

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, June 13, 2013
9:00 a.m. – 12:30 p.m.
Seventh Mountain Resort
18575 SW Century Dr.
Bend, OR 97702

MEETING AGENDA

- | | |
|---|---|
| 1. Action Item: Approval of minutes - PDSC meeting held on April 29, 2013 (<i>Attachment 1</i>) | Chair Ellis |
| 2. PDSC Budget Update (<i>handouts</i>) | Nancy Cozine |
| 3. Action Item: Amendment of Proposed 2014-15 Contract Language (<i>Attachment 2</i>) | John Potter
Nancy Cozine & Paul Levy
Contractor Comments |
| 4. Planning for October Public Defense Management Conference; Possible PDSC Retreat (<i>Attachment 3</i>) | Nancy Cozine |
| 5. Overview of Contracting Process & Priorities | Paul Levy
Analysts |
| 6. PDSC Contracting Priorities | Commission
Contractor Representatives –
Lane Borg, Greg
Hazarabedian, Angela
Sherbo |
| 7. OPDS Monthly Report | OPDS Management Team |
| 8. Padilla Project Report (http://www.mpdlaw.com/immigration) | Alex Bassos
Stephanie Engelsman |

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: July 17, 2013, 9:00 a.m. – 2:00 p.m. at the City Council Chambers in Astoria, Oregon. Meeting dates, times, and locations are subject to change; future meetings are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Monday, April 29, 2013
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
John Potter
Per Ramfjord
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Shawn Wiley
Billy Strehlow

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

Agenda Item No. 1 Approval of minutes – PDSC meeting held on March 22, 2013, 2013

The Commission unanimously approved the minutes with one correction on page three, first full paragraph, the reference to “borrower’s disposal income” was changed “borrower’s disposable income.”

Agenda Item No. 2 PDSC Budget Update

Nancy Cozine summarized the agency’s two days of budget hearings and expressed gratitude for the support offered during those hearings by Judge David Schuman of the Oregon Court of Appeals, Judge Nan Waller from Multnomah County, Attorney General Rosenblum, and Walt Beglau, District Attorney from Marion County. She also noted the contributions of public defense providers, Jack Morris and Angela Sherbo, and Brett Ballew from the Washington State Public Defender Office, as well as two individuals who were recipients of public defense services; both mothers in the dependency system who spoke to the importance of having a dedicated lawyer who has time to meet prior the shelter hearing and throughout the case. Kathryn Aylward described PDSC’s budget status for the remainder of the current biennium, noting the need for additional funding to fully cover expenses incurred through the end of the biennium.

Agenda Item No. 3

HB 3463 – Public Defender Pay Parity

Mark McKechnie from Youth, Rights & Justice (YRJ) offered a brief recap of the hearing on House Bill 3463, the bill introduced by Representative Williamson that would have required pay parity between public defense attorneys and deputy district attorneys. He acknowledged that while everyone knew that the bill was not going to pass, it was a chance to educate the House Judiciary Committee - a different group of legislators that often don't hear about the fiscal issues. Mr. McKechnie mentioned the material presented, which included

- a chart from Metropolitan Public Defender (MPD), demonstrating that if the current trend continues, the lowest paid deputy district attorney will soon make more than the highest paid staff attorney at MPD.
- charts showing the current disparities specifically between YRJ staff attorneys and the district attorneys. It starts off significant and gets worse over time.

Mr. McKechnie clarified that the charts reflect only salaries, not additional benefits, and that if other benefits were included it would look much worse. He then pointed out that by the 14th year of practice, the deputy district attorney is making double what the YRJ attorney makes. He went on to explain that with the student loan debt average now at \$125,000, the likely monthly student loan repayment would require nearly a quarter a new YRJ attorney's pre-taxed income, versus 15% for a new deputy district attorney's, and that after 14 years the YRJ attorney would still be paying 16% of gross salary, which is greater than the percentage that the deputy district attorney started with as a percentage of their gross salary paid towards student loans.

Chair Ellis asked whether information was provided regarding jurisdictions outside of Multnomah County. Mr. McKechnie responded that Tom Crabtree (from Bend) also provided information at the hearing that demonstrated the compensation increases gained by an attorney who left his office and went to the district attorney's office. Greg Hazarabedian noted that about a year ago the disparity in Lane County was examined and revealed an approximate 30% differential in salary, not benefits, for comparable experience levels and that the greater discrepancy was at the higher levels of experience.

Mr. McKechnie concluded his remarks by noting appreciation for the members of the House Judiciary Committee, all of whom seemed genuinely interested in the topic. Kati Dunn, with MPD, echoed his sentiments and expressed deep gratitude for Representative Jennifer Williamson, who gave public defenders the opportunity to talk about the issues. She also noted that the MPD attorney who holds an elected position with the union testified very clearly that the pay disparity could not be solved through the collective bargaining process; that the issue can be resolved only through a larger appropriation from the Legislature. Ms. Dunn also expressed appreciation for the support from members of the ODAA and confirmed Chair Ellis's assumption that the tone of the hearing did not suggest that district attorneys are overpaid, but rather that everyone is underpaid, particularly public defenders.

Commissioner Lazenby noted his long time interest in this issue, and that he thought the letter from the prosecuting attorneys was extraordinary. Commissioner Potter noted that even more extraordinary than the letter was the testimony; that he thought it was the most remarkable of all the testimony that was given. He also emphasized the importance of having providers communicate with their legislators.

Agenda Item No. 4

Chief Justice's Task Force on Appointment of Counsel in Juvenile Delinquency Proceedings; juvenile dependency law updates

Michael Livingston, Juvenile Law Staff Counsel for the Oregon Judicial Department, summarized his professional background which includes about 24 years as a lawyer with the Attorney General's office, much of that focused on juvenile law, followed by over two years as a juvenile court referee and judge pro tem in Marion County, and service in his current

capacity since 2011. He explained the Chief Justice's instruction to convene a task force to examine the Application Contribution Program in juvenile delinquency proceedings. He said that the task force is charged with examining two separate but related areas: documenting the process statewide, which varies widely from county to county, and establishing some consistent practices that should be implemented statewide. He and Ms. Cozine noted that though the groundwork for the task force is taking a considerable amount of time, the Chief remains committed to the work.

Chair Ellis asked how much the Chief Justice, as the Chief Administrative Officer, could accomplish without legislative changes. Mr. Livingston expressed confidence that changes could be made, even if not part of a formal directive. Commissioner Lazenby referred to an earlier comment by Mr. Livingston, in which he indicated that the juvenile system is a very balkanized system that survives on limited funds, and asked Mr. Livingston what kind of strategy might break through both of those factors. Mr. Livingston responded by noting that cases often resolve more quickly and efficiently if counsel is appointed early in the case, including some informal disposition, which can save money in the system. Mr. Livingston went on to describe ways in which standardized forms and statewide processes can build in uniformity and help correct systemic problems.

M. Livingston ended his comments by offering his praise for the work of OPDS's Juvenile Appellate Section. He noted that in a number of areas the focus of OPDS lawyers has clarified the law and that it has had the effect of elevating juvenile court practice across the state.

Agenda Item No. 5 Approval of PDSC Request for Proposals

Kathryn Aylward described the request for proposals as the same format used in the past, and provided an overview of its format and contents. She noted a few minor changes and reviewed the proposed process and timing of Commission review of the statewide plan. Ms. Aylward specifically mentioned the change to contract provision 5.9, which would require contract administrators to attend the management conference. Ms. Cozine described the reasoning behind asking everyone to attend, noting that it hurts the entire system when public defense contractors remain entirely disconnected from conversations about the problems, goals, and potential solutions within public defense. Commissioner Potter noted his potential conflict of interest, as the Executive Director of the entity that provides the conference, and then provided history and background about how the conference started as an initiative of the OCDLA. He suggested a modification to the proposed language that would clarify that this is a co-sponsored event, asking that the contract use the word "sponsor" rather than "hold." The Commission further discussed whether the provision would be applicable to death penalty providers, and it was noted that they could be exempted out through a specific contract term. Ms. Aylward also noted the deletion of contract provision 7.11, explaining that it is entirely unnecessary because contract providers already submit an annual audit, which is far more detailed than what is included in contract provision 7.11.

MOTION: John Potter moved to approve the contract with a deletion of contract provision 7.11 and change of the word "hold" to "sponsor;" Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 6 Approval of PDSC Payment Policies & Procedures

Ms. Aylward described changes made to the PDSC Payment Policies & Procedures over the course of the last year, and asked for the Commission's approval. Mr. Levy noted that the policies and procedures could use a thorough and comprehensive review at some point in the near future.

MOTION: John Potter moved to approve; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 7

OPDS Monthly Report

Ms. Cozine summarized the last meeting of the Public Defense Advisory Group, where contractors discussed the management conference and whether or not that should be mandatory, eCourt implementation statewide, other topics that are arising for contractors around the state, and current peer review efforts. She reminded Commission members that the July meeting will be in Clatsop County so that the Commission can hear from providers there about that peer review. Ms. Cozine agreed to send out possible alternative dates for this meeting. She also noted that the Legislature's Committee on Public Safety continues to consider sentencing reform, and that House Bill 3194 remains a viable vehicle.

Mr. Gartlan noted that the Appellate Division is embarking upon the next exchange of attorneys, which entails an OPDS attorney going to the Marion County Public Defender's Office, and vice versa. Chair Ellis asked whether OPDS would be doing something similar with MPD and Lane PD. Mr. Gartlan indicated that it was a possibility as long as they could figure out the commuting aspects. He also said that he and former Chief Justice De Muniz have collaborated to create an externship program with Willamette University. OPDS will receive two externs this summer; they will be supervised by Josh Crowther. Shawn Wiley, Chief Deputy, provided a summary of the Appellate Division's legislative efforts, which included the introduction to two substantive bills. Both bills have enjoyed broad support and no opposition. Mr. Gartlan finished by summarizing AD cases currently before the Supreme Court.

Mr. Levy offered an explanation about the National Juvenile Defense Standards which were provided to each Commission member in booklet form. He also noted that the Marion County peer review would be held on Wednesday, Thursday, and Friday, and would focus on only those providers who practice criminal law - MCAD and the public defender office. Mr. Levy concluded by noting that there would be an OPDS diversity training program May 30 at Willamette.

Chair Ellis requested a motion to adjourn, noting that following adjournment Commission members would have a chance to thank Lorrie Railey for her years of service.

MOTION: John Potter moved to adjourn the meeting; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Meeting Adjourned

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Monday, April 29, 2013
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
John Potter
Per Ramfjord
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Shawn Wiley
Billy Strehlow

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

Agenda Item No. 1 Approval of minutes – PDSC meeting held on March 22, 2013, 2013

0:11 Chair Ellis Call the meeting to order. The first item is approval of the minutes from March 22, 2013. Are there any additions or corrections? I had one on page three, the first full paragraph. The reference to “borrower’s disposal income” should be “borrower’s disposable income.” Other than that I did not have any. Anyone else? Is there a motion to approve?

MOTION: John Potter moved to approve the minutes. Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried. **VOTE 5-0.**

0:51 Chair Ellis Okay. Nice to see Mr. Gartlan has returned from his unauthorized leave.

Agenda Item No. 2 PDSC Budget Update

1:03 Chair Ellis Nancy and Kathryn, budget update.

1:10 N. Cozine Good morning, Chair Ellis and members of the Commission. You will probably recall that when we last met we were days away from our budget hearings with the legislature. So we had two days of budget hearings. On day one we covered the agency mission, history, an overview of the agency including a description of each division, key performance measures, the importance of quality representation and the factors that go into measuring that and budget

drivers on challenges. On day two we talked about budget development and we heard from invited guests. We had the support at those hearings from our invited guests which included Judge David Schuman from the Oregon Court of Appeals. Judge Nan Waller from Multnomah County. Attorney General Rosenblum was there. Walt Beglau, District Attorney from Marion County. We also heard from some of our providers, Jack Morris and Angela Sherbo, who provided very good information about the services that are provided and the importance of funding those services. We heard from Brett Ballew, who is the managing attorney at the Parent Representation Program in Washington. This is the program that demonstrated a significant reduction in the number of children spending time in foster care through increased advocacy for parents. So the legislature was very interested in that topic and it sounds like they will want to hear a little bit more about that program. We also had two individuals testify who were recipients of public defense services. Both had been mothers in the dependency system and they spoke to the importance of having a lawyer who is dedicated to representation and has time to meet prior to the time that the lawyer is appointed to talk about the case and to be available during and throughout the case. So overall I think the hearings went very well. We had a few outstanding questions from subcommittee members. We met with Senator Whitsett afterwards and we met with co-chairs afterwards. We also circulated a memorandum with some clarifying information, and in our meetings we felt confident that there was a full understanding of our budget and that we have support. Of course we are still in a biennium that is short on funds. We will have a May forecast coming out soon that will hopefully give us a little more indication about where we stand. I will let Kathryn tell you a little bit more information about the budget details.

