

**Members**

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



**Ex-Officio Member**

Chief Justice Paul J. De Muniz

**Executive Director**

Ingrid Swenson

**PUBLIC DEFENSE SERVICES COMMISSION**

**PUBLIC DEFENSE SERVICES COMMISSION MEETING**

Wednesday, July 2, 2008

10:30 a.m. to 11:30 a.m.

**(Commissioners will Participate by Telephone)**

Office of Public Defense Services

1320 Capitol St., NE

Salem, Oregon 97310

**AGENDA**

1. PDSC 2009-2011 Budget Proposal
  - Essential Budget Level
  - Policy Option Packages

*(Attachments: Unofficial transcript of June 12, 2008 PDSC meeting, budget proposal document, 6/25/08 letter from Juvenile Rights Project)*

Ingrid Swenson  
Kathryn Aylward

*This special meeting of the Public Defense Services Commission will be conducted by telephone. Members of the public who wish to attend the meeting may do so either by appearing at the Office of Public Defense Services (OPDS) at the above address at the date and time indicated, or by calling (866) 895-5510 and entering the code 375954.*

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Laura Weeks at the telephone number listed above.*

*The next regular meeting of the Commission will be on August 14, 2008 from 9:00 a.m. to 1:00 p.m. at a location to be announced in Baker City, Oregon.*

**Attachments**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, June 12, 2008  
9 a.m. to 1 p.m.  
Mt. Washington Room  
Seventh Mountain Resort  
Bend, Oregon

MEMBERS PRESENT: Shaun McCrea  
John Potter  
Hon. Elizabeth Welch  
Janet Stevens  
Chip Lazenby

STAFF PRESENT: Ingrid Swenson  
Kathryn Aylward  
Peter Gartlan  
Becky Duncan  
Paul Levy  
Billy Strehlow

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**TAPE 1, SIDE A**

[The meeting was called to order.]

**Agenda Item No. 1 Approval of the Minutes of PDSC's May 8, 2008 Meeting**

0:19 Chair McCrea We are going to go ahead and convene the meeting. The reason for the delay is we were trying to get Barnes on the phone, because he is waiting for a jury and was going to be here by phone, but as you probably noticed with people coming in and out there have been technical difficulties. We will go ahead and convene the meeting and proceed and hopefully we can bring Barnes in at some point. First action item is approval of the minutes of the May 8, 2008 meeting. Do we have any additions or corrections, changes or comments?

0:56 Hon. Elizabeth Welch I got credit for something really smart.

1:06 C. Lazenby Do we know if anybody followed up on that. We had that discussion in the minutes about the comments from Pendleton. It seemed like there were almost two separate systems, one for Latinos and Indians and one for everybody else. Did anybody follow up? There was a suggestion that we follow up with the Chief Justice. Does anybody know if that happened?

1:26 Chair McCrea Aren't you kind of jumping ahead to the monthly report?

1:28 C. Lazenby No. They were in the minutes. Maybe I am jumping ahead.

1:34 Chair McCrea Well, I am just asking for approval of the minutes. Do we need to amend the minutes?

1:38 C. Lazenby Can I move for approval of the minutes?

**MOTION:** Chip Lazenby moved to approve the minutes; Janet Stevens seconded the motion; hearing no objection the motion carried: **VOTE: 5-0.**

1:47 Chair McCrea            Alright. The minutes are approved. Can we come back to that Chip?

1:48 C. Lazenby            Yes.

1:49 Chair McCrea            We will. So Kathryn would you like to take us through our 2009-2011 budget proposals?

**Agenda Item No. 2            PDSC 2009-2011 Budget Proposal**

1:57 K. Aylward            Yes. You have a separate handout. I am going to talk first about the page that is titled Package 040, Mandated Caseload. As you will recall, mandated caseload used to be trial level, non-death penalty caseload increase or decrease, and the process was, "If this is how much money the account had last time, and you are expecting 10 percent increase in caseload, then here is a 10 percent increase in funding." But, as we have learned, it is too simple a model. Now the components of mandated caseload are, of course, number one you still need the caseload component and in this case we are actually projecting a one percent caseload increase a year based on what we were budgeted for in the current biennium. However, what we were budgeted for in the current biennium is a little bit on the high side. We are not going to quite make the caseload projection that we had for this biennium, so, in fact, we are projecting a decrease in the funding we will need based on trial level, non-death penalty caseload. The reason it is three million dollars is that the process allows you a 2.8 percent inflationary increase, so the inflationary increase would be 5.6 million, but because the caseload is going to be lower than what we projected for the current biennium, you end up with 3.7 million. It is a little bit confusing but it is the process we have used for many years. Item No. 2, death penalty caseload from prior biennia, that process was established by looking at current expenditures for death penalty cases and projecting, using regression analysis that somebody else did for me, what the increase in costs would be over and above what the funding would be with a 2.8 inflationary increase. No. 3, the mileage reimbursement - our current budget has funding at the rate of 44.5 cents a mile. We already went to 48.5 cents during the last biennium and now we are at 50.5 cents. The funding is chasing the increases and \$175,210 is the amount that exceeds the 2.8 percent inflationary increase. Mileage for us is big. For most state agencies, a big increase in the mileage rate might be something they could absorb. Their employees may travel very little. But for us, as you know, it is investigators and attorneys racking up lots and lots of miles, so it is not something we can absorb. No. 4, non-attorney provider cost increase, this is principally for psychiatrists' and psychologists' services. As Ingrid and the site review teams go around and visit people a lot of the comments you get in service delivery reports and in some site reviews are that maybe providers aren't making sufficient use of psychological exams. And so, because the word is getting out there, it actually is picking up. We are seeing a 21 or 22 percent increase in the use of these services. No. 5, the personal services adjustment - we have that in our current budget. And that figure is arrived at by taking the same percentage increase that the state provides for its own employees and applying it to non-hourly paid contractors, so basically, with our contract providers we assume that 85 percent of their costs are personal services costs, so, salaries, benefits, retirement, and we take 85 percent of their contract, and apply the same increase the state provides to employees. This year I think it is 10.7 percent increase.

6:19 J. Potter            10.7 percent for one year or for each year?

6:22 K. Aylward            For the total biennial funding. One thing that was interesting, we have often talked about identifying some other system that is comparable to ours and there really aren't very many, but the Oregon Health Plan does something almost exactly like this. When they build their budget there is a package that provides the standard 2.8 percent inflationary increase. Everyone gets that, and it changes from biennium to biennium, but then there is a special medical inflation rate that is 4.4 percent. But even that is not going to continue to buy

medical services in the same way that we couldn't continue to buy legal services with those small increase. But then they have a separate package which is a rate increase linked by statute to some sort of standard cost of medical services, so they get 15 percent on top of that, as an example, so they end up with a 20 percent increase because that is what is necessary when you are buying medical services. This is exactly what we are doing and we wish we would have applied it sooner. No. 6, appellate mandated caseload - unfortunately I just lost my connection. Pete, help me out. Five additional attorneys?

7:56 P. Gartlan

Yes.

7:57 K. Aylward

Thank you. Yes, we need two additional attorneys just to keep up with the work that is coming in, because we are not actually keeping up. Then three additional attorneys are needed because the Court of Appeals has informed our office that they are reducing the time that they allow between record settlement and filing the opening brief. They want to shorten that timeline down to 180 days so we will need those positions. We think it will take almost the full biennium to reach that target. Then those positions would continue to be needed because of caseload growth in future biennia.

That is mandated caseload and it came in under \$20 million which is good for us. I think last time it was \$29 million. The other side of the page is for policy option packages. Mandated caseload goes into what is called the essential budget level. Essential budget level is what an agency needs to continue to operate without a change in policy. Everything else that an agency wants to do is put into a policy option package. These three that we have listed here were all three presented - well at least two - in our last two budgets. The first one, juvenile dependency representation, is pretty vague and I am hoping the Commission will have a good discussion about how additional funding could be used. We know we need improvement and we know that additional funding will assist with that improvement, but the question is do you go in and say I need \$25 million to make it the way I know it should be, or is that unrealistic and inviting you to get shot down? Do you chose something smaller and figure out, "Well if we had a little bit of funding here we can make some small increases and improve, for example, review hearings." For people who have to travel, we don't provide very much right now. It is under \$300 and if you have to travel and visit the family and monitor the case between review hearings it is a lot of work. Even though we think of it as a monthly amount of money for ongoing work on the case, people sometimes associate the individual task with the case credit value in their contract. It is very easy for people to say, "Well, I just spent eight hours and I only got \$240 and that is not enough. I I can't cover my overhead." So I think that is an area where we definitely need to increase rates. You could decide that maybe what is needed is more support staff. Maybe you say to a contractor, "We are going to provide additional funding in your contract for you to hire a social worker or a case worker who can help you maintain contact with the family." It may be that we need a specific request for funding so that we can increase training opportunities. Maybe that is where we see the need and we can put something together that provides training. With all of these options what a policy option package needs is it needs to be tied to a key performance measure or at the very least you need a way to measure the improvement. If you are going to say to the legislature, "Please provide this much money so that we can accomplish this," you need to be able to come back to them and say, "This is how we know we accomplished it." You can't just say, "Well, we provided training so they must be better trained now." You have to have some bang for your buck. We have had some difficulty thinking through what would be a good approach for improving this. Do you want to talk about it or should I carry on with the rest?

12:11 Chair McCrea

Why don't we go through all three of them and then we will come back and discuss it.

12:18 K. Aylward

Okay. Package 101, Post-Conviction Relief, trial-level relief - these would be employees of our office. It would be one senior deputy defender, one deputy defender II and two deputy defender Is and a legal secretary. We have put this package in before and the assumption was

that an attorney could handle four PCR cases a month. The Commission has heard testimony where people have said, "That is not doable. You are not doing a good job if you can handle four." We heard from other people who said, "Well, you know, you get a lot of cases where there isn't much you can do, but cases that you are actually working on will take a lot of time." If such a section were created, that would, of course, reduce the funding for the Public Defense Services account. We are currently paying people outside of our office to do this work. We wouldn't need to pay them if we were doing it in-house.

Package 102, Public Defense Provider Compensation - these are the same three components that we put into the package last time. One of them is funding to increase full-time public defender salaries to corresponding deputy district attorney salary levels in their counties. If you wish to continue to have that one in there, I would need to do a survey again of current salaries for public defender offices. As you know, in this biennium we did have some additional funding provided to address that. It is difficult to know how directly that translated to salaries. In some incidences it may have been necessary for a public defender to hire an additional attorney because caseload was more of an issue than salary. Maybe there was a trade off - a little less work, a little more money. So I will do a survey if you want to have that included. The second part was to increase the hourly rates for attorneys. Last time we had asked to go to \$70 an hour for non-capital cases and \$95 an hour for capital cases. We did again receive a portion of the funding and we increased rates from \$40 to \$45 for non-capital and from \$55 to \$60 for capital cases. I could work up numbers for those same dollar figures. And we did have an increase for investigators as well. It used to be \$25 an hour for non-capital and now it is \$30, and it used to be \$34 for capital cases and now it is \$39. I know it is a little bit difficult, in the absence of dollar figures, to know where these are going. It is difficult to work up an exact dollar figure and then have someone say, "Well no, how about \$75 or how about \$100," so I don't have exact dollar figures on any of these, but my personal view is that you decide what you want to do, you figure out how much it cost about saying, "Oh that is such a big number. We don't want to ask for that much. Let's ask for less." It costs what it costs.

