

Members

Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
Henry H. Lazenby, Jr.
Peter A. Ozanne
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

Thursday, August 5, 2010
10:00 a.m. – 3:00 p.m.
Room 357
Oregon State Capitol Building
Salem

AGENDA

1. **Action Item:** Approval of the Minutes of PDSC's June 17, 2010 Meeting
(Attachment 1) Barnes Ellis
2. **Action Item:** Approval of Service Delivery Plan for Clackamas County
(Attachment 2) Barnes Ellis
Commissioners
3. **Action Item:** Discussion and Approval of PDSC '11-'13 Budget Narrative
(Attachment 3) Barnes Ellis
Commissioners
Kathryn Aylward
4. **Action Item:** Amendment to Eligibility Standards
(Handout) Kathryn Aylward
5. Discussion of Service Delivery Plan for Deschutes County
(Attachment 4) Barnes Ellis
Commissioners
Ingrid Swenson
6. Best Practices for Boards & Commissions
(Attachment 5) Commissioners
Ingrid Swenson
7. OPDS Monthly Report
-'09 -'11 budget
-Delinquency Representation Update
-October Meeting and Retreat
OPDS staff

Notes

Please note: Lunch will be provided for Commission members at 12:00 p.m.

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

Next meeting: PDSC's next regular meeting is on Friday, October 22 from 12:30 to 4:00 p.m. The Commission will have a retreat on Saturday, October 23 from 9:00 a.m. to 2:00 p.m. Both meetings will be held in the Cove Room at the Agate Beach Hotel in Newport, Oregon.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, June 17, 2010
9:00 a.m. - 2:00 p.m.
North Sister Room
Seventh Mountain Resort
Bend, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
Peter Ozanne
John Potter
Janet Stevens
Hon. Elizabeth Welch
Chief Justice Paul De Muniz

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Peter Gartlan
Paul Levy
Billy Strehlow
Amy Jackson

The meeting was called to order at 9:00

Agenda Item No. 1 Approval of the Minutes of PDSC's April 22, 2010 Meeting

Chair Ellis moved that the resolution adopted by the Commission, as it appeared on page three of the official minutes, be amended to reflect the actual resolution approved by the Commission: "Beginning in January of 2010, every contractor for public defense legal services shall be governed by a board of directors that includes at least two independent members who do not provide services under the entity's contract and are not elected by those who do. In lieu of a board of directors, a contractor shall demonstrate to OPDS staff and the Commission effective and appropriate financial safeguards and quality assurance mechanisms." Hon. Elizabeth Welch seconded the motion; without objection the motion carried: **VOTE 7-0.**

Commissioner Ozanne pointed out an error on page eight and proposed that the word "million" be stricken and the word "billion" inserted instead. John Potter moved to approve the correction; Janet Stevens seconded the motion; without objection the motion carried: **VOTE 7-0.**

MOTION: Chip Lazenby moved to approve the corrected minutes; Hon. Elizabeth Welch seconded the motion; without objection, the motion carried:
VOTE 7-0.

Agenda Item No. 2

Presentations on Public Defense Delivery in Deschutes County

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Brendon Alexander of Alexander and Associates said that his office had reluctantly agreed to handle early disposition cases after the OPDS analyst for the county told him that his firm's contract would not be renewed unless it agreed to take responsibility for the EDP program. He said that he had run the program as well as he could have, given the resources available. It is a burden for a small firm to provide coverage for this court on a daily basis. He would not be unhappy if responsibility for the program went to another provider. It is a money losing kind of representation for him. The number of clients varies from two or three a day to 15 or more. Discovery is provided in advance. Most of the cases involve pleas with a set-over for sentencing. If all of the conditions are met, the case is closed. The goal is to keep people off probation. At the initial appearance the defense attorney tries to identify the cases that are not appropriate for EDP. Even if a civil compromise were possible in some of these cases, the firm does not receive adequate compensation to explore this option for EDP clients. Most cases are second degree thefts, primarily shop lifts. In most of these cases the defendant has already had an opportunity to get the case dismissed through a victim/offender reconciliation program but has failed to complete the conditions. Other case types include misdemeanor hit and run cases and other motor vehicle cases. Most of the time there is a plea offer that reduces it to a careless driving, which means the defendant will not be convicted of a crime and his license will not be suspended. Oftentimes they are very questionable cases, but the attorney can usually identify those by reading the reports. Criminal mischief is the third major category of cases in the program.

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

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

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

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

Commissioner Lazenby expressed concern about whether these programs are really making the system more efficient. Does the benefit outweigh the limitations imposed on the attorney/client relationship? Mr. Alexander said that one benefit is that PDSC is saving \$300 to \$400 per case through the use of this model. Chair Ellis said that a decision by the Commission on whether to continue funding this type of representation should be postponed until willingness of local officials to change the program had been explored. Ingrid Swenson was directed to discuss possible changes with Deschutes County officials. Commissioner Stevens inquired whether there wasn't a value in having someone inform this group of defendants about the program and what they could expect from it without actually representing them. Commissioner Ozanne inquired whether most of these defendants wouldn't otherwise be waiving their right to counsel. Mr. Alexander said that he does believe it is important for them to have some legal advice about the impact of their criminal histories and how they could be affected by the property crime measures, and whether they are eligible for expunction of their records. People want someone to tell them that they will not be going to jail, tell them what the maximum punishment is going to be. Even though the judge is responsible for taking a knowing and informed plea time does not allow the judge to provide all the information people want and clients understand it better coming from an attorney than from the judge's comments to a whole roomful of people.

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

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

could benefit from the participation of the deputy district attorneys who are prosecuting the family's criminal cases.

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

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

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

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

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

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

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

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

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

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

Agenda Item No. 3

Commission Discussion of Service Delivery Plan for Clackamas County

Ron Gray said that the Clackamas Indigent Defense Consortium's (CIDC) president has written a proposed revision of the group's bylaws. The new bylaws will allow the group to bring in two outside members. Judge Ray Bagley is still available and when the new bylaws are in place, recruitment for the second member will begin. The board will continue to have nine members, two of who will be permanent. The others will rotate out of the attorney pool for two-year terms. The President of the board, Brad Jonasson, has recently retired but will remain president for a year. They are still discussing how to recruit the second outside board member. Chair Ellis suggested that they confer with Paul Levy about the method of selecting the outside members since the Commission has defined independent board members as persons who are not receiving public money for cases and who are not selected by those who do.

Mr. Gray said that another CIDC member had been appointed to the bench and one had retired. In seeking to replace those two members, the group received a large number of applications. One attorney with approximately 10 years of practice has been accepted. A second attorney who has been practicing in another consortium is being considered. She was one of three well-qualified attorneys who applied. There are also two new lawyers in the apprenticeship

positions. CIDC has now approved a “work up contract” which would allow an attorney to start out taking only misdemeanors and minor felonies. He will continue to work with his mentor from the apprenticeship program and will be reviewed after six months. After six months it will be determined whether he will be a permanent members and, if so, he will continue to “work up” to handling more serious cases. With this member the group will have 30 members, its highest number. A former court bailiff will be starting the apprentice program.

Chair Ellis commended CIDC for making good progress and responding to the Commission’s concerns.

Marty Cohen said that Independent Defenders, Inc. (IDI) had conducted an online survey of judges, CASAs, juvenile court counselors, DHS and OYA workers. More than 60% responded. For the most part respondents thought that the attorneys were doing well. The survey did not identify lawyers by name. Respondents were asked to assess quality of representation by the entire group. Some respondents said that they would prefer to provide information about individual attorneys. Some responses did talk about the work of individual attorneys. Some who provided very negative information did not identify the attorneys about whom their comments were made. Mr. Cohen said he was trying to obtain additional information. Commentators said that communication with the group has improved. IDI members meet annually with the CASAs. The last meeting was very successful. No new members have been added to the board but Mr. Cohen has talked to a retired judge about serving. If independent members must be selected by someone other than the consortium members, the group will have to revise its bylaws.

Mr. Cohen reported that the group’s working relationship with the judges is fairly good. Judge Darling seems satisfied with the progress that has occurred. The caseload has fluctuated over the last six months. Delinquency cases are down but dependency cases have gone up. One new attorney has been added to fill a vacancy but no others will be added until it appears that the caseload will require another attorney.

In terms of attorney evaluations, Mr. Cohen said that he does them on an informal basis. The group is planning to create a more formal process.

Ron Gray said that CIDC had evaluated all of its attorneys and included the names of individual attorneys on the questionnaire. Board members were then assigned to attorneys who were criticized. In one case an attorney was reported to be effective in court but very unorganized. That attorney hired a consultant to her organize her office. There have been reports of significant progress.

Agenda Item No. 4

Update on Service Delivery in Marion County

Tom Sermak said that he was satisfied with the way the public defense system is functioning in Marion County. He believes that the public defender’s office is now accepted in the criminal justice community and has a good working relationship with the courts and the sheriff’s office. For the time being the office will not fill one open position. The office has completed its developmental stage and will now be focusing on making internal improvements. He said that he talks frequently with the judges and receives good reports on how the lawyers are doing. His office has a good working relationship with the MCAD lawyers and with administrator Paul Lipscomb.

Paul Lipscomb said that MCAD had established a standard of excellence and that it is therefore continually seeking to improve.

Commissioner Ozanne said that service to clients is the main objective and that both groups appeared to have made progress in that regard. He inquired what role the public defenders office was playing in the legislature.

Tom Sermak said that he was serving on an E-Board advisory group and was working closely with the lobbyist for the Oregon Criminal Defense Lawyers Association. His office is willing to serve as a resource on legislative issues. Paul Lipscomb said that he has also been providing support to the defense bar's participation in the legislative process.

Chair Ellis inquired about the professional improvement plan that was being used by MCAD. Paul Lipscomb said that when a lawyer appears to be struggling to get off probation he meets with the attorney and discusses what the issues are and possible solutions. The lawyer is then required to prepare a proposed professional improvement plan, which he then discusses with them. This approach requires the attorney to take ownership of the problem and develop a strategy to address it. He said that his role in quality improvement is to be a coach.