3:43 K. Aylward

As far as this budget goes this biennium we are cutting it close. There are two issues. There is having a cash flow problem of needing the money through June 30, and then needing additional money beyond that to pay bills that come in later. So right now, June 30, we would have \$100,000 left, which is a pretty tight margin on a \$9 million a month budget. I am watching it very closely.

4:16 J. Potter

Is that just contracts or the business and services?

4:19 K. Aylward

That is everything except operating.

4:24 J. Potter

Everything except operating.

4:27 K. Aylward

Right. So the contracts are a majority of it but also all the expenses and the non-contract, airfare, everything else, the whole sack of cash. We told LFO and the legislature that we would probably need a rebalance before June 30. They can do that. There is another rebalance bill that they need for some other agency and we could be a little line item that says, "Can I have a half million just to make sure that get through to June 30." We could do that and then our main budget bill for next biennium would have something in it that says, "And by the way, here is another three or four million for the last biennium." The mechanics are there for doing it. I don't know if the money is there for doing it. I think there was a lot of support for the idea that you shouldn't kick the can down the road. That we shouldn't say, "Oh well we are out of money this time. I guess we will pay for it next time." I think they really do want to keep this biennium's expenses paid for out of this biennium's money, so we will see. I am waiting until I have April numbers, so the first week of May I will send LFO the current forecast and say, "I am not comfortable with this. What do you suggest?" We will see what happens. As far as 13-15 goes, the good news is I think it is certain that we won't be asked to come back for a phase two, which is something new they have done this time. They haven't done it before where phase one is supposed to be maybe more general overview and phase two digs into the details. Well I got into the details plenty in phase one. I think they don't need a phase two for us, which is fine. Maybe it means we are more of a simple agency in terms of function and I think we are. We have one thing that we do. Whereas large agencies have a lot of different programs.

6:41 Chair Ellis I had the privilege of attending both days. I do want to commend both of you and others. I thought what was impressive was the tone and attitude of the committee, which doesn't happen without a lot of preparatory work and I thought it was very clear that they had confidence in the information that we had provided them. So the testimony is reinforcing, but the real education that occurred before that I was very happy with it, so thank you both.

7:23 N. Cozine Thank you. We do have follow up meetings scheduled with Senator Devlin and Representative Buckley in the next two weeks, as well as other members of the full Ways & Means Committee. We will be expecting to be able to provide further details at our next meeting.

7:36 Chair Ellis Good. Okay. What is next?

Agenda Item No. 3 HB 3463 – Public Defender Pay Parity

7:42 Chair Ellis Public Defender Pay Parity. Is Kati Dunn here?

7:51 N. Cozine Chair Ellis, we also have Mark McKechnie available. He was at the hearing and between the two of them you should be able to provide with a summary of the events.

8:09 M. McKechnie I guess I am going first. Good morning, Commissioners. Mark McKechnie from Youth, Rights & Justice. I am just going to give you a brief recap of House Bill 3463 hearing; Representative Williamson's bill that would have required pay parity between public defense attorneys and assistant district attorneys. I guess the easy thing about the hearing was going in knowing that there was no chance that the bill was going to pass, but it was a chance to educate the committee and a different group of legislators that often don't hear about the fiscal issues.

8:49 Chair Ellis This is the House Judiciary Committee.

8:50 M. McKechnie They often consider it a policy issue and then those that have a fiscal impact go to Ways & Means. There are only two members, Representatives Williamson and Barker, who overlap between the two committees. There were several other legislators who were hearing about the plight of public defenders. They often see OCDLA and other defense representatives on the policy issues, but they haven't necessarily heard about the conditions that we are dealing with. There was a lot of material presented. I see that Commissioner Potter has the chart from Metropolitan Public Defenders, showing the dramatic shift over time where possibly before too long the lowest paid district attorney is going to make more than the highest paid staff attorney at Metropolitan Public Defenders if that trend continues. There are also charts in the packet, I believe, that I created that look like these showing the current disparities specifically between our pay scale for staff attorneys and those of the district attorneys. It starts off significant and gets worse over time. You can see that over time the rate of increase flattens out for more experienced attorneys.

10:25 Chair Ellis Can I ask on the data, both in that chart and the earlier one, are you just comparing salary to salary of comparable positions, or do you factor in the benefits and all the indirect comp?

10:44 M. McKechnie That is a great question. I know my chart, and I believe the Metropolitan Public Defender chart, only reflects salaries, so the reality is actually worse.

10:51 Chair Ellis That was my assumption as I looked at it.

10:58 K. Aylward That is correct.

10:58 M. McKechnie So if you looked at total FTE costs the disparity would be even worse. Obviously the retirement costs and benefit costs are typically higher for public sector employees compared

to the private non-profit sector. So you can see in this chart that compares the compensation of our attorneys with the district attorney's office that by the 14th year the assistant district attorney with the same amount of experience is making double what our attorney makes. I think two meetings ago Angela Sherbo gave you some examples of actually attorneys in our office and the district attorneys who are on the other side in a case and how their salaries compared. One of those examples did mention the deputy district attorney was making double what our attorney made. Then you heard last meeting, I believe, from Bill Penn from Lewis & Clark about student loan debt that the average now is \$125,000 for a person graduating law school. Comparing the likely repayment of that size debt, at a kind of standard payment schedule, that would take nearly a quarter of pre-taxed income of one of our new attorneys to pay on that student loan. So one of our attorneys would have to pay 24% of gross salary towards student loans, versus 15% for a new deputy district attorney, and after 14 years our attorney would still have to be paying 16% of gross salary, which is greater than the percentage that the deputy district attorney started with as a percentage of their gross salary paid towards student loans. This is obviously simplifying one hypothetical case. Obviously there are different payment plans and some people are eligible for some types of loan relief. Some are not as you have heard, but this is primarily to compare similarly situated attorneys.

- 13:00 Chair Ellis Of all of the data that of the three charts you have looked at is Multnomah County specific. Has there been data gathered elsewhere in the state? I don't know whether Multnomah is more extreme than elsewhere.
- 13:21 M. McKechnie Tom Crabtree also provided data that was presented in a hearing. There is another graph. He chose one of his attorneys to use for comparison because that attorney did leave his office and went to the district attorney's office, so he showed the jump that that attorney received in pay simply by moving over and then the change over time. In one contract cycle they were able to close the gap temporarily and then the DA's office pay scales again went up and out paced them further. I guess the short answer to your question is that I don't have that statewide data. I think part of this conversation has been how hard it can be to compare the consortium attorneys and private bar attorneys who have a variety of time that they spend on the contract cases versus private retained cases. Simply looking at their salary, which is a function of income from both, is hard to compare.
- 14:24 Chair Ellis Greg?
- 14:25 G. Hazarabedian Mr. Chair I can report that about a year or a year and a half ago in Lane County we did a comparison of lawyers in my office with lawyers in the DA's office by bar number. If we averaged out all the years it was something slightly over 30% differential in pay, not benefits just salary, for comparable experience levels and that the greater discrepancy was at the higher levels than the lower levels by some much larger margin. It was 30 or 31% was the average across the board.
- 15:08 M. McKechnie I will mention, and I have said this a couple of times since the hearing because it impressed me so much, but having sat through many hearings, particularly in the Judiciary Committee, I was impressed by how much attention every committee member paid to this issue. Partly because I think they were seeing the reality. Some of the attorneys whose job it is every day to interpret the laws that they make and execute them in practice. I think they were particularly interested in how much out of balance the system is in this way. How poorly resourced the defense function is in the state. I didn't see a single member get up and leave. They weren't holding meetings in the hall.
- 15:57 Chair Ellis Who were the members?
- 15:58 M. McKechnie Representatives Barker, Greger, Garrett, Tomei, Olson, Barton, Hicks, and Williamson. I think that covers all of them. Representative Williamson, Tomei, Hicks, Barton, and – four or five members who were actually co-sponsors of the bill. I would have to say that I think we

got a very good reception. It was a nice change relative to kind of the average hearing where people are on their phones and getting up and leaving and caucusing and all kinds of things. I didn't see a single member who was not paying attention for the entire time.

- 16:55 Chair Ellis What was the background that led to the form of the bill, which is a sort of a case specific direction to PDSC to only pay equal to the other side, which administratively would be very difficult. I think we have long supported closing the gap but do it in the form of appropriations to PDSC that we would then administer. Did the committee get into the differences between the format of this bill?
- 17:31 M. McKechnie They didn't really. They mostly listened to the testimony. I was privy to the development of this bill. But I will say that coincidentally I had a conversation with one of the legislative staff before I came over here and the issue came up that you can not obligate – under just passing a biennial budget you can't do anything to essentially – or very few things that you can do to obligate future legislatures to pay a certain level for a certain service. Putting it in statute that it is a policy that they must be paid equally then requires the Ways & Means Committee to appropriate the money or else they have to go back and change the statute to relieve them of the obligation. It is a way to obligate the legislature for more than one session at a time to provide the funding. Without that I think you see the slippage the MPD chart shows over time of the disparity getting worse and worse and worse.
- 18:28 Chair Ellis Kati, did you want to ...
- 18:30 K. Dunn Just a little bit. Kati Dunn with Metro Public Defender. Thanks for having me. Lane Borg wasn't able to be here today but asked me to come in his place. Lane was able to attend the hearing, which I was not. I would just echo a lot of what Mark said about the reception that the bill got. What Lane told me was that everyone was interested in the issue. A lot of people were just astonished when they saw this chart. I think that it is something that had not occurred to a lot of people that it was happening. I don't think that anybody disputed the outcomes of such a disparity. There was testimony from a number of people who spoke compellingly about how the pay for public defenders ought to be commensurate with similarly experienced prosecutors and the effects on the system that it has when public defenders are not adequately compensated. I don't think that was a surprise to anybody. Certainly Jennifer Williamson gets our deepest gratitude for giving us the opportunity to talk about it. Lane did convey to me that on behalf of a public defender who has an elected position with the union, and his testimony was that the pay disparity could not be solved with the collective bargaining process between the union and Lane.
- 20:04 Chair Ellis He doesn't have any money.
- 20:05 K. Dunn Right. That was in his testimony that he has taken Lane and shook him upside down. He believes it is a transparent process.
- 20:14 Chair Ellis Lane is a big guy. That is pretty impressive.
- 20:17 K. Dunn It is a pretty good visual. The question is how big the pie is to begin with, not that a PD is not dividing it up appropriately. We are expecting a good deal of support on this. There was also a good deal of support from ODAA.
- 20:45 Chair Ellis Which must mean that the tone wasn't that DA's are over paid. The tone was they are underpaid and we are way underpaid.
- 20:56 M. McKechnie Chair Barker, who has family members in the prosecuting business, made that point at the end. He thought the DA's are underpaid, so certainly we are underpaid.