- 16:33 Chair McCrea I agree with you. I have a question, Kathryn. We are under \$20 million this time and last time we were at \$29. What is the difference?
- 16:46 K. Aylward Roll ups. Things that were funded last biennium, that would roll up into this biennium, don't need to be added into mandated caseload again. Last time it was almost like they made a one time fix to get us on the right track and now that we are on the right track, hopefully we will not need to make major adjustments like that again.
- 17:14 C. Lazenby We just squeaked through with the last revenue forecast but isn't the sort of smarter thinking in Salem right now that the next revenue forecast is probably going to be down for the one that the '09 legislature looks at, so as we look and think about these policy options shouldn't we think about the fact that we are going to have diminished revenue in all likelihood. If we are going out and just saying, "Well, let's put out a package that gets an additional 10, 12, 14, 15, 20, pick a number, million dollars, the reality is the money probably isn't going to be there even if we are coming in and asking for less. We may be lucky just to be given the \$19 million dollar figure. Is that right?
- 17:59 K. Aylward That is my understanding and I went to a training session for policy option packages and the word at that point was that all agencies were looking at 95 percent of essential budget level. That was the estimate of what could be funded for next biennium. So we said, "Why do we have an eight hour training on how to develop a policy option package when it is not going to go anywhere?" They said, "Well, you never know and sometimes there is a little bit of money at the end and if there is a place to put it..." You would actually feel sorry for yourselves if you didn't give them a method for giving you a little extra money. I think there is something to that psychology. You know, if your budget including policy packages is a bigger number than your essential budget level, it is almost like protection for your essential budget level to

say, “Well really we wanted this much and you only gave us this.” I don’t know if it is that simple but all other agencies are doing it, so I think it would be wise to put in policy option packages. But I agree with you we can’t just go in and say, “Well, we want to make everything perfect in one two-year period.” I think realistically you have to say, “We know the state is balancing a lot of different needs and therefore our plan is a little bit this time, a little bit next time, and here is the direction we plan to go.”

- 19:33 J. Potter We had that plan in the last session. We had a one-sixth increase as a two-year goal. We can conceivably keep on that track even in the face of potential diminishing revenue. I don’t think that we should deviate based on trying to guess what the revenue situation is going to be, unless the board changes its policy line.
- 20:02 Chair McCrea You mean the Commission? I think you targeted three areas that we have been really concerned about. We have had a lot of testimony about them and I certainly understand and acknowledge what Chip is saying and the grim reality, but the fact is these are not just wish lists. They are needs that the system has. It seems to me, as one of the Commissioners, that that is an important thing to bring to the legislature’s attention. We know if don’t ask for it we are not going to get it. If we keep bringing it to them and saying, “We have a need, and here is what it is, and here is why. If we can make incremental increases and gains, then we have done something.
- 20:52 K. Aylward The one-sixth was just what we ended up getting. If we go in and say, “Here is the total. We got one-sixth of the way. Thanks very much and we are assuming that we can do it in like six years,” but at least then you have given them the total amount. If they chose to they can say, “You know what. We don’t want to drag this out for four more years. Let’s just fix it now.” I agree with you. I think you put the package in that is the total remaining, the five-sixths that is left, and just say we hope that it will be funded, but if not we will take it piece by piece.
- 21:28 C. Lazenby Just doing my job as Commissioner Coldwater. That’s all. My job is just to put some cold water out there every once in awhile.
- 21:40 Hon. Elizabeth Welch I have a couple of questions. The first one is in terms of what happened the last round given that these three items were presented, or was a formula presented? Was it your sense that the legislators were convinced of the need and just didn’t part with the money, or were they not convinced of the need and they didn’t part with the money?
- 22:01 K. Aylward I think there was some very convincing testimony – like hearing from that woman with four children who still lives with her mother because that is the only way she can afford to continue to do the work she does. There were stories about law school debts and a lot of very moving remarks about people saying they love the work but they can’t afford to do it.
- 22:33 I. Swenson The members of the Public Safety Sub-Committee, which heard our budget and made a recommendation to the full Ways and Means Committee, essentially to a member, commented at the end of the hearings that the recommended amount clearly was not enough. They told us, “We know we haven’t gotten you where you need to be and we hope to make better progress next time.” They allocated a large proportion of their discretionary funds to PDSC because they felt that our essential budget simply didn’t meet the need. That is why we got additional funding.
- 23:07 Hon. Elizabeth Welch My other question has to do with the first item on the juvenile dependency representation. I am not clear what the difference is, or what is the connection between that suggestion or proposal and this on going ....
- 23:26 K. Aylward Gang of four.

- 23:27 Hon. Elizabeth Welch Yes.
- 23:30 I. Swenson Well they are certainly related concepts. As you know, we had a particular champion in the legislature last session, Senator Brown, who brought to her role the perspective of a juvenile court attorney. So she was able to organize and gather together some like-minded legislators who had participated in a sensitive case review, and as a result of their work, determined that it was an important priority for them as legislators to see that there was improved representation in juvenile dependency matters. They proceeded with a bill that passed through the Judiciary Committee and then went to Ways and Means that would have allocated \$23 million dollars for that purpose. I think I may have mentioned last month, but perhaps not, that that same group of legislators is still interested in the concept but they believe that this session a pilot project would probably be more in order, rather than the full funding piece.
- 24:51 Hon. Elizabeth Welch I guess my question is how does that fit with this? Do you want to go ahead with trying to get the pilot program funding and to do this?
- 24:58 I. Swenson Independently, yes. Even though the legislators would be sponsoring the pilot project, they would, I am sure, be supportive of this policy package although they might not be as optimistic about it as then a decision would be made at some point during the session whether to fund either of those packages.
- 25:28 K. Aylward I think our agency, if anyone, ought to be putting it forward. If it is wonderful if someone else did too, but certainly we need to be the ones coming forward and saying, "This is what this agency needs to do or should do."
- 25:46 C. Lazenby Does this still have enough juice with Senator Brown's leaving the legislature for Secretary of State office? Do you think they still have the juice to make it a priority? Kate had a lot of juice.
- 25:59 I. Swenson There is certainly intense interest. They are a bipartisan group and represent both bodies. Senator Monnes Anderson is taking Senator Brown's place in this group. I think it is an important effort.
- 26:16 C. Lazenby Are you suggesting that all three of these be policy packages or are we picking from a menu here to create a priority?
- 26:26 K. Aylward We are suggesting that all three of these be policy option packages.
- 26:28 I. Swenson Madam Chair, I know we have contractors present who are interested in commenting and I don't know if they have comments on specific pieces of this package and want to express support or lack of support for any of them or for the entire proposal. You might want to hear from them before the Commission makes a decision.
- 26:49 Chair McCrea Janet, did you want to comment or ask any questions?
- 26:49 J. Stevens No. I am just listening still.
- 26:51 Hon. Elizabeth Welch Can I ask another one? Is there a downside to prioritizing packages? Is that dangerous? I don't know.

- 27:03 K. Aylward They have to be prioritized. The budget system requires you to prioritize them and the order that they are in is the priority that I put them in there. You can certainly change that, but that is the way they are situated now.
- 27:27 Chair McCrea Does anybody want to comment? Yes, Jim.
- 27:34 J. Hennings A couple of comments.
- 27:35 I. Swenson Jim, do you want to have a seat here at the table?
- 27:36 J. Hennings Good morning. I am glad to see the sun. It has been so long. I am Jim Hennings. I am the Executive Director of the Metropolitan Public Defender, soon to be retired, so please take with a grain of salt some retrospective that I may indulge in. First, the caseload is decreasing and everything that I am seeing is it is going to plummet over the next biennium, primarily because the funding for law enforcement is city and county paid and the counties, especially outside of the metropolitan area, are going to track, I think, what has happened in the metropolitan area. The caseload in Multnomah County, so far this year, about half way through the year, is two percent higher on an annualized basis than it was in 2003 when we had the BRAC reduction. The caseload on C felonies is down substantially, roughly 23 percent. The caseload in Measure 11s is down. Not quite as much. There has been a flip upwards just recently in the A and B felonies. This is a longstanding trend at least in Multnomah County. There has been this constant decline. Some of it is the mess in the justice system in Multnomah County. Some of it is that the crime rate actually has decreased. We know of areas in the state where there may be one or two deputies at most in the sheriff's office, so there simply won't be the ability to continue to support the caseload. I think that is dangerous because the legislature wants a steady state and this is not a steady state. We are going to be chasing our tails for a good time. A good example of chasing our tails is the aim last time was to get one-sixth of the way toward parity for full-time defenders. The problem is that the target keeps moving. In Multnomah County and in Washington County we have gone in the last ten years from 30 percent behind the district attorney offices on salary - compensation is something else - from 30 percent behind to 40 percent behind. That becomes dangerous. Really what you are going to have to do is guarantee the future quality of the services. People will not be able to stay in this particular field longer. The ones that are coming in now, really, the ones who should be the leaders of those who coming in now, are looking at leaving, in other words that mid-range group. I am seeing that in my office. You are going to lose all of the gains that have been made. Oregon has a marvelous criminal justice system but it really depends upon continued growth, continuing to bring people in, so that one-sixth was really not one-sixth because at least in the Metropolitan areas there were increases. Now in Eugene there were increases at the expense of laying off deputy DAs, but there were still increases in the salaries that were being paid. On your juvenile dependency representation, I think a pilot is a good idea but what wasn't in this list was an evaluation component. What sold the idea of reducing caseload in dependencies in Washington was a very good evaluation that showed that the cases were resulting in placement much earlier actually saving the state a considerable amount of money. If you don't have that component you are not going to have the ammunition in the future to say here is the level of caseload that ought to be handled by juvenile attorneys. On your post conviction trial relief FTEs, what is missing in that is any word of investigation. I have done post conviction. I have made proposals twice to do post convictions and both times turned down because it was too expensive. One of the reasons it was too expensive is because I included investigative costs. If you are going to do post conviction properly you have to investigate it as if it were a brand new case. You can't do that, and shouldn't do that, with the attorneys. It really needs investigation.
- 32:54 K. Aylward The policy package assumes that investigation would continue to be covered out of the account. So in other words, we don't want a bunch of state employee investigators in Salem. We want to continue to buy investigation services around the state.