Chair Ellis congratulated both Marion County providers for the progress that had been made. The county's system had gone from being a problem to being a model in the state.

Commissioner Potter said he sensed that there was less tension between the contractors over caseloads than there had been. Paul Lipscomb said that MCAD members would be concerned if there were an interest in moving additional workload from MCAD to the public defender. Tom Sermak said that he and Paul Lipscomb confer as needed to make sure that the cases are distributed as required by their contracts. The public defender picks up cases one day a week and MCAD picks them up four days a week. Overall caseload is currently down.

Agenda Item No. 5

PDSC 2011-13 Budget Request Policy Option Packages; Contractor Recommendations

Kathryn Aylward reported that when the most recent revenue forecast was lower than expected, the governor asked executive branch agencies to reduce their current biennium general fund expenditures by 4.63% effective July 1. Allotments to those agencies will be reduced accordingly. PDSC is not subject to the governor's order but legislative leadership requested that PDSC develop a similar reduction plan. The reduction for PDSC would be \$9.7 million. The reduction would be made to the Public Defense Services Account and would amount to about 32 days of representation.

In the 2011-2013 budget proposal there are essential packages, necessary to maintain the current service level, and policy option packages which cover things the agency would choose to do if funding were available. In the essential budget there is a large item to cover mandated caseload which includes projections for caseload changes (which is a decrease in this biennium) and inflationary factors. It also includes appellate mandated caseload. The total will be approximately \$20 million for the mandated caseload package. Appellate caseload is skyrocketing, depending on the time period, between 20 and 33%. PDSC will be requesting 12 additional attorneys and two support staff positions. The total for this portion of the package is \$2.6 million. Chair Ellis inquired

about the reasons for the increase in appellate cases. Ms. Aylward said that some of the cases were a result of HB 3508 but she will continue to analyze it. Since the cases are currently just being filed, the real impact won't occur for six to nine months.

She said that policy option package proposals in the Commission materials represent the proposals submitted previously by the Commission. Commissioners asked about the post conviction relief proposal and why the number had changed over time

Ms. Aylward recommended that the Commission submit a reasonable set of proposals in light of projected budget limitations. She also recommended that the post conviction relief proposal not be included this biennium. Ingrid Swenson said that before seeking additional resources for post conviction cases, it would be appropriate to evaluate the work of the groups that are now providing representation to see if an employee based system is still needed. Chair Ellis and Commissioner McCrea supported deleting the PCR package in this budget proposal.

Commission Lazenby inquired whether it would be beneficial to ask for more initially that could then be withdrawn or to start with a more frugal approach. Kathryn Aylward said that it depended upon who was producing the numbers but she believes it is better to have a reputation for being realistic. In difficult biennia, policy packages come off the table and the legislature looks at cuts to the current service level. Ingrid Swenson noted that the policy packages permit the agency to discuss its longer term needs during budget hearings even if they will not be funded in the current biennium. Public comment on the policy packages was invited but none was offered.

It was moved that the Commission approve the submission of Policy Packages No. 100, 101 and 103.

MOTION: Chip Lazenby moved to approve the motion; John Potter seconded the motion; without objection, the motion carried: **VOTE: 7-0.**

Commissioners had a brief discussion about changes in district attorney charging practices, the decline in the crime rate and the potential cost of a pending criminal justice initiative petition.

Agenda Item No. 6

OPDS Monthly Report

Ingrid Swenson said that PDSC continued to report to the E-Board and to the interim Ways and Means Committee on caseload trends and PDSC expenditures as required by the 2009 legislature.

Chief Justice De Muniz said that some of the data in PDSC's report to the E-Board was now out of date and that projected revenue under HB 2287 was now close to what had initially been projected.

Kathryn Aylward said that a lease had been signed on the new OPDS office and that construction was underway. Free rent for the initial occupancy period will cover the cost of the move, which is planned for the end of August. If twelve more attorneys are added, OPDS would have to house them elsewhere.

Ingrid Swenson said that she and Commissioner Welch had sent information to juvenile department directors and had corresponded by the juvenile court judges

about waiver of counsel by youth in delinquency cases. The responses of the judges indicated that some judges support representation for youth in all cases and others permit waiver in a variety of cases but acknowledge a need for more education among judges on these issues. She and Commissioner Welch will meet and discuss appropriate next steps.

Peter Gartlan said that the Appellate Division would be adopting a regional assignment plan for its deputies. Deputies would be made available to attorneys in their assigned geographic regions for consultation and communication in order to assist them in development of the issues. Appellate Division lawyers will make connections with the assistance of the CBS analysts. Mr. Gartlan announced that Shannon Storey had been appointed a senior deputy and would be in charge of the Juvenile Appellate Section. He was asked about the growth in the appellate caseload and he said that he did not have an explanation but that it might be related to the number of defendants who are incarcerated since they seem more likely to appeal. The increase started at the end of 2009 but is continuing. He noted that the Department of Justice's caseload was also increasing and that the Court of Appeals had been inundated with cases for a couple of years. He will be looking for patterns and explanations for the increase.

The Chief Justice said that volume of cases in the Court of Appeals is a serious problem. They have been experimenting with two-judge panels and he has said he would advocate for an additional panel. He said that the public defender's office has become a very sophisticated advocacy group and one that PDSC should be proud of, presenting issues to the court that the court has to wrestle with.

MOTION: Peter Ozanne moved to adjourn the meeting; Shaun McCrea seconded the motion; without objection, the motion carried: **VOTE 6-0.**

Meeting was adjourned at 1:23 p.m.

PUBLIC DEFENSE SERVICES COMMISSION
UNOFFICIAL EDITED TRANSCRIPT

Thursday, June 17, 2010
9:00 a.m. - 2:00 p.m.
North Sister Room
Seventh Mountain Resort
Bend, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
Peter Ozanne
John Potter
Janet Stevens
Hon. Elizabeth Welch
Chief Justice Paul De Muniz

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Peter Gartlan
Paul Levy
Billy Strehlow
Amy Jackson

The meeting was called to order at 9:00

Agenda Item No. 1 Approval of the Minutes of PDSC's April 22, 2010 Meeting

- 0:27 Chair Ellis The first item is the approval of the minutes from April 22. Are there additions or corrections? I do have one if no one else does. I think on page three, the first full paragraph where we put in the minutes the motion that was passed regarding either having an independent member, two independent members on the board, or another acceptable safeguard. I think we ought to not paraphrase it but actually use the language that was used at the meeting. I would move to substitute for the paragraph on page three the following: I am taking this from page 25 of the transcript. It would read "after further discussion the Commission directed OPDS to negotiate contracts beginning in January of 2012 only with contractors offering public defense legal services governed by a board of directors that includes at least two independent members, or in lieu of a board of directors, demonstrates to OPDS staff and the Commission, in response to an RFP, that the contractor has developed and implemented effective and appropriate financial safeguards and quality assurance mechanisms. An independent board member is a person who does not provide services under the entity's contract and is not selected by those who do." That would be my motion. Hon. Elizabeth Welch seconded the motion.
- 2:02 I. Swenson May I comment before you vote, Mr. Chair? I apologize. I did leave it out and paraphrase it. That was partly because as I looked at it I wanted to clarify a couple of things before that became your official statement. Obviously, the minutes should reflect what you adopted and that is an accurate reflection of that. We can either talk now or at some later point about a potential amendment to your resolution.
- 2:37 Chair Ellis I missed your last sentence. We can either ...

2:39 I. Swenson Later in the meeting we can talk about proposed amended language. It is the same concept. Commissioner Stevens, for example, had suggested that the comments about what makes for an independent board member be moved up and connected with the earlier language. It was just an effort to clarify your intentions.

3:08 Chair Ellis Why don't we do this? At least with our minutes I don't think we get to rewrite history. I would like to have the minutes as close to what we did as we can. Then if at the present meeting there is a desire to clarify that we can do that. Then clarification will show up in the minutes for this meeting. This is the only record of what we did. I did really want it verbatim.

3:37 I. Swenson Good.

3:36 Chair Ellis There is a motion and a second.

3:43 P. Ozanne Mr. Chair, it is presumptuous of me to suggest amendments since I wasn't at the meeting but the last page quotes Mr. Borden and says \$2.6 million dollar deficit. It actually should be billion.

4:05 Chair Ellis The last page of the minutes. So let's vote on the first amendment and I think you can raise this even though you weren't there. Any further discussion on the first motion?

4:40 S. McCrea Well, Mr. Chair, in looking at this and what I think Ingrid was referring to is after the language that you are talking about on page 25, Commissioner Stevens then made some comments about the editing aspect. I want to make sure that the language that you are talking about includes – in other words that it includes everything that was said and our intent up until the time that the motion passed.

5:12 Chair Ellis If you will observe that there was a motion by Mr. Potter to approve the language. I did understand it to be approving what Paul had proposed. I agree with that. Let's revise the motion. What I am trying to get at is make it verbatim and not a summary. The revision would be that beginning in January of 2010, every contractor for Public Defense Legal Services shall be governed by a board of directors that includes at least two independent members who do not provide services under the entity's contract and are not elected by those who do. In lieu of a board of directors, a contractor shall demonstrate to OPDS staff and the Commission effective and appropriate financial safeguards and quality assurance mechanisms. That is the revised motion. Is there a second? Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

Then Commissioner Ozanne points out an error on page eight and proposes that the word "million" be stricken and insert in lieu the word "billion." Does someone who was present want to make that motion? John Potter moved to approve the correction; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

With the two amendments is there a motion to adopt the minutes?
MOTION: Chip Lazenby moved to approve the corrected minutes; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

7:45 Chair Ellis The minutes are adopted. Ingrid, I had several typos in the unofficial transcript. I don't think that requires a motion and I will get them to you afterwards.

7:57 I. Swenson Thank you.