- 21:11 Chair Ellis I think this session is continuing a really good relationship between the defense community and the prosecution community. That Attorney General Rosenblum came and spoke – just the fact she did it was significant. It sounds like the same thing in the hearing that you are talking about.
- 21:34 K. Dunn Right. I think at the beginning of the hearing somebody made a joke that this hearing was to decrease the pay of the DA's and everybody had a good laugh.
- 21:46 Chair Ellis Of course the legislature pays very little of the DA's. It is a different pot of money.
- 21:55 M. McKechnie I would just add that obviously in spite of the fact that this bill is dead now because the deadline has past and it didn't move out committee, I don't want to lose the momentum and the focus for this session which is not over. I think this helped us educate a broader audience about the issue of pay disparity and there is still a pending policy option package in front of the committee. Particularly in light if the department is not being invited back for a phase two presentation. We want to make sure that we keep up the visibility on this issue with individual legislators. That is what I am doing today and later this week, and would certainly encourage you and others to just keep the visibility of this issue. I think we have laid the groundwork and I am not ready to assume that it is groundwork for two years from now or more. To the extent there is any discretionary funding that the Ways & Means Committee has to play with we want to be on the short list of priorities if they decide to fund this session. We have had a lot of regard and sympathy for many sessions now, but we need to be on the short list and, frankly, there has never been a better opportunity than we have this session. We can't assume that we will be as well positioned next session.
- 23:27 C. Lazenby I just want to say that I have followed this issue, as you know, from a lot of different chairs over the years. I think it is remarkable the breadth of support and the way this issue has changed. I am actually more optimistic than I ever have been that we are on the verge of getting some success on this issue. I thought the letter from the prosecuting attorneys was extraordinary.
- 23:51 J. Potter Even more extraordinary than the letter was the testimony. If you read the transcript of the testimony, which MPD's office has transcribed, it is a remarkable piece of testimony. I thought the most remarkable of all the testimony that was given.
- 24:09 C. Lazenby That is 180 degrees from where I think that segment was when this first started. The discussion has been going on for many, many years, but that is really to be commended for achieving that. It is great.
- 24:27 J. Potter I came away from that hearing, having sat through a number of them myself, thinking that we do have to keep up the pressure and I commend you, Mark, for being down there and talking to these folks. We need more providers to do the same. I came away from it thinking that we are really getting close to a crisis. We have been clawing away for a long time, but having these graphs and showing that it is getting exponentially worse. Having people testify that brought tears to your eyes almost. At some point these folks aren't going to do it anymore. I am not sure where that it, but for some people it is getting close. If the legislature can be made to understand that, that this unfairness has gone on for decades and we are reaching a breaking point and when it fails it is not going to be good for anybody.
- 25:24 C. Lazenby It is almost going to be like the new and improved BRAC in some ways. Do you have any numbers on what the fiscal impact would be in a biennium to achieve the kind of parity that the bill describes? Overall what the impact would be? I am saying that with an eye towards trying to think about alternative sources of revenue to get you there. How big would that be?
- 25:51 Chair Ellis I think Kathryn has that.

25:54 K. Aylward There are a couple of ways to look at it. Our policy option package to achieve parity and we were doing that in one-thirds. I can look at the exact number but it was around seven or eight million to get the whole way there. Now this is a different way of calculating it, and if the salaries were to match then you have also got to make sure that social security and the other things, retirement, whatever else is rolled in and tied to that. But a wild guess is seven or eight million.

26:30 C. Lazenby As a fixed, ongoing biennial cost?

26:34 K. Aylward Yes.

26:34 J. Potter And that is just for public defenders?

26:37 K. Aylward Yes.

26:41 M. McKechnie Just to clarify I thought the \$4.8 million this session was for a third. I would assume that would be three times that.

26:52 K. Aylward Just a second. No. The funding to increase full-time public defender salaries to corresponding deputy district attorney's salaries is \$2.35 million to get a third of the way there.

27:21 Chair Ellis But just the employed defenders not the consortium and law firm and other.

27:30 K. Aylward Right. Which is probably why we knew it wasn't going to pass. Nobody asked me for a fiscal on it, but I think everybody knew. When you see that they are that much different, it is going to take a lot to close that difference.

27:46 Chair Ellis I thought the most powerful thing was the visual that showed that there is not just a discrepancy, but that it is growing. That graph that shows the highest paid PD is at the lowest paid DA. We are losing touch.

28:09 M. McKechnie Following Commissioner Potter's point about a true crisis, virtually all of the attorneys in our office started as brand new lawyers. So our focus has been to get them straight out of law school and then keep them. That has really been the only successful strategy all along. What we are seeing now is with the heavy debt load that they are coming in with I am, frankly, every worried about even being able to attract brand new law school graduates if they are going to have to pay such a substantial part of the salary towards to student loan debt. We are going to see that fewer attorneys are even considering entering this field.

28:53 Chair Ellis Other questions for Kati or Mark? Thank you both.

29:03 K. Dunn Thank you.

Agenda Item No. 4 Chief Justice's Task Force on Appointment of Counsel in Juvenile Delinquency Proceedings; juvenile dependency law updates

29:06 Chair Ellis Alright. The next item is the Chief Justice's Task Force on appointment of counsel in juvenile delinquency proceedings. Mike Livingston.

29:23 M. Livingston Good morning. My name is Michael Livingston. I am currently the Juvenile Law Staff Counsel for the Oregon Judicial Department. I began that job in 2011. In January before that I had the honor of serving for two and a half years as a juvenile court referee and judge pro tem in Marion County. Before that for about 24 years I worked with the Attorney General's office. Much of that work was focused on the area of juvenile law. Nancy Cozine and I have been asked by the Chief Justice to put together a task force to examine the application and

contribution program in juvenile delinquency proceedings. That is the process by which the court assesses the eligibility of juveniles in delinquency cases for appointment of counsel at state expense. It is covered currently by a set of procedures in Chapter 8 called the ACP. In addition to the work that we are taking on with the task force, notwithstanding that this would be currently appropriate for review anyway. What the task force is charged with doing is really two separate but related areas. One is to examine that process statewide. There is probably no area of the law where there is more provinciality and balkanization than in the juvenile courts. It even includes what otherwise you would think would be a pretty standardized process. If I could give you an example on the dependency side the same issue. In Marion County in a juvenile dependency case the judge has the affidavit for appointment of counsel at the initial appearance. So the judge right then and there can take care of that process at least if their affidavit is complete. In Columbia County they use pretty much the same process they use for application for appointment of counsel in criminal proceedings. It can take 30 days to get counsel appointed in a dependency case, which means 30 days out of 60 that you have to adjudicate the petition. So part of that you can see there is a lot of reliquary out there that is just being carried on because it is an unexamined practice. So the first charge of the task force is to take a look at what is going on statewide with the application and contribution program. This not only includes the process for determining indigency, but when and how much recoupment can be ordered to pay part or all of those attorney fees and then when it is recovered. I am just learning the sort of funding straits here. Nancy has been good enough to school me in that area. I am aware, among other things, if you take it on the back end of the case that the fund that it goes in to is different from when you take it on the front end of the case.

- 32:32 Chair Ellis Which is which?
- 32:32 M. Livingston Well if it is front end it is general fund.
- 32:37 N. Cozine If it is front end it is called the contribution amount and flows into the ACP account, which is dedicated to funding both the OJD and PDSC for verification and operational costs. If it is ordered at the end of the case it is terms "recoupment." That is what flows in to what use to be called the "CFAA." It is the "Criminal Fine Account" now. That funds a variety of services including victim services. I think some law enforcement type services. I think history has shown that any time that account is touched there are so many interests that are triggered that it can raise a lot of concerns when you try and reallocate funding distribution.
- 33:24 C. Lazenby It is the old unitary.
- 33:31 M. Livingston So part of the work here is just to find out what is going out there now. One thing that has obviously occurred is since the court staff has been cut is there is a lot of making do with available staff. Not trying to come up, I don't think, with a one size fits all to recognize the economics of each county can bring to the problem, but there are some consistencies that need to be implemented statewide. In a number of places it is just not being done. The process is given kind of a wink and a nod. That is really not the way courts and the OPDS administration of this is not the direction, and to go with this and it is really a separate issue, is the whole process for appointment of counsel in delinquency cases and waiver of counsel. There is much inconsistency and Judge Welch knows this quite well from your visit to Marion County when I was out there, there is as much inconsistency in that process as there is inconsistency in the application of the application of indigency process. What our charge is there is again to take a look at practices statewide and to develop uniformed legally adequate standards for the appointment of counsel and taking waiver of counsel from young people that also take into account national standards. You have a National Juvenile Defense Counsel manual. This is kind of going to be our guidebook for that. Again, like the ACP examination a long overdue inquiry. You might imagine that one of the challenges of this task force is to do sort of the detailed hard work of looking at the ACP process and not jump into the more interesting – would be to me, aspect of the other charge which is to look at the appointment of

counsel and waiver of counsel process. But I have very much enjoyed my work so far with Nancy on putting this task force together. We plan to have our first meeting sometime in May.

35:50 Chair Ellis

Who else is on the task force?

35:56 N. Cozine

I have those notes in my office and I can go grab them. I will say that I touched base with the Chief Justice at the end of last week. He wasn't able to come to this meeting but he did want his support for the project reiterated. He recognizes that it has been taking some time to get the ground work done. I think it was mentioned at the last meeting that there have been several changes in staffing at the judicial department in terms of support for the Juvenile Court Improvement Project. I will grab that list while Michael fills you in on other factors.

36:35 Chair Ellis

Let me ask one question. This subject of waiver of counsel is one that we have been very interested in for quite some time. My question is how much can be done with the Chief Justice as the Chief Administrative Officer of courts as a whole. How much can he do in terms of a chief justice directive, and how much in that area do you think requires legislation?

37:13 M. Livingston

I think a great deal on the first question even if it is not in the form of a formal directive. The area of juvenile law generally, I think, has a much higher profile now. It has kind of been rising through the courts. Justice Brewer, who was formally on the Court of Appeals, is very focused and committed in this area. I think I would say that the time is right for the state level leadership from the Chief to begin to have an impact in this area. One thing we have discussed that is being discussed, but not directly on this point is standards for juvenile court justices in terms of special training and preparation. We do a lot of that. That is not saying that anything that I do is judicial training and doing work shops. I think just elevate the practice and standards. I think this would be consistent with that kind of directive, whether it is informal or formal, would be consistent with that sort of general let's raise the standards.

38:24 C. Lazenby

But Mike how do - I think I need a little more detail on that because as you pointed out it is a very balkanized system. There are lots of little fiefdoms out there where the people absolutely rule their fief. Then we just had a presentation on the fiscal problems that the state is facing around funding. What would be the strategy to break through both of those features? The balkanization of it and the fact that if we move to a system that we think is appropriate where there is less waiver of counsel on the front end, more appointment of counsel there is an additional cost there. How do we end up running into a Ways & Means problem where people say we just don't have the funds to do that, or where is the money going to come from to make that happen if we do?

39:10 M. Livingston

I would say two things. First of all I would not leave the premise unexamined that stricter standards for waiver would necessarily mean more expense. I think that cases often resolve more quickly and more efficiently if there is counsel appointed early on in the case, including some informal disposition and resolution of cases. Right now there is not a standardized process for having counsel appointed or advising a youth before the first court appearance. The way things are now - and you have to remember that this structure was set up way before we have the sort of adversarial nature of juvenile courts we have now. It is the juvenile department that still has that initial contact. The juvenile department makes that front end call about whether to go to court or not in most cases. The alternative to court is called "A Formal Accountability Agreement." That is where the youth agrees to certain conditions in lieu of having a petition filed. Well that is a process that might be assisted and not hindered by having counsel appointed and available for youth at that time. I don't know what the data would be but I think it is important not to leave that premise unexamined and that it would necessarily mean more costs. Secondly, there are means short - this goes back to your question, Commissioner Ellis, there are means short of legislation to begin to bring statewide consistency. We work primarily in the area of juvenile court dependency, our office the Juvenile Court Improvement Program, and just through the process of having model state

forms for judgments in the core dependency proceeding, we have been able to raise the level of consistency, and I think best practice statewide, just by having those model forms available. We also have an annual summer conference of juvenile court judges. Now not every judge who does juvenile work in Oregon comes to those conferences, but 60 to 70 do. One thing we did at the last conference is we had three statewide initiatives and judges went back home having agreed to put them in place. So there are initiatives and movements short of legislature which can happen just through the current structures that we have. I think this is another opportunity to do that although we don't do primarily delinquency work. Through the Juvenile Court Improvement Program this standardized or recommended process for appointment of counsel would be something that we could get out there and have people sign on to as an initiative. I think in many cases these standards are almost minimum, almost the minimum legal standards. Unfortunately I think what we are faced with here now is a situation where in many places the basic minimum standards are not being followed. It is not uncommon for the colloquy to go something like this when the judge says to the youth, "Do you want a lawyer?" The youth looks up at mom or dad and gets the non verbal, "No." That is it. That is the waiver. That doesn't satisfy current standards. By the way that is a good example of the interconnect between the waiver of counsel and the whole indigency issue. Does the parent's ability to pay, should the parent's ability to pay have anything to do as a veto in whether the youth gets counsel or not. But anyway the long, roundabout answer to your question. I think the first thing to do is to make sure we are following what the current law is and to sort of zero in on what that is. So often juvenile court proceedings because of their traditional informality over look and skirt around and make do. That just can't continue.