- 33:10 J. Hennings That may be a good idea because you have to investigate where it took place.
- On public defender compensation, I think that is critical if you want to guarantee the quality of future services. Otherwise, you are going to see a slow degradation of the services provided and makeup is really going to be very, very difficult. You will have lost all the leadership, all the gains we have made over the last – how long has OCDLA been around John?
- 33:40 J. Potter Twenty-nine years.
- 33:44 J. Hennings Twenty-nine years. It was a very different picture 29 years ago before we had the kind of quality push that we now have with one of the biggest, I think the biggest, criminal defense organization. That is a big part of what we have in Oregon. If we lose that it is going to be very difficult to get it back again. Those are my comments. If you prioritize, I would prioritize the compensation first because that is the future, but I think they are all very, very important issues. Any questions that you have?
- 34:18 Chair McCrea So Jim, when you talk about the evaluation component for the juvenile dependency representation, are you saying something different than what Kathryn was saying about we have to tie this to a key performance measure to be able to show some kind of improvement?
- 34:32 J. Hennings No. It is how you are going to tie it. You are going to tie it by having it built in to begin with. It is going to be difficult. It would be much easier to pay the bills that are sitting on the table right now. The cases that are being handled right now, but without it you are not going to get the kind of traction I think you need. I think it will be important to build that in from the beginning and sell it to the legislature. This will be evaluated and we can look at the other studies and say this is what we think we are going to find, but we ought to prove it in Oregon.
- 35:06 Chair McCrea Thank you.
- 35:06 J. Hennings The other good thing about that is there are some offices that have social workers. You can get your pilot, you can evaluate your pilot, but you can also evaluate some of things that are already being done in some offices.
- 35:33 Chair McCrea Anyone else? Bob, why don't you come up to the table.
- 35:37 B. Homan I just had a scenario that I was going to add and it has to do with the compensation packages. Bob Homan, Assistant Director, Lane County Public Defenders. We just lost a three-year attorney in our office because she couldn't afford not to take a job with the AGs office at \$12,000 more a year. She didn't want to go but she has a new baby, and a family, and she didn't have any choice. That is a big jump in her current salary. She is making under \$50,000 with us and she is going to be making that much more with the AG's office. That is all I wanted to add.
- 36:12 Chair McCrea So you would agree with Jim that funding should be the number one priority?
- 36:18 B. Homan Absolutely. These are people we want to keep.
- 36:24 Chair McCrea Yeah. We have got to have another crop coming.
- 36:26 B. Homan Some of us are getting up there and we are not going to be around forever. Thanks.
- 36:31 K. Aylward Could I say that I didn't just randomly chose this order. It is not my opinion. This is the priority that the Commission established last biennium. I did not comment on that.

- 36:41 C. Lazenby So it is our fault.
- 36:44 K. Aylward Yes. It is your fault.
- 36:45 Chair McCrea Other comments? Come on up.
- 36:48 A. Sherbo I am Angela Sherbo and I am the supervising attorney at the Juvenile Rights Project and this is Mark McKechnie who is our Interim Executive Director and, interestingly, a social worker. Not surprisingly we want to talk to you about the juvenile dependency representation policy package. I am not sure that either of us would prioritize it over the competency package because it is essentially the same thing. A couple of things I do want to say about the juvenile representation package: We have invested a lot of time as you have - the Commission, OCDLA, our lawyers at JRP. We spent the last interim on two different work groups, a work group convened by Bill Taylor and the Judiciary Committee and a work group convened by Hardy Myers and the Attorney General's Office. We participated throughout the legislative session. We made really strong statements to the policy makers about the necessity for providing quality representation both for children and their parents who are faced with this unbelievable intrusion by the state into their lives. I don't think we should back off from that now not having gotten what we told them we need. I would urge you to continue with that work and I think there is a lot of work that those of us in the field can do help in terms of creating some of the information about what our caseloads are like, what the requirements of a dependency case are now. what they may have been in the past in terms of how much more difficult they are, how much speedier they are, what the level of adequacy of practice is that lawyers are being judged against on a constitutional basis. I don't want to go head to head with other public defender organizations but we have lost many, many, many, mid-level attorneys who can neither afford to raise their children, nor take care of their parents, nor pay off their student loans at the rates that we pay. As much as they desire, and I have been in constant communication with one who was forced to leave trying to get him back, and the conversations are agonizing. Ultimately the AG's office paid him \$25,000 more than we could pay even after the increases from last session, which we had hoped might enable us to entice people back. That is really all I have to say. I think Mark has some numbers.
- 39:34 M. McKechnie Good morning. Again, I am Mark McKechnie, the Interim Executive Director of Juvenile Rights Project. For three months that I have been executive director but I have been a social worker for JRP for nine a half years. I would comment that I have been able to stay at JRP that long in part because of the additional programs and the revenue that those bring in that have supplemented my position and my ability to work at JRP that also allowed me to be a resource to the attorneys on our defense cases. But without those additional programs supporting my position that probably wouldn't have occurred. I come from within JRP but I am also able to look at our budget with somewhat fresh eyes. I can see the disconnect between the standards of practice that we have aspired to at JRP for many years and the standards of practice that this Commission and the office seeks to achieve. But the math simply doesn't support that kind of practice. I think we do our best in spite of the circumstances that we have. I will note one area of progress. And after almost a decade of decline in the compensation for dependency cases, there was a six percent increase in real dollars over what we were paid in 1998. Of course, that is using the more conservative consumer price index figure. Not taking into account the 85 percent of costs on average are personnel driven and the fact that increases in health care and those kinds of things are usually significantly higher than the simple rate of inflation for goods, but we are still losing ground even with the increases in dependencies. The compensation rate for review hearings, which is one of the most frequent activities for our attorneys, is down three percent in real dollars from a decade ago. I think because there has been less emphasis on juvenile delinquency rates, those numbers are down 12 percent for juvenile felony cases and 14 percent for misdemeanors in real dollars just since 2002. I would just add, and this is probably for a future conversation, but coming in as a new set of eyes and looking at our contract, I noticed the difference between compensation for juvenile delinquencies and adult criminal

representation. Adult criminal cases are tiered based upon the severity of the offense, whereas there is a single rate for juvenile delinquencies for C felonies, B felonies, and A felonies. We are working at a rate that is comparable to the adult C felony rate even when we are representing juveniles on sex abuse in the first degree and other very serious charges that have life-time consequences in terms of sex offender registration and other consequences in their lives that will last well into their adult years.

- 43:09 Chair McCrea So you are suggesting Mark that we should tier the juvenile cases like the adult cases?
- 43:16 M. McKechnie Yes.
- 43:16 Chair McCrea On the severity of the offense?
- 43:18 M. McKechnie Yes.
- 43:20 A. Sherbo I think that maybe the reason they weren't tiered, but that no longer applies, is that up until '95 the duration of a juvenile adjudication was 21, regardless. The significant difference between a B felony and C felony was not what it is today with that change in the law.
- 43:47 Chair McCrea Questions? Thank you. Any other comments from the public? Ingrid, do you have any sense of where Barnes is on the policy packages?
- 44:06 I. Swenson No, and I was going to suggest that if you want to take a break at some point I would like to call him and get some input from him if we are not able to connect.
- 44:17 K. Aylward Just call him on a cell phone and put it on speaker.
- 44:21 I. Swenson If it would work.
- 44:24 K. Aylward Mine works pretty well.
- 44:24 I. Swenson Shall we try that?
- 44:33 Chair McCrea Okay. Let's take a break and see if we can get Barnes on the phone.
- (Break)
- 1:00:46 Chair McCrea So I understand we have not been able to contact with Barnes?
- 1:00:53 I. Swenson Well, I did speak with him but he had just gotten a call and the jury had a question. He was heading over for that and wasn't sure when he would back. He said he would give me a call when he is free. I asked if he had particular input that he wanted to provide on the budget and he said, "Not being part of the discussion it is hard to do that."
- 1:101:13 Chair McCrea Ingrid, do you have some comments that you to make?
- 1:01:15 I. Swenson Just a couple, Madam Chair. When we look at the dependency package versus policy package 102, I suggest that you keep in mind that item 1 in that package refers to salaries of only non-profit public defense offices. The benefits of that piece do not extend to consortium members and others. If you look at the juvenile representation package that would, of course, apply to all – at least as we have conceived it it would apply to all providers in juvenile dependency representation regardless of the contractor's structure.
- 1:02:10 J. Stevens Ingrid, could I ask a question? Do you know what percentage of people who represent juveniles are in consortia and in public defender offices?

1:02:21 I. Swenson Kathryn would have the best idea.

1:02:25 K. Aylward I don't know. I can't give you an exact number.

1:02:27 J. Stevens Can you give me a rough guess?

1:02:31 K. Aylward Sure. Maybe 20 percent.

1:02:38 J. Stevens Are in a consortia?

1:02:37 K. Aylward No. No. Twenty percent are public defenders.

1:02:43 J. Stevens So 102 would miss most of them.

1:02:45 I. Swenson Yes. That is true. I also wanted to mention that I think policy package 100 is probably of more interest to legislators, for whatever reason. That body tends to reflect more concern for the quality and scope of representation being provided in juvenile cases than in criminal cases, so there is some appeal there and frankly I think our juvenile lawyers are more needy and I have expressed that in different ways at different times, but on the whole, as you know from our structural reviews and Paul and I know from our site reviews, the most serious criticism we receive is of juvenile representation. It is not unanimous and sometimes the juvenile component is stronger than the criminal, but on average it is pretty clear that people generally feel like criminal lawyers are doing better work than the juvenile lawyers. There appears to be more room for improvement there and we also hear about the caseloads of juvenile lawyers much more frequently than we do about criminal lawyers. That is not objective information. That isn't a measure of what each of these lawyers is actually doing, but that is the information we receive from the people we talk to in these site visits and structural reviews. It is the juvenile lawyers who appear to be under the most time pressure. I think the needs there are pretty significant and then finally, as has been mentioned, the Oregon Criminal Defense Lawyers Association has been here a long time. It is a very valuable support system for criminal lawyers. They are reaching out more and more to juvenile lawyers, but juvenile lawyers do not have the same support system, the same networks, the same resources that criminal lawyers do. They are just needier and that may be why the last time around when you looked at this you decided that that was an appropriate priority. Then my other comment is with respect to post conviction relief. As you will recall, in March we had a hearing on current issues in post conviction relief. They remain every bit as serious as were when the bar did its initial report, I think it was in '95 or '96. We haven't really addressed those issues. I know Kathryn keeps making good efforts to do that and I think we are making improvements, but as you heard from the testimony, we are not there yet, or even close to being there. I provided you with a copy of a letter Tony Bornstein wrote to you. If you will recall, when Steve Wax testified in March he talked about the fact that at the federal level they find cases where they cannot obtain relief for the client because of an error or one kind or another on the part of post conviction counsel. At that hearing, Barnes expressed some surprise that were such cases and we then asked the federal defender to address that in writing. Tony's letter is in response to that request. And then in addition I asked him to provide us some specific examples, which he has done, of cases in which there was some failure to act on the part of the post conviction attorney that resulted in defaulting the person's claims in the federal system. These are sometimes murder and aggravated murder cases and people being denied relief because they didn't receive appropriate representation in the post conviction arena. Those are my comments.