Agenda Item No. 2

Presentations on Public Defense Delivery in Deschutes County

- 8:02 Chair Ellis We are very happy to be here in Deschutes County. The next order of business is to review the public defense delivery system here in Deschutes County. Do you want to introduce that, Ingrid?
- 8:21 I. Swenson Thank you, Mr. Chair.
- 8:29 J. Potter Is that microphone working?
- 8:29 I. Swenson We have our mike here. Can you not hear?
- 8:30 J. Potter I can hear. I am just wondering if people in the back can hear.
- 8:35 I. Swenson Can you? Okay. It must be turned on at another location because it has no mechanism for doing that here. I will speak loudly and if anybody has trouble hearing let us know. Mr. Chair, Commissioner Potter and I were here in May and had the opportunity to interview many of the people in the local juvenile and criminal justice systems. We were invited to speak to the judges who met together for the purpose of providing some information to us. As I mentioned in the report, we talked to the district attorney and two of his deputies. We spoke with Mr. Mazorol, the trial court administrator, and members of his staff about how things were working. We also met with representatives of the Department of Human Services, the juvenile department, the CASA program and the Citizen's Review Board and with all of our contractors. The report is essentially a description of how this system works in contrast to the ones that you have examined before. It is unique as you have found most systems to be. We have four contractors in this area - one non-profit public defender office, two law firms and a consortium, so it is the mix that you see around the state. This morning most of the judges are scheduled for court appearances and I don't know whether any of them will be present today. Mr. Mazorol, the trial court administrator, is present and a member of his staff who is the person that manages the family court. I thought you might to hear a little bit about that court. It is a special one and is performing very well. Then I believe most of our contractors will be here to talk to you about what is happening with them and what kinds of recommendations they might have for you. I included a couple of topics that I thought you might want to look at a little more closely. There are here, as elsewhere, some issues in the juvenile system in terms of representation at initial hearings and contact with clients in a timely way. Those you are quite accustomed to and then EDP representation. The program here, as I mentioned in the report, is not of the type that the Commission has endorsed in its guidelines for these programs. It is operated quite differently from those guidelines. You might want to make some inquiries about that. Then with respect to the contractors here I mentioned that caseload is either flat or slightly declining. It may be a question of whether we can sustain four providers in this area in the longer term. They each perform functions that are valuable to the system. You may want to inquire a little bit on that issue as well. Maybe Mr. Mazorol could say hello this morning and answer any questions that might exist about the court structure. I do point out that it is an unusual calendaring system.
- 12:33 E. Mazorol For the record, I am Ernie Mazorol and I am the court administrator for Deschutes County.
- 12:37 Chair Ellis Welcome and thank you for coming.
- 12:36 E. Mazorol Thank you for inviting me. I have been here since 1984 and welcome to Deschutes County. I hope you have a good time here and enjoy the area. I did not come with any prepared remarks. I was informed that this was going to be a discussion. I would like to share with you, if you wouldn't mind, kind of what has happened with our caseload over the last five years, not just in the criminal area but all of the areas, to give you an idea of the boom and bust period that we are experiencing here. What

you are receiving now is some filing information since 2005. That is the boom period and it goes through 2009, to the bust period. As you can see our caseload continues to grow with the exception of the criminal area. Since 2005, our filings have increased 16 percent. Our biggest growth has been in civil. We have increased 42 percent in the civil area, - general civil, FEDs, and small claims. That caseload continues to spiral upward. Our domestic relations filings have increased 13 percent, which is our divorces, our FAPAs (Family Abuse Prevention Act), and our violations have increased 11% which is primarily traffic. As you can see the criminal has decreased six percent. If these trends continue, which we assume they are going to, our filings have not tapered off in the areas where they continue to grow.

- 14:36 Chair Ellis These numbers are raw data cases filed?
- 14:38 E. Mazorol Correct.
- 14:38 Chair Ellis No effort to weigh them by complexity and that sort of thing?
- 14:42 E. Mazorol Not in this report here. This is just raw filings coming through the door. The alarming thing is while you see this caseload growing our staffing has decreased. We currently have a staff of about 50. We have lost about three positions and we are sitting on about five vacancies.
- 15:10 Chair Ellis The judicial positions have been constant but the staff is as you described it?
- 15:16 E. Mazorol Yes sir. We have seven judicial positions and a part-time juvenile referee that hears delinquency cases. Those positions have remained constant but our staffing has decreased significantly, about 15 percent. We are in this steady growth period here in Deschutes County. We have the same number of judges and many more cases to push through with decreasing staff and ability to process these cases. What I wanted to do is give you a broader context. I know your focus is primarily on the criminal area. There are a lot of cases that are going through this system that need to be addressed as well.
- 16:07 Chair Ellis Within the criminal area this decline of six percent - is there anything you observe about the mix of cases where the decline is happening?
- 16:24 E. Mazorol It has been pretty steady with the felonies and misdemeanors. I would say probably – let me look at this real quick. Fewer felonies than misdemeanors. Misdemeanors have stayed pretty consistent. Felonies have gone down from about 1900 to roughly 1400. You are seeing a decline in the felony area.
- 16:47 Chair Ellis From your point of view as the TCA, do you have any observations about how the defense function is being handled here in terms of quality and efficiency? The appointment process - how that is handled?
- 17:14 E. Marozol The quality of representation is very good. The judges indicate that they are very pleased with the quality of representation. They would like to see more attorneys available on the more complex cases. There seems to be a need there for attorneys with more experience and more availability in that area. That is the area that we are suffering a little bit in. The other thing that would be helpful is if the attorneys were able to carry their calendars with them. When we schedule cases in court they would be able to tell us whether they have conflicts with other settings, with other cases. We are right now looking at our calendaring system. We have made a variety of calendaring changes over the years. We have a judge who just retired and a new judge coming in. We don't know who that is going to be in January. We are looking at revamping our calendaring system. We have a hybrid individual calendar system in the criminal area. That appears to create some scheduling conflicts for the attorneys because they are scheduled in different courtrooms. I know that has been a source of difficulty in terms of attorneys being scheduled in different places and trying to appear in a variety of different courtrooms. We are trying to address that as

I indicated. Another difficulty we have is the jail is roughly four miles away from downtown. We do a lot of things over video but I know it is difficult for the attorneys to get out to the jail and meet with their clients before court hearings. It would be very beneficial if there was some way that there could be that contact, more frequent contacts with the attorneys and their clients before the court hearings. My understanding is they had a difficult time doing that and they frequently see their clients at the first hearing.

- 19:17 Chair Ellis If I understand the report there are four defense providers in the criminal area. One fairly large public defender office; one fairly large consortium, and then two smaller firms. How are the appointments allocated? How is it decided who gets which case?
- 19:47 E. Marozol The public defender firm gets a large portion of the felonies and some of the misdemeanors. The DeKalb firm gets a large portion of the felonies as well. Most of the felonies are shared between the DeKalb firm and the public defender firm. The consortium gets the bulk of the misdemeanor cases and we appoint the firm and then the firm gives it to the attorneys in the firm. Then Alexander does a lot of the early disposition program appointments as well as a fairly significant portion of the felonies, but the bulk of the felonies are the public defender's office as well as DeKalb and Alexander.
- 20:36 Chair Ellis When you comment that there seems to be, and I won't use the term "deficiency," but you would like more experienced lawyers for the more complex cases. Is that addressed to the public defender?
- 20:57 E. Marozol That was raised by the judges when Ingrid came out and spoke and met with the judges and asked questions about how the services are being provided. The judges felt that there needed to be more experienced attorneys in the public defender's office or in DeKalb's office. DeKalb handles a lot of the high end felonies but there are very few attorneys there. It would be nice if there were another attorney in that firm or in Crabtree's firm to handle those cases.
- 21:37 Chair Ellis Bend is a lovely place to live. It shouldn't be hard to find somebody over in the valley that has experience and wants to lead a good life over here. I was interested in one item that you may not be able to answer. Footnote eight on page 12 has some statistics that strike me as interesting - that 3.4% of felonies and 2.2% of misdemeanors went to trial compared to a statewide average of nearly double in both categories. Any thoughts as to what may be happening there?
- 22:33 E. Marozol We try to do a lot of settlement conferences. We are trying to get cases resolved short of trial.
- 22:38 Chair Ellis Including the criminal cases?
- 22:43 E. Marozol Including the criminal cases.
- 22:44 Chair Ellis That probably is unusual to have settlement conferences in criminal cases. How are those handled? Who does what?
- 22:50 E. Marozol They are handled in a variety of different ways. Judge Sullivan, who is the primary settlement judge, spends roughly a couple of days a month doing settlement conferences both in the civil and criminal area. It is not unusual in a misdemeanor case that is set for trial in the morning to have it sent up to another judge before the trial occurs to see if it can be settled. It is not unusual for the judges individually to call the attorneys in and chat with them about where they are in their negotiations and settlement. That may not be a full blown settlement conference, but at the same time there are some prolonged discussions in the judge's chamber about those cases.
- 23:43 Chair Ellis With a judge other than the judge who is going to try the case?

23:45 E. Marozol It can be both. Typically, judges other than the judges that are going to try the cases do the full blown settlement conferences but they also conference in chambers before the case to discuss the possibility of settlement as well.

24:08 Chair Ellis Chief, I don't know if that is done very widely in the state. That sounds unusual to me. I don't know if that is what is driving these numbers but it is potentially a very positive thing.

24:31 Chief Justice De Muniz My comment would be, of course, this is one of the top trial court administrators in the state. Ernie Marozol is one of the most experienced and talented people in the state in that job.

24:54 E. Marozol Thank you, Chief.

24:54 Chair Ellis Ingrid mentioned that the EDP program is different than programs of that nature elsewhere in the state. Can you describe to us the EDP program here?

25:10 E. Marozol It has been a while since I have been connected to that program. It is some of the lower level misdemeanors. The district attorney will make an offer that is only good for a short period of time. Brendon Alexander will meet with them as a group, as I understand, and talk to them about how the court system works and what their rights would be and whether or not, and I'm not certain, whether or not this would be a good opportunity for them to take the early disposition without counsel. A lot of cases are being resolved through that early disposition program.

25:54 Chair Ellis He doesn't function as a lawyer for an individual client. He is more in a group information role?

26:04 E. Marozol That is my understanding. That would be a good question for him, though.