- 43:33 Chair Ellis So as your task force moves forward obviously you are looking at a range of paternalistic attitudes by some of the juvenile judges, but you are also confronting potentially DHS. What sort of reaction or response are you getting so far on that front?
- 43:58 M. Livingston This is delinquency so they are out of delinquency.
- 44:00 Chair Ellis Okay. Not the same.
- 44:01 M. Livingston But I think that goes into maybe the second thing that Nancy has asked me to talk about.
- 44:12 N. Cozine Yes. Before we move on to the second thing I can tell you who the confirmed and invited members for the task force. I will say that the invitations have been just verbal confirmation at this point. A formal letter will be going out and we are working with the judicial department on that. At the current time we have Judge Forte from Deschutes County. Judge Welch, whose is going to be a member. We have Lisa Robinson from Linn County Juvenile Department. You might recall that she testified to this Commission with the director out there, Tori Linn. We have Dick Codon as a defense representative. He is from Marion County. Julie McFarlane from Youths, Rights & Justice. We have Matt Shields from the Oregon State Bar. We have also invited, I think, Rob Bovett from Lincoln County. He is the district attorney out there and Tami Dover from Yamhill County. She is the trial court administrator and she might need to assign someone else. But they are in the process of implementing the eCourt system. Having her knowledge there and I know they have had to work through how to arrange appointment of counsel on formal accountability agreements before a petition is filed using the new electronic system, so she would have a perspective to offer that would be very helpful. Additionally, one of her staff members was on the work group that drafted chapter 8 of the ECP manual.
- 45:45 Chair Ellis Will you be chair, Mike?
- 45:45 M. Livingston Judge Forte will be the chair. He is the right demeanor, I think, for it. He is on the steering committee of what we call our, "Judicial Engagement Leadership Institution." He is very committed to that kind of work and I also think a fresh eye, which means not one of the usual

suspects, is a real good one to have on an issue like this. Nancy and I will both be participating and sort of staffing the task force.

- 46:13 J. Potter Before we move on to the next can we go back to the judge's training that you touched on. You said 60 or 70 judges attend the training but not all judges attend the training. How many juvenile judges are there?
- 46:24 M. Livingston We have to talk about terminology here and that is why I made the distinction judges who do juvenile cases. There are judges who do primarily juvenile law and then there are judges like Judge Murphy in Linn County he is the presiding judge there. I would say that less than 20% of his cases are juvenile and yet he is one of the leaders in the group. It would be hard to say how many judges statewide touch a juvenile case. In Marion County, for example, there are three judges - Marion County has a full-time, two judicial officer juvenile court. But three judges in the downtown courthouse also do some juvenile cases. So it is really hard to get a sense of that. I would say the 60 or 70 judges do 60 to 70% of the juvenile cases in the state, and almost all of the folks from Multnomah County, who have the highest number of judicial officers, they are always there.
- 47:30 J. Potter So the remaining 30 or so percent of the cases might be handled by a 100 other judges?
- 47:40 M. Livingston Is there a mandatory - this gets back to an agenda item we are going to have later on our agendas. A sort of mandatory training and whether or not that is effective where you can really do it. Is there any sort of mandatory training requirement upon judges to attend a juvenile program if they are doing any juvenile work?
- 48:02 M. Livingston No. No, and in a way to me that is one of the sort of positive comments on the work that we are doing is that these people are not required to come and yet they do. I should add in addition to the summer conference, which is a two and half day conference we have four judges, I digest and send out emails every week about the Court of Appeals opinions that come out. It is really the only way they can keep up with them and put comments about what the cases mean and how it affects their practice. So we have a lot of integrated judicial training. We are also having a smaller conference next Monday of judges who developed those three initiatives that I talked about at the last one. We are trying to make a year long process that we don't have to all be physically in the same place.
- 48:53 J. Potter My last question relates to waiver issue. As the chair has noted, we have been grappling with this for a long time and we have anecdotal testimony about waiver and we hear about things in various counties that appall us. Is there any hard data that says, "X number of cases have evolved waiver of counsel." If that exists is it broken down by county?
- 49:27 M. Livingston I don't know the answer to your question generally. I do know that when we first started this process one of the things that Nancy and I decided to do was to be able to bring to the first meeting, or even before the first meeting with the group, the data which would include what you are talking about. We put together a survey which I think did exactly that. You know do you appoint in these cases? Under what circumstances do you waive? We addressed that survey to trial court administrators, district attorneys, judges - who else? What other groups?
- 50:02 N. Cozine Lawyers.
- 50:09 M. Livingston What we got was disappointing. The responses we got were disappointing, but in a way they were as telling as what we would have gotten if we had gotten responses. The disappointing part was that in many counties we only heard from one of those entities. That was necessarily, usually a myopic view of what we were trying to ask about. My answer to you is, "No." In a way it kind of confirms the anecdotal aspects of this. Many of these folks are just doing it the way the person that filled that chair before did it without any reflection at all. For example when I first went to Marion County, this is just a small example. People were doing

what they call 10 day review hearings on probation. On probation that is a detention hearing. You can only have a youth in detention for eight days. The 10 day review is pre-adjudication and detention. The eight days for punishment for a probation violation, but those have become conflated over time and nobody had asked the question. I think the same thing applies to the whole waiver of colloquy and process.

51:20 J. Potter

Maybe I am naïve and I don't understand the process. It just seems like it just should be a ritualized are you waiving counsel. You say, "Yes" or "No." It gets entered into a data system of some nature.

51:38 M. Livingston

But at different points in proceedings in different counties that process occurs. It is kind of hard to dig into and see where that occurs.

51:45 N. Cozine

Not only that but the way OJIN is structured on the juvenile side there is a petition filed and any PV that is entered along the way could or could not have an appointment of counsel. But when you run the query you can't peel out whether or not that appointment was at the initial petition or at a following petition, or at a probation violation, because they are all entered in that one same case. The data protocol is different from county to county, so the query of that system is very complex. Kathryn helped out when we were trying to dig out some of that data earlier. We were able to identify trends, but to actually figure out what is happening in each county is very laborious.

52:33 M. Livingston

The best approach and most effective might not be to look at this as correcting any specific objection problems, but just saying, "Here is the standard. Here is what we are going to do. Here is what the law requires." If there is more that is required in the national standards to have that discussion among the task force members. I think that is probably the approach to take. Thank you. I appreciate your patient but I really have to take a minute and in effect sing the praises of OPDS and their appellate work. Several years ago as you may know this office took on the responsibility of most of the appeals in juvenile law, dependency cases. I remember having some conversations with Peter, who is a long time friend, when that started about how that would work. I was on the bench at the time in Marion County and I knew right away - not only because I know Peter and because of the approach that he intended to take to it that it would be successful. I want to report to you that just an observer of the law and the development of law that not only has the change made a difference, but the way it has been managed and put into practice here has made a difference. When I was doing a number of appellate cases for the AG's office, the folks were represented on appeal by attorneys from all over the state and many times the folks who had done the trials. This is not a knock at those folks, because they often were not primarily appellate lawyers. Most of the arguments had to do with the sufficiency of the evidence. They weren't really focused on legal issues and statutory construction and application. In a number of areas and I will mention two of them specifically, the focus of the OPDS lawyers who do this work on those legal errors and statutory applications, I think have not only done the right work on the law but also elevated juvenile court practice across the state. One of them corrected a practice of DHS where you would have jurisdiction established with respect to a child and parents on one set of grounds. Then through the course of the case DHS would find other things that they thought the parent needed to do or not to do. It may have been correct but never gone back and corrected the petition to reflect those grounds. In a case, M.N.S., the court uses initials now rather than names, the court said you can't do that. If you are going to look at a permanency hearing deciding whether to continue to reunify the family or not, if you are going to look at the progress the parents have made and adequacy of the services provided, you are going to do it based on the jurisdictional basis. That wasn't new law. The statutes that govern this for years have said that the DHS case plan has to be related rationally to the grounds for jurisdiction. They just got lazy, and that laziness, of course, really prejudiced in many cases parents who got to the time of permanency hearing and the goal posts had been changed. That case come out of arguments and briefing that this office did. Another set of cases is a little more difficult to categorize, but it broadly is in the area of the permanency judgments where the statute

requires that the judgments include certain findings. This is what prompted me to put together the model form for the permanency judgments. It took a long time for that filter out and a lot of the incentive for judges to change their practices and actually include those findings came from the arguments that this office was making. It really helped, although inadvertently, but necessarily it helped what we were trying to do to get judges to use these forms. Because not only did they include the findings, but if you go through the forms correctly you will have the hearing that the law requires. I want to just take that moment and point out that not only was the move important to standardize state practice and I think to elevate it, but the way it was carried out here is exactly the way Peter described it. I want to just make that comment that this office has done a great service not just to itself but to the courts and court practices in the state, and in an area where consistency and best practice are sorely needed to be right. I wanted to take that moment.

57:05 Chair Ellis

Don't apologize. Thank you. Any other questions for Mike or Nancy?

57:15 N. Cozine

No. I think Commission members were very fortunate to have Michael Livingston to work with on these issues. He is very passionate about the subject. Though it has taken some time to get things under way, we are very hopeful that we will still be able to come out with a product by the end of the year.

57:33 Chair Ellis

I am very encouraged that this is happening.

57:32 Hon. Elizabeth
Welch

Mr. Chairman, I want to say one thing. I am not going to start anything. I don't think anybody else here was present but about a year or so ago I went to - it was Justice De Muniz, so it was probably a little bit more than a year ago, at Justice De Muniz's request and met with the presiding judges around the state in Salem which was scary. I did and we talked about this subject of waiver. One of the things that I noticed then and I don't know if you have about this from Judge De Muniz or not but the primary reaction - I had some people who were ready to run me out of town on a rail, but not too many. There is a fundamental problem of not understanding PDSC will and will not pay for. There were a lot of questions of me, both out loud and afterwards, from judges all over the state about, "Are you telling me that if I appoint counsel for all these kids that PDSC will pay for it." I said, "Yes." It was of like oh. I have been around long enough to know there is a reason for people to be confused. This whole contribution thing is all stirred up together. To borrow from women's lib there is a consciousness raising process that needs to go on here and a few retirements wouldn't hurt as well.

59:25 M. Livingston

I think your point is a good one. One of the first places to look for a problem is to say, "What is your paradigm? What model are you working from?" I think you have just described one right there.

59:39 N. Cozine

And to follow on that I have been asked by Michael and I think others and I have agreed to speak at the next Juvenile Court Improvement Program at the annual conference. So I will be there on August 12, and I think it will be an opportunity to reiterate some of that information that, yes, these are the case types that we cover and there are a few points of interests that judges are interested in hearing about that, but that will certainly be one of the topics covered.

1:00:14 Chair Ellis

Okay. Thank you.

1:00:14 M. Livingston

Thank you.

1:00:15 Chair Ellis

Why don't we take about a 10 minutes recess and we will resume at 11:10.

(Break))

Agenda Item No. 5

Approve of PDSC Request for Proposals

1:10:24 Chair Ellis

Shall we resume. The next item is Item 5, the PDSC request for proposals. Kathryn you are the presenter.

1:10:46 K. Aylward

Yes. This is a request for proposals that is the same format that we have used as long as I have been here. It has four parts. It is general information. There is the actual instructions for filling out the application. The application itself and then part four is the model general terms. You will recall that our contracts were constructed in a way there is a set of model terms. That goes out in the RFP. We will talk a little bit later about some of the changes we are proposing to make to those model terms. But then the specific terms are unique to each contractor, and the specific terms can sometimes make modifications to the general terms to sort of say, "Okay. These general terms apply to everybody but in my special terms it says that won't apply to me." So basically that is the model that we are using. The request for proposals this one that you have in your packet basically goes to new applicants. The Commission decided and approved some years ago, four or six, that we were seeking a lot of information from existing contractors. That is what was causing them spend a lot of time preparing a proposal when we already knew. We wanted a slimmed down proposal for existing contractors that says, "Your contract right now and your situation what is going to change if you were to have another two year contract? Do you anticipate different case types? Are staff or your health insurance costs going up?" It is not as onerous as filling out this complete one. I didn't send you a track changes on the RFP. There is not a lot that changed and the RFP itself is really just a starting point. When we get this information if there is more that we want, if we go through it and say, "Hey, you know in your case could I see the list of CLEs you have been to in the last year. I would like some more information on this." I am not so worried that if there was something that we forgot to put it, it doesn't preclude us from seeking that information. We changed the language under Section 1.5, Minority Women and Emerging Small Businesses. That language was sent to all agencies and recommended that that language be used. On page 2, at the bottom, you will see the schedule. Unless you have a whole lot of changes that you want, I figure by Friday, May 3, it can go out. This time we have split the deadline for non-death and death penalty contracts. As you will recall at your last meeting, you approved a different way to certify attorneys for capital cases. Part of that certification has to come together with the request for proposals. So we wanted to give them more time to do that. It involves letters of recommendations or writing samples, or things that you might not have readily available. So the non-death penalty proposals will be due June 17. As a comparison last year the RFP was issued May 5 and was due back June 13, so it is very similar as it was four years ago.