1:06:52 Chair McCrea Comments by the Commission?

1:06:57 Hon. Elizabeth Welch Ingrid, I thought, maybe not the primary, but one of the issues on this point that this letter was addressing was time frame concerns aside from the quality issues, that there was just straight

time frame problems. That the Oregon process was too long and that certain - is that not right, Paul?

1:07:22 P. Levy I think you may be remembering testimony about the statute of limitations trap that can occur which there is a two-year statute of limitations in the state PCR and a one year in federal habeas. While that is a trap for some it is not –

1:07:48 Hon. Elizabeth Welch Not a big deal?

1:07:46 P. Levy No.

1:07:46 Hon. Elizabeth Welch Looking at package 102, there is a provision here for increasing public defender salaries and a provision for increasing hourly rate lawyers. Now people who aren't addressed there are consortium lawyers. I guess I don't understand that. I'm not saying they should be here or they shouldn't be here, but it is a little hard for your eyes to kind of focus here, and particularly for me learning this stuff and being very new. Do you have adequate money to pay consortia lawyers so you don't need to ask for more, or do you not have adequate money to pay these people? I don't understand?

1:08:39 Chair McCrea I think the correct term is "we." Do we have adequate money? The Commission.

1:08:46 K. Aylward I think the issue is that with a consortium it is very difficult to separate the funding that comes from the contract from any other funding. I know that a lot of consortium members say, "Well, this is all I do or this takes my full time," but as a model you could have a member who takes retained cases in the afternoon and does public defense in the morning. Should the overhead that it covers be 50/50 or should public defense cover less of the overhead? I know I am not supposed to say that your retained work subsidizes your indigent defense work, but that is the reality of what happens for a lot of people. They like having a contract because it guarantees a certain amount of money coming in. It is the bread and butter. It makes it easy to operate a business and then you hope that you will actually make your profit. These are the areas where people come to us and say, "I am an employee of a public defense office and I don't have an option to make income elsewhere and I can't continue to work for this employer when the employer across the street will pay me \$12,000 a year more or \$24,000 a year more. We can identify that and we can quantify that and I think that is why it is in here.

1:10:12 I. Swenson I think we haven't heard as often from consortium members. Not that they shouldn't receive additional compensation. I don't think their rates should be any different if possible than other people's, but for them, as a whole, it is probably working better. We are not losing consortium members. In fact, vacancies in consortia are sometimes hotly contested within an area and people are anxious to apply for those vacancies, so the model seems to be working fairly well for most of them.

1:10:48 C. Lazenby Even if they are not included in the rising tide that lifts all boats, if we were to get the compensation increase there would probably be a correlating increase in what the consortium folks are getting paid.

1:11:01 I. Swenson Well you know, the components of the mandated caseload part of it work to their benefit too. This time around I think we were able to provide additional compensation to almost everyone.

1:11:20 K. Aylward In addition, the Commission indicated that there shouldn't be such a huge disparity between the rates that are paid to a public defender office and a consortium. In other words, you shouldn't be twisting it down so tight with a consortium that they don't last or they break apart or bankrupt themselves. You are right, all boats should float a little more equally, or all boats rise.

1:11:52 Chair McCrea John, were you going to say something?

1:11:52 J. Potter I agree with Ingrid's memory and analysis that last time around we did prioritize the juvenile dependency issues, in large measure, because the legislature, we believed, was going to be sympathetic to that issue. We prioritized the post conviction in large measure because the Chief Justice was greatly concerned about that and the money to fix it wasn't a significant amount. Then we prioritized the third package. Even understanding and agreeing with that, I think we might want to take another look at how we do it this time. I would float this idea; that we take a look at changing the priorities so that the compensation package, one of two, becomes the number one priority and take item number one out of the 100 package, that is the language that says, "funding to reduce caseloads and improve compensation," and add that as number four into this 102 package so it says, "funding to reduce caseloads and improve compensation in juvenile and adult representation by consortium lawyers. That becomes part of the compensation package and then the 100 package, the juvenile dependency, the remaining three targeting increases, funding additional support staff, funding for enhanced training opportunities, would become a pilot project for targeted juvenile dependency representation and number three would be the post conviction relief.

1:13:35 I. Swenson Certainly an interesting approach, John, and a good idea. I think two, three and four were sort of viewed as pieces of one. If we didn't get one, then one or more of these pieces might fill that gap, but they could be presented as a separate package I suppose.

1:13:56 J. Potter I understand that if you had funding that was in 102 under this scenario, that was the number one, and we got that additional money, that takes care of part of the problem and now you can focus on dependency representation with two, three and four, because folks would have been paid more under the new number one. Is that clear or not clear? I haven't fleshed this out any more than five minutes of thinking about it. We may have to change our emphasis is my suggestion.

1:14:35 I. Swenson So we would make 102 a bigger package?

1:14:40 J. Potter Right.

1:14:40 I. Swenson It would be significantly larger for one thing. Last session we calculated what is 100 here at \$23 million, so independently that is a big number.

1:14:57 J. Potter That would reduce, considerably, the pilot project idea. We backed off of the notion that we were going to get \$20 something million dollars pretty quickly when the realities of that set in.

1:15:12 I. Swenson The last day of the session we gave up on that one.

1:15:15 K. Aylward Commissioner Potter, I thought what I heard you say is that number one becomes full funding to reduce caseloads and improve compensation for representation of parents and children in juvenile dependency matters, but did I heard the word consortia thrown in there?

1:15:30 J. Potter Yes. By consortium lawyers.

1:15:36 K. Aylward Only?

1:15:36 I. Swenson All of them. As well.

1:15:38 J. Potter Because it now becomes part of this number one package down here. Those other things – you have the public defenders in there right?

- 1:15:48K. Aylward      Yeah, but that is strictly salary parity. That won't reduce caseloads and it won't target juvenile dependency representation. If you want to include the full funding for caseloads and compensation, I think it would have to do it for all providers and I think that package would then be \$40 million, \$50 million, and even though I said, "You just tell them what it costs," I have a sort of gut check level ....
- 1:16:23J. Potter      But they also need to know what it costs if we are going to make a policy that supports doing the right thing. We can massage the language. I don't have any problem with that, but it seems like we have an obligation to tell them what it is going to cost to do it the way they should be doing it.
- 1:16:40K. Aylward      Absolutely, but I would recommend breaking it into separate packages because if you say, "Here are 10 packages at \$5 million each," you know someone might say, "You know for \$5 million I think we ought to do that." Whereas if it is \$50 million people just say, "Oh, we don't have \$50" and it gets discarded.
- 1:17:00J. Stevens      If you put your \$50 million out and then you had four items of 10 or 20 plus or whatever it is, my math is terrible, they can pick and chose among the subsections, can they not?
- 1:17:17K. Aylward      That is true and that is kind of what we did last time where we did actually show them the three components.
- 1:17:24J. Stevens      Right.
- 1:17:24K. Aylward      They didn't end up actually saying, "Okay. We want to fund component two or component three." They just sort of said, "Well, here is some money we have," and then the Commission decided where to channel it.
- 1:17:40J. Stevens      On that same idea, is it better for us to give them these four items as a single thing and hope they say, "Okay, here is \$20 million. Go have fun with it and do whatever you want." Is it better for us to have them do it that way or to say, "Okay, we like number 4 which is \$20 million dollars. So we will give you \$20 million dollars for number four that is part of this 102 package." Which accomplishes more for us?
- 1:18:05K. Aylward      Well, from a contracting point of view, the less specificity the better because ..
- 1:18:13J. Stevens      You can spend it on whatever you want.
- 1:18:13K. Aylward      You aim it toward what the intention was but sometimes you are stuck. Someone says, "I don't do juvenile dependency representation so where is my improvement?" I like less.
- 1:18:29C. Lazenby      I think John's idea is worth pursuing a little bit more. I wonder because I sat through the conversations here and I know there was a lot a legislative activity around increasing compensation for our lawyers in this field. I have experienced sort of legislative fatigue when the same issue resurfaces again. Not saying that it is not really our top priority but the other two pieces as separate packages, the juvenile dependency as well as the post conviction which seems to be getting a lot of traction from a lot of different areas, from the judges and a number of other folks, is a fresh look at a new issue as opposed to just coming back and saying, "Yes we know you gave us more money last time, but we want more money again now," which is a common refrain and quickly disposed of. The other reason I think we need to kind of look carefully at what John is proposing is when you put together a larger package you are right, Janet, that you have got to put it together and think about what parts of it you are willing to throw overboard first. If you go in with an all or nothing, you are more than likely to get a nothing. It is just a cautionary comment. I think there are some synergies between one and three, but we need to be careful how we do it and structure it in a way that

we can focus this without the whole thing falling apart, and keep in mind the legislative fatigue around, “We gave you raises last time and now you are back asking for more money again. Is that all you are about?” That can damage us in a lot of different fronts if we pursue that.

1:20:19I. Swenson One comment, Commissioner Lazenby. They did invite us to come back. The Public Safety Subcommittee recommended that we come back for more. That is one of the strong pieces in favor of that package.

1:20:39Hon. Elizabeth Welch This is my new observation on all of this. I cannot understand why 102 would not be the first priority of this organization. I just don’t understand that. What has been so fascinating about the time that I have had on here is coming to understand the struggles that so many defense organizations have getting and keeping capable lawyers so that people who are being charged with crimes get a fair shot at defense, that there is fairness in the system and that is so fundamental. I just don’t see how it could be anything other than the first priority of the Commission, that we raise the standards of compensation so that in places like Coos Bay, Burns, Pendleton, and even smaller places, there is a functioning, capable, professional organization representing people charged with crimes, and everything else is a detail.