26:06 P. Ozanne Ernie, nice to see you again. Do I conclude from your comment that the court considers those defendants uncounseled? Do they waive their counsel for the purposes of that?

26:23 E. Marozol My understanding is they are told that they have a right to counsel or that they can meet with an attorney who will tell them about the early disposition programs and what their options would be. If they come back and don't want to take the plea through the early disposition program then they would be appointed counsel.

26:45 P. Ozanne Right. So the plea itself in early disposition is considered one without counsel?

26:51 E. Marozol Correct.

26:58 Chair Ellis Any other questions?

26:58 P. Ozanne I had one, Ernie, on the jail. Can you elaborate a little more on your comments that lawyers have trouble getting to their clients before the first hearing? Is it your impression that that is because it is difficult scheduling time at the jail? Is it just overloaded attorneys? Do you have a sense what is going on there?

27:21 E. Marozol I think it may be a combination of both - difficulty for them getting in and out of the jail, overloaded attorneys, and distance. I think it is a combination of a variety of different things.

27:41 Chair Ellis Any suggestions you have for us? One reason we go around the state and meet with people in the systems is to get the advantage of your thinking. Any suggestions or thoughts?

28:05 E. Marozol No. I do like the structure that you put in place. We do appreciate having Ingrid and John come out and meet us and talk to us about the system, look at it from a micro and macro level. It is good having this report. I think Ingrid has laid out some good recommendations. Again, we are looking at our calendaring system. We are probably going to be making some changes over the next four to six months. Some of the issues that she has outlined in here will definitely go into our thought process. We are going to be probably in the next 60 to 90 days coming up with a plan for changes. At that point in time we will be meeting with the bar and talking to them about it before any final changes are made, but having this report will be very helpful. Thank you again for doing that.

28:59 Chair Ellis I can't help but ask you about one other aspect in the report, this footnote 17. It says "One interviewee said that if he were a public defense client and either of two attorneys he identified were appointed as his counsel, he would sell his dog to be able to retain his own counsel." My question is not who are we talking about but do you feel you know where to go if you see something that causes you to think a lawyer is underperforming or performing inappropriately?

29:42 E. Marozol You know that is the judge's responsibility. I can tell you that the judges in Deschutes County are very active about adequate representation of counsel. There have been discussions among the judges, primarily the presiding judge, with members of different firms about their attorneys. When they have concerns they make it known. They want it addressed and long term they will not tolerate it. I can tell you that they are active and they know where to go and they take it very seriously.

30:20 Chair Ellis One I particularly want to ask you about, and not that this is a reference to lawyers from that group, but just the form of the structure of a consortium. We see in different areas of the state some of them have pretty good quality control mechanisms. Some really don't. So, from your point of view on the consortium piece do you feel you know where to go if you see something that you think really isn't right.

30:55 E. Marozol Jon Pritchard manages that consortium and he has been very responsive to the court and yes, we do know where to go.

31:06 Chair Ellis Any other comments?

31:07 J. Potter It strikes me, Ernie, that this county has been fairly stable in its criminal justice system for awhile. That means the prosecution, defense, and the courts. You are going to have a change in the prosecutor starting in a few months. You are going to have a new judge. Do you anticipate any substantive changes taking place in the delivery system that would be affected by this?

31:36 E. Marozol I can't say just yet. I can tell you there is a contested race right now for the judgeship. Either one would be a good candidate. One comes with considerable criminal experience. He is a deputy district attorney now. The other has more civil experience. Either one of them will require some adjustments. It just takes time for a judge to kind of fit in in the sense of learning the job, etc. Having somebody that potentially could come in with a lot of district attorney experience and continuing to work in that office for quite some time poses some unique problems in terms of what types of cases they can hear. That could have an impact on the assignment of cases. It is yet to be determined who that is going to be. I think that with a new district attorney coming in there is bound to be some turmoil. There is bound to be some looking at policies that the assistant district attorney has. There are bound to be some issues related to staffing. I think that is just going to take some time to play out. It was a pretty contentious race. We are just going to have to give that a couple or three months and I think as we start developing our new calendaring system, we will be talking with Pat Flaherty, the new district attorney, and trying to work out some of the logistics but possibly what he plans to do when he comes in, how he

plans to structure and organize that office. That will probably go into some of our thinking in a sense of how the docketing system will be put in place. So, yeah, I do see some fairly significant changes coming in January. I just don't know exactly the extent of what they are going to look like.

- 33:44 J. Potter Well, clearly we have an interest in the outcome. I know that you know that you can talk to Ingrid and certainly any of us. I hope that communication line stays open.
- 33:59 E. Marozol That is great. Thank you.
- 33:59 Chair Ellis Thanks Ernie.
- 34:07 E. Marozol Thank you very much. Good seeing you Chief.
- 34:12 I. Swenson I also invited Brie Arnette who is the manager of the family court program here to answer any questions, or provide some general information about the court if you are interested in that. Do you want to just give them a quick summary?
- 34:30 B. Arnette Good morning.
- 34:33 Chair Ellis Thank you very much for coming.
- 34:33 B. Arnette Thank you for having me. I am not sure if you are familiar with the family court program in Deschutes County. It is very unique. It was the first unified family court in the nation in 1994. It is a hybrid model. The criteria for coming in is having an open dependency case, having a criminal history with the parents and an open domestic relations case.
- 35:01 Chair Ellis So any one of those three?
- 35:02 B. Arnette No, all of those. In addition, I generally see domestic violence, substance abuse and mental health being issues with the families that I work with. There are two parts to the program. The first piece is the consolidation piece. If it meets that criteria the cases get bundled before one judge. It reduces conflicting orders and the bench is more apprised of the family situation. The second portion involves the coordination of services. That is what I do, bring folks to the table. Generally speaking I have a representative from DHS, CASA, the parents, the attorneys, treatment providers, school personnel, and we do unified treatment planning for the family.
- 36:01 Chair Ellis So walk me through where the lawyers are in that process.
- 36:07 B. Arnette From the beginning of the case there are appointed attorneys, including the children. The attorneys are present for the family court meetings and advocate on the behalf of their client.
- 36:27 Chair Ellis Questions on family court?
- 36:34 P. Ozanne I would like to follow up. Thanks for coming. With an open criminal case is that possible? The defense attorney is there. Does counsel not participate? How does that play out?
- 37:05 B. Arnette That is a good question. Generally speaking we don't discuss matters that will affect the criminal case at this meeting. I have yet to have anyone fail to participate in the meeting because we are looking at reunifying them with their child, looking at planning around that so if there are issues that may affect that criminal case we don't discuss those issues. You are right that there is a room full of attorneys as well as other folks. Typically my meetings are 10 to 15 people in attendance.
- 37:43 Chair Ellis So if you have a termination of parental rights case is that part of your process too?

37:49 B. Arnette On the statistical sheet that I presented you will see that in the bottom right corner. I have been with Deschutes County for about two and a half years. These are the stats on the families that I have worked with. There have been zero TPR cases. The folks that have worked in the treatment planning process and have had at least three meetings have 100 percent success rates in terms of permanency for the children. Eighty percent are returned to a parent. The remainder have either aged out or been adopted.

38:30 C. Lazenby These are unduplicated families. You don't have folks in these families that have over time cycled through a couple of different times?

38:48 B. Arnette There are approximately 300 family court families. Of the active court cases there are about 100 and 200 inactive over the course since 1994. I have worked with about 30 families in the last two and half years. So, no, those stats aren't duplicated.

39:07 C. Lazenby Then to get back to Commissioner Ozanne's question about the resolution of the outstanding criminal charges. The court is sort of getting its arms around all of the family matters. Would the family court judge necessarily be the judge that would handle the disposition? Let's assume the criminal matter is a DV case or something like that. Would that judge handle the disposition of that or would it be another judge who would handle the criminal disposition? Then maybe another sentencing or probation might be passed on?

39:43 B. Arnette Good question. Typically the family court judge hears all cases. criminal as well as dom rel as well as dependency. However, occasionally another judge will hear a case if that is what is preferred.

40:04 C. Lazenby Are there any instances where it works kind of like the drug courts that work around the state, where folks will come in and there is either a provisional plea that is entered subject to them completing the rest of the program? Or is it really handled on a separate track? It is not tied into the other coordinated work that is tied into the family court?

40:30 B. Arnette It is definitely not tied in from a logistical point of view. However, because the family court judge knows all of the matters at hand, I would say that their performance in family court definitely is understood by the parties involved. If somebody, for example, is doing very well over the course of a family court program, that is taken into consideration but there is no plea deal or change in sentencing based on them being in the family court program.

41:04 Hon. Elizabeth Welch Everybody is envisioning this room full of lawyers. Assuming that the parties are getting a divorce or fighting over some post-divorce custody issues that would bring it into this arena. There is a dependency case in juvenile court, otherwise we would be in juvenile court, and a criminal case and all three of those of present in each of these cases, is that right?

41:37 B. Arnette Correct.

41:42 Hon. Elizabeth Welch Let's assume dad is the bad guy, okay, in terms of the criminal matter. Dad has a lawyer in the criminal case. Does he have a different lawyer in the dependency case or does he have the same lawyer in the dependency case?

41:54 B. Arnette We like to see one attorney representing each parent and typically I have multiple parents. Normally I have one mother and multiple fathers in all of my cases, which means I have more lawyers. It is not always the case that one attorney represents a father so sometimes there are multiple attorneys representing one father on different cases.

42:15 Hon. Elizabeth Welch Has there been an effort to actually get a single lawyer to represent a dad, not all dads, in both of those matters?

42:30 B. Arnette Yes.

42:35 Hon. Elizabeth Welch How has that gone? Have you been able to get anywhere with that?

42:38 B. Arnette I would probably defer to the attorneys who are here in the room to answer that question. I would say in my experience probably 50 to 70 percent of the time we have one attorney representing a father, a parent, in multiple cases and in the remainder there are multiple attorneys. I have found in Deschutes County those attorneys communicate very effectively between each other. I haven't seen any real issues.

43:08 Hon. Elizabeth Welch Same kind of question. Same dad and there is a domestic relations issue of some sort. Does the appointed attorney represent dad in the domestic relations matter?