1:14:26 Chair Ellis

I also notice that you have done what we hoped would happen. You will recall the dialogue, but there is a Commission review of the statewide plan, and then Commission approval of individual contracts.

1:14:42 K. Aylward

That is correct. We had originally been hoping to have that statewide review at the August meeting. We decided it simply wasn't possible. So it will be the September meeting where we will hopefully come and say, "Here is what we want to do. Here is what we think there is money for. Here is what we think the caseload is. Let us know if you agree." Then depending on what you say we then have until the October meeting to actually go out to contractors and award contracts. Actually the October 25 meeting - that October 18 date we are required to give notice of intent to enter into a contract. Basically when the materials for the October meeting go out and there is an agenda item to approve contracts, and there is a list of the contracts that I am asking you to approve, that pretty much is this is our intent to award. If the materials go out a week in advance then that meets our obligation as far as noticing. We talked a little bit and you will recall there was some language in the RFP. When we were discussing late submissions and the language said, "Well, you can't submit a proposal late unless PDSC agrees in writing to let you do it." Then the question was do we have to be asked before the deadline? Can somebody say, "Oh you know what last year I didn't put

something in, can I put it in now?" Are we free to say, "Okay." Or does it have to be asked in advance. You can tell us not to do this but after much discussion the conclusion was why wouldn't we want to leave it to our advantage to be able to say, "Yes, I will let you turn it in late." Somebody could be on the way to the post office - okay, it is email submission, but let's say it was the post office and they were hit by a bus and they were in a coma and didn't have a chance to ask to turn it in late because they didn't know they were going to be late. We would then want to say, "Oh, sorry MPD. No contract." We have left the flexibility in there. We did add some language that said the decision would be based on our needs. The reason the submission is late. Whether we need you or not. Those kinds of things. On page 6, if you want to look at that language under the heading deadline. One of the other things that we changed just stylistically, Paul commented that there were a lot of things in here that when we really meant it we did it in all caps and bold and underlined. This we really mean. He said to just say it. They must do this.

- 1:17:55 Chair Ellis Is this the same language in place when we had the Rieke issue two years ago?
- 1:18:01 K. Aylward It is very similar except that last sentence has been added to say what sorts of things we will consider.
- 1:18:10 Chair Ellis Which is a reflection of that?
- 1:18:10 K. Aylward And I see on page 6, because I am looking at a great big "Proposals must be submitted." So there is still some in there. We also took this opportunity to review the contract itself and generally - I don't know maybe I'm just lazy, but I always sort of let sleeping dogs lie. If no one has told me there is a problem or we don't have a problem with something, I tend to just leave it alone. At some point maybe we might want to consider doing what we did say 12 years ago where we had a contractor advisory group and they were tasked with redrafting the contract. They met many times and had big, thick binders with suggested changes, and everything the contractors wanted to change in the contract benefitted the contractors. Having a group and asking for their help was a little - thanks, but I will just change it my way. We might want to look at that again. I think right now this contract pretty much is to our benefit. I don't find anything in here that doesn't leave the balance of power in our hands, so sorry contractors, but we did look at a few things and I asked Paul to not leave me sitting up here hanging out. There will be some things that he changed because a lawyer says that that shouldn't say that. I don't really care whether it says, "Willful failure," or just plain, "Failure." On page 4 is the first change in the contract.
- 1:20:13 P. Levy Unless you have questions on some of these, I have had to refer to the reasons for contract termination on occasion with contractors when we are talking about their obligations to ensure that lawyers who are providing services under their contract are doing the job the way they should be. There are a couple of these that we didn't change and I would like to change. Like B, if you are looking at 3.5.1. It is not helpful. This one willful doesn't seem like a term and a concept that I want to have to argue over at length. I think to follow up what on Kathryn just said, there likely will be a time, perhaps after this contract period that we really want to take a comprehensive look at the contract because it reflects how we do business and our relationship with our contractors. How we think public defense should be provided in the state and this document has been in this form essentially for decades. It is probably a good time to have a comprehensive look at this.
- 1:21:40 K. Aylward Thank you, Paul. I know that there are a couple of things. One of them is the 5.9 addition of the management conference. We debated that and discussed it. Whether it should just say specifically our management conference, or could you go to any kind of training on how to run - whatever. We decided that this is our show and if you are going to have a contract with us then what you have to do is show up once year so we can tell you how to comply with your contract. It is not a big expectation.

1:22:17 Chair Ellis This is the same management conference I take it. I think of as an OCDLA event, but you are describing here as a PDSC event.

1:22:31 K. Aylward Yes. That is correct. We always use to call it the OCDLA Management Conference. I think historically we didn't necessarily want to tell people you have to go to that shop and buy this outfit. Let them do what they want if they are meeting their obligations. But over the years it became an avenue for our office in collaboration with OCDLA for using it as an opportunity to get information across. To train them on case counting. To show them what this means in the contract. To tell them the importance of timely, accurate reports, or whatever. It was a way for us to be better at our jobs and spend less money traveling all over the state. So it is our conference and John does all the hard work and we just take the stage.

1:23:23 Chair Ellis So there is not an intent here to change what has been the relationship with OCDLA.

1:23:30 K. Aylward Oh no.

1:23:30 P. Levy We use OCDLA's technical services and hosting and producing the conference, but most of the agenda planning we do in conjunction with John. It is our show.

1:23:50 N. Cozine We did have a very long discussion on this particular topic. One of the challenges that I think is unique to public defense is that because we have this contractual arrangement, there isn't a time when everyone comes together from around the state to talk about the challenges and potential solutions to the work that we do. To talk about why people do the work. What the priorities should be and to set up for ourselves for public defense priorities in terms of how we do the work on case by case basis, but also how we interact with our communities and with the legislature. As I look at other state agencies and other entities that provide services across the state, most of them have a mechanism for distributing information. We have mechanisms but they are all a little bit different. OCDLA serves as an educational entity for public defense providers, but it is very much on a sort of take as you would like basis. It doesn't necessarily, except for this one conference, address management issues. As I see it, when we go to a legislature or we go to someone else in state government and we talk about the work that we do and what it means, if we have contractors who are completely disconnected from this office and the conversations that happen at the management conference, it is very difficult to have sort of a statewide message. We need a mechanism for creating that. I have had some contractors who are not necessarily responsive to legislators. Who have questions about constituent complaints and that really hurts us as an entity. It hurts us when we have contractors who disconnect from anything but submitting a contract and don't engage in the process. Because what we do is more than just providing individual representation. We also have a responsibility as is demonstrated in the National Juvenile Defense Standards. We do have a responsibility to advocate at the system level for changes that affect juvenile and criminal practice. My view of this contractual provision is that we haven't done it in the past. Public Defense has been in its current form for 10 years now. We haven't had an opportunity to bring everyone together from across the state to make sure that every single region is represented in a conversation where we talk about who we are, what we do, why we do it, and what the priorities are. I would like to see us try this for a contract cycle. We could always change it in the next contract cycle, but I would like to have two management conference meetings where we have every region of the state represented. I don't think we have ever had that.

1:27:17 J. Potter I will announce a potential conflict of interest and give my historical perspective on this which may differ from the memories of others, but history tends to be what we remember. This conference started in 1990. Lane Borg and Ross Shepherd and a number of public defenders got together and said we need a management conference. We want to learn how to manage our contracts better. We want to get some outside opinions, but we also want to learn how to negotiate better with the state. That first conference was held at Rock Springs Guest Ranch outside of Tumalo. It was a communal kind of affair. We had cabins and shared

meals. We invited Ann Christian to be one of the speakers. After that we invited more state employees and some of the contractors were upset with me, if not the board, for allowing the state to come to this conference. It should be our management conference. They got over that and it morphed over time, the next 15 years, in which it then showed up on the brochure as co-sponsored by the Office of Public Defense Services, when the Office of Public Defense Services came into existence, and then in the last four years it is actually on the brochure as Oregon Criminal Defense Lawyers and the Office of Public Defense Services putting on this conference. So OCDLA has taken some ownership of the conference. We have in the last few years, and I think it is fair to say, Paul, abdicated a lot of planning of the conference to the OPDS staff. That is not to say that we haven't had input and we are engaged in that process. So it has morphed into this. I think it is a great to try to have everybody attend that should be there. I also happen to think, and this is where some of the conflict comes in, that it benefits the state to have this non-profit organization involved in some regards so it just isn't view as the heavy hand of the state forcing somebody to come to something that is a state conference. The blend of the two has worked quite well. To the degree that that can be continues serves everybody well.

- 1:29:50 N. Cozine So Commission members it may be that what I am hearing is that we should amend this language to say that PDSC will work in conjunction with OCDLA to put on an annual management conference.
- 1:29:59 J. Potter Nancy, I am not even suggesting that. I don't think you want that in a contract. But OPDS can ensure that there is going to be a management conference or some language like that. Then you can figure out. If OCDLA went out of business you don't want to have language in a contract if there is no organization. It is a squirrelly kind of a deal to have the state contracting, or having in a contract, some language that takes you to a 501(c)(3).
- 1:30:33 N. Cozine Right. I also want to mention one more thing which is that we did have a thorough discussion on this topic with the Public Defense Advisory Committee group on Friday. They looked at the contract. They looked at the proposed changes. We discussed this item at length and was there was great support among that group for requiring everyone to come together for a discussion about public defense and where it is and where it is going and where we should be in the future.
- 1:30:56 Chair Ellis Steve.
- 1:30:56 S. Gorham Is it the intent of this to have the smaller contracts like the death penalty and mitigation contracts included as well, so these people will be at the conference too?
- 1:31:12 N. Cozine When we discussed it conceptually it was for people providing non-death penalty work. We also put in the contract that in the event that a contractor was not able to attend they should contact their analyst to find out how their community would be represented. As we discussed it, it was more a regional view of the state to make sure that every single community has someone at this conference.
- 1:31:37 J. Potter Historically I think this meant contractors that never show up, Steve. There are folks that just don't show up for the conference. It gets back in my mind to what Mike was talking about with the judges and training. Some of them come and probably those 60 or 70 that come are the ones that come all the time. Then there are those that never come and should come.
- 1:32:03 S. Gorham The reason for the question was is this language going to be in the general death penalty contract? It will be, so I guess you expect that people will be coming.
- 1:32:19 J. Potter Is that true?

1:32:21 K. Aylward It is true. But if you wish to so instruct me it would be simple to put in the specific terms of all the capital ones. You don't have to do 5.9. We can extract it if you want.

1:32:37 N. Cozine There is a death penalty conference that generally is held in conjunction with and sort of right after that draws the death penalty community to that conference. We could talk more about it. I am not sure if there is a significant of need.

1:32:54 J. Potter This does apply, though, if I have a contract and I am sole proprietor of a contract providing services in Measure 11 cases or whatever it might be. It is non-death penalty. I would have to come because I am the only person in the contract.

1:33:09 N. Cozine I think that gets back to that other provision that says to call us to talk about how your community will be represented. We do have some counties where we have just that one contractor doing everything. If that one person doesn't come that community is entirely unrepresented in that situation and we might say you have to come. In another county where there are multiple providers and that person is providing a limited service that community can be presented through a different entity and share the messaging if the person cannot attend.

1:33:49 Chair Ellis I am mindful that at least one very large county with a single consortium didn't seem to want to be very involved with the state program. They just kind of wanted the money lobed over a wall. For that reason I am very happy to see this. I think this whole process of the last 10 to 12 years has been trying to both raise everybody's game and get people talking to each other and sharing. That can only happen if people come. Assuming we are not stepping on OCDLA's toes, which I hear we are not, I think it is a very positive thing.