1:21:44Chair McCrea I guess I look at it a little differently. I look at it like sailing because with sailing you can’t get from point A to point B by just going there. You have to tack and zigzag with the wind and those kinds of things. At least for me, in the time I have been with the Commission, it seems to me that 102 has been our top priority but it has been sort of trying to do it without tacking different ways. I talked to Ingrid at the break and said, “Would it make a difference if we made 102 the top priority.” I hope you don’t mind my repeating this Ingrid? Ingrid’s analysis was that the legislature is going to look at where they perceive the need to be. It seemed to me that this list, as it is set out, was almost like in a pyramid shape. The juvenile was correctly put first because it is where we have the legislature interest. You have got them hooked if you will. We may at least get the pilot project and we have significant need there, although it is not the overriding need. On post conviction I think we have do something. We have to do something on all of these, but I think something has to happen with that. In reading Tony’s letter I was appalled at the meeting in March and it breaks my heart to see these things. In terms of the public defense provider compensation, you know I care about all of our providers but I got to say I am especially concerned about the PD offices because we have taken a position with the Commission that the public defenders are different because they are institutional and we have an expectation of what they are going to do for us which is different than what we expect from private lawyers and our consortia. We expect to be on the cutting edge. We expect them to be training and bringing people up to speed and if we are losing that, based on what we were hearing, not just today but other days, that is critical to the criminal defense infrastructure. For what it is worth, I totally agree with you in terms of our mission and our goal that in terms of the 2009-11 policy packages, I would leave it as it is. There is my two cents. Now, we have to make some kind decision before this has to go in on July 31. I am very uncomfortable with not having the wisdom and input of the Chair. I am wondering if the Commissioners would agree to set a phone conversation when Barnes is available for us to have further discussion. I think this is obviously very important. What is the reaction to that?

1:25:04I. Swenson We could have a transcript made of comments so far and get those to him.

1:25:14J. Potter I think that is right we should have a phone conference.

1:25:13C. Lazenby Me too.

1:25:17Hon. Elizabeth Welch As long as it happens soon.

1:25:18 Chair McCrea Okay. We could do it by email?

1:25:25 J. Stevens No let's do it by phone.

1:25:38 J. Potter When is the deadline Kathryn?

1:25:40 K. Aylward The figures for the essential budget level are due in the system by June 30. The essential budget level is just this package 040.

1:25:50 Chair McCrea I don't think there is any issue with the essential budget at all.

1:25:55 K. Aylward And then the policy option package figures, the complete agency request budget, needs to be in the system by July 31. Then the actual budget binder, the supporting narrative, is due September 1, so I will bring that to the August meeting for the Commission to review and comment on.

1:26:15 J. Potter So in order for you to plug things in after the Commission sets their priorities, how much time do you need?

1:26:25 K. Aylward It depends on which one you pick. Maybe two weeks.

1:26:32 Hon. Elizabeth Welch May I ask you a question, Kathryn? If package 100 remains package 100, when you create it will you break it down with numbers attached? I assume you do. You just don't go out there and say, "Give me money."

1:26:46 K. Aylward When it is submitted there is a figure, depending on what you choose. I agree with Ingrid and the Chair that the priority doesn't really make a difference other than politically, I suppose, or publicly. They won't say, "Oh, we have this number of dollars so we are going to fund your first priority." It is just that the system requires you to set the priority, but depending on which components of package 100, which approach you want to take, then it would be different dollar figures.

1:27:27 J. Potter July 7, 8, 9, in that range. Does that give you enough time?

1:27:32 Hon. Elizabeth Welch What about July 1?

1:27:36 I. Swenson If we could let's pick a couple of dates and get ahold of Barnes and see when he is available.

1:27:47 J. Potter Any particular time you want to do it?

1:27:51 Hon. Elizabeth Welch May I ask another question? How do we do this and not violate the public meetings law?

1:27:56 I. Swenson We will give notice. We will have to give notice and provide access to the public.

1:28:08 C. Lazenby July 1 anytime after 9:30.

1:28:11 I. Swenson July 2 did you say?

1:28:13 C. Lazenby July 1. July 2 is completely open.

1:28:22 Hon. Elizabeth Welch What would be a good time?

1:28:22J. Stevens For me 10:30.

1:28:28J. Potter 10:30 works on either one of those days for me.

1:28:31I. Swenson So July 1 or 2 at 10:30 for everyone? Could we look at the following week as well and maybe tentatively .....

1:28:58K. Aylward I just realized on package 102, Item No. 1, shall I assume that it will not be wasted effort to go ahead and survey the public defenders and get current salaries and go ahead work up a number for that. It is likely that the Commission will ....

1:29:16J. Potter In light of Jim Hennings' comments, I think it is a worthwhile exercise.

1:20:3 K. Aylward Okay. I could go ahead and work up numbers for 102 even though the Commission hasn't concluded; I might as well do it.

1:29:29 Chair McCrea Yeah, go ahead and do it.

1:29:40I. Swenson How about the 8<sup>th</sup>? Does that work for people? Tuesday the 8<sup>th</sup>.

1:29:49J. Stevens Again, I am always tied up until about 9:30.

1:29:54I. Swenson And the 9<sup>th</sup> is a Wednesday. Same thing?

1:30:30J. Potter The 9<sup>th</sup> works for me too.

1:30:02I. Swenson Very good. That should be enough to work with. I'll try to reach Barnes again during the meeting and see what his schedule is.

1:30:15K. Aylward Prior to that meeting I will provide figures on the items in 102. On 100 I won't do anything until I get some direction.

1:30:26J. Stevens If you were to do 100 there was some talk of a pilot project. Is there one going on now? Did I understand that?

1:30:34I. Swenson There is a workgroup of legislators who have asked us to pursue a proposed pilot project. Kathryn and I are meeting with a couple of our providers in the next couple of weeks to explore what a pilot might look like in those jurisdictions. Then we would need to get back to the legislators and ....

1:30:59J. Stevens Would that be separate from 100?

1:30:59I. Swenson Yes. At this point I believe they would like to sponsor a bill of their own and it can be mirrored in our proposal or it can be independent of our proposal.

1:31:17Chair McCrea Very good. Let's move on to Item No. 3.

**Agenda Item No. 3**

**Approval of Contracts**

1:31:24K. Aylward It is behind the pink tab divider in your materials. We issued a request for proposals for death penalty contracts and principally it was necessitated because MCAD and Marion County had included aggravated murder under their contract. They were the only general purpose contractor that included aggravated murder cases. We decided we were going to remove aggravated murder from MCAD's caseload and have aggravated murder cases in Marion County handled the same way as everywhere else in the state, so we issued the request for

proposals. These were the three bidders we had. Dan Casey has been on our Capital Appellate Panel. He is an excellent attorney and we are thrilled to have him. Steve Gorham and Steve Krasik had been handling the aggravated murder cases that were under MCAD's contract so this was a natural progression. The contracts are the same standard of number of hours per year and the typical rate of \$90 an hour. I recommend approval of these contracts.

1:32:54 Chair McCrea Discussion or questions by the Commission? I would entertain a motion.  
**MOTION:** Chip Lazenby moved to approve the contracts; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

**Agenda Item No. 4 Commission Discussion of Service Delivery Plan for Judicial District 14**

1:33:10 Chair McCrea Item No. 4, Commission Discussion of Service Delivery Plan for Judicial District 14, Josephine County, which is behind Attachment 3. We lost Ingrid. Let's come back to that. Paul, why don't you go ahead and give us the report on the site visit findings.

**Agenda Item No. 5 Report on Site Visit Findings**

1:33:45 P. Levy I will be happy to do. I also was hoping Ingrid would be here for this as well since she has participated in most of these site visits. Traditionally, at this meeting here, the Commission has received an update on the site review process and in your materials you have a list that you have seen at this meeting in the past updated with all of the site reviews that we have done and the volunteers who have served on those teams. I think the Commission has always expressed its appreciation to those volunteers for the work that they have done. I am sure that you will want to do that again today, but what we also wanted to do today is to provide you an overview of some, what we would call preliminary findings or conclusions that we can draw from looking at all of the site reviews that we have done since 2004. That is what I propose to present to you now including a little bit of detail, if you wish to have it, about the site review process. The peer reviews have been happening since 2004. As I mentioned, there have been 30 providers who have been evaluated by peer teams. That is 30 detailed reports about the quality of representation, with those providers representing roughly – is Kathryn here? Do you the percentage of the caseload that – this was blank that I needed to fill in for you, but I think it is 60.

1:35:54 K. Aylward I was going to guess 58.

1:36:00 P. Levy About 60, 58 percent of the public defense caseload has been examined. So you know, these reviews have been identified in the Commission's strategic plan in the current biennium and in the past as a key strategy in the goal of the Commission to assure quality public defense. The process is overseen by the Quality Assurance Task Force; this is an advisory body to the executive director. Jack Morris just took over duties as chair of the task force after the original and long serving chair, Jim Arneson, resigned. Other members of the Quality Assurance Task Force are Jim Hennings, Ron Gray, a representative or two from the Juvenile Rights Project and Mark McKechnie was at our most recent meeting, Tom Sermak, Greg Hazarabedian, Karen Stenard, and Jennifer Kimble. I am not sure if all of you are familiar with how the process works or whether you would like me to describe it?

1:37:20 Chair McCrea Why don't you give us a brief description?

1:30:25 P. Levy After we have selected a provider to evaluate, established a date for that evaluation and a team, in advance of a site visit we send a survey to all of the major local officials in the criminal justice, or juvenile, or both, systems asking a variety of questions to get their views about the performance of the provider. The provider helps us identify those people and then we also schedule, usually with the assistance of the provider, interviews with all of these officials that take place over the course of two very intense days of interviews. On the third day of the site visit, the team meets to try to reach preliminary conclusions and then shares that