43:24 B. Arnette What I have seen is most of the time they are *pro se* on their domestic relations. However, I have seen the attorney that is representing them on the dependency matter assist them in terms of ...

43:43 Hon. Elizabeth Welch Getting some legal advice?

43:43 B. Arnette Telling them what sort of paperwork they need to file. That sort of thing. Not representing them.

43:42 Chair Ellis Any other questions? Thank you.

43:59 B. Arnette Thank you very much.

44:12 Chair Ellis Good morning.

44:12 T. Crabtree Good morning. Tom Crabtree. I am the head of the public defender's office in Bend. I have a few comments about what has been talked about so far. I would be happy to answer any questions that you might have. There has been a long stable history in central Oregon for the existing contractors that provide indigent defense services in Deschutes County. That, I think, has lead to overall high quality services that the clients receive.

45:03 Chair Ellis Remind me of the history. I think I know this but you had a private firm that converted into a non-profit PD?

45:10 T. Crabtree Essentially. We started in July of 1981. We were a private law firm but literally 99 percent of the cases we had were court appointed. There wasn't time to do anything else. I think we might have had three private cases over the course of the five years or so before we converted to a 501(c)(3) program.

45:44 Chair Ellis The conversion was in the late 80s?

45:47 T. Crabtree Correct. It was 1986, I believe. At that time we had just become a public defender organization with a board of directors. Private business was never a major part of our functioning at all. It was a very easy conversion to a PD.

46:20 Chair Ellis I didn't mean to interrupt.

46:22 T. Crabtree Not a problem. One of the issues that Ernie brought up was the judges would like to have more experienced people handling the major felony cases. I know our office would certainly appreciate that as well. I know Mr. DeKalb in his comments to the Commission made mention of that fact too. Chairman Ellis you said Bend is a nice place and it shouldn't be hard to get people to come here. While in general that is very true, the problem has been the money aspect. Getting enough salary to bring somebody over. What we had for a period of time we had people going up through the system that were getting more experience. Than when BRAC hit we took a hit in terms of people leaving the office, not being able to count on this remaining stable.

47:36 Chair Ellis Did they stay in the community?

47:38 T. Crabtree Yes.

47:43 Chair Ellis In private practice?

47:43 T. Crabtree For the most part. Then we had an attorney who would be with us today if not for that. He loved the work he was doing. He had a new family. We took a 10 percent salary cut during BRAC and he came to me with tears in his eyes and just said, "How long is this going to go on?" I wanted to be able to tell him that this was a one-time thing and it is not going to happen again, but I can't foresee the future.

48:19 Chair Ellis You didn't assure him that you could cap the well and suck it up in a straw?

48:25 T. Crabtree I think the nuclear option was more tenable at that point. In any event, he is now a partner in one of the major civil firms in town. He is doing a great job for them. We had that issue and at the same time going on, the district attorney's office's salary kept going up and up and ours were remaining the same. It was not a time when indigent defense budgets were increasing greatly. It was, "If you want more money you have to do more cases."

49:09 Chair Ellis Have you lost lawyers to the DA?

49:10 T. Crabtree Yes. We lost a couple of people in 2005 to the DA's office. At one point the DA's office starting salary was \$26,000 more than ours. For every person in the office there was a salary differential of about \$26,000. At the start of the last contract, when there was a major influx of funds, we were able to cut the salary differential to about \$10,000. It was still the highest differential between any DA and any public defender in the state, but it was a huge increase from our perspective from where we had been. Now that salary differential is up to about \$15,000. We start ours at \$60,000. The DAs starts at \$75,100 roughly. They are going up again two percent in January. That has been the real problem. And at the same time Commissioner Stevens will tell you the housing market just went totally nuts. At one point in '06-'07 the median price of a house in Bend was \$390,000. I talked to people about coming over here and they would look at the real estate market and say, "I just can't afford it."

51:05 Chair Ellis This is the same story Jack Morris has in Hood River where that happens. Hood River is still up but Bend is down.

51:12 T. Crabtree Bend is way down. I think in the Bulletin this morning \$195,000 is the median price now. Now would be a good time to come. The good news is that since the start of '08 we have had relative stability in our office. It has always been the issue of having the money to attract the people.

51:50 Chair Ellis Do you actively recruit from places like MPD or Lane PD?

51:56 T. Crabtree All over the state. Recent history, meaning going back three or four years, we have had a lot of people from the Umatilla office come to work for us. Bend is a nicer place to live than Pendleton. We were able to get some people there. I haven't been

able to attract people from Portland with one exception. Well, somebody out of law school. I haven't been able to attract too many people coming from Eugene. Money has always been an issue here. One of the problems we are having now that relates to that is the case assignments. Chairman Ellis you hit on this a bit with Mr. Mazorol in how cases are assigned. Historically what we did is somebody in DeKalb's office would be in charge of the calendar. We would take the percentage of each type of case that the individual contractors had and divide up the arraignment days by that amount and then assign days to people. That worked fine for years. Then at the start of the last biennium we were falling way behind in our quota. At one point Contract and Business Services took over the assigning of cases to even things out. Even with them taking it over we were not able to achieve our quota of cases. For the first time we were asked to give money back to them at the end of the year. All three other contractors had overages. At the end of last contract we were asked to return \$60,000, which we did. Then we ended up being short by – it would have been \$330,000. With discounts by Ms. Aylward, and she was generous over the normal amount they do, we ended up with a shortage of \$172,000 with credits. We are having to send back \$7,000 a month to Contract and Business Services. Essentially that money is going, in some part at least, to pay the other contractors for cases we were available to do but through the assignment practices we weren't able to get. This is really crippling us financially, having to give back \$7,000 a month, then facing a 12,5% increase in our health insurance costs which goes into effect July 1.

55:34 Chair Ellis Help me to understand. This all is driven by the practice of alternating arraignment days?

55:46 T. Crabtree Yes.

55:46 Chair Ellis Then whoever is there on a particular day gets all the cases that come in that day?

55:50 T. Crabtree Well, essentially. There are three different arraignment times because of our district court/circuit court split. In a felony court we have an arraignment for those felonies. In misdemeanor court we have arraignments on misdemeanors and felonies. So we have those three and they are divided up. On a given day our office could pick up in all three or we could pick up say felonies in felony court. For the last year and a half the assignment of those days has been handled by Amy Jackson in Contract and Business Services division. Even though they were doing the assignment, we ended up short seven months out of each year. We ended up hugely behind and having to pay them back.

57:04 Chair Ellis This feels like it is something at the local level – disparity - if that is what it is.

57:17 T. Crabtree Who does what day was assigned by CBS and not the local judges. I know some counties have a system where it is done on a weekly basis. The public defender gets all of the cases that they need, until they meet their quota the first part of the week except for conflicts. Then it goes to the other contractors. That isn't done here. It is done on a monthly basis trying to predict in advance. Sometimes Ms. Jackson would say, "Well, PD needs more cases so I am going to give them two more days this month," in hopes of getting caught up but it never did.

58:06 Chair Ellis Ernie testified earlier and I thought I heard him say that your firm was getting a predominance of felony work.

58:19 T. Crabtree I think what he is referring to is if you look at the contracts of each of the four contractors, we are supposed to get 55 percent of the felonies. We are supposed to get 45 percent of the misdemeanors and a certain percentage of the juveniles. They take those percentages and the ones for DeKalb and Alexander and those for Bend Attorney Group and say, "Okay, based on that we are supposed to get, 55 percent of the felony assignment days." They will prepare a calendar and we do it for this amount. Then DeKalb will have so many pick up days and each of the other groups will have those too. When that doesn't produce the numbers that you are supposed

to get, Amy will modify that and give the PD two more days. Even though CBS was doing the assignment it never resulted in us getting our quota, whereas it did result in each of the other groups getting an overage. That is a major concern of mine about the delivery system. In an office we have these fixed costs. I can't tell an attorney that our caseload is low this month so I'm not going to pay you or pay you less.

- 1:00:03 Chair Ellis We are well aware that for PDs, just by the nature of how they are structured with fixed costs, it is harder to shrink than it is for either a consortium or a private firm that takes private work, or at least that has been our perception. We understand that.
- 1:00:29 T. Crabtree That is probably my major concern about how the delivery system is functioning now. It is always a concern that we are able to get attorneys, experienced attorneys, for the positions we need to have filled. It is always a concern where we are parity-wise with the district attorney's office. I understand the Deschutes County DAs might be the highest paid in the state, but when Dugan comes raiding my staff for people ...
- 1:01:13 Chair Ellis But that is an old war and he will be gone.
- 1:01:14 T. Crabtree He will be gone. Yeah.
- 1:01:22 Chair Ellis But that was before the increase that you got three years ago.
- 1:01:24 T. Crabtree Right. That was when it was a \$26,000 difference. Now just with an eye on the future \$15,000 is the disparity now. That is going up again in January.
- 1:01:40 Chair Ellis Do you have any comments on the statistics that I read earlier where going to trial rates here are about half what they appear to be elsewhere in the state? Ernie attributed that to use of judicial settlement conferences in criminal cases.
- 1:02:02 T. Crabtree I think that has a lot to do with it at least on the felony level. Judge Sullivan does an excellent job of running settlement conferences. I think it is usually the defense that asks for settlement conferences. If you get an offer from the DA that you don't like on a major case you request a settlement conference with the judge. He will meet with the parties and try to talk reality to the defendant and the DA in terms of what they are offering. We are often able to avoid a large number of Measure 11 trials in particular, but other serious felony charges too, to basically broker a deal between the parties. I think that that works well. I am not certain that I would attribute that answer to misdemeanor court. For a while we had really large backlogs in misdemeanor court and Ernie brought in some pro tem judges to have, on several occasions, a week of settlement conferences in those cases, and then later to try cases to resolve the backlog. I think because of the strong emphasis on settlement there that they were able to resolve a lot of cases in that period of time. I don't know, and Ernie would be a better one to ask about this, whether over time those two figures you see for trial rates are consistent.
- 1:04:15 Chair Ellis Can you tell us a little bit about the 13 lawyers you have? How long some of them have been there and what the turnover is?
- 1:04:27 T. Crabtree Of the 13 lawyers Terry and I started out in July of 1981 setting up the office. We are still there. Obviously the second lawyer we hired, Ed Mierjeski, is still with us too. We are coming up on 29 years next month. Ed has been there 28 years. We have another attorney who started with us in 1989 and is still with us. Another major felony attorney in Deschutes County has been with us since 1998. She was experienced when we hired her. Other than that we are down to people who have been with us since the start of the decade. We have got a large number of people who have been out four or five years. Then we have a couple of people who have been out approximately two and half years each.
- 1:05:49 Chair Ellis Pretty good mix.