1:34:42 J. Potter A potential language change that allows some flexibility. Otherwise PDSC agrees to hold an annual conference. You can agree to sponsor an annual conference and that doesn't exclude others from sponsoring along with you. I am not quite sure "to hold" is really great language.

1:35:05 Chair Ellis You are okay with that?

1:35:05 N. Cozine I would be very supportive of the word "sponsor."

1:35:15 Chair Ellis Okay.

1:35:17 K. Aylward Okay. I am the one who has to get this in the mail. I better make sure that I know what you are talking about. I heard you say something about uncomfortable with a state contract pointing someone to a 503(c) or whatever.

1:35:37 J. Potter This wouldn't...

1:35:37 K. Aylward Oh, because it doesn't name OCDLA.

1:35:41 J. Potter I don't think you want to have a (c)(3) or anybody named in here because there may be a change, or you may decide somebody else is better to sponsor with you.

1:35:56 K. Aylward There was one other change that came up when we met with PDAG? When you send somebody a document that has got changes we want to make, suddenly they look and everything and say, "Well I didn't want to make that change." Some stuff came up and I think one of them was a good idea. It is on page 11. It is 7.11. Somebody said, "Forty-five days really isn't enough time. Can you make that more time to get the annual expenditure report to you?" I thought about it and decided why do I even want an annual expenditure report? It is a hold over from the days when a contract was made was somebody puts together a budget like a PD's office and they come forward and say, "Okay. I want to have a contract. Here is what I think everything is going to cost me." We would look at that and go, "Come on, Jim. You don't need \$10,000 for long distance. That is a way big estimate. It should be

\$8,000.” The whole point of that process is that you get to a bottom line and you say, “Okay, big PD, I agree you need \$10 million a year to do your stuff. Now, how many cases can you do? Oh, not very many. Oh, yes a lot.” That was the negotiation but you always ended up at the dollar amount. Then we said, “Okay. It was just an estimate.” A year into the contract why don’t you send me your long distance bills. If they are \$10,000, I will put your cost up. So that is why we were asking for this. Something majored changed 10 years ago, but at some point Jim Hennings would say, “Look. Here is all the money I know I need.” I would say, “I believe you but I don’t have that money so too bad.” I am going to pay you less than what you need to live on. Then it became a farce when I would get this actual printout of the costs. He would say, “I told you it was going to be \$10 million. Here is my annual accounting.” Sure enough it is \$10,200,000 and you only paid me \$9,500,000. I would say, “Okay. Thanks for form,” and throw it in the file. It really is useless. What we do rely on is the 7.10 requirement just above it, the Independent Audit. It is audited material. It is accurate. It provides detail in a much more sort of balance sheet kind of way. As opposed to whatever we said, right now what your costs are going to be and those are the categories you have to put it in. It is just weird. It is not how you would run a business and categorize things. People wouldn’t say, “How much did you spend on cups? How much did you spend on pens?” You would just have office supplies. I am fine with 7.11 just coming out. I checked with all the analysts and they said, “No. It is just yet another thing to make them comply with and I have to make sure that I am making them comply or else I am remiss.”

- 1:39:25 Chair Ellis So help me understand. Do you need our approval of deletion of 7.11?
- 1:39:29 K. Aylward Yes. I need your approval for everything.
- 1:39:34 Chair Ellis Okay. Is there any discussion on that?
- 1:39:38 K. Aylward In addition to whatever else is in here. All the bits.
- 1:39:48 Chair Ellis So how do you recommend that we go? An omnibus motion at the end that includes deletion of 7.11? Okay.
- 1:40:00 K. Aylward For the record, yes.
- 1:40:00 Chair Ellis Okay.
- 1:40:01 K. Aylward But we are at that point now, right?
- 1:40:04 J. Potter Are you done?
- 1:40:03 K. Aylward I am done.
- 1:40:08 Chair Ellis Is there a motion to approve including deletion of 7.11?
- 1:40:15 P. Ramfjord And change 5.9 to the word “sponsor.”
- 1:40:20 Chair Ellis Correct.

MOTION: John Potter moved to approve; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 6 Approval of PDSC Payment Policies & Procedures

- 1:40:37 Chair Ellis Item 6, the PDSC Payment Policies & Procedures.

1:40:49 K. Aylward This is Attachment 4 behind the pink page. I at least had the common sense to put in the materials a tracked changes version, or a show changes version. What we have tended to do in the past is update the payment policy when there was a change in the federal mileage rate. For awhile there that happened quite a bit, like three times in one year when gas prices were going way up and way down. Lorrie Railey is the keeper of the payment policies and procedures and as she goes through her days and weeks and months and years, if something comes up where she says, "Well wait a minute. Somebody just read that in a way that I didn't think they would read it that way. Let's clarify that language." She keeps track and takes notes, but we wait until we have to reissue an updated policy because the mileage changed or something else changed. Unfortunately, and this is also one of the things on giant office to do list, is that we have tended to co-mingle policies and procedures like the substitution policy that we were required to enact by statute. We didn't really have a place for it so it ended up in the payment policies. Maybe it belongs there. I think at some point we need to totally restructure how we do our policies so that is what is clearly a procedural change, we don't have to keep dragging it back to you just because it is contained in a document with the word "policy" in its name. So the changes you see here – actually this revision was necessitated because of Paul's suggested changes to confidentiality. You will recall you had several Commission ...

1:42:59 Chair Ellis We had a lengthy discussion.

1:43:01 K. Aylward You finally sorted that out. That happened at the October meeting. These are dated January 1 probably because nobody told Lorrie something changed and get it on the webpage. That is why it is January's date. One of the main things you will see is we crossed out invoices. What was happening is people were sending us an invoice and wanting to get reimbursed saying, "You pay me because I am going to have to pay this guy. See this is his invoice." We would say, "Have you paid it?" And they would say, "No. Because I am waiting for you to pay me." We can't reimburse you for an expense that you didn't incur. We didn't want to be in a situation where we paid someone to pay an invoice and then they did not pay an invoice for whatever reason. So invoice won't do. I have to see the fact that you have paid it if you want to be reimbursed.

1:44:05 P. Ramfjord Is that the 3.1.2?

1:44:06 K. Aylward It actually starts even sooner. It starts on page 4, 2.3.1, the heading in general.

1:44:20 C. Lazenby On page 9, you can advance.

1:44:23 K. Aylward Yes. We don't like to do it just because it is an accounting nightmare. We pay so quickly. If you put something on your credit card, you will have the cash from us 28 days before you have to pay that credit card bill. A lot of language you will see it looks like receipt required has been crossed out. Really nothing is changing. At one point in the payment policy it says, "Unless we say otherwise you have to have a receipt." Then it was just confusing. That is what clearing all that language out is for.

1:45:07 J. Potter Is the postage on first class mail receipt required if the cost exceeds \$5?

1:45:23 K. Aylward You are asking me if before you could spend \$6 and not have a receipt?

1:45:27 P. Ramfjord I think you could under 3.1.2. Now you can't.

1:45:37 K. Aylward Over cake I can have Lorrie tell you why she decided to do that, but I think a lot of the decisions that she makes are because she sees what is happening. Why did your postage always cost you \$4.99 and you needed one every single day. She is putting stuff in her to protect this agency and to make sure that we aren't missing opportunities to save money.

- 1:46:26 S. Gorham I have a question about the receipt policy. Since PDSC is going to basically all PDF, why can't we just make a copy and scan it of the original receipt and send that in?
- 1:46:42 K. Aylward This is a problem because what is an original receipt. If all I am getting from that hotel is an email attachment that is PDF and I forward that email to someone. I have made a copy right there. The original is what landed in my inbox maybe, or the original is what left the hotel, who knows. All we are trying to do is prevent people from using this same old receipt, reimburse me \$5, \$5, \$5, and there is just one receipt out there and they are giving it to us over and over and over again.
- 1:47:21 J. Potter That sounds like a crime.
- 1:47:29 K. Aylward We are reasonable if people are saying, "This is the only receipt I ever got." If we had more staff and loads of time on our hands, we could actually make sure that that \$4.99 or \$5.00 receipt isn't the same date and time stamp as one that was submitted five months ago. We could do that. I don't think there are wholesale cheaters out there. I think there some genuine mistakes that we have found. It is easy to forget. I have a shoebox of receipts from 30 years ago and when you sell a house they want to know, where is your receipt from 30 years ago?
- 1:48:17 Chair Ellis My inclination is the Commission is probably not very well qualified to get into this. Whatever you guys think is right we will go with.
- 1:48:27 K. Aylward We were hoping that the Oregon Accounting Manual would help us and guide us. I think the law just can't keep up with technology.
- 1:48:35 S. Gorham I'm sorry. My question to you is if I have a mail receipt can I copy it and PDF it to you all?
- 1:48:46 K. Aylward What we have been saying to people is if you have that little mail receipt, send it to us and then we will PDF it and write "yes" we saw the original on it. So I guess the answer is still "No." If you need a little mail receipt we need to have it. That is what we have been doing.
- 1:49:10 Chair Ellis Do you think any of the other changes require discussion by the Commission?
- 1:49:16 K. Aylward I didn't think so.
- 1:49:22 J. Potter And your legal counsel reviewed this and looked at 1.6, and yet did not take out the capital letters.
- 1:49:34 P. Levy This is a document that would also benefit from reorganization and a comprehensive review that we haven't done. I could point you to some of my choice passages that I would like to see revised but that is for another day.
- 1:49:55 Chair Ellis Paul, you are satisfied that this incorporates the long and fruitful discussion we had on disclosure of expenses?
- 1:50:05 P. Levy That is shown in here as a change because of what this document is comparing itself to. The Commission has already approved that.
- 1:50:16 Chair Ellis It looked like it had all the footsteps that I remembered. Anything else? Is there a motion to approve?
- MOTION:** John Potter moved to approve; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 7

OPDS Monthly Report

1:50:40 Chair Ellis The monthly report?

1:50:41 N. Cozine Do you want to get food while we have the monthly report?

1:50:47 Chair Ellis Let's go ahead and do the monthly report. If we start eating it all sort of disintegrates.

1:50:56 N. Cozine I wanted to update the Commission. At our last meeting we talked about the final report from Linn County, and Commissioner Welch had a question about DHS discovery and whether or not there had been any changes since their implementation of electronic system that speeded up the time to receive the discovery. I spoke with Melissa Riddell who is the contract administrator there. It sounds like the time is now varying very significantly. It could be anywhere from one to three weeks. Conversations are ongoing about how to get that timeline shortened up, but the problem has not yet been resolved. The other piece of that was whether or not there had been any movement toward getting lawyers in to cover first appearances. That has actually had no change at all. They have been in the process of implementing eCourt. They are continuing to recognize that contractors are continuing to recognize that as a priority, but I did want to let you know that I have had that conversation with her and that the issues were unresolved at the time of the final report remain unresolved. Public Defense Advisory Group met on Friday. We had a very good discussion not only about the management conference and whether or not that should be mandatory. We discussed eCourt implementation statewide. We discussed other topics that are arising for contractors around the state. We discussed the peer reviews and I wanted to remind this Commission of our discussion on the Clatsop County peer review. That took place last year and we talked about changing our models so that when we do appear, and we talked about changing our model so that when we do a peer review we then follow it up about six months to a year later with a service delivery review. So we are planning to go to Clatsop County in July of this year, so that we can do a follow up to that peer review. So make sure you mark your calendars that our meeting in July will be held in Astoria. We have worked with Senator Johnson who very kindly secured a place for us to meet there. We are hoping it will be a very interesting and productive meeting. The contractors there have been very responsive. So Paul continues to work on that and we will talk about his other peer review plans for the week. I think those are my topics. Oh, I thought the Commission would also want to hear about the Committee on Public Safety, the legislative committee on public safety. The primary mechanism for making changes is House Bill 3194. It remains a viable bill. There is still quite a bit of opposition, so it has been about three weeks since that committee met. I think they are continuing to have ongoing conversation, but nothing is moving at this point in time. I think it is viewed as still being viable. I think it will be an end of session kind of action.

1:54:18 Chair Ellis This is the issue on prison population?

1:54:21 N. Cozine It is. As you have read in the papers there are many policy matters that are hung in the legislature. The revenue package. PERS went through, but there are so many pieces still at play. It is very difficult to determine where at this point in time we will end up from a budget perspective.

1:54:44 Chair Ellis That is why God invented forecasts. Close the gap that way.