with the administrator of the provider. Following that, after a month or sometimes longer, a report is produced. The report is provided to the administrator and we ask for comments and that has been included in the report. The goal of these site visits is to first determine the quality of representation that is occurring, and also to identify what is working particularly well with this provider with the view that that can be shared with other providers in the state, and then to also identify areas that need improvement and to offer assistance with achieving improvement where it is needed. A fundamental operating principle of these visits is that the people who we survey and ask for input are promised confidentiality and anonymity and they provide their comments with that understanding. Because of this the reports that follow are considered under the Public Record's Law as confidential reports and also because of these promises and conditions, we have gotten very good response, very good participation in the survey, very good participation in the interviews, and good, frank comments about how our providers are doing. Preserving that confidentiality and anonymity, we can still provide you with some overall observations, without identifying particular providers or the source of the information, about these site visits. I want to do this with a couple of caveats. First of all, every site visit has looked at the particular circumstances of that provider. Its focus has been dictated by the jurisdiction and the needs of the provider. They have not been uniform in a way that you can compare them easily, necessarily. Every team has different members with their own focus and values. I have tried, in looking recently at all 30 of these reports, to draw generalizations from them and some of that has been my own interpretation and filtering of this information. One thing that each report does do is reaches a conclusion about the overall quality of representation, generally, looking at a scale of excellent to poor and that is what our survey asks. Across all of the reviews, the representation is most often said to be good with the understanding that with every provider, I think it is safe to say, there have been one or more attorneys who have been identified as doing very good, or excellent work, but there has also been with almost every provider, attorneys who are widely known or said to be performing unsatisfactorily. "Good" is probably, in the view of the Commission and I think in our view, not good enough, especially when it is understood in the context of specific comments and information that we also receive in these site visits. One observation that Ingrid has already shared with you and won't come as any surprise is that juvenile representation is consistently rated as inferior to the representation that is being provided in criminal work. The reasons for this are ones that you are familiar with, the complexity of the cases, the need for specialized skills and knowledge, and high caseloads. Another issue, though, that is frequently identified to site teams is that you have good criminal defense lawyers doing juvenile work not as well. That is because in many jurisdictions they have to, or it is at least thought that they have to, because you need these lawyers because of the number of parties and conflicts. They are compelled to do the work and they don't necessarily make the transition well to an entirely different kind of advocacy. Some are not really interested in doing the work. The one thing, aside from this, that is very interesting in these site visits is that in the juvenile field you have more people, more parties, and more interested individuals who are available to report to you about the work that is being done. You have the CASAs, you have CRBs, and you have DHS, lots of sources of information. There are really fewer people in the criminal world that are willing to give you good, frank information about the performance of attorneys although we do seek them out. What we hear across these site reviews in the juvenile area most frequently is inadequate client contact. What is often reported to us by a variety of sources is that attorneys are thought to be meeting with their clients only at court hearings and only shortly before them. We know from our own database, and this is also reported to us, that attorneys in juvenile work make minimal use, sometimes shockingly minimal use, of investigative and expert resources. There is often confusion about the role of counsel in these cases. There is confusion about basic statutory and regulatory processes. Interestingly, we frequently hear that attorneys either too easily acquiesce in what DHS or a juvenile court counselor is recommending, or are too combative and too adversarial. It is an interesting problem that is often brought to our attention. Across the board in these reviews, we are hearing that manageability of workload and caseload is a major problem for our providers and, again, I'm sure this comes as no surprise. In some reviews we are provided with or we have access to actual numbers which we know exceed

national standards. More often it is anecdotal reports, though, and client contact is the most consistent area where attorneys are said to have too many cases and are not able to meet their clients in a timely and meaningful way. We also receive reports about failure to be prepared, difficulty in scheduling hearings and other meetings because the attorneys have too many cases and too many obligations and too many places to be.

The site visits also look at management issues within providers and interestingly, most providers, looking at the 30 reviews that we have done, have not had in place mechanisms for recruiting, training, supervision, and evaluation of attorneys. The providers who do have mechanisms, and typically those are found in public defender offices, are having trouble performing those evaluations and supervision duties, and there remain attorneys within these providers who are, as I said, widely known to have performance problems. On the other hand, we have found in the site reviews that most providers do now have in place boards of directors which increasingly include outside board members, members who are not part of the providers. Generally with consortia there is more of a trend toward more structure in these groups. I think we are hearing and know that this is a result of the Board's initiative in this area. Consortia have more boards and they are adopting attorney agreements or contracts which set performance standards or expectations, and also mechanisms to deal with underperforming attorneys.

Site teams also look at systematic issues - the practices of courts, law enforcement, prosecutors, DHS since all of these affect how public defense services are delivered and the quality of those services. Again, as you have learned, the site visits document the availability of court time, court scheduling and docketing practices and the impact they have on how attorneys operate. Among the good news from the site reviews is that most providers participate in systemic discussions. They are part of workgroups. They are part of standing groups that talk about and deal with systems issues. A number of providers, we have been told, have successfully dealt with docketing issues and other issues that cause inefficiency and interfere with the ability to provide good representation. As you also know, providers are involved, where they exist, in specialty courts, drug courts, domestic violence courts. Most of the jurisdictions that we have looked at in site visits, though, have not had formal early resolution courts.

Again, with systemic issues, what we hear frequently when we are looking at providers that do juvenile work is that problems with DHS affect the quality of representation. The problems that are usually identified with DHS, in addition to lack of training, is a high rate of turnover and high caseloads at DHS. Among the major system issues that every site visit has looked at is whether attorneys are present at the initial hearings in both criminal and juvenile cases. What we have found is that most are not. Most providers are not present at arraignments in criminal cases, the initial arraignments. They are not present at shelter hearings in delinquency and dependency cases. They are working on this and some have moved toward achieving representation there.

As I said, with every report, a draft is sent to the provider. We ask for a response, which is included in the report, and then we follow up a year or so later to see what progress has been made on the recommendations. With almost every site visit the provider has expressed, I think, genuine appreciation for the review and has made some change as a result of the observations. Those changes range from dealing with a particular problem that had been brought to their attention that was widely known within the community but somehow was never brought to the attention of the provider, or a more general need for structure in a group, the implementation of training programs, greater monitoring of attorney performance. With almost every site review there have been changes. We have not revisited providers with follow up site reviews, so it is difficult to tell you or to know what has changed overall as a result of this process, the process which is still ongoing. We did, as you know, conduct a statewide survey recently asking about the quality of representation. The survey has its limitations and flaws, but it does suggest that there has been overall improvement. But what

the survey also identified as a major impediment to quality of representation is the same one that the site reviews have identified, primarily caseload problems and then a number of other problems specific to providers. I don't mean to paint a gloomy picture here. As I have said, we have seen and heard about some outstanding practices across the state, but there is clearly, across the board, a great deal of room for improvement. Ingrid staffed the vast majority of these site reviews. Do you have any other comments you would like to add?

- 1:53:33 I. Swenson No. I think that is good summary, Paul, of what we have found over the course of almost four years now. Did you figure out the percentage? I wasn't here when you started.
- 1:53:44 K. Aylward Fifty-six and a half percent.
- 1:53:51 K. Aylward There have been 29 site reviews. Nineteen of them adopted changes and that represents 56 ½ percent of the caseload. We track this because, as you know, it was one of our key performance measures. It is currently a key performance measure that we are going to recommend that we not use anymore.
- 1:54:18 I. Swenson So we still have a few to do. The Commission's structural reviews have overlapped, to some extent, so there isn't the urgent need to send a site team to places where you have been and explored some of these same issues.
- 1:54:26 Chair McCrea Well, I want to express my gratitude on behalf of the Commission to you, Ingrid, and to all the people who are listed in here who have helped and assisted and been able to make the time to go an help out with these.
- 1:54:41 I. Swenson Lots of volunteers.
- 1:54:42 Chair McCrea Lots and lots of volunteers and it is much, much appreciated.
- 1:54:44 P. Levy I would also like to add the providers are appreciative even when they are not necessarily happy. They are glad to have had another set of eyes. The teams, the people who serve on these teams invariably take away information and knowledge that they then use in their own organizations as well.
- 1:55:12 J. Potter I belong to a loose knit group of executive directors or criminal defense organizations, and I have mentioned this to them from time to time, and there is no state of that I am aware of that does anything remotely like this. It is pretty unique. It is truly a feather in our cap. It strikes me that it is one of those things that, even though I know Ingrid and Kathryn talk to the legislators about this, it may be something that we need to trumpet a little bit more.
- 1:55:51 Chair McCrea Other comments?
- 1:55:54 I. Swenson I did reach Barnes' office and July 2 at 10:30 would work for him, so why don't we convene a conference call at that time. I told his office I would get him at least unofficial minutes of this discussion and I will certainly get them to all of you to so that you can read that beforehand. If that other requests for information before that please let us know.
- 1:56:32 Chair McCrea So, Ingrid, I put Paul in the hot seat while you were out of the room calling Barnes' office. We can got back to Item 4, which was the Commission Discussion of Service Delivery Plan for Josephine County.
- 1:56:45 I. Swenson Very good, Madam Chair. Last time, as you will recall, we got very involved in a discussion about Jackson County, and did not get to a review of Josephine County. The Commissioners had heard from witnesses from both of those counties when we were in Medford in April. The report, which you have, has been updated just to include a summary of the testimony that you heard. I would be happy to run over the highlights of that report, unless that is not

necessary. If you have all had a chance to review it, you may not need further update, but essentially, I think we learned that they were doing good work. The combination of providers there was the appropriate one, at least at this point in time. They have a public defender office. It is not as large as the one in Jackson County. It has only seven lawyers but it is certainly filling the function of a public defense office and they have a very healthy consortium. They have recently had to address some difficult issues, but they have done that and moved on. They are currently recruiting for some additional consortium members. On the whole, people were satisfied in the judiciary, the district attorney's office, and in juvenile court with the work of these lawyers. In terms of a structural situation it is probably the appropriate delivery system for that county.

1:58:29 Chair McCrea

That was my impression.

1:59:30 J. Potter

It appears as well that it may be the county in Oregon that, although Coos may argue differently or Curry, that is going to be hardest hit by the loss of O&C funds in the criminal justice system. They may be a totally different kind of system a year from now.

1:58:44 I. Swenson

It is true. I looked at their most recent budget update, which is online, and they got the one year extension of O&C funds and they split it in two and spent \$6 million the first year and set aside \$6 million for the second. As of July 1, they will have reduced the Public Safety Budget from \$4.3 to \$3 million in anticipation of the loss of revenue and they basically indicate in their budget update that they do not know what the situation will be in '09-'10, so there are a lot of unknowns for them.

1:59:30 C. Lazenby

Did they come close to closing their jail a few months ago?

1:59:31 I. Swenson

They talked about that as an option and it may still be on the table. Some counties are considering doing that, closing their juvenile detention facilities as well and housing prisoners in other locations when they need to. As some of you may know, the Governor had convened a task force to look at ways the state and others could assist the counties that were hardest hit by this funding loss and they have a number of proposals. There is no final report yet, but they will be following up with a number of proposals in the legislature and elsewhere in terms of how to help these counties through this crisis.

2:00:22 Chair McCrea

Anything else on Josephine County? Okay, so what do we have in the way of monthly reports.

**Agenda Item No. 5**

**OPDS's Monthly Report**

2:00:30 I. Swenson

I will ask Pete, in a minute, to talk about our appellate division but very quickly we also talked about Umatilla County last month and a couple of weeks ago I went to Pendleton and met with a number of people regarding the juvenile representation piece. As you will recall, 50 percent of the kids who came to court with formal petitions were being assigned counsel, 50 percent were waiving counsel and that was of concern to this Commission. In the report which you reviewed last month, the juvenile department essentially reported that the representation being provided to juveniles was not valuable and that nobody was particularly interested in promoting additional appointments until it was clear that there was a benefit that would come from those appointments. A number of discussions have taken place. I did talk with the juvenile judge, with the trial court administrator, with our provider. And the judge is prepared to increase the rate of appointment. Our principle provider there is looking at dedicating some of his positions to juvenile representation so that these attorneys could specialize and begin to treat these cases with more concern and interest. They are convening a group of interested representatives of various local agencies to talk further about that. I will keep you updated on that but I think there are some things happening that might be useful. I wanted to note, as I informed Commissioner Welch earlier, that I heard from Judge Orf just before coming to this meeting and she reported significant improvement in the contact

lawyers were having with children in Jackson County. Both providers, she thought, were evidencing significantly greater effort in contacting and maintaining contact with their clients. I think those are the only updates I have. Pete?