1:05:49 T. Crabtree We have a pretty good mix.

1:05:52 Chair Ellis Career versus newer.

1:05:52 T. Crabtree We went through a big revolving door of attorneys, not being able to keep them around for various reasons. A lot was related to money starting in 2005. There was one period around '01 where we lost four attorneys that year. We were relatively stable until '05 and then over the next three years we lost three, two, and four respectively. Since then we have been doing fairly well. No attorneys so far this year, one last year. It is been relatively stable since the '08-'09 contract.

1:06:50 Chair Ellis When you go out looking for a new lawyer do you feel it is a buyer's market or a seller's market?

1:06:55 T. Crabtree For us for a long time it was seller's market. I would advertise in various forums around the state and I would get no experienced attorneys applying. Those were the factors that we had talked about before, the salary and the cost of living in Bend. Having not had to hire anybody in the last year a half I don't have a real good finger on the market. I would think with the relative bargains you can find in Bend, the cost of living would not be a factor. The salary shouldn't be a factor. We are able to offer more than we have before. I think now things would be a lot different than they were when we were going through the difficulties in '05 to '07 period when you just couldn't get anybody.

1:08:12 Chair Ellis Any other questions for Tom?

1:08:12 J. Potter Your argument about case assignments - you are not getting enough under the contract, the other contractors are getting too many under their contract.

1:08:27 T. Crabtree That is how it definitely was for the last contract. As I said we have to send money back now which hurts our abilities under the present contract.

1:08:37 J. Potter If you didn't have to send the money back, and you were getting the cases that you believe were supposed to under your contract, would you have to hire another lawyer?

1:08:51 T. Crabtree I wouldn't have to hire another lawyer but I certainly would like to hire another lawyer to reduce the caseloads.

1:09:01 J. Potter We are going to hear from the other contractors and they are going to speak to this, I would imagine, so what arguments are we going to hear from them about why this takes place and why it might be okay?

1:09:13 T. Crabtree I am sure they will tell you what they think is the case. I know with the DeKalb firm that they are a small office. A very high percentage of their cases are felonies. They don't do juvenile work. They need to be at or above the line so they can afford to pay their people. He apparently thinks we are paying our people too much or that PDSC is paying us too much to pay our people, so they can't compete with salaries that are being paid to us. What I will say about the Bend Attorney Group is that basically they are two offices, two functions. One is a group of juvenile lawyers and one is a group that primarily does misdemeanors. I work with their juvenile people a lot. They are excellent people. They provide really good work for their juvenile clients. I would be shocked if the dog comment was made about them. I know it wasn't made about our attorneys. They do good work and the good news is that the juvenile caseload is expanding in Deschutes County.

1:11:02 J. Potter That is good news for you.

- 1:11:02 T. Crabtree It is good news for us. It is good news for the Bend Attorney Group juvenile folks. I think it is due in large part to an artificial drop in dependency cases that occurred in the last contract due to the adoption of the Oregon Safety Model by the Department of Human Services. I think Ms. Aylward will tell you that juvenile dependency cases just dropped off the charts in Deschutes County during that time. I think now we are coming back to historical levels of where they should be. I wanted to make one comment, if I could, about the family court situation. One, it is an excellent, excellent program. I am real glad to have had the opportunity to work with that. It has provided better results for my dependency clients than we ever got under the strict adversarial system. I wanted to correct an impression that may have been made earlier. A domestic relations case is not required for a family court case. What is required is a criminal case and a dependency case. I won't say it is rare but it is an uncommon occurrence where you have a divorce that is going on as well. More often these days it is a custody matter. The parents were never married. The way this works is, unlike how folks might think of a room full of lawyers advocating for their clients, it is not like a courtroom situation and you are not arguing legal principles or whatever. You are trying to find the services that are going to make it work for this family, that are going to make them able to function as a family unit and you bring in the outside community partners to provide services. Ms. Arnette has been excellent in doing that, bringing agreements from people to provide services that you just can't get in normal DHS cases. Her estimates of 80 to 100 percent success rate aren't exaggerated. I have seen amazing results from that program. It is a tribute to those who created it in the first place. It is a highly successful program and I urge the Commission when you evaluate other jurisdictions to have them consider something like that. It produces great results without a high monetary cost to the system.
- 1:14:21 Chair Ellis You firm doesn't participate in the EDP program?
- 1:14:27 T. Crabtree No. Not anymore. When it was created I was asked by Ann Christian to run the program. She and Ben Westlund asked if I would do it personally. I did it for six months. At the end of the six months I told Ann that there were serious problems with the way that it was being run. It couldn't function adequately. I wasn't comfortable running it the way it was with the defendants as a group. It was as if all of you were the defendants and I walk into the room and say, "Okay, you are charged with various crimes. You are charged with Theft II. You are charged with DUI. You are charged with harassment," whatever. I didn't get the police reports until I walked into the court that day. Trying to advise each of these people about what their crimes were, what their options were and then go into court and evaluate whether this is a good offer. I told Ann at that time that this EDP is basically an abolish the right to counsel system. I spoke with other people about it and when PDSC first came and evaluated my office the first time around we had talked about the EDP. Tom Sermak and I kind of led the charge to develop some standards for EDPs around the state. I felt very strongly that we needed to have standards that should be followed. The judges love this system. It gets rid of cases quickly. It gets them off the docket and I understand that. When I was doing it they had asked to expand the program to include minor felonies, drug cases and theft I. Fortunately Ms. Christian at that point said, "No, we are not going to expand it to anything beyond what it is." I think as the attorney for that going in that I was ethically putting my name on the line every day I went in there. At that time, and I don't know if it has changed, but we were listed on the journal entry as counsel of record for that client.
- 1:17:22 Chair Ellis That doesn't sound like the role you were playing. When you speak to a group, by definition there is no attorney/client privilege.
- 1:17:33 T. Crabtree Exactly. You could not talk about the facts of their case in a group of people that are around there. You would go through it as quickly as possible. I think most of the people that were in there that were interested in that were ones that say, "I just want

to get this over with.” They didn’t care as long as they weren’t going to jail. “I am busy and don’t want to deal with this. Get it over with and move on.”

- 1:18:03 Chair Ellis I don’t know if we will get a chance to talk to Mr. Alexander but do you have a view whether the Commission should compensate someone with state funds to play that informational role, even though they are not representing individuals, on the argument that that is better than nothing? It is at least somebody who is not a state employee.
- 1:18:33 T. Crabtree What I would say is I would urge the Commission to follow the standards that you have set up. I think those are good standards. I think they are reasonable standards. I think if you can get a commitment to have this program brought up to those standards then it is worth preserving.
- 1:18:57 Chair Ellis I think we all agree with that. Let’s assume for the moment that our powers of persuasion are unsuccessful, the county continues with the kind of program that it has. The policy question for us, I think is, do we want to use funding to support this individual playing an informational role, not a representation role?
- 1:19:25 T. Crabtree What I would say is looking at the Commission I see a lot of really good minds. I think you would have good input from your Commission. My comments probably wouldn’t add to that one way or the other.
- 1:19:46 Chair Ellis That is why you are so good at what you do.
- 1:19:46 J. Potter Are you going to plug the oil spill?
- 1:19:55 Chair Ellis Any other comments for Tom?
- 1:19:58 Chief Justice De Muniz I have a sort of systemic question given your many, many years of experience. As you know state government is facing a decade, at a minimum, of budget deficits. Most economists have predicted 10 more years before the revenues meet the cost of state government services. In response to that I have a group called the Court Reengineering and Efficiencies Workgroup that has been operating for about seven months. The charge to this group is to deliver judicial services at the same level we are delivering them today, but reduce that cost through a variety of efficiencies and changes. One of the first things that we did was to survey our 1700 employees with a variety of questions. We received over 1400 responses, which is remarkable, with some really wonderful ideas which we are in the process of implementing. I reviewed all 1400 of those responses personally. A theme that went through many of those responses was we could save a good deal of money by reducing the number of appearances in court. That was followed by a complaint that in the criminal arena multiple appearances were often caused by defense lawyers not being able to meet with their clients timely before the next appearance. I don’t have any empirical evidence whether that is right or not. I just know that those were the perceptions of employees around the state. I am asking you because I notice when I read the material in preparation for this meeting there was a comment, at least with regards to Deschutes County on a very small scale that the lawyers need to bring their calendars to court. Some people complained about not having their calendars which I assume has something to do with appearances. I am asking you from your experience level do you think there is some accuracy to that and what could we do if there is to try to reduce the number of appearances?
- 1:23:01 T. Crabtree One, yes, I think that there is – whether it is people not bringing their calendars to court. I am sure that happens on occasions. I made a note of Ernie’s comment and underlined it and put an exclamation mark to bring it up at the next staff meeting. That is something we don’t want to have happen. I think that one of the things that happens in Deschutes County that is different from others - and I am not suggesting that it is a good thing or a bad thing - but it is the individual calendaring for the

judges. At 8:30 in the morning to 9:30 when trial starts we have five different felony courts in operation. Each of them has criminal matters that are set at that time. You can bounce from Judge Tiktin's court to Judge Sullivan's court to Judge Brady's court. As long as things are going exactly on time for the 15 minutes allotted for that appearance you are okay. But as we know life isn't perfect. Sometimes Judge Sullivan's 8:30 doesn't start until 8:42. Then when you have to be in another courtroom in three minutes that messes things up and sometimes things get set over as a result of that. Sometimes you are juggling cases and when we have arraignments somebody will be appointed an attorney in our office. I could have a hearing already set for Judge Brady at 8:45 and then I pick up a new case and it is assigned to Judge Adler at 8:45. Then I have to get one of the other attorneys in my office to either cover for me or I have to tell one of the judges could you email down to Judge Adler's courtroom and let him know that I am up here and I will be down there as quickly as I can. I think that that can create some problems in terms of scheduling. Our cattle call criminal system that we have on Mondays that I think Mr. DeKalb is going to be talking about in particular fosters more appearances down the road. As a side note, I have invited Pat Flaherty, the new DA coming in, to come to our office to talk to us, to see what together we can come up with as suggestions for streamlining the system and making it more efficient and present those to the judges for their consideration. I am with you. Whatever we can do to make the system more efficient is not only going to save money in the long run, it is going to save time for attorneys.