1:54:49 J. Potter Just one comment on the Commission meeting that is on the 18th that is now going to be in Astoria.

1:54:57 Chair Ellis July.

1:54:58 J. Potter July 18th. I have a board retreat that day that starts on the 18th in the afternoon and goes Friday and Saturday. I assumed that it was going to be here and I would still be able to make the board retreat. I won't be able to make the board retreat. I won't be able to make the

Commission meeting. Those are the two choices. I have to choose that I am not at the Commission meeting.

1:55:30 N. Cozine Okay.

1:55:31 C. Lazenby So it is the 17th not the 18th.

1:55:41 N. Cozine I guess the question is whether this Commission would want to move the date. That date is still a flexible date.

1:55:47 Chair Ellis Why don't you email us some options.

1:55:52 J. Potter I can do the 17th if you want to do that.

1:55:55 N. Cozine Okay. Thank you.

1:56:04 Chair Ellis Mr. Gartlan.

1:56:04 P. Gartlan Chair Ellis. I only have a few things to update the Commission on. One is we are ready for the next exchange of attorneys. An attorney from this office going to the Marion County Public Defender's Office, and one attorney from that office coming here to kind of get the difference experiences between trial and appellate practices.

1:56:30 J. Potter You say you are ready for it?

1:56:31 P. Gartlan We finished one and now we are ready to do another.

1:56:40 J. Potter I'm sorry. How long is this exchange?

1:56:45 P. Gartlan We didn't know how long it was going to be. We thought it would be maybe 30 hours over the course of a few months, but it has turned out into a lot more. The attorneys on both sides are devoting more time because, believe it or not, they are not familiar with the practice.

1:57:04 Chair Ellis Which is the whole point.

1:57:04 P. Gartlan That is really my fault for underestimating how much time the commitment would be.

1:57:11 Chair Ellis Are you talking about doing something similar with MPD and LPD and others, or is it pretty well focused ...

1:57:19 P. Gartlan We haven't done that yet. I don't see why it wouldn't work. The only aspect would be the commuting part of it. Along those outreach lines, again, I discussed with former Chief Justice De Muniz kind of an externship program with Willamette University. We are in early stages of setting up a program where a couple of law students at Willamette University come here. We are scheduled to receive two for the summer for an externship. Those law students will be working with Josh Crowther, who is now currently preparing a direct appeal in a death penalty case. So we are starting a program at Willamette University, at this point in time, to have an externship program. Shawn do you want to come up. I am asking Shawn Wiley, Chief Deputy, to come up because he has really been spearheading the legislative efforts. I thought he might want to report on AD bills in the legislature.

1:58:33 S. Wiley I am the chief deputy that is in charge of the outreach, and also in that capacity I have formed kind of a legislative liaison role. In this session in addition to our institutional role is kind of providing information to the legislature about pending bills and the impact on the criminal system. We have two substantive bills in front of the legislature. The first is a bill that would add an appeals provision to an existing set of statutes that allow a person convicted of a

serious crime to ask for DNA testing to be performed on evidence that was gathered during their case. The original statutes were enacted in 2001, and probably due to an oversight they just didn't add an appeals provision. This has gone for some time now without anyone really knowing whether or not somebody that was denied the opportunity for testing could appeal it. There has been a lot of litigation back and forth over a number of years. We finally got a ruling from the Court of Appeals in January that it was not. It did not fall under the general criminal appeals provisions. We had kind of prepared this. Nancy and I had talked to Bill Taylor, whose is the legislative counsel for both judiciary committees, and had previewed this as a potential bill. When it became necessary we then amended the placeholder we had. It was a really fulfilling experience. So far we are through the Senate. We passed out of Senate Judiciary full floor and passed unanimously. We have now passed out of the House Judiciary last week. Again unanimously, and we are waiting a floor vote in the house. The conversation has been very rewarding both privately with individual legislators and the testimony during the public hearing. Most DNA exonerates were convicted on the basis of a faulty eyewitness identification procedure. As the Commission may know this has been a big topic in criminal law recently, so it was nice to have that conversation. It was also an opportunity to talk about the value of having representation at the trial level when the person is preparing this petition, and the value of appeals in making sure that the law is uniformly applied and interpreted consistently. If the legislature then says that that wasn't what meant, it gives them an opportunity to do. It was a nice conversation to be able to talk about the value of all those things. The second bill is a bill to rectify a situation that we have been struggling. The Court of Appeals has been struggling with it for years. It has to do with amended notices of appeal. Often in a criminal case the judgment is issued. Then down the line someone notices a problem at the trial level. The judge issued an amended judgment, which then triggered the need to file an amended notice of appeal. The problem is often the appellate attorney and the Court of Appeals is unaware that the new judgment has been entered. For we have struggled for years kind of defining when the deadline is supposed to start. We took a run at it in 2007, but that fix didn't quite take. We went back before them this session and have included explicit language that the deadline starts to run when the appellate counsel receives notice of the new judgment.

2:02:10 Chair Ellis

But you still need a new notice after an amended?

2:02:15 S. Wiley

We do. In this case it should solve the problem of that deadline running when nobody is aware that the new judgment exists. It was a good benefit to the Court of Appeals. They don't have to spend the time figuring out when that deadline should have started, or when it ran, or the effects of missing it if it were missed. We worked with OJD and specifically with Jim Nass and got language that we all liked.

2:02:45 Chair Ellis

Good. Is that it?

2:02:45 P. Gartlan

Pretty much, unless you want to hear what is being briefed in the Supreme Court now?

2:02:49 Chair Ellis

Yeah. I like to hear about these things ahead of time to know what is coming.

2:02:54 P. Gartlan

One is being briefed by Dan Bennett. This involves a statute that a court instructs a jury consider the charged offense first. If you reach a verdict on that, or you can't reach a verdict, or you reach a verdict of not guilty, then you may consider a lesser included instruction. The question has kind of been banging around for awhile. We have this other body of law that says if a trial court fails to instruct the jury on a lesser included offense that is reversible error. It is kind of a conflict between those two rules of law. If a court fails to instruct a jury on a lesser include offense, it is reversible error if the jury returned a guilty verdict on the charged offense? It is going to be really interesting. I think it might be boil down to how do humans make decisions? It might be they make decisions based upon knowing what the ...

2:03:58 Chair Ellis

What their options are.

2:04:03 P. Gartlan It is like going into an election booth. You want to know what is on the ballot. Ernie Lannet has a very narrow statutory interpretation issue that would bore the tears out of anybody, so I won't go into that. Erica Herb has an issue that is very interesting. It is a RICO. RICO is the sort of organized crime prosecution. The question is what is an organization for this statute.

2:04:38 Chair Ellis That is the word not "Enterprise?"

2:04:40 P. Gartlan I'm sorry. It is enterprise. The question is what was it intended to describe. Her client and someone else were convicted, and I couldn't make this up, of going in to two maybe three Safeway stores and taking diapers, frozen shrimp, and beer. They did that a few times and whether or not ...

2:05:12 Chair Ellis Same baby ate the shrimp and the beer?

2:05:18 P. Gartlan We thought at first it was a Cohen brother's script, but it really happened. Another case that is really interesting is may an officer stop an individual if the officer believes the individual is intoxicated on methamphetamine, and if so, how does the officer explain at the motion to suppress that in his training experience he could recognize the symptoms of methamphetamine intoxication as opposed to some symptoms that are common with other controlled substances, non-controlled substances, personality quirks, health disorders, whatever. That is a very interesting and actually far reaching issue. For instance you can imagine an officer at a Grateful Dead concert. Does an officer at a Grateful Dead concert have reasonable suspicion to stop virtually 90% of the audience?

2:06:35 C. Lazenby That is not a hard question.

2:06:48 P. Gartlan Those are the issues that are being briefed right now in this office. That is a wrap for the AD update.

2:06:58 Chair Ellis Thank you. So, Nancy ...

2:07:04 P. Levy I have something real briefly. I just wanted to say a word about these national standards. As I said at the last meeting, I was getting these for you because your statutory obligation is to ensure that public defense is provided in satisfaction with the National Standards of Justice. These are a new set. What I wanted to point out about these is most of them are directives to defense counsel providing representation in delinquency cases. How they should perform in court and in representation of their clients. The last set of standards is a set of obligations for attorneys to engage in system reform. The consensus is that attorneys practicing in juvenile law have an obligation to do that. It is in these law standards at the end book that you will see instruction to work against waiver of counsel and mass arraignments, and to work toward presumptions of indigency in determining eligibility for appointed counsel. I was very encouraged to hear Michael Livingston say that they would be looking to these in their work. I think Nancy also wanted me to mention that we do have a peer review this week scheduled Wednesday, Thursday, and Friday here in Marion County. We are looking at MCAD and the public defender office.

2:08:40 Chair Ellis Looking at both?

2:08:42 P. Levy Looking at both. We are only looking at criminal representation in the county. We are not looking at juvenile. Both providers have cooperated fully and assisted greatly in preparing for the review.

2:08:58 Chair Ellis We will be very interested in that.

2:09:05 P. Levy Sorry?

- 2:09:04 Chair Ellis I said we will be very interested in that.
- 2:09:05 P. Levy Nancy also wants me to mention that we are doing a diversity training program May 30, here, well it will be at Willamette.
- 2:09: C. Lazenby Who is doing that training?
- 2:09:19 P. Levy The agenda is not finalized. It will feature a couple of woman from Portland who I have seen do a training at the DHS diversity conference, on explicit or unconscious bias. They are interactive. They are engaging and they engage the attendees in a nice way. Then we actually have one more slot to fill. That slot that is always hard to fill and we are still working on it.
- 2:10:00 G. Hazarabedian In the past some of these trainings that OPDS has done have been made available to some of us who don't work here. Is that the case in this instance?
- 2:10:11 P. Levy Yes. We will get word out as we did in the past to the provider community.
- 2:10:20 Chair Ellis What I am going to suggest we do is adjourn the meeting. The Commission gets their lunch. Then bring Lorrie in and we will have an opportunity to thank her.
- 2:10:32 N. Cozine That sounds very good. I just wanted to check with Kathryn to see if she had any CBS updates?
- 2:10:40 K. Aylward Other than Lorrie leaving and gathering plans to cover her work.
- 2:10:48 J. Potter What is her date for leaving?
- 2:10:48 K. Aylward Her first day of retirement is June 1. So her last day worked is May 31, 2013.
- 2:10:57 Chair Ellis Is there a motion to adjourn?

MOTION: John Potter moved to adjourn the meeting; Chip Lazenby seconded the motion ; hearing no objection, the motion carried: **VOTE 5-0.**

Meeting Adjourned

Agenda Item No. 8

Thank you to Lorrie Railey

- 0:20 Chair Ellis We have one more item and that is to thank Lorrie Railey for – I have done some math here, Lorrie. You started with the predecessor agency in 1991, at least that is what I am told, which makes your service at 22 years, which is not quite the longest of anybody but it is very close.
- 0:47 K. Aylward Your math is wrong.
- 0:51 L. Railey Go back to 1980.
- 0:53 Chair Ellis If you go back to Linn County you get more. Several things I wanted to comment about. One is PDSC really stands on the shoulders of what came before. You were a big part of that. You were a big part of the transition. Then you have been a big part of why we have had such a positive relationship with the provider community. They get paid quickly, promptly, no hassle, and that is just a great way to handle them. So on behalf of the Commission we want to thank you for your wonderful years of services. We wish you well when May 31 comes around. I guess June 1 is the day you are looking at, but thank Lorrie, you have done a wonderful job.

1:55 L. Railey It has been a pleasure. It has been a real interesting and rewarding journey and I wouldn't have traded any of it for any other job. It has been great. I wouldn't have been here so long if I hadn't loved it so much.

2:12 Chair Ellis I understand, Nancy ...

2:12 J. Potter Nancy, before you do that I just wanted to say that I see contractors with my other hat. I see the folks that you work around and have over time developed relationships with, and before Billy took over the death penalty part, we have had a number of the death penalty folks that said, "We really miss Lorrie. She shepherded us through the process." You did a great job with that group. There are lots of people you have touched over the years, but those folks in particular were most appreciative.

2:48 L. Railey Great group.

2:51 S. Gorham I guess I wanted to reiterated that I started dealing with the statewide system pretty much in 93 and have been through all the transitions. Lorrie and everybody here have just been really great through all the transitions. I am not sure we all could have done it without all of you. Thank you.