- 2:03:13 P. Gartlan Thank you, Madam Chair, members of the Commission. For the record, Pete Gartlan, Office of Public Defense Services. I am somewhat sad to say that the days of LSD are waning. We will be officially changing our name to the Appellate Division. There may be some flashbacks over the next couple of weeks. That should be the last of the flashbacks.
- 2:03:40 C. Lazenby It has been a long strange trip hasn't it?
- 2:03:41 P. Gartlan But we have enjoyed the ride. I thought I would bring the Commission up to date with our U.S. Supreme Court litigation. The U.S. Supreme Court has set a date for Wednesday, October 15, as the argument date in *State v. Ice*. The state has filed its brief on the merits. We are drafting the response right now. The first due date is early in July. We have a draft relatively completed, that first draft only. We will be ready and going back to D.C. It seems like our U.S. Supreme Court practice is expanding somewhat. We will be filing an *amicus* brief in a case out of Louisiana with respect to unanimous jury verdicts. Right now, only Louisiana and Oregon allow a guilty verdict on a less than unanimous verdict, so for felony cases in Oregon it is possible to have – “possible?” It occurs daily - a guilty verdict based on a 10-2 verdict or an 11-1 verdict. If the Court does not take the Louisiana case, we will be filing our own cert petition sometime in the future on cases coming out of Oregon. Finally, I want to report in the juvenile section, our juvenile attorneys have cases assigned so they are working on cases now. We have worked with the Court of Appeals, which has been incredibly helpful for us, and Chief Judge Brewer has arranged a CLE in September for all the juvenile appellate practitioners on the defense side and in the Attorney General's Office and there will be four Court of Appeals judges participating in that. It will be half day event. As for what is happening internally, Angela Sherbo, who reported to you earlier today, has been terrific assisting the attorneys and instructing them on substantive juvenile law. That is about it. Thank you.
- 2:06:04 Chair McCrea Do we have any other reports?
- 2:06:06 S. Gorham Madam Chair, could I ask Peter a question about one of the things he just mentioned?
- 2:06:11 Chair McCrea Okay. If it is not personal or about flashbacks.
- 2:06:13 S. Gorham No. It is a substantive question. Should we be objecting to 10-2 verdicts if you are going up on a potential cert on this, would it be to our client's advantage to be objecting to this if, in case, the Supreme Court takes it?
- 2:06:37 P. Gartlan As usual, it is better to be safe than sorry, so I would advise that. I think probably if we prevail, if the U.S. Supreme Court decides that a unanimous jury verdict is required, that would probably be considered structural error and would apply, at least, to all cases still alive on direct appeal.
- 2:07:01 P. Levy I note on this, the cert petition that was filed in the Louisiana case was filed by Jeffrey Fisher and he is pursuing that. It is an excellent cert petition and it is all federal constitutional law. There are state laws as well, but you can find that cert petition or I can somehow make it available.
- 2:07:26 Chair McCrea Okay. Any other reports? As Jim Hennings indicated he is retiring and we on the Commission, and those of us who have practiced in Oregon for any period time, know how much of a debt we owe to Jim and how important he has been to public defense in Oregon. We wanted to recognize and honor him and that was delegated to our illustrious chair, who is not here, and Jim may see that as a back door way of making him come to the next meeting

because Barnes had a number of things that he wanted to say. He wanted to make a presentation so Jim you may just have to come over to Baker City with us. I as an Oregonian and as somebody who has practiced in the state over the past 25 years. I can't believe it has been that long, you have always been in my life. You have always been there and I just want you to know how much I appreciate, and everyone on the Commission and in this room, appreciate all you have done for us and we hope you will keep hanging in here with us.

2:08:55 J. Hennings I am going to be very, very brief. I can't say how proud I am of Oregon and of the criminal defense bar and the Commission. I just urge you to keep up the good work. You have a good group of attorneys. There are flaws and blemishes and things that have to be done, but you have a group that really wants to do it right. I urge you as a Commission to continue to support that, and push that, and I urge the field to continue to be the best that you can be, the attorneys that we know can excel. Oregon has created a process in which criminal defense attorneys are part of the system, part of the bar and that was my intent when I first started. I am just so proud of everyone. Thank you.

2:09:47 Chair McCrea Any other business?  
**MOTION:** John Potter moved to adjourn the meeting; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Meeting was adjourned.

Public Defense Services Commission  
Package 040 Mandated Caseload  
2009-11 Biennium

1	Trial-level non-death penalty caseload growth	\$3,723,869
2	Death penalty caseload from prior biennia	\$4,122,148
3	Mileage reimbursement (50.5 cents per mile)	\$175,210
4	Non-attorney provider cost increase	\$583,135
5	Personal services adjustment	\$9,867,772
6	Appellate mandated caseload	\$936,717
	Total Package 040	\$19,408,850

Note: \$5,660,951 of this amount is the standard 2.8% inflationary adjustment;  
Package 040 would be \$13,747,899 aside from inflation

## 2009-11 Policy Package Discussion

### 100 Juvenile Dependency Representation

Options for improving juvenile dependency representation:

1. Full funding to reduce caseloads and improve compensation.
2. Targeted increases, e.g. review hearing rates.
3. Funding for additional support staff for increased client contact.
4. Funding for enhanced training opportunities.

### 101 Post-Conviction Relief Trial-level FTEs

This package adds one Senior Deputy Defender, one Deputy Defender 2, two Deputy Defender 1, and one Legal Secretary FTE positions to handle trial-level post-conviction relief cases. The personnel costs are generated by the payroll system and then 16.3% of that figure is added for services and supplies. The reduction in expenditures from the Public Defense Services Account assumes that the PCR unit would handle 48 PCR cases per year per attorney.

Cost of FTEs and Services & Supplies	\$838,500
Less the costs currently paid from the Public Defense Services Account	(\$493,824)
Package total	\$344,676

### 102 Public Defense Provider Compensation

This package is comprised of three elements:

1.	Funding to increase full-time public defender salaries to corresponding deputy district attorney salaries in their counties.
2.	Funding to provide an increase in the hourly rate paid to attorneys (\$70/hour non-capital; \$95/hour capital).
3.	Funding to provide an increase in the hourly rate paid to investigators (\$35/hour non-capital; \$45/hour capital).



401 NE 19<sup>th</sup> Ave., Portland, OR 97232

June 25, 2008

Chief Justice Paul J. De Muniz  
Barnes H. Ellis, Chair  
Shaun McCrea, Vice-Chair  
Henry H. Lazenby, Jr.  
Oregon Public Defense Services Commission  
1320 Capitol Street NE, Ste 200  
Salem, OR 97303

John R. Potter  
Janet C. Stevens  
Hon. Elizabeth Welch

Dear Mr. Ellis and Members of the Public Defense Services Commission:

This letter is intended to expand upon the testimony provided by the Juvenile Rights Project, Inc. at the Commission meeting in Bend, OR, on June 12, 2008, and encourage the Commission to focus on strengthening Oregon's public defender organizations by improving compensation for attorneys and support staff and reducing caseloads to levels at which effective and ethical legal representation can be assured.

Juvenile Rights Project has represented tens of thousands of clients in the juvenile court system and in the court of appeals through contracts with the State of Oregon and, previously, with Multnomah County. We have learned that skilled and zealous advocacy for our clients can result in substantial improvements in their lives. In order to apply the skill and knowledge necessary to benefit our clients, we also need to retain experienced staff (including not just attorneys, but also legal assistants, investigators, social workers and others) and ensure that they have manageable caseloads.

We hope that the following information will be useful to the PDSC in your discussions regarding Policy Option Packages for the 2009-2011 biennium.

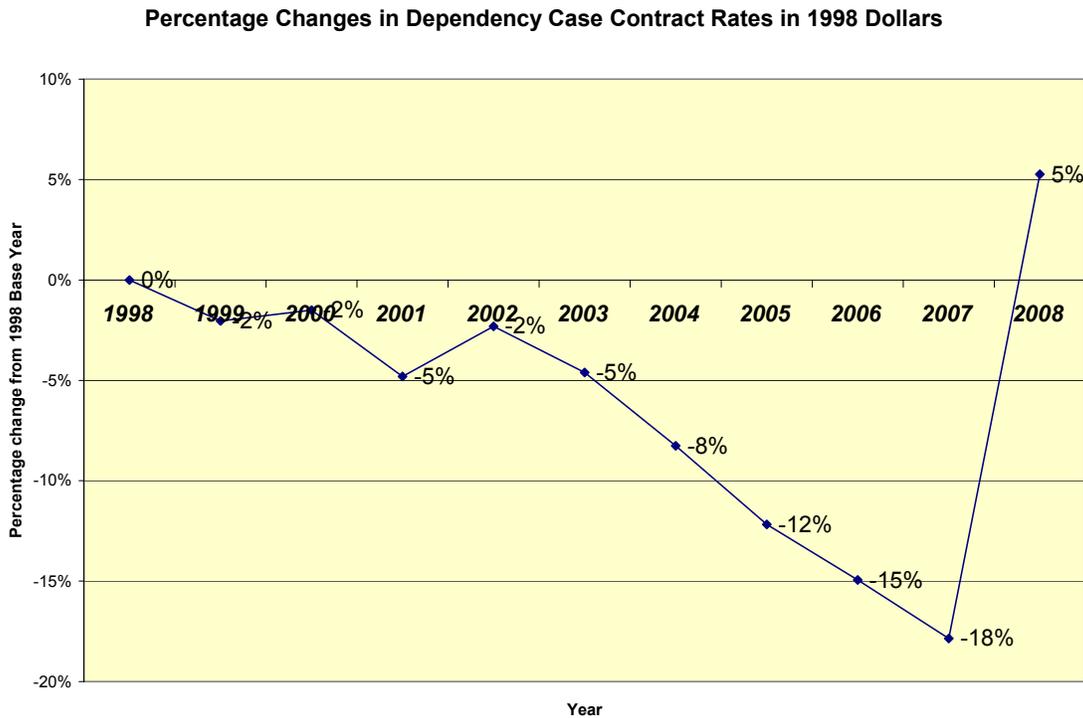
In spite of salaries that continue to lag well behind attorneys employed by the state, nine of JRP's 18 attorneys have worked at JRP for 10 years or longer. The average tenure is 7.5 years. We have lost a few very experienced attorneys to private firms and the Attorney General's office. We also lost our most experienced investigator to the AG's office two years ago. When we lose experienced staff, we have been unable to attract and retain new employees who have the same level of experience.

High caseloads continue to be one of the largest challenges to retaining staff and to providing the most effective legal representation. Our average caseload is currently 110 cases for each full-time equivalent attorney. Case types include adult and child dependency representation, juvenile felony and misdemeanor cases, termination of

parental rights (representing children and adults), Psychiatric Security Review Board cases and Court of Appeals cases. Because juvenile dependency cases often involve multiple siblings per case, the number of clients per full-time attorney position is higher than the 110 case numbers.