- 1:26:42 Chair Ellis What is your schedule? Are you able to stay around?
- 1:26:41 T. Crabtree I am.
- 1:26:46 Chair Ellis We have one witness who has to leave pretty quickly.
- 1:26:50 T. Crabtree I will be around all morning.
- 1:26:50 Chair Ellis Okay. Why don't we reset you. You are not excused.
- 1:27:02 J. Potter Thanks, Tom.
- 1:27:02 T. Crabtree Thank you.
- 1:27:01 Chair Ellis Brendon.
- 1:27:06 B. Alexander Hi. I am Brendon Alexander from Alexander and Associates.
- 1:27:09 Chair Ellis Thank you for coming.
- 1:27:10 B. Alexander You bet. I'm sorry that I have an 11:00 o'clock. I know you guys wanted to talk about EDP so that is why I ran over. My firm very grudgingly accepted the initial responsibility to do the EDP program. I will tell you how that came about. Billy Strehlow on July 31, when we were contracting for that cycle, told my firm that they would not be renewing our contract unless we took the EDP responsibility. I saved that tape recording for a year. Billy and I have since made up but I remember it because I was over on the Oregon coast and I was pretty stunned to hear that. That was how we ended up with EDP. It didn't make a lot of sense.
- 1:28:00 Chair Ellis What are the prospects of changing the system?
- 1:28:02 B. Alexander Very good.
- 1:28:02 Chair Ellis You know our guidelines. We tried to set up what we thought was a reasonable set of guidelines so that you could have EDP and the benefits of it, but do it in a way that is a lot more consistent with our sense of fairness.

- 1:28:21 B. Alexander Very good question.
- 1:28:21 Chair Ellis This county kind of sticks out as not even coming close to those guidelines. My first question to you is what has happened in terms of trying to get the county to change the system so that it matches?
- 1:28:41 B. Alexander Well, to be honest, I have run the program in the best way that we can given the resources that we have. Our firm primarily does major felony work. This is a real contrast for us. What I am doing is this. It doesn't make a lot of sense for a three person law firm to be doing this because it requires coverage every day and that is why I didn't want to do it in the first place. Personnel wise it is very difficult for a small firm to do it. What we do is this. Say you are the group for fast track today. It ranges anywhere from two or three cases to sometimes 15 or 16 and even more sometimes.
- 1:29:15 Chair Ellis Monday mornings after a holiday weekend.
- 1:29:17 B. Alexander Yeah. We do get the discovery in advance. Usually the person assigned to do fast track in my office will sit down around 11:00 to go through the fast track reports for that day. Each day will bring a mix of new cases and people that are coming back for sentencing. Almost 100 percent of the cases involve a plea and set-over for sentencing. A person comes back for sentencing with some written proof that they have their community service done and an amount of money they have paid to the court or are ready to pay the court that day. The goal is to keep people off probation. Essentially they are sentenced to what they have already done. They come back to court with these things completed and again, the idea is to keep people off probation. That is a good thing. Each day there will be a mix of those. I will listen to the reason. Why don't you have the community service done so I can tell the judge? How come you don't have any money? Restitution is an issue because the DA's office often times doesn't have those figures at the initial appearance. What we have done about that is oftentimes we are leaving orders open for 90 days giving the DA's office a chance to come back in 90 days if they get proof of restitution.
- With regard to the initial rights, which was the main issue, what I do and what I have my associates do is - we are all very experienced for one thing. We do it as a triage approach. We read through these reports and try to identify which cases at the outset are questionable, which cases look like they have some issues. Primarily we are looking at three groups of cases. We are looking at Theft II, of which probably 80 percent are shoplifts, some thefts between individuals and some employee thefts. Most of these people have already had an opportunity to have their case dismissed through a victim offender mediation program. Most of these people have already had a chance. One of the initial problems with the theft cases was what about a civil compromise? We certainly don't have time and we are not compensated anywhere near enough to send an investigator out to try to do a civil compromise. So are people loosing the opportunity to get that civil compromise? Very important issue. What is happening, by and large is, number one, we are finding the stores are less and less willing to enter into civil compromises. We are finding a major change here with some of our major retailers. Number two is that many of these people have already had, and we can tell that from the reports, an opportunity to pay damages and have the case dismissed and they flunked out of that program for one reason or another and now they are facing prosecution.
- Another group of cases is failure to perform duties of a driver cases - misdemeanors, and minor traffic accidents. The issues are like whether there was insurance in effect or not. Most of the time there is a plea offer that reduces it to a careless driving, a very good benefit for the person because they are looking at lack of a criminal conviction and no driving license suspension at all if it is reduced to careless. But oftentimes they are very questionable cases. You can identify those from reading the reports.

The third group is criminal mischief cases. Criminal Mischief II consists of vandalism, either intentional or reckless, usually combined with some drunk and disorderly conduct. These are not particularly complex cases. An experienced attorney can read through the reports. You can get an idea of which cases look like they have an issue before you go in.

Then we go in. I do address them as a group. I will say, "I am Brendon Alexander and I am here to assist you with the fast track program. What it is is an opportunity to get your case potentially settled today if you are interested in that." Then I will tell them, "Here is what I am not going to be able to do."

1:33:23 Chair Ellis

When you say "settle," they enter a plea?

1:33:27 B. Alexander

Oftentimes, yeah. I will say it is an opportunity to get your case settled today. I explain that if your idea of settlement means dismissal of the charges that is not what we are doing.

1:33:40 Chair Ellis

I need to understand what happens. If they enter a plea under this program then what happens?

1:33:46 B. Alexander

They enter a plea. It is a very specific written offer. We hand that to the judge and it will say, "Do eight hours community service, \$25 compensatory fine, \$65 court costs and \$35 surcharge." The judge will go through their rights with them. I stand there in court with them.

1:34:04 Chair Ellis

So at that point you are representing the individual?

1:34:14 B. Alexander

I am. I wanted to clarify something that was in Ingrid's report. I met with her and John. I didn't mean to say that I don't think it is representation. I don't think I meant to communicate that. I admit it is questionable, but we were forced to do this program and we have developed it into something that I think grudgingly does do a service for people. I really won't be heartbroken if you say no more. It won't bother me a bit. I have no financial stake in it. It is a money loser for us. We do it now and we are providing a service. I do think there is individual representation. We do keep it as a conflict list. However, it is a limited representation with consent is how I view it. In other words what I am saying is, "I am going to represent you in this if you don't want me to investigate in your case, if you don't believe there needs to be some investigation of it, if you don't have a chance for civil compromise. If you want to take that opportunity I can't do it for you." Or there may be some other things that I will mention pursuant to this specific case.

When we say we do a triage approach I have usually identified the cases in advance which look like there is going to be something where they need to have individual attorneys. Sometimes I will get into an argument with people. They want to get their case done that day. "Because you have felony convictions this misdemeanor theft may trigger your mandatory sentencing. This may be number four for you. This will trigger a mandatory property crimes measure. You need to have an attorney. You need to have full representation on this." I make sure they go back in and fill out paperwork for court appointed counsel. We try to identify the cases, just by their nature and what I can see from the reports, that do need some investigation. They need some things to happen and I urge those people to go ahead and fill out the form for full court appointment or to hire an attorney. I explain to them these are criminal charges although misdemeanors. "You don't want to represent yourself anymore than you want me to fixing your car, and trust me, you don't want me fixing your car." That is how I will put it to a lot of these people. I do try to weed out the cases that really look like they need a full office conference. They may need some investigation. They need somebody to go out and talk to a couple of witnesses and I make sure that they then go ahead and apply for full court appointed counsel. The second thing is if I have an individual who might have some mental problems. That is not hard to tell if you have been doing this for awhile. Do I make a precise

diagnosis? No, but all of us who have been doing defense have an idea when we got someone who has some issues. I definitely don't feel that it is appropriate for those people to go through this program. I try to make sure that they get appointed counsel. If I have somebody that is very excited about their case and wants to tell me all about it, that is not going to be appropriate for fast track. "With regard to individual representation first I am going to talk to all of you as a group. Your case falls under these categories. I don't want to say anything about your case individually, even what you are charged with in front of the other people unless you tell me that is okay. When I mention your name you let me know if it is okay to go ahead and talk about it. I am not going to get into detail about it. First I am just going to tell you what the charge is and what the prosecutor's offer is. Then I will answer some questions. If you would like to have an individual conference without the others present, just tell me that when I call your name. I will make time at the end of things to meet with you one on one out in the hallway or wherever we need to do." That is all I can do with the time that we have got. By and large I would say that maybe one or two people, maybe 10 percent, will ask for some individual time. Most of these people are in the same boat. They are not highly embarrassing cases. Many of the folks who are charged in this program really do just want to get it over with, with the least consequences that they can.

- 1:39:01 Chair Ellis Go back a minute to your discussion with Billy Strehlow. As I understand it you get compensated on the regular caseload that you have, but you do this work in addition.
- 1:39:19 B. Alexander That is correct.
- 1:39:19 Chair Ellis So there is no segregated compensation on this work?
- 1:39:29 B. Alexander Yes there is. If I understand your question, Mr. Ellis, there is a specific contract amount based on just the projected number of fast tracks. It probably works out to about five or ten bucks a person. It is a set monthly amount.
- 1:39:46 Chair Ellis So why hasn't someone looked at this program from the standpoint of matching it up against the criteria that we have published that we think an EDP program should have? Why is nobody addressing it?
- 1:40:05 B. Alexander I have not had any complaints. I have been surprised. I haven't had anything come back to our office. We have had clients very satisfied with the program. The way it got started was not good. The idea was somebody had to do it. Nobody wanted to do it. Mr. Crabtree is absolutely right.
- 1:40:39 Chair Ellis Whose program is this? Is this the DA's program or the court's program?
- 1:40:47 B. Alexander It is all of our program.
- 1:40:47 Chair Ellis You have a new DA coming in. Why isn't this a wonderful time to talk with the new DA and say, "Look, EDP is a good thing but the way we are doing it is giving the PDSC heartburn. How about taking a look at it to see if we can't restructure this to keep an EDP program in Deschutes County that will have a state compensated lawyer working."
- 1:41:17 B. Alexander This is probably a good time to look at it.
- 1:41:20 Chair Ellis A system consistent with the principles that PDSC has put together and tried to urge other counties to adopt.
- 1:41:30 P. Ozanne Barnes, isn't the ball in our court?
- 1:41:33 B. Alexander You make me feel like I am neglecting something here. You put the ball on me and I have done the best I can for eight years to run this thing. I will be happy to turn it over to anyone who wants it.

1:41:44 P. Ozanne We would agree that one conclusion, as ugly as it, was that there were people who wanted to avail themselves of it and therefore we ought to give them that opportunity.

1:42:02 Chair Ellis I remember it was Clatsop County.

1:42:03 P. Ozanne We came back with this set of guidelines. Excuse me, but I don't think we – I think we have to be the ones to push back.

1:42:20 B. Alexander If you have anything specific that you think we are doing wrong I will be more than happy to listen.

1:42:26 Chair Ellis You have a set of our guidelines?

1:42:31 B. Alexander I don't have them with me right now.

1:42:31 Chair Ellis But you have seen them?

1:42:33 B. Alexander I have seen them recently.

1:42:41 Chair Ellis Nothing I am saying is critical of what you have been doing. It is more critical of how the program is now structured. I am trying, obviously, to find out which are the right levers to push to see in a county that is in transition as this one is whether we can't solve the ethical problem by getting the program to change.

1:43:07 P. Ozanne I think there is some language in there about offering our services to the court. I remember meeting with some of the judges about this and offering our assistance to help design a program that would be consistent.

1:43:20 Chair Ellis So Ingrid, I recognize that these are different parts of the state. You probably have a good sense, because you did the interviews here, who ought to be involved. Can't we as a result of this meeting, send the new DA and whichever judges remain the most focused on this program, a set of our guidelines and say we would like to present these to you and we would like to help you consider adopting these guidelines for the Deschutes program. That takes Brendon off the hook of this very awkward business of having to show up with a group individuals each with a different problem and quickly having to sort out who belongs in what category.

1:44:25 I. Swenson Of course, Mr. Chair, we could take that approach. I think the only thing that we have to remember when we consider whether that will be successful - and we can hope that that conversation would lead to the result that you would like to see - is that other people, district attorneys in particular, have a great deal of control over whether these programs exist at all. If it turns into a program that takes hours and hours of Brendon's time it is going to take hours and hours of other people's time as well. It might look like Hillsboro, for example. They are very pleased with their program and from the beginning they incorporated all the protections and all the things they needed to create that program. Their motive for doing it was to clear out their jail and it succeeded and succeeded beyond their expectation. Here you are dealing with very minor offenses that probably aren't jail offenses. The whole idea is to move those quickly. I would be happy to offer to convene a discussion about that. I am aware that there are other people who have interests at stake that may not be interested.

1:45:45 Chair Ellis I understand that but you have an unusual situation of a long time DA that is leaving office. You have a new one coming in and here is a great moment of opportunity to take a look at what this program is. I think without heroic adjustments we can solve a couple of problems that have troubled us before.

- 1:46:11 B. Alexander I have a real good working relationship with Mr. Flaherty as well. I would be happy to do that.
- 1:46:15 Chair Ellis Is the rest of the Commission feeling the same way?
- 1:46:22 J. Potter Absolutely, but isn't part of the carrot here that it could expand to other crimes rather than these three? In other counties it goes beyond that under guidelines that have been established so that there are some safeguards. The DA then has the option of moving some other crimes into this program. Even though it might take a little more time at this end, it would free up their time for the cases that take up their time anyway.
- 1:46:49 B. Alexander They tried to have my firm do felony PCS, DUIs, and that sort of thing and I just flat out refused because the way that I am doing this doesn't provide, in my opinion, anywhere enough for the consequences of the offense.
- 1:47:08 J. Potter I am not suggesting that that be the case.
- 1:47:13 B. Alexander If we could adopt those and pull that off timewise, I would certainly be willing to do it. They need more time to be able to go into those kinds of questions.
- 1:47:23 C. Lazenby I agree that in this county we have some situations where we have some opportunities. I am kind of concerned about one attorney addressing 15 criminal defendants and basically saying, "I am your lawyer for the disposition." It sort of destroys the attorney/client privilege. The speedy disposition piece is (inaudible) from that standpoint. For me I would be interested in moving forward to try to seek expansion of this to go back to the Chief's point which is are we really making the system more efficient through these programs? Do we really have any savings in the system by doing these kinds of cattle call sort of things to get it done? If we aren't getting the efficiencies within the system that we can quantifiably measure, then I think the damage we do around the representational issues on the other side would be of more serious concern to me because then we are just destroying the integrity of the system without really showing the benefit from it.
- 1:48:52 B. Alexander If I could address what the benefit would be, it is essentially the way we phrased it in looking at a contract bid. You are saving 300 to 400 full appointments at about \$300 bucks a pop. That is the money you are saving. Just in Deschutes County alone I am estimating you are probably saving \$80,000 to \$100,000 just here. The question is whether or not the reduced level of service I am providing is worth that savings? My initial opinion was no it wasn't but I was forced to do it to have my full contract. [Referring to the time] I have a medical witness in my office. I am not keeping a judge waiting. Maybe it will be good for him.
- 1:49:41 C. Lazenby This is a small matter but are you disqualified from picking up those folks that end up coming back, the ones you tell, "Now we are going to get you appointed counsel?" Are you disqualified from becoming that appointed counsel?
- 1:49:50 B. Alexander Well, generally our firm doesn't take misdemeanor appointments. I generally only do serious felonies. I will be frank, occasionally I have had the person call me later that has been turned down for court appointed counsel. They will call me to ask to hire me. By and large our firm only takes misdemeanors when there is a felony attached. We try to be the one stop where I handle your serious felony, your juvenile dependency, and then are a bit of the St. Andrews Legal Clinic and we do some sliding scale dom rel work as well to try to work things out for some folks. We will try to help people out in their civil matters as well.
- 1:50:39 Chair Ellis Maybe the way to wind this up is in the report you suggested that we might want to consider whether it is right to compensate someone to do the function that Brendon does. Of course he brought the information that we kind of urged him to do that. I

would like to delay that issue until we see if there isn't the possibility of exciting a willingness to change the program. Are you okay with this, Ingrid?

- 1:51:16 I. Swenson Of course, Mr. Chair. We can explore all the cost issues and the trade offs. There will be a lot of them I think. We can talk to everybody involved and see what would be involved in implementing a more complete representation.
- 1:51:28 Chair Ellis We weigh the equilibrium between cost and quality. I am very concerned about the quality piece. I hear how this program is currently structured. Let's try the reform piece and I am sure you will find a diplomatic way to present that. If that doesn't succeed we can talk about the issues.
- 1:51:59 J. Stevens Is there a value of having someone, whether it is an attorney or a paralegal, whatever, come in and tell groups of people like this that this program is available, this is what you can expect, without it ever becoming a question of whether or not he is an attorney representing somebody or not?
- 1:52:26 Chair Ellis I assume if we didn't compensate Brendon to do it, the program would find a way to have somebody explain to the judicial participants what it was about. They probably wouldn't do it as well as you do.
- 1:52:44 P. Ozanne I have a question and I think Chip and I may be on the same ground as to what we are gaining. Brendon, you said earlier that folks are just eager to proceed and get their cases done. I would expect that a lot of these folks would be waiving counsel if informed by the judge.
- 1:53:09 B. Alexander I do think it is important that with regard to the advice component you mentioned, Ms. Stevens, when people have got some criminal history. They have to look at the mandatory property crimes measures. I think it is real important and I don't know how you can have a non-attorney sort through that. Second, they are going to want to know about expungements. I am answering questions every day about expungements. When you look through the expungement statute that is not an example of legislative clarity. Expungement questions are critical to a lot of the people. I think those are very important issues particularly in the data sharing age. What a Theft II conviction does to you now is far different from what it did five years ago with the data sharing that goes on. I think that is a valuable function. Prior to the fast track program I took a lot of heat, my firm did, for in essence robbing them of these cases. I had to explain and I played the tape recording for a couple of people. It was "no contract or take EDP and here is how much you are going to get." These are easy cases. They were the ones that make up for when you go to trial for two and half days on a Theft II. These people by and large were not waiving counsel. They just want a few questions asked and they want to find out what the answer is really going to be. They want somebody to tell them that it says the maximum penalty is a year in jail and \$6,250. Am I going to go to jail or not? That is lot of what the folks want to hear. They are worried about their kids. They are worried about their pocket book and they are worried about their jobs.
- 1:55:19 P. Ozanne I am a little rusty on the criminal law because it has been awhile since I faced the court. I thought the judge was responsible for taking a knowing and informed plea?
- 1:55:25 B. Alexander Absolutely. The judge is looking at a docket of 50 people crammed into a room sometimes. The judge is going to do the best he or she can to do that. The judge has got to tell them exactly what and go through the plea colloquy with them but again, a lot of people freeze up when they are standing in front of a judge. We lawyers are used to doing that. For someone who has never done it before they will stand there in this room full of people and there is somebody talking to them. They don't hear it a lot of times. They just don't. But they have me looking them in the eye and saying, "Here is what it is. This is what