3:25 J. Potter Now can we eat cake?

3:25 Chair Ellis I believe Lorrie is the one who said, "Let them eat cake."

3:31 L. Railey Please have cake.

Attachment 2

Proposed Amendment to Contract Provision 5.9

PDSC expects contract administrators, and any staff the administrator deems necessary, to attend a public defense management conference each year of the contract, whether the conference is sponsored by OCDLA, OPDS, or another Oregon State Bar approved provider. If the contract administrator is unable to attend, the Contractor agrees to contact the assigned contract analyst to discuss alternative options so that the community served by that provider is not without representation at a public defense management conference.

Existing Language

5.9 Management Conference

Absent compelling circumstances dictating otherwise, PDSC agrees to hold an annual public defense management conference and Contractor agrees to ensure that the contract administrator and any staff the administrator deems necessary will attend each management conference offered during the term of the contract. If the contract administrator is unable to attend, the Contractor agrees to contact the assigned contract analyst to discuss alternative options so that the community served by that provider is not without representation at the management conference.

Attachment 3



To: PDSC members
From: Nancy Cozine, Executive Director
Date: June 5, 2013
Re: Performance management and outcome-based budgeting

Attached below is a letter from Senator Devlin, Representative Buckley, and Fred King addressing legislative expectations regarding performance management and outcome-based budgeting. Some agencies subject to ORS 291.201 to 291.222 began building their budgets with this approach after passage of SB 676 in the 2011 session, and as the letter articulates, different agencies are at different stages of implementation. Many agencies used the services of consultants to create their outcome-based budgeting plans, and this Commission may also wish to consider similar options.

As you are likely aware, the PDSC is not subject to the provisions of ORS 291.201 to 291.222, but as other agencies adopt this budgeting model, it creates an environment in which budget conversations revolve around the way that budget decisions impact services, and many agencies are able to produce data to support their assertions. Oregon's public defense system, as in other states, is a unique system in which it is difficult to measure case outcomes, and public defenders around the country lack the kinds of data repositories necessary for research and analysis of performance and outcomes. Nonetheless, I believe it is important for the PDSC to get a better understanding of the ways in which public defense could incorporate performance management and outcome-based budgeting into its policies, contracts, and procedures.

This conversation dovetails nicely with new initiatives at the national level, where public defense leaders and providers are beginning to look at how measurement of various case-related tasks (e.g. timing and frequency of client contact and use of experts) and other factors (e.g. caseload size) impact case and system outcomes. It is a complicated conversation, particularly so in an environment that includes appellate attorneys who are part of a state FTE model, and contract attorneys who have significant discretion over their practices.

If the Commission wishes to take this approach, it must be a collaborative conversation that includes Commission members, OPDS staff, contractors, and at some point, input from system partners. It would be nice to begin the discussion with contract providers at the October 2013 Management Conference. At some point following that meeting, I would suggest that we have a Commission retreat, where we can incorporate the information learned from contract providers as we build a better understanding of what it means to develop performance based management and outcome-based budgeting, and how it might work within our unique structure.

With the right approach, we can preserve what works well while adding tools to ensure the provision of quality services. The skills of a consultant group with the experience and capacity to gather detailed information, assess that information, and synthesize it into visual and narrative resources that can be used to guide PDSC, OPDS, and our constituents, would likely enhance our ability to achieve success. Before I begin exploring options (including expense), it seemed appropriate to discuss whether this is a direction the Commission supports.

**Legislative
Fiscal Office**

900 Court St. NE, Rm. H-178
Salem, OR 97301
503-986-1828

Ken Rocco, Legislative Fiscal Officer
Gina Rumbaugh, Committee Manager



**Joint Committee on
Ways and Means**

Sen. Richard Devlin, Co-Chair
Rep. Peter Buckley, Co-Chair

Sen. Betsy Johnson, Co-Vice Chair
Rep. Nancy Nathanson, Co-Vice Chair
Rep. Dennis Richardson, Co-Vice Chair

March 22, 2013

Members of the Joint Committee on Ways and Means:

The Co-Chairs of the Joint Committee on Ways and Means and the Chair of the Committee on Performance Excellence would like to share with you a new **Integrating Performance Management and Outcome-Based Budgeting** primer to help set and manage expectations for fully integrating performance management with outcome-based budgeting.

In 2011, SB 676 passed (ORS Chapter 563). Its purpose was to continue the state's efforts to shift resource allocation from past patterns to future priorities by outlining the framework for outcome-based budgeting that more obviously connects the budget cycle with performance management.

Every state agency must implement management practices that ensure maximum value for dollars received, better aligning budgets with priorities.

Because state agencies are at differing stages of implementing performance management and fully integrating it with outcome-based budgeting, we hope the attached primer will provide you with the questions to ask in order to gauge the current level/capacity of each agency to successfully integrate performance management and outcome-based budgeting.

Sincerely,

Sen. Richard Devlin
Co-Chair
Joint Committee on
Ways and Means

Rep. Peter Buckley
Co-Chair
Joint Committee on
Ways and Means

Fred King
Chair
Committee on Performance
Excellence

cc: Michael Jordan, Director, Department of Administrative Services (DAS)
George Naughton, Administrator, DAS Budget and Management Division
Ken Rocco, Legislative Fiscal Officer, Legislative Fiscal Office



Senate Bill 676 (Chapter 563, 2011 Laws) aims to continue the state's efforts to shift resource allocation from past patterns to future priorities by outlining the framework for outcome-based budgeting that more obviously connects the budget cycle with performance management. Every state agency must implement management practices that ensure maximum value for the money, better aligning budgets with priorities.

Because state agencies are at differing stages of implementing performance management and fully integrating it with outcome-based budgeting, the following questions can be asked to gage the current level/capacity of each agency to successfully integrate performance management and outcome-based budgeting:

Strategic Considerations

- ▶ **Current Strategic Plan:** How has the agency's Key Performance Measure system been adapted in the integration of outcome-based budgeting and performance management? Does the agency have a current, up-to-date Strategic Plan? Have you considered collaborative opportunities across the state? How do you align your agency's key goals and the high-level outcomes (results the agency intends to accomplish, the specific strategies used to reach those outcomes, as well as a formal Implementation Plan that details specific actions to achieve defined goals and targets) with other agencies? How do you anticipate and avoid problems that could interfere with achievement of your goals and outcomes?
- ▶ **Outcome Measures:** To what degree does the agency have *measurable* indicators of progress towards desired outcomes?
- ▶ **Identified Core Processes:** To what degree is the critical work an agency must accomplish to achieve its defined Outcome Measures specifically defined?
- ▶ **Performance Management:** To what degree has the agency defined specific quantitative and qualitative measures that serve to track progress toward achieving predetermined program objectives? These would include: Process Quality Measures of an agency's critical work products [volumetrics, cycle time, unit cost, service quality (such as timeliness, accuracy, etc.) as well as unit and individual performance plans and measures].

General Management

- ▶ To what degree does your current staff have sufficient technical know-how, training and resources to design, track and report on performance indicators? What are you doing to ensure that your staff has the right mix of skills?
- ▶ How is your agency communicating strategic goals and priorities to *all* employees? How do you primarily get your information about the frontline of your agency? What's working and what's not?
- ▶ To what degree does your agency have a formal organizational development and continuous improvement program in place and functioning?
- ▶ How are you providing periodic operational and performance feedback to employees to help them improve and increase their performance capabilities?

Operational

- ▶ Have you formally "mapped" your current primary work processes?
- ▶ Specifically, what have you done to identify and implement ways to be more efficient? What changes have you made in your methods in order to improve results? How have you measured those results?
- ▶ Are your performance measures, including data collection and analysis of systems, independently validated on a regular basis?
- ▶ Do you have any ongoing review processes, outside of the budget process, to develop new strategies and eliminate current programs, policies and practices that are not central to the agency's core purposes, and/or or are no longer sufficiently valuable to citizens to justify their cost? For example, do you do regular program reviews, sunset reviews, special commissions, and subsidy reviews?
- ▶ What other state programs/agencies are serving the same clients you serve? How does staff in your agency coordinate their work with the staff in those other programs/agencies to ensure efficient and effective service delivery to clients?

Budgeting & Resource Allocation

- ▶ How do you ensure that priority outcomes are properly resourced?
- ▶ How do you balance your available resources to match your identified critical outcomes and adjust workload among various functions?
- ▶ Have you completed an agency-wide personnel skills assessment so you know the skills, knowledge and abilities of your work force?
- ▶ What areas do you feel most at risk of problems occurring? How are you addressing them?

CHALLENGES THAT MUST BE ADDRESSED

In order to successfully integrate outcome-based budgeting and performance management, legislators and agencies must work together to answer tough questions in order to come to a consensus in setting clear, agreed-upon outcomes; and to develop common, sound measurement methodologies that are consistent, credible, and easy to use:

- **Integration and a Common Language:** Many agencies work independently of each other when the overall state outcomes need cross-agency integration. To achieve performance excellence as a state, all three branches need to work together in the design and implementation of SB 676 to ensure a common language so that outcome-based budgeting and performance can be readily understood and rationally assessed. The Key Performance Measure (KPM) system that exists today is a mix of output, process, and outcome measures that address legislative requests for information rather than as tools for agency decision-making or reporting. As a result, agency leaders struggle with having the KPMs being anything other than a reporting exercise, and most legislators find the system to be an inadequate source of information for defining agency performance results. How will the agency's KPM system be adapted in the integration of outcome-based budgeting and performance management?
- **Clear, Agreed-Upon Outcomes:** Outcome-based budgeting requires systematic strategic planning and clear, agreed-upon objectives. Without widespread agreement on the outcomes to achieve, conflicting views on what programs are supposed to achieve could make it impossible for agencies to effectively implement programs to meet specified desired outcomes. What roles will agencies and the legislature play in ensuring that there are clear, agreed-upon outcomes? Does the legislature and agencies agree on the broad goals that will provide over-arching direction and serve as a basis for decision-making?
- **Technical Expertise and Resources:** For outcome-based budgeting to succeed the state must develop the required skills and capacity, including workforce and management information system development. Procedures must be developed and institutionalized so that the system survives when individuals championing this effort leave office. A reliable system of data collection, validation, analysis and reporting must be established and maintained. What roles will agencies and the legislature play in ensuring that agencies have the technical expertise and resources to produce reliable information?
- **Trust in the Capturing of Measures/Indicators:** Reported Measures/Indicators should capture the actual effect of the program activities. They must be designed to capture the important features of the program, rather than those features easiest to capture. What roles will agencies and the legislature play in ensuring that the necessary expertise and resources to develop a succinct list of meaningful, reliable indicators presented in a user-friendly way are available?
- **Trust in the Use of Data/Indicators:** It is essential that everyone involved, in each branch of government, at each level of the budget process, shares the same understanding of how performance information will be used. Unrealistic expectations and poor understanding of requirements and responsibilities will derail outcome-based budgeting. A major barrier to the use of performance measures is the concern that performance information will be misused against managers and agencies. Legislative decision makers can alleviate this concern by acknowledging that performance information is a tool for managers and agencies to make service improvements and to turn agencies into learning organizations. Where performance targets aren't met due to external factors beyond its control, an agency should be given the opportunity to explain why. If performance data is not used punitively, managers and agencies will become less wary of collecting performance information. How will agencies and legislative leaders work together to ensure the effective use of realistic and managerially-relevant performance measures?
- **Leadership and Politics:** Budgets are not just technical managerial documents. They are by nature unavoidably political. No system of budget information will ever replace the negotiating that occurs when those with competing interests seek resources from a limited pool. While information from an outcome-based budgeting system can rationally inform budget decisions, it also makes the trade-offs more explicit. Strong leadership, backed up by political commitment and consensus, are essential to implement and sustain budgetary reform under this increased scrutiny. Lack of leadership and commitment weakens the link between strategy and the budget. How will agencies and legislative leaders balance the interests of certain constituents with the interests of the entire state under this increased scrutiny?

Committee Members:

Fred King, Chair, Public Member
Larry Williams, Vice-Chair, SEIU
[open], Judicial Branch
Patrick Allen, Executive Branch
[open], Executive Branch

Dwayne Johnson, Public Member
Dr. Rita Hartley, AFSCME
Senator Richard Devlin, Senate
Representative Paul Holvey

CPE website: <http://cms.oregon.egov.com/DAS/CFO/Pages/CommPerfExcel.aspx>