Because OPDS contracts with JRP and other public defense firms using case rates that have declined in real dollars over the last decade, we have had to contract for increased case numbers (at the same staffing level) in order to keep pace with increasing personnel and overhead costs.<sup>1</sup>

Juvenile dependency case rates declined in real dollars from 1998 to 2007 before seeing an increase in real dollars in this biennium.

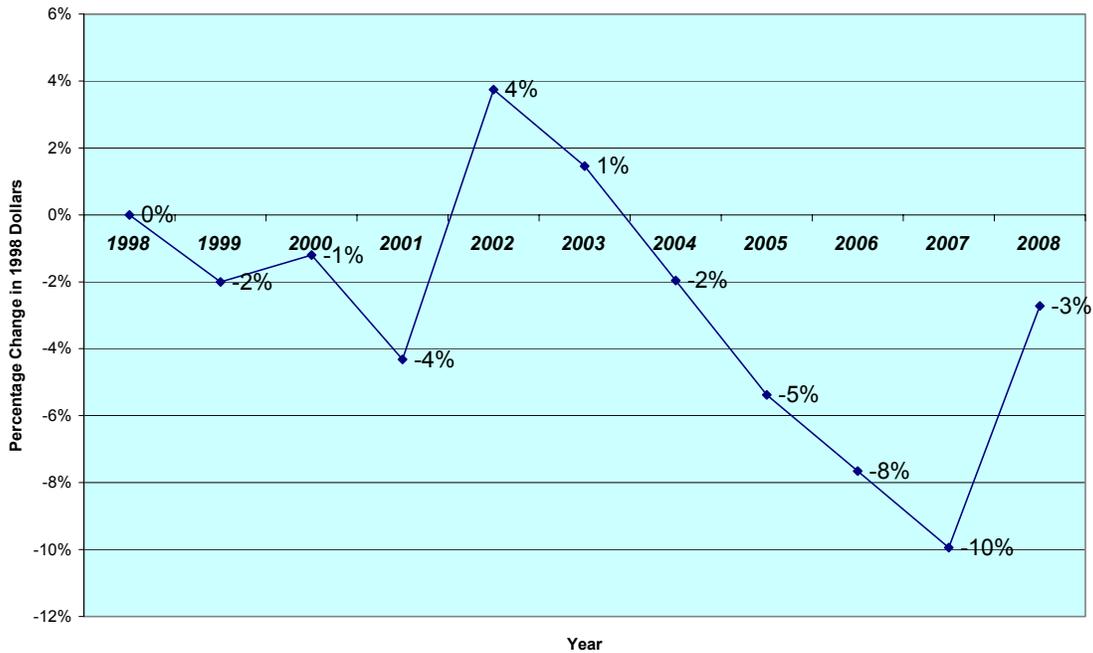


While we appreciate the significant increase in juvenile dependency case rates in 2008, the chart above should make clear that an increase this year cannot fully make up for the declines experienced over the preceding decade.

The rates for juvenile dependency review hearings have declined in real dollars between 1998 and 2008. JRP attorneys appeared on behalf of parents and children at nearly 6,000 review hearings in 2006-07.

<sup>1</sup> As discussed at the June 12<sup>th</sup> meeting, the Consumer Price Index is weighed heavily toward the price of goods. It is an inadequate measure of the real cost increases experienced by organizations whose costs are largely for personnel. From 2005 to 2007, the rate of inflation increase was 6%, while Oregon DAS set the rate for personnel increase for state agencies at 9.08% for the 2007-09 biennium, as compared to the 2005-07 biennium.

**Percentage Change in Dependency Review Hearing Rates from 1998 Base Year**



Public defense firms appear to be at a greater disadvantage in juvenile delinquency cases, even when compared to other public defense firms representing adults on criminal matters. All juvenile felonies are paid at the same rate, regardless of the seriousness of the allegation, whether the offenses are property-related or person-to-person offenses. The chart shows the amount paid for juvenile delinquency cases as a percentage of the rate paid to represent adults for the same class of offense:

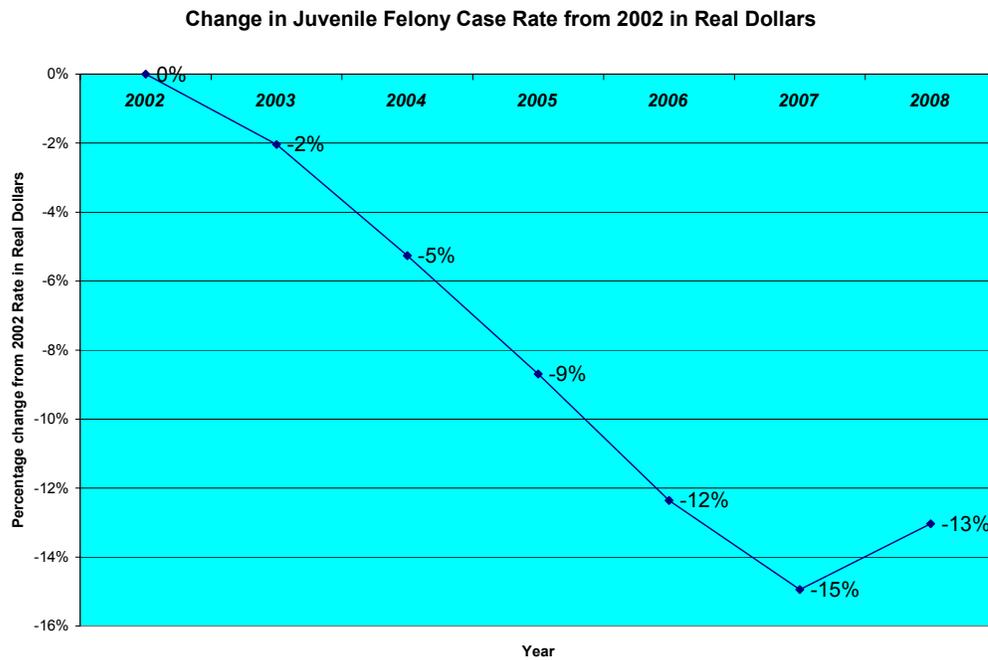
Offense Type	Ratio of Juvenile Case Rate/Adult Case Rate
Class A Felony (non-M11)	45%
Class B Felony (non-M11)	54%
Class C Felony	102%
Misdemeanor	85%

Not only has delinquency representation become more complex, but the stakes for youth have become much higher since the state assumed responsibility for public defense services in 1993. SB 1 increased length of potential incarceration. In 1995, ORS 419C.501 (Duration of Dispositions Statute) was amended to increase the limit on sentencing of juveniles from ending at age 21 to ending at age 25. OR Legis 422 (1995).

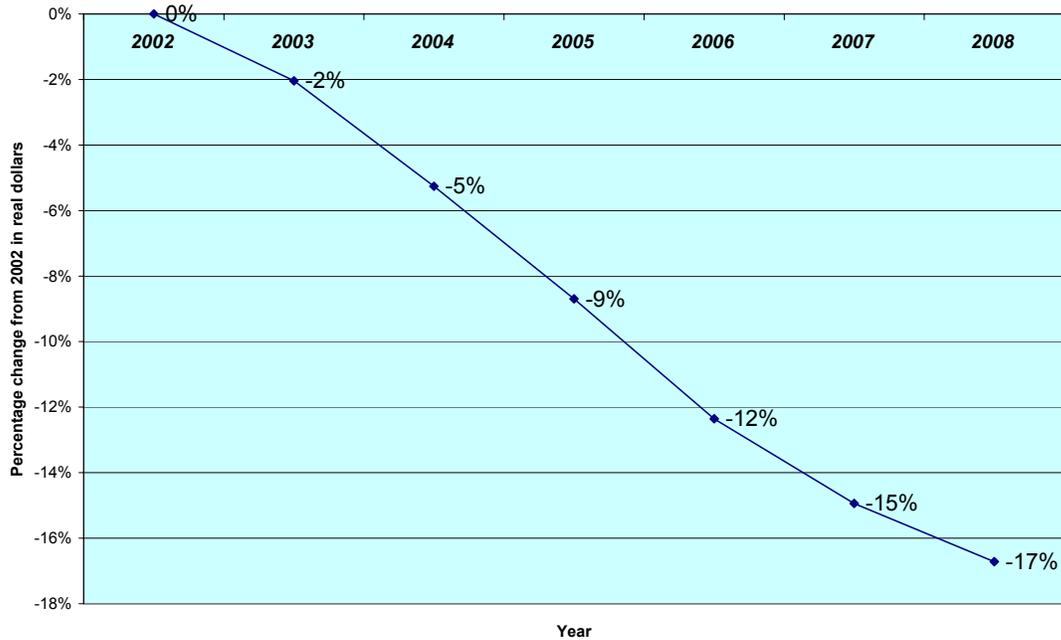
Also in 1995, juveniles were mandated to register for lifetime sex offender status, with the possibility to petition for relief from registration after 10 years. Also, new laws regarding sex offenses affecting juveniles have included mandatory sentencing and remand to adult court. Pre-trial detention statutes have also been changed. For example, courts may now order mental health assessments in some cases involving firearms.

Changes in scientific knowledge and changes in the Oregon population also make delinquency representation increasingly complex. Scientific advances in neuroscience, specifically in the areas of child and adolescent brain development, demand that counsel for children increasingly must address the issues of competency, knowing and intelligent waiver and voluntariness in many more cases. In addition, with increases in migrant, immigrant and refugee populations in Oregon, more delinquency and dependency cases involve more interpretation and culturally competent legal services. In practice this means that cases require more time and attention by attorneys and their support staff.

In spite of the increasing complexity of juvenile delinquency cases and the more serious consequences for adjudicated youth offenders, and in addition to the disparity between adult criminal and juvenile delinquency defense, rates for juvenile delinquency representation have fallen more sharply than the rates for dependency representation.



Percentage Change in Misdemeanor Case Rates since 2002 (in 2002 dollars)



We urge the Commission to craft Policy Option Packages for 2009 in a manner that addresses both the disparity between public defender salaries and district attorney salary scales and also works to reverse the trend toward increasing caseloads. Case prices must be structured in a way that brings salaries closer to parity and controls or reduces caseload sizes simultaneously. This is the only way in which the goals for high-quality representation for indigent clients aspired to by the Commission, by the Office of Public Defense Services, and by the firms dedicated to public defense can ultimately be achieved.

Thank you for your support and your efforts to champion a quality public defense system in Oregon.

Sincerely,

Mark McKechnie,  
Interim Executive Director

Angela Sherbo,  
Supervising Attorney.

C: Ingrid Swenson, Executive Director, OPDS