory Group (PDAG), comprised of contract administrators who are viewed as leaders in their communities, met in January and April 2013. The PDAG discussed a range of topics from quality of services, peer reviews, and budget matters to eCourt implementation and possible topics for the 2013 OCDLA Public Defense Management Conference. The Death Penalty Peer Review Panel met in February 2013 to review the newly proposed death penalty certification process. Finally, the Executive Director worked with representatives from OPDS, the Department of Justice, District Attorneys, courts, Department of Human Services and CASA to plan the 2013 Juvenile Law Training Academy (JLTA).

This year's JLTA had a record number of attendees and enjoyed positive reviews. The Executive Director also worked with OCDLA in planning for the 2013 OCDLA Public Defense Management Conference.

During 2013, the Executive Director participated in telephonic and in-person meetings of the National Legal Aid and Defender Association's Research and Data Advisory Committee, as well as the Oregon Juvenile Court Improvement Program. Both of these committees serve as excellent sources of information for continuing improvement efforts for both criminal and juvenile practice in Oregon. The Executive Director also participated as an external member of the Oregon Judicial Department's Audit Committee and the Governor's public safety team meetings. Finally, she is a contributing editor of the *Juvenile Law Reader*, and a member of the JR Justice Loan Review Panel, and OCDLA's Juvenile Law Committee.

The Executive Director also participated in several work groups focused on juvenile law. In January 2013 the Department of Human Services convened a small work group, chaired by former Attorney General Hardy Myers, to discuss representation for the Department of Human Services in dependency proceedings across the state. This group met in response to the decision of some district attorneys to stop providing state representation in these cases. The Executive Director also participated, along with Shannon Storey, in the Oregon Law Commission's juvenile records bill work group, which met several times to propose statutory amendments to clarify rules around access to electronic juvenile court records. Yet another juvenile work group was formed following the passage of House Bill 3363 in the 2013 legislative session; this work group is focused on identifying and removing barriers to permanency for children in the child welfare system. The Executive Director and OPDS Commission member Judge Elizabeth Welch are members of this legislatively created work group, which continues to meet regularly.

### **Challenges for 2014**

OPDS continues to pursue excellence in all aspects of its business. Through consistent training, mentoring, supervision, and annual reviews of lawyers in the appellate division, OPDS is able to ensure quality representation at the appellate level. That said, appellate caseloads remain well above national standards, and staff at OPDS receive compensation that is 3-14% below

comparable positions at other state agencies. OPDS will continue to pursue funding to increase compensation and reduce caseloads to a level more consistent with national standards.

Measuring excellence is more challenging at the trial court level, where there are almost 100 contract providers statewide, in addition to a limited number of hourly providers. Information provided by criminal and juvenile justice stakeholders through annual statewide surveys indicates that the quality of services varies across the state. On the whole, providers are providing good representation, but comments in the survey reveal that more work is needed. Caseloads must be reduced in order to give lawyers time to meet with clients, prepare cases for trial, and ensure a timely appearance at all court proceedings. Additionally, providers need funding to implement training, mentoring, and education programs, address recruitment and retention challenges, and increase compensation. Attorney salaries at non-profit public defender offices are approximately 10-35% below district attorney salaries. Most consortia and law firm providers indicate that their ability to handle private cases in addition to public defense cases has declined significantly over the last ten years, and that they must agree to provide representation in an increasing number of public defense cases each year in order to keep their businesses operating. Lawyers do not have enough time for client communication and case preparation. Finally, adequate compensation for trial court providers continues to be a major concern articulated by all provider types.

OPDS is dedicating more resources to the review of non-routine expense requests, communication with providers regarding quality of services, and is enhancing its ability to assess workload and quality of services at the trial court level. The agency will continue to pursue initiatives and funding to support this work and will be selecting new key performance measures focused on the quality of services at the trial court level. OPDS will also continue to use existing resources and advocate for additional resources to improve compensation for publicly funded lawyers in the criminal and juvenile justice systems, and dedicate resources toward the two other major goals described in its strategic plan: assuring continued availability of qualified and culturally competent public defense providers in every judicial district, and continuing to strengthen the efficiency and management of OPDS and the contracting system.

**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, March 20, 2014  
Oregon Gardens  
879 W. Main St.  
Silverton, OR 97381

**RETREAT AGENDA****Commission Retreat Objectives**

Oregon's current contracting model, adopted when the Commission formed in 2003, was selected to achieve several objectives. The 2003 Gilfoy-Ozanne Report is included as background material primarily for the purpose of explaining the rationale behind Oregon's current contracting structure, but also to provide some history to Commission members. (See *Attachment 1*, particularly the purposes of different provider types described on Pages 9-10).

During the last several years, contract administrators and lawyers have testified to the Commission regarding the challenges of providing public defense services in Oregon. Specific challenges were also shared at regional meetings, and are listed in regional meeting summaries (included with the March Meeting agenda materials). The Commission has consistently heard from contract providers that the public defense landscape is changing:

- consortia providers find it increasingly difficult to maintain a private client base while also providing representation in public defense cases; the majority of providers have said that 90% or more of their caseload is dedicated to public defense clients.
- public defender offices and consortia providers say that fluctuation in case filings creates unmanageable shifts in resources; when cases are not filed as expected and contract "shortages" occur, the firm's overhead expenses do not change. Ultimately, there is less money available for compensation, as a greater amount of each case rate is used for overhead expenses.
- Survey responses and anecdotal information collected through peer and service delivery reviews suggest that high caseloads remain a concern in most jurisdictions, and especially in dependency cases.

With this background in mind, the 2014 PDSC retreat will focus on whether modifications in the contracting model and contract oversight can alleviate some of the concerns described above while also meeting the Commission's obligation to provide public defense services in the most cost-efficient manner consistent with Oregon and national standards of justice. Once the Commission has made these determinations, it will be necessary to examine the strategic plan and adopt any necessary conceptual amendments. Finally, as the Commission approaches the 2015 legislative session, the

Commission may wish to consider whether it should play a role in the recruitment and organization of a coalition of support for public defense funding.

1. Current Improvement Efforts
  - Data collection & analysis
  - Dependency pilot
  - Courthouse facilities that improve lawyer-client communication
  
2. **151.216 Duties.** (1) The Public Defense Services Commission shall: (a) Establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.
  - Defining “cost-efficient” in light of current standards of justice
    - i. Strengths and weaknesses in current contracting model
    - ii. Major problems that must be addressed
    - iii. Potential Solutions
  - Public Defense as a system of care; what do our clients experience?
  - Contracting model that avoids high caseloads
  - Increased funding to address low pay, high caseloads, and lack of time for client communication and case preparation
  
3. OPDS Challenges
  - Space
  - Technology
  
4. PDSC Strategic Plan (*Attachment 2*)
  
5. Building a Coalition of Support for improved funding, reduced caseloads, and quality services
  - OSB, ACLU, others
  - Commission members

***Please note: Participation in this informal commission retreat by non-commission members will be by invitation only. Written material may be submitted in advance for possible commission consideration. Lunch will be provided for commission members at 12:00 p.m.***

***The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting, to Laura Kepford at (503) 378-3349.***

# Attachment 1

**REPORT TO THE PUBLIC DEFENSE SERVICES  
COMMISSION**

**Recommendations to Improve  
Oregon's Public Defense Contracting System**

*September 2003*

Prepared By:

Peter Ozanne, *Executive Director*  
**OFFICE OF PUBLIC DEFENSE SERVICES**

and

Geoff Guilfooy, *Principal*  
**ALDRICH KILBRIDE & TATONE LLC**

## **INTRODUCTION**

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The Public Defense Services Commission (PDSC) assumes responsibility for the contracting of public defense services effective July 1, 2003. During May and June 2003, Peter Ozanne, the executive director of the Office of Public Defense Services (OPDS); John Potter, a PDSC member; and Geoff Guilfoy, a management consultant from Aldrich Kilbride & Tatone LLC held a series of meetings throughout the state with public defense contractors to discuss how the present contracting system is working and what changes PDSC should make to the contracting process to improve service delivery and the quality of legal representation.

We held nine days of meetings with contractors from Multnomah, Clackamas, Marion, Deschutes, Crook, Jefferson, Lane, Douglas, Wasco, Sherman, Gilliam, Wheeler, Umatilla, Morrow, Jackson, Josephine, Coos, Lake and Klamath counties in locations across the state. Over 60 attorneys and staff representing nonprofit public defenders, consortia, law firms and hourly paid attorneys were personally interviewed in separate meetings. We found the contractors to be very open and candid in their opinions and extremely helpful in proposing solutions to improve contract negotiations, monitoring, service delivery and overall system quality.

This report to PDSC outlines concerns with the present contracting system and recommends several improvements we believe will assist PDSC in carrying out its statutory mission to administer “a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.” (ORS 151.216)<sup>1</sup>

## **CONTRACTORS’ CONCERNS**

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Numerous local and national studies have confirmed that Oregon’s public defense system ranks among the very best in the country. While the public defense contractors we interviewed expressed concerns and frustrations about the state’s contracting process, particularly due to events over the past few months, virtually all of them recognized the high quality of Oregon’s public defense system, as well as the skill, dedication and commitment of the men and women at the State Court Administrator’s Indigent Defense Services Division (IDSD) who have contributed to that quality with very limited administrative resources and support.

During our interviews, we asked contractors to speak candidly about their views of the strengths and weaknesses of the state’s administration of Oregon’s public defense contracting process. We conducted these interviews in the midst of a crisis in contractor operations and finances caused by the Legislature’s 2002 special session budget cuts to the Indigent Defense Account. Therefore, we urged contractors to set aside their feelings stemming from recent experiences trying to cope with this crisis in order to give us longer-term views based on the totality of their experiences with the contracting process. While we believe most contractors we interviewed made every effort to comply with this request, feelings about the state budget crisis and its consequences may have colored some of the observations we report here. Finally, we assured contractors that we would not identify their individual comments, but would instead develop a series of themes and recommendations for PDSC to consider as it works to improve the overall system for providing public defense services while preserving the current strengths of that system.

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<sup>1</sup> This report does not include the perspectives or input of the state’s contracting staff at the Contract and Business Services Division (CBS) of OPDS (formerly IDSD). We believe that this input is critical to the validity and effectiveness of any process that PDSC may employ to address the observations and recommendations in this report. Therefore, we recommend that OPDS establish a method of communicating this critical information to the Commission during its deliberations concerning this report.

This report presents those themes and recommendations in four categories:

1. Working relationships;
2. System issues;
3. Financial issues;
4. Quality issues.

## Working Relationships

The past 15-month state budget crisis has spawned an increasing level of stress and anxiety throughout Oregon's public defense contractor community. The crisis reached its peak when it became apparent that IDSD would have to make significant financial reductions to contracts in order to rebalance the state's public defense budget in the aftermath of the state's five special sessions during 2002.

From the contractors' perspective, the state's contracting process during the budget crisis was filled with uncertainty and poor communication with IDSD. From IDSD's perspective, any communication lapses were due to lack of information, the press of the special legislative sessions, and the sheer volume of work involved in renegotiating and revising contracts. What IDSD perceived as the right thing to do (e.g., not giving out incorrect information or information that might change), contractors frequently perceived as manipulation or an unwillingness to communicate openly.

The many reported perceptions of contractors regarding their working relationships with the state, whether accurate or mistaken, and their suggestions for improvement can be summarized as follows:

- ▶ A substantial number of contractors, especially in rural areas and smaller counties and among adept negotiators, report positive and constructive relationships with IDSD's management and contract analysts over the years, including responsiveness, recognition of their needs and a willingness to address their most critical problems.
- ▶ A few IDSD staff over the years have been difficult to work with and some contractors have worried about reprisals if they complained about their treatment or resulting circumstances.
- ▶ OPDS's executive director needs to get out to all counties, establish relationships with contractors, court administrators, presiding judges, district attorneys, legislators and other criminal justice stakeholders, and be seen by them as a "problem solver."
- ▶ IDSD is frequently perceived as insensitive to the business needs of contractors, including their need for time and funding to wind down their operations in the event of budget cuts, caseload reductions or contract terminations.
- ▶ The State of Oregon is generally not seen as holding itself accountable for the recent drastic cuts in public defense budgets. As a result, contractors have had to assume the financial burdens and professional liabilities associated with the woefully inadequate resources provided by the state.
- ▶ Most contractors feel that their contracts are not really negotiated or renegotiated. Contracts are usually presented to them on a "take it or leave it" basis.

- ▶ Staggered contract cycles, apparently adopted to facilitate IDSD’s management of contracts in certain locales and to ensure some level of continuing service during contract negotiations, sometimes produce seemingly irrational inconsistencies within counties or among similarly situated contractors.
- ▶ The state’s public defense contracting process lacks transparency and consistency. IDSD does not appear to most contractors to be driven by explicit or consistent policies in negotiating contracts. Instead, contract terms are apparently subject to the personal discretion of IDSD management or more senior contract analysts.
- ▶ In many cases, contractors do not believe that their assigned analyst has the authority to make final contract decisions. This leads those contractors to question the utility of working with their analysts, as opposed to the “real decision makers” within IDSD’s management.
- ▶ IDSD often uses impersonal email and faxes to send bad news, rather than personally talking to contractors face-to-face or over the telephone. With the exception of annual conferences, contractors rarely meet with their contract analysts or other representatives of IDSD. Some have never personally met their analysts.
- ▶ A few contractors believe IDSD has tried to break up their organizations by directly contacting their attorneys to encourage them to form consortia and contract separately with the state.
- ▶ Many contractors currently have a low level of trust and confidence in the state’s administration of the public defense contracting system. These contractors note that IDSD has failed to take an open and collaborative approach to planning and contracting in their counties. They want OPDS to treat them like fellow professionals and bring their local defense communities together to develop coherent delivery systems in partnership with the state. IDSD is perceived by some contractors as deliberately staggering contract cycles within counties in order to “divide and conquer” contractors, rather than to plan and collaborate together in the development of comprehensive and coherent local public defense systems.

## System Issues

Contractors identified a number of inconsistencies, ambiguities and delays in the state’s current contracting system. While some of these problems were especially evident during this past biennium, many are apparently longstanding. Here are contractors’ most important observations and suggestions regarding the contracting system:

- ▶ There appears to be no consistent methods or apparent policies for distributing cases among providers in the same area, tracking and fairly compensating contractors for conflicts-of-interest cases, or rebalancing and reallocating caseloads in the event contractors fail to meet or exceed their contract quotas.
- ▶ PDSC needs to establish transparent contracting processes and clear and uniform policies for administering the public defense contracting system.
- ▶ Many counties have a mixed delivery system of nonprofit public defenders, consortia, law firms and hourly paid attorneys. The state has failed to clearly define or explicitly prioritize their respective roles in the local defense service delivery systems. The consequences include uncoordinated distributions of cases among providers, under and over assignment of caseloads, and serious cash flow problems for some providers.

- ▶ IDSD's original RFP process involved unnecessary paperwork, which turned out to be irrelevant to contract negotiations and failed to generate competitive bids. Because IDSD generally contracts with the same providers over the years, the RFP process has been modified over time and perhaps could be streamlined even more.
- ▶ The contract negotiation process frequently proceeds too slowly. Contractors often work without a contract for months, and sometimes for as long as a year. While most contractors recognize that IDSD's limited resources may explain some of these delays, they believe that four-year contracts would mitigate this problem, and would also permit them to more easily manage their operations and finances.
- ▶ Contracts within a county or defined region should begin on the same cycle. The current contracting system with staggered contract cycles may facilitate the management of the contract caseloads by IDSD's contract analysts, but it prevents the development of integrated local public defense systems. It also creates management difficulties for contractors, especially when actual caseloads fall short of or exceed caseload projections and contract quotas.
- ▶ There is sometimes little apparent consistency among the terms and rates of contracts in the same area or among similarly situated contractors.
- ▶ Some contractors characterize IDSD's approach to establishing and administering contracts as an employer/employee relationship rather than an independent contractor relationship.
- ▶ IDSD fails to employ state-of-the-art case forecasting methods, like the methods used by the State Economist to forecast prison populations or by some of the larger public defense contractors. Without accurate case forecasts, contractors cannot manage their businesses or handle their caseloads cost-effectively.
- ▶ There are wide variations in the quality and availability of public defense services for juvenile law cases across the state. Some contractors expressed their view that IDSD has failed to adequately take into account the unique nature of these cases and, instead, has tended to impose a criminal law "template" on juvenile law contractors.
- ▶ Contractors in similar circumstances should be using the same form contracts with comparable terms and conditions, including case rates. Differences in case rates are to be expected, but they must be capable of explanation and justification by OPDS.
- ▶ High volume programs like Drug Courts and Early Disposition Programs are difficult for small contractors to administer cost-effectively. These programs require experienced attorneys to be available in court and on call to handle their demands. Nonprofit public defenders are usually better equipped to operate these programs. PDSC should adopt uniform statewide policies regarding the nature and quality of these programs and require all qualified contractors to participate.
- ▶ IDSD appears not to understand or appreciate what it takes to build office infrastructure and, therefore, fails to compensate for it when negotiating or terminating contracts.

- ▶ IDSD sometimes contracts with too many people and organizations. This has created huge problems in some counties due to recent budget reductions and resulting downsizing. PDSC should carefully consider the mix and diversity of contractors in any given location. Private law firms and consortia that are dependent on public defense contracts as their sole source of income, and large, dominant contractors can limit the state's contracting options and flexibility in the course of administering local public defense systems.
- ▶ OPDS needs to develop systematic and reliable processes for identifying conflicts-of-interest and avoiding unnecessary costs (such as double billing the state), which has typically been associated with resolving conflicts. Some local processes for handling conflicts still provide financial incentives for contractors to "churn" conflict cases in order to receive compensation without performing any legal work on cases that must be passed on to other contractors.
- ▶ PDSC apparently assumes that private contractors and consortia have greater flexibility than nonprofit public defenders to absorb the risk of reduced caseloads. This assumption is not correct if these contractors and consortia rely exclusively on work generated by indigent defense contracts. The expertise of individual lawyers and the assurance of continual professional training, internal quality control and "institutionalizing" a defense delivery system may be the most important factors in selecting the type of contractors for a particular locale. However, if private contractors in a county rely exclusively on state public defense contracts, then the Commission should determine whether duplication of contractors' operating and overhead costs could be reduced by consolidating or restructuring that county's public defense delivery system.
- ▶ The state's method of determining end-of-biennium payments severely impacts contractors' cash flow and creates major financial burdens for them. If at all possible, this practice should be abandoned.
- ▶ IDSD has not defined the goals of the state's contracting process. A balance between saving the state money and providing quality legal representation has not been expressly established and consistently enforced.
- ▶ IDSD has done a very good job of administering the state's extraordinary or non-routine expense system. OPDS should standardize processes and forms as it undertakes its additional responsibilities for administering non-routine expenses.

## Financial Issues

There is no question that the state's appropriations for public defense services have historically failed to adequately compensate contractors for the work they do. Significant discrepancies in pay still exist between some public defense attorneys and their counterparts in prosecutors' offices. Nevertheless, the contractors we interviewed recognized that IDSD has done a remarkable job of spreading the limited amount of state funding across the system and ensuring quality statewide public defense services in the process. But they also expressed the following financial concerns and suggestions:

- ▶ PDSC should, within practical and political limits, seek uniformity in contract rates among similar classes of cases, similarly situated contractors, and within the same counties or other defined regions. Differences in rates will exist, but they should have rational bases that can be explained to contractors. For example, differences in rates may be justified by differences in costs of living and practicing in certain locales and staffing levels, or as incentives to handle certain cases or to practice in certain areas of the state.

- ▶ The state’s case valuation process for determining contract rates does not always reflect the actual cost of handling cases. The state’s contract rates sometimes do not reflect the complexity of cases. Discrepancies in rates exist for the same kinds of cases within a county or among similarly situated contractors.
- ▶ IDSD uses the same contracting and pricing methods for juvenile and criminal cases. But the demands of legal representation in juvenile cases are vastly different from criminal cases and, as a result, case rates should be determined differently.
- ▶ IDSD may need to develop a more flexible system for small firms that permits payment as cases are completed, rather than monthly lump sum payments.
- ▶ Contract negotiations focus almost exclusively on the value of cases in projected caseloads. It appears to some contractors that the state neither knows nor cares about what it actually costs to run contractors’ businesses.
- ▶ Investigators may be making more in some cases under an hourly rate payment method than appointed attorneys are making under contract in the same cases.
- ▶ IDSD does not pay contractors for the costs of automation. This is a necessary cost of doing business. It is unreasonable to expect that these costs can be covered under the state’s current contract rates.

## Quality Issues

Most of the contractors we interviewed agreed that, while Oregon’s public defense system ranks high nationally, there are problems with the quality of legal representation in Oregon’s public defense system. Some suggested there are long-term contractors in the state who are not qualified to provide public defense services. Many felt there were too few opportunities for new attorneys to receive basic skill training in criminal defense practice. On the other hand, the contractors gave high marks to the Oregon Criminal Defense Lawyers Association for the quality and availability of its training programs, particularly for experienced practitioners.

Contractors are clearly interested in improving the quality of public defense legal representation in Oregon, and are eager for PDSC to lead the charge. Here are contractors’ most important observations and suggestions regarding the quality of public defense services in Oregon:

- ▶ A peer review process would be an important element in assuring quality legal representation. Whatever quality assurance processes are adopted by PDSC, they should be developed at the “grass roots” level by experienced trial lawyers in order to be accepted as credible and valid by the public defense community. Such grass roots processes represent opportunities for contractors to work in partnership with PDSC and OPDS to accomplish their critical joint mission of ensuring the delivery of quality, cost-efficient legal services.
- ▶ IDSD collects many case-related statistics unrelated to contractor performance and quality. These statistics often measure workloads, but they do not measure quality. PDSC needs to establish quality assurance processes and performance measures as integral components of a system that monitors contractors’ operations.

- ▶ Achieving statewide uniformity in quality is unlikely. PDSC should at least seek uniformity in the quality of legal services within each county of the state. Differential contract rates may be one effective means to attract contractors to rural areas of the state.
- ▶ Attracting competent lawyers (like competent physicians) to rural areas of the state may be PDSC's greatest challenge.
- ▶ The state can improve the quality of public defense services in the state by allocating cases to contractors in a way that ensures a mix of complex and simple cases, along with a significant substantive variety of cases. Specialized caseloads often lead to burnout and incompetence.
- ▶ OPDS needs to develop an in-house performance audit capability.
- ▶ OPDS should systematically survey district attorneys and judges for the purposes of evaluating the quality of legal services provided by contractors and the individual performance of their attorneys. OPDS should also survey clients to determine contracting attorneys' communications skills and responsiveness to their clients' needs.
- ▶ OPDS needs to develop basic skills training programs for new attorneys. Ample training resources exist throughout the public defense community and within OCDLA, which OPDS should draw upon to develop these programs. A basic level of attorney training, particularly practice skills training, should be mandated by PDSC's contracts.
- ▶ Programs like the Clackamas County Consortium's apprenticeship and mentoring programs and the in-house training programs of the Multnomah and Lane County public defenders offices, should be used as models in developing regional and statewide training programs.
- ▶ Attorneys who are not certified to handle particular kinds of cases should not be permitted to handle them. PDSC should adopt a certification process in collaboration with the courts that incorporates objective standards and qualifications, as well as a valid means to verify self-reported experience and expertise of attorneys seeking certification.

## **OUR RECOMMENDATIONS**

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The following recommendations are aimed at (a) improving working relationships between OPDS and contractors, (b) rationalizing and streamlining the contracting system, (c) allocating in a cost-efficient manner what will no doubt always be scarce financial resources and (d) increasing the quality of public defense legal representation. If PDSC adopts some or all of these recommendations, OPDS should prepare a detailed work plan for review, approval and implementation by PDSC, with the goal of implementing as many recommendations as possible during the 2003-05 biennium.

### **Working Relationships**

It is crucial for PDSC and OPDS to strengthen working relationships and increase levels of trust among their contractors. The key to the success of these working relationships is to strike a balance between the necessary "arms length" relationship between OPDS and its contractors for the purposes of ensuring quality legal services, cost-efficient performance and public accountability, on the one hand; and a collegial relationship, on the other hand, that views contractors as (a) fellow professionals who share PDSC's and OPDS's commitment to quality public defense, (b) representatives of the State of Oregon in carrying out the mission of PDSC, (c) long-term providers with ongoing relationships with PDSC and OPDS and (d) essential participants in the cost-efficient administration of Oregon's public defense system. This, of course, assumes that contractors will also recognize the need to treat OPDS staff as fellow professionals committed to quality public defense services.

PDSC and OPDS should take the following steps to promote the quality of their working relationships with contractors:

- ▶ Make the contract negotiation process more open, consistent and transparent.
- ▶ Increase communication with contractors by requiring OPDS's contract analysts and management to spend more time in the field conducting business, rather than relying on email, faxes and telephone conversations from Salem. This change in doing business will promote a greater understanding by OPDS of the issues and challenges contractors face, as well as how they operate their businesses. It will also promote a greater understand by contractors of the issues and challenges that OPDS must face in Salem and across the state.
- ▶ Rotate the location of PDSC's monthly meetings among major regions of the state. This will offer more contractors an opportunity to interact with the Commission and will provide the Commission with a greater understanding of the issues and concerns within specific regions of the state.
- ▶ Clearly define expectations for the contracting process and contractor performance. Policies governing the contracting system and its administrative processes need to be formulated and enacted by the Commission. OPDS's contracting staff and the contractors will then be able to rely on the Commission's policies in determining the limits of the state's proper exercise of its administrative discretion and as practical guidance in the conduct of their contract negotiations and working relationships. This kind of explicit policymaking process by the Commission is a critical element in clarifying and improving working relationships between OPDS contracting staff and contractors.
- ▶ Direct OPDS's executive director to concentrate high-level contract negotiating and decision-making authority with a limited number of senior contracting staff in order to ensure consistency and compliance with PDSC's policies and directives. A team approach to contract negotiations, with one of these senior staff and the contract analyst regularly assigned to a contractor, is another effective method to accomplish these goals.
- ▶ Develop a policy regarding contacts between OPDS and individual attorneys in contractors' offices who express an interest in forming new public defense offices and contracting separately with the state. This scenario confronts OPDS, as it has IDSD, with a dilemma calling for policy guidance from PDSC: (a) respond to such contacts and be seen by current contractors as operating "behind their backs" and "breaking up" their law firms, or (b) cut off opportunities for attorneys to develop professionally and for OPDS to increase the capacity of the state's public defense system? In resolving this dilemma, the Commission may not satisfy all of the interests involved; but it will at least reflect a reasoned and consistent approach to the problem.
- ▶ Reinforce the sense that (1) contractors and OPDS share the same goal (the delivery of high quality and cost-efficient legal services to public defense clients); (2) we are all fellow professionals engaged in a common mission; and (3) OPDS has a stake in the future of the key contractors with whom it has chosen to do business.
- ▶ Develop a "customer satisfaction" survey for contractors to complete each biennium, which provides them with an opportunity to express their concerns about OPDS's administration of the public defense contracting process and to recommend improvements in the process.

## System Issues

The following recommendations focus on ways to strengthen OPDS's approach to the contracting process and the outcomes it produces. These recommendations concentrate on making the process more open and collaborative, with the goal of ensuring a strong and competent contractor community.

- ▶ PDSC's and OPDS's responsibilities to the state's taxpayers require them to take a business-like approach with contractors and a commitment to finding the most cost-efficient approaches to providing quality public defense services. However, it is also in the interest of taxpayers, as well as the state's indigent clients, for PDSC to promote the viability and competence of contractors by recognizing their need for stability and predictability in their operations. During the 2003-05 biennium, OPDS needs to strike this balance and reflect it in the contracting process.
- ▶ Contractors, judges and prosecutors have a wealth of knowledge and expertise relevant to the improvement of Oregon's public defense system. During 2003-05, OPDS's management should conduct on-site visits in regions of the state selected by PDSC to solicit input from these and other public safety stakeholders on the appropriate structure and operation of local public defense systems. The primary purpose of these site visits should be to develop ideas for local "service delivery plans" to submit to PDSC for its consideration.
- ▶ In order to promote both the quality and cost-efficiency of Oregon's public defense services, the current contracting process relies to a large extent on free-market forces involving many and varied contractors across the state. The competition and diversity among contractors that such a market-based approach promotes are important elements in assuring the quality of the state's public defense system. However, market forces without planning and structure can produce misallocations of resources, irrational contracting practices and operational inefficiencies. A principal challenge for PDSC is to strike the right balance between a market-based approach to public defense contracting and a comprehensive planning process, in order to ensure quality, consistency and cost-efficiency in Oregon's public defense system.
- ▶ PDSC should consider developing and adopting a set of "service delivery principles" regarding the structure, components and features of a quality, cost-efficient public defense system. Focusing first on such general principles would enable the Commission to address some controversial issues effectively, without becoming entangled in questions affecting the interests of individual contractors or jurisdictions. These principles should be developed in conjunction with the Commission's response to the Legislature's 2003 directive "to develop performance measures for appellate and trial court public defense services, and to present the draft performance measures to the Joint Legislative Audit Committee for review and approval by no later than July 2004." Such principles could include:
  - Establishing nonprofit public defenders or consortia as primary contractors in particular jurisdictions, depending on local conditions and resources. These contractors should be capable of providing:
    - Continuity and permanence for the purpose of "institutionalizing" local public defense delivery systems; and
    - Leadership, policy direction and training for local defense communities.

- Designating consortia as the preferred back-up structure in jurisdictions with another primary public defense contractor. These consortia would:
    - Handle conflicts and overflow efficiently;
    - Provide access to experienced attorneys who are no longer interested in working in larger law firms or public defender offices;
    - Offer flexibility to handle varying public defense caseloads, particularly in rural areas, due to diverse law practices involving specialties other than public defense; and
    - Provide administrative efficiencies and accountability by reducing the number of contracts and office administrators in the jurisdiction.
  - Designating private law firms and sole practitioners as an additional public defense resource to meet excess demands for public defense services or to deliver specialized defense services that other contractors in a jurisdiction cannot provide.
- ▶ Assuming PDSC adopts a set of service delivery principles, the Commission should then direct OPDS to propose selected regions of the state in which the Commission would consider adopting “service delivery plans.” The Commission would select these regions, based upon the needs and resources of a region and the Commission’s priorities for accomplishing its statutory mission. A statewide plan or “template” should not be applied indiscriminately across the state. Instead, local customs, practices and resources must be taken into account within the framework of PDSC’s service delivery principles. OPDS should discuss these principles and potential local service delivery plans with public safety stakeholders in every region selected by the Commission (probably through Local Public Safety Coordinating Councils and Criminal Justice Advisory Committees, which each county in the state is required by statute to operate). PDSC would then be able to develop relevant and effective service delivery plans that address the varying public defense needs and resources in selected regions of the state. Once the Commission adopts a service delivery plan, contracts in the region would be negotiated in accordance with that plan. This kind of comprehensive approach to planning would also require the Commission to establish a “contracting plan” for 2003-05 and subsequent biennia that establishes (1) its priorities in terms of which regions of the state to address first in the comprehensive planning process (based, for example, on concerns over the quality of available legal services or the size of a region’s caseload) and (2) another, more streamlined process to negotiate and administer contracts within other, lower priority regions of the state.
  - ▶ The foregoing planning process would call for a change in the state’s current contracting cycle so that all contracts in a region would be negotiated on the same cycle in accordance with the PDSC’s service delivery plans. As a result, contracts could be coordinated in conformity with rational and coherent plans and public defense resources could be deployed cost-efficiently to handle projected caseloads.
  - ▶ The terms and conditions of PDSC’s contracts are matters of public record, which should be readily accessible to all of its contractors for review. In general, case rates should be the same for similar contractors handling similar cases. Differences in rates must be rational and justifiable; based, for example, on local conditions, costs of living, types and levels of staffing, case complexity or the Commission’s policy priorities (such as attracting contractors to under-served areas of the state).

- ▶ Contract periods for PDSC's key contractors should be extended to four years, assuming processes are established that ensure the quality of their legal services and the cost-efficiency of their operations.
- ▶ To the extent this change in doing business has not yet been fully implemented, contracts should be more standardized and perhaps tailored to the needs and structure of particular types of contractors (e.g., three form contracts: one for nonprofit public defenders; one for consortia; and one for law firms or sole practitioners). PDSC should establish a representative work group of contractors and OPDS contracting staff to review and propose revisions to the state's current form public defense contracts.
- ▶ Contractors who wind up falling below or exceeding their contract quotas present problems that interfere with the cost-efficient administration of the state's contracting system. Keeping track of a contractor's progress in meeting its quotas, and periodically modifying the contract, if necessary, may be the most important responsibility of OPDS's contract analysts. OPDS should consider concentrating this responsibility among a few of its most experienced analysts. OPDS must continue to closely monitor this process.
- ▶ Specialized contractor caseloads should be kept to a minimum, since most contractors depend on a wide range or "mix" of cases to operate cost-efficiently. When specialized caseloads are developed, most notably for programs like EDP or Drug Courts, PDSC should develop policies and standards governing the roles and responsibilities of defense attorneys engaged in these programs. Many, if not most, specialized programs should be operated by nonprofit public defender offices or larger consortia.
- ▶ OPDS should utilize state-of-the-art caseload forecasting methods and technologies, similar to the ones used by the State Economist to forecast prison populations or by larger public defense contractors to manage their operations. While past experience combined with anecdotal assessments of policy changes and crime trends are useful, the state's current public defense forecasting methods may present a risk of inaccurate caseload projections, unrealistic contract quotas and severe financial management problems.
- ▶ OPDS should streamline contracting processes and expedite contract negotiations, with the goal that no contractor should be operating without a signed contract. This goal should be one of OPDS's key performance benchmarks.

## Financial Issues

Like many, if not most, of the recommendations in this report, the degree to which PDSC can implement the following recommendations will depend on the sufficiency of its 2003-05 budget. Along with measurable performance standards and management controls to ensure quality and cost-efficient performance, OPDS must establish a manageable number of contracts, with fair and realistic rates. The Commission should consider taking the following steps to improve the financial management of Oregon's public defense contracts:

- ▶ Develop a uniform contract rate structure which, to the maximum extent possible, compensates contractors for actual work performed and establishes clear and rational bases for differences in contract rates.

- ▶ Direct OPDS to factor into PDSC’s contract rate structure for full-time contractors the reasonable costs of purchasing and replacing technology and office equipment, which are essential components in cost-efficient public defense operations.
- ▶ Authorize and, if possible, fund key contractors to establish adequate cash reserves.
- ▶ Direct OPDS to consider the establishment of an internal audit unit in order to ensure greater uniformity and reliability in monitoring contractor performance and relieve OPDS’s contract analysts of the burden of verifying the accuracy of contractors’ case-counting methods and reports. This unit would systematically conduct on-site contractor audits and train contractor staff.
- ▶ Reexamine prevailing methods and processes for identifying, resolving and compensating contractors for conflicts-of-interest cases. PDSC should also consider appointing a working group of contractors, OPDS staff and other criminal justice stakeholders to propose new or revised methods and processes for handling conflicts.
- ▶ Inform the boards of directors of nonprofit public defenders and consortia of their responsibilities and liabilities for the business operations and practices of their offices and offer training opportunities to board members.
- ▶ Require key consortia to have boards of directors with a majority of independent members.
- ▶ Designate boards of directors as the parties authorized to contract with PDSC.
- ▶ Provide for PDSC’s formal input into the office and financial management of contractors through such means as approval of boards of directors, appointment of one or more board members, and participation in the selection of directors of nonprofit public defenders and consortia.
- ▶ Eliminate the present end-of-biennium process for paying contractors as unnecessarily disruptive to their financial operations.
- ▶ Require contractors to comply with prevailing financial management and accounting standards and practices, and to acquire basic financial management expertise through training and outside professional services. Mandate these standards and safeguards in PDSC’s contracts.

## Quality Issues

In addition to being a worthy enterprise in and of itself, advancing the goal of quality public defense legal services in Oregon satisfies PDSC’s statutory mandate to “ensure the provision of public defense services in the most cost-efficient manner . . . .” (ORS 151.216) Any experienced lawyer, including any prosecutor, would confirm that cases can be litigated and resolved most efficiently if opposing counsel is competent and experienced. Furthermore, poorly handled cases create serious inefficiencies requiring additional appeals and retrials to remedy errors and omissions caused by an inadequate defense.

PDSC can substantially improve the quality of Oregon’s public defense delivery system and the legal services it provides by leveraging the expertise and resources of current contractors. The Commission can also advance this goal by establishing internal processes within OPDS to hold contractors, their attorneys and their boards of directors accountable for the quality of the services they provide. The following recommendations represent the first steps in that direction:

- ▶ The contracts of selected public defense contractors should include a requirement and funding to establish and administer training programs on a regional basis, which are designed to develop skills in public defense practice, financial operations and law office management.
- ▶ In collaboration with contractors across the state, PDSC should incorporate performance measures in its contracts that promote objective determinations of the quality and cost-efficiency of the legal and administrative services performed by contractors.
- ▶ PDSC should consider directing OPDS to develop plans for a public defense “training academy” similar to the Department of Justice’s District Attorney Academy, along with a request for the necessary funding for its operation during the 2005-07 biennium.
- ▶ OPDS should consider hiring at least one experienced trial lawyer in a new Quality Assurance or Audit Unit to (a) perform systematic quality assurance audits in collaboration with selected contractors, (b) coordinate the development and administration of regional skills training programs, (c) develop plans for a new training academy, (d) establish a “360 Degree” performance evaluation system for contractors, which includes systematic surveys of judges, prosecutors, clients and defense attorneys regarding the quality of contractors’ legal services and performance of their attorneys (e) recruit and coordinate qualified contractors to develop valid and reliable quality assurance processes (f) coordinate efforts to address conflicts-of-interest cases in a more cost-efficient manner and (g) staff a work group of contractors and OPDS contracting staff to propose revisions to the state’s current public defense form contracts. OPDS’s quality assurance process should include volunteer contractors to perform peer reviews and performance and management audits, as well as OPDS’s appellate attorneys to provide additional feedback on the quality of public defense services. OPDS’s Quality Assurance or Audit Unit could also serve as a “help desk” to field calls for advice and assistance.
- ▶ OPDS should consider contracting with one or more highly skilled and experienced Oregon lawyers to develop quality assurance standards for OPDS contracts and a quality assurance process and audit system for OPDS, in collaboration with qualified contractors across the state.
- ▶ OPDS is currently establishing a merit-based employee performance evaluation system, including annual work plans developed by every OPDS employee—from secretaries to the executive director—and annual reviews of those plans and performance evaluations by each employee’s supervisor. In developing this system, OPDS is drawing upon the experience and expertise of public defense contractors across the state with such systems already in place. Once OPDS has developed its own employee performance system, PDSC should require every public defense contractor in the state to adopt and administer such a system as a condition of contracting with the Commission.

## **CONCLUSION**

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This report presents PDSC with an ambitious agenda for improving Oregon's public defense contracting system. Many of its recommendations will require significant involvement by PDSC, OPDS and the state's entire public defense community. However, as PDSC begins its first year as a fully integrated public defense agency, the recommendations in this report provide the Commission with an opportunity to demonstrate to the Oregon legislature, the public and the public defense community its clear commitment to improving the state's system of providing quality and cost-efficient legal services to people who cannot afford those services.

# Attachment 2

# **Public Defense Services Commission**

## **Strategic Plan 2011 – 2013**

**June 2012**

### **Background**

The Public Defense Services Commission's strategic plan for the 2011-2013 biennium reflects the Commission's statutory responsibilities, and its vision, mission, values, policies, and standards.

### **Vision**

The Public Defense Services Commission (PDSC) is responsible for creating a state public defense system that provides quality representation to eligible clients in trial and appellate court proceedings. The Commission is a leader in the delivery of a quality, cost-efficient legal services system that ensures the continuing availability of competent and dedicated public defense counsel. To that end, the PDSC is a

- visionary planner for the effective delivery of public defense services and administration of justice.
- responsive and cooperative policy maker in the state's justice system.
- responsible steward of taxpayer dollars devoted to public defense.
- vigilant guardian of the legal rights and interests of public defense clients and the public's interest in equal justice and due process of law.

Further, the PDSC ensures that the Office of Public Defense Services remains a model for other Oregon state agencies in terms of

- efficiency in the delivery of quality public services.
- effectiveness of financial management standards and practices.
- responsiveness to clients, customers and stakeholders.
- accountability to itself, PDSC, the Oregon Legislature, and the public through innovations in performance measurement and evaluation.

### **Mission**

It is the mission of the PDSC to administer a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice. See ORS 151.216.

## Values & Policies

- **Quality** – PDSC is committed to providing quality public defense services consistent with the state and federal constitutions and with Oregon and national standards of justice, while seeking opportunities for its capable and diverse employees and contractors to experience fulfilling careers in public defense service.
- **Cost-Efficiency** - PDSC is a responsible steward of taxpayer dollars and constantly seeks the most cost-efficient methods of delivering and administering public defense services. PDSC's commitment to providing quality public defense services also promotes cost-efficiency by reducing the chances of legal error and the need for appeals, post-conviction proceedings, retrials, and other costly remedial actions.
- **Leadership** – PDSC is a responsible leader and cooperative partner with other state and local agencies in the development of justice policy and the administration of justice in Oregon. PDSC is a vigorous advocate for adequate public funding to support Oregon's public defense system. PDSC and the Office of Public Defense Services (OPDS) are credible sources of information and expertise about public defense and justice policies, practices and their implications, for the benefit of the public, the Oregon Legislature, the media and other justice agencies and professionals.
- **Accountability** – PDSC is a results-based organization with employees and managers who hold themselves accountable by establishing performance standards and outcome-based benchmarks and who implement those measures through regular performance evaluations and day-to-day best practices. PDSC and OPDS award and administer public defense services contracts in an open, even-handed and business-like manner ensuring fair and rational treatment of all affected parties and interests.
- **Legislative Advocacy** – PDSC views its role in appearing before the Oregon Legislative Assembly and committees of the Assembly to be limited to:
  - providing information in response to requests from legislators or legislative staff;
  - advocating for a state budget sufficient to ensure (a) the delivery of quality public defense services in a manner consistent with the state and federal constitutions and state and national standards of justice, and (b) the continuing availability of competent and dedicated public defense counsel; and
  - informing legislators of (a) the fiscal impact on the public defense system of proposed legislation or existing laws relevant to public defense, and (b) any potential constitutional or other problems that might occur as the result of the enactment, implementation, or amendment of legislation.

As a general matter, PDSC does not view its role before the Legislative Assembly to include advocacy for changes in criminal, juvenile, mental health or other areas of substantive law or procedure. The Commission may decide to take a position before the Legislative Assembly with regard to particular legislation proposing changes in substantive law or procedure only if such legislation is likely to substantially affect the quality of public defense services in the state, the cost-efficient operation of the state's public defense system, the continuing availability of competent and dedicated public defense counsel, or the fundamental fairness of Oregon's justice system.

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

### **Organization and Decision Making**

PDSC serves as a governing body for the administration of Oregon's public defense system, providing policy direction, guidance, and oversight to its operating agency, OPDS. As chief executive officer of OPDS, its Executive Director reports to PDSC and serves at its pleasure.

OPDS is comprised of two divisions:

- (1) the Contract and Business Services Division (CBS), which administers the state's public defense contracting and payment systems and manages the operations of OPDS; and
- (2) the Appellate Division (AD), which provides (a) appellate legal services to financially eligible individuals on direct criminal appeal and parole and post prison supervision appeals, (b) appellate legal services in juvenile dependency and termination appeals, and (c) training and support to public defense attorneys at the trial level in criminal and juvenile matters.

Each division is headed by a chief operating officer – the Division Director within CBS, and the Chief Defender within AD – both of whom report to the Executive Director.

ORS 151.216 sets forth the policy and decision-making responsibilities of PDSC, including the responsibilities to:

- establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the state and federal constitutions and state and national standards of justice;
- establish OPDS and appoint its Executive Director, who serves at the pleasure of the PDSC;

- review and approve the Executive Director’s budget proposals, and submit the final budget proposal to the Legislature, with budget presentations by the Chief Justice and PDSC’s Chair;
- review and approve any public defense services contract negotiated by the Executive Director;
- adopt compensation and personnel plans and an employee classification system for OPDS that are commensurate with other state agencies; and
- adopt policies, procedures, standards, and guidelines regarding
  - determination of financial eligibility for public defense services,
  - appointment of legal counsel,
  - fair compensation for appointed counsel,
  - disputes over compensation for appointed counsel,
  - any other costs associated with public defense representation,
  - professional qualifications for appointed counsel,
  - performance of appointed counsel,
  - contracting of public defense services, and
  - any other matters necessary to carry out the duties of PDSC.

PDSC has approved the Executive Director’s delegation of authority to negotiate contracts to OPDS’s Director of Contract and Business Services. PDSC has delegated to the Executive Director its authority to execute public defense services contracts that it has reviewed and approved.

PDSC will continue to devote most of its time and energy to developing policies that will guide the shape and direction of the state’s public defense system and will improve the overall quality and cost-effectiveness of public defense services in Oregon, and to overseeing implementation of the strategies set forth in its Strategic Plan.

ORS 151.216 directs PDSC **not** to:

- make any decision regarding the handling of an individual public defense case;
- have access to any case file; or
- interfere with the Executive Director or staff in carrying out professional duties involving the legal representation of public defense clients.

Accordingly, public defense contractors under contract with PDSC act as independent contractors in the operation of their law offices and practices and in the representation of their public defense clients. However, contractors are subject to the terms and conditions of their contracts with PDSC, which include provisions regarding overall management, performance and quality assurance requirements, and standards designed to ensure the provision of high quality, cost-efficient public defense services.

PDSC has approved the Executive Director's delegation of authority to the Chief Defender to directly manage AD and directly supervise attorneys and staff.

### **Standards of Service**

The statute establishing PDSC (ORS 151.216) and the state and federal constitutions require PDSC to serve the interests of public defense clients by ensuring the provision of constitutionally mandated legal services. In addition to public defense clients, PDSC serves

- the community of public defense contractors, attorneys, and allied professionals through its professional and contracting services, legislative advocacy, and policy making.
- the public and Oregon taxpayers, primarily through their elected representatives in the Oregon Legislature, and secondarily by responding to direct inquiries from the public and the media.
- criminal justice agencies and other justice stakeholders through interagency collaboration, planning, and policy making.

All of OPDS's employees will:

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

### **Accomplishments Since 2003**

Stabilization of public defense services in Oregon through a service delivery system that has become a national model for excellence.

PDSC oversight of the contracting process, including review and approval of the statewide service delivery plan for the state of Oregon, with a summary review and approval of each proposed contract.

Increased understanding within the public safety community, and with the Legislative Assembly and staff, regarding the increased costs and other risks associated with underfunding public defense services.

Advancement in compensation for public defense lawyers, with significant room left for continued improvement.

Service Delivery Reviews in every region of the state and in over half of the judicial districts, with additional reviews in three substantive areas of practice.

Peer reviews of 39 providers who handle a majority of public defense services across the state, with a review of death penalty providers underway.

Annual co-sponsorship of a Management Conference for public defense providers, at which contractors learn about effective business management, OPDS policies and procedures, legal ethics, and sharing of information about successful business strategies.

Creation and use of a secure and reliable method for sending non-routine expense authorizations and denials by email.

Adoption of PDSC policy governing the release of public records and recoupment of production costs.

PDSC review, revision, and adoption of standards and processes for determining the eligibility of attorneys for court-appointments.

Creation of policies, procedures, standards and guidelines that guide the Commission, courts, and providers in the provision of public defense services:

- “Best Practices” for public defense boards and commissions to use as a guide for establishing and maintaining a public defense practice;
- a “minimum qualifications” document outlining the experience an attorney must have before providing representation in various case types;
- “Performance Standards,” created and revised through continued collaboration with the Oregon State Bar, that incorporate Oregon and national standards of representation as well as lessons learned through the peer review process, and
- “Drug Court Guidelines” created after extensive informational hearings and final review by the Commission, and provided to contractors who have drug court responsibilities.

Creation of a formalized complaint policy and procedure, with a database specifically designed to store and search complaints related to a particular provider. OPDS works closely with the Oregon State Bar to ensure that the complaint process operates fairly and effectively, avoids duplication with the Bar’s processes, and protects confidential and privileged information from disclosure.

Annual survey sent to judges, district attorneys, and other juvenile and criminal justice system representatives to assess the quality of representation provided by public defense contractors and hourly rate attorneys. The Chief Justice has assisted OPDS by sending a letter urging judges to respond, which has generated a high response rate.

Biennial survey of public defense providers regarding their satisfaction with OPDS business practices and delivery of services, with consistently high levels of satisfaction reported, and annual opportunities for contractors to testify to the Commission regarding any concerns or issues they have regarding public defense services in Oregon.

Annual survey of OPDS staff to ensure that employees' needs are met and the office continues to improve the quality of its services and work environment.

Creation of an extensive training curriculum for Appellate Division attorneys, and annual review of an Appellate Division practice and procedures manual that sets forth detailed expectations for employees in that Division.

Annual performance reviews of all Appellate Division attorneys and management team members.

Reduction of the Appellate Division's median number of days to filing of the opening brief, from 330 days to 236 days.

Creation of a program connecting Appellate Division attorneys with particular regions across the state to provide guidance on substantive legal issues upon request, and regular advancement of legal issues through attorney participation in continuing legal education seminars and submission of articles for publication.

Creation of the Juvenile Attorney Section (JAS) within OPDS; the attorneys in this section have pursued cases that further develop and clarify juvenile law in Oregon, and are frequent presenters at continuing legal education seminars focusing on juvenile law.

Extensive review of District Attorney charging practices in the state of Oregon, and the costs associated with those charging decisions; development of information for legislators regarding the impact of decriminalization/charge reduction on costs of public defense.

Creation and circulation of a waiver of counsel colloquy to reduce the number of youth found within the jurisdiction of the juvenile court without having had the benefit of counsel, and without understanding the risks of proceeding without counsel.

Conversion to a paperless office model that includes electronic case files and an electronic business processes model, with electronic filing and receipt of case and business documents, and electronic signature capabilities.

## **2011-2013 Goals and Strategies**

### **Goal I: Ensure the Provision of High Quality Public Defense Services**

**Challenges Addressed by Achieving this Goal:** The PDSC has a statutory obligation to ensure the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution, and Oregon and national standards of justice. In order to fulfill its obligation, the PDSC must routinely examine Oregon's public defense system and the structure within each judicial district, and pursue quality improvement standards and measures that conform to standards adopted at state and national levels. By providing high quality public defense services, the PDSC serves as a prudent manager of state resources, ensuring that state funds are not spent on inferior providers. Quality representation at the trial court level reduces other costs to the public safety system, such as legal challenges and wrongful convictions in criminal cases, foster care costs in juvenile dependency cases, and unnecessary commitment of allegedly mentally ill individuals through the civil commitment process.

The PDSC faces many challenges in its efforts to provide quality public defense services, but the issue of under-compensation remains one of the largest hurdles. Public defense providers struggle to attract and retain quality candidates due to comparatively low pay for public defense work. This is particularly true in light of increasing student debt upon graduation.<sup>1</sup> Low rates of pay also make it difficult for providers to maintain manageable workloads that permit attorneys to discharge their ethical and constitutional obligations to clients. New graduates often take positions with public defense providers, but move on once they have gained some experience in order to avoid low pay and high caseloads. This leaves the provider in a constant cycle of hiring and training, without sufficient internal resources for recruitment and mentoring.

Adequate funding for the public defense system is also a critical component of the public safety system. In the 2001-2003 biennium, the Public Defense Services Account was reduced by \$27.6 million (17%) over the course of several special sessions. Though \$5 million was restored, the cuts were so late in the biennium that Oregon's public defense system was drastically underfunded, and the state was unable to appoint attorneys during the last four months of the biennium. Cases had to be dismissed or deferred to the following biennium, and the entire public safety system suffered. Crime rates increased and repeat

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<sup>1</sup> "A legal education can cost upwards of \$150,000, and students, on average, graduate from law school with \$93,359 in debt..." Hopkins, Katy, *10 Law Degrees With Most Financial Value at Graduation*, U.S. News & World Report, March 29, 2011.

property offenders could not be held. Fox Butterfield reported in the June 7, 2003, edition of the *New York Times* that “[b]ecause [there is] little money for public defenders, Mark Kroeker, the Portland police chief, said officers were now giving a new version of the Miranda warning when they arrested a suspect in a nonviolent crime. They effectively have to say, ‘If you can’t afford a lawyer, you will be set free. Enjoy.’ Chief Kroeker said. Noting a significant increase in shoplifts, car break ins, and other crimes, Kroeker said, ‘The scary thing is that the worst results are still six months down the road, as the bad guys realize nothing is going to happen to them....’”

*Strategy 1: Build legislative support for adequate funding of public defense in a time of significant revenue shortfalls.*

*Strategy 2: Continue to pursue policy option packages to fund reduced caseloads and increased compensation for lawyers providing public defense services.*

*Strategy 3: Continue to work toward fair compensation for all publicly funded lawyers practicing in the area of criminal and juvenile law.*

*Strategy 4: Continue OPDS tradition of planning and coordinating legal education seminars, participating in committees and ad hoc work groups, and co-sponsoring an annual public defense management conference to promote good business practices that will assist public defense contractors in their efforts to provide quality representation.*

*Strategy 5: Continue to focus on quality improvements within juvenile dependency and delinquency representation, and begin assigning juvenile delinquency appeals to OPDS attorneys.*

*Strategy 6: Continue to develop quality assurance standards – including minimum attorney qualifications, standards of representation, and best practices - and programs to improve public defense services across the state.*

*Strategy 7: Continue to administer PDSC’s formal complaint process fairly and effectively without duplicating processes of the Oregon State Bar*

*Strategy 8: Continue annual surveys of judges, district attorneys, and other juvenile and criminal justice system representatives regarding the quality of representation provided by public defense contractors and hourly rate attorneys.*

*Strategy 9: Encourage the adoption of best practices for public defense contract providers as identified by the Quality Assurance Task Force, including the regular evaluation of attorneys, a plan for recruiting new attorneys, and a system*

*for training and mentoring new attorneys and experienced attorneys found to be in need of such training or mentoring.*

*Strategy 10: Expand AD's capacity to offer training and support for public defense contract and hourly attorneys.*

*Strategy 11: Continue efforts to improve the quality of AD's legal services and reduce the median number of days to file the opening brief.*

## **Goal II: Assure Continued Availability of Qualified and Culturally Competent Public Defense Providers in Every Judicial District**

**Challenges Addressed by Achieving this Goal:** As described above, public defense providers, particularly those in rural areas, struggle to attract and retain lawyers. The challenge is increasing as experienced lawyers, who were drawn to public defense by a desire to perform public service, retire, and new lawyers, burdened with significant law school debt, are unable to meet their financial obligations while working as public defenders. New attorneys often leave once they have enough experience to be successful in the private sector, and the number of experienced public defense attorneys who are prepared and interested in becoming the next generation of public defense providers remains inadequate. Additionally, Oregon public defense lawyers provide representation to an increasingly diverse client population, and need to have a strong understanding of different cultures and the challenges faced by individuals in culturally diverse communities. Ensuring diversity within the public defense bar contributes to positive communication and increased trust in attorney-client relationships, and with the culturally diverse populations in Oregon's jurisdictions.

*Strategy 1: Continue recruitment efforts by fostering positive relationships with law schools in Oregon and by participating in job fairs and recruitment programs.*

*Strategy 2: Promote the diversity and cultural competence of Oregon's public defense provider community through recruitment efforts and by offering regular diversity training for OPDS employees and the public defense community.*

*Strategy 3: Continue the role of PDSC in oversight of the contracting process.*

*Strategy 4: Continue to encourage the creation and existence of boards of directors or advisory boards for public defenders and consortia that include outside members in order to (a) broaden the support and understanding of public defense in local communities, (b) strengthen the management of contractors, (c) ensure that adequate quality assurance and monitoring systems are in place, (d)*

*facilitate communication with PDSC and OPDS, and (e) increase the number of advocates for adequate state funding for public defense.*

*Strategy 5: Refine and continue PDSC's service delivery planning and peer review processes to ensure availability of qualified providers in every judicial district in the state and in all substantive areas of public defense practice.*

### **Goal III: Continue to Strengthen the Efficiency and Management of OPDS and the Contracting System**

**Challenges Addressed by Achieving this Goal:** OPDS manages over 100 contracts within Oregon's 27 judicial districts. In order for the public defense system to operate smoothly, OPDS must be able to execute contracts and reimburse providers through a predictable, reliable, systematic, and efficient process.

*Strategy 1: Maintain positive working relationships with public defense contractors.*

*Strategy 2: Continue to improve the effectiveness and cost-efficiency of OPDS's administration of the contracting system.*

*Strategy 3: Create centralized documentation of management roles and responsibilities.*

*Strategy 4: Ensure that PDSC and OPDS adhere to strategic plan goals and objectives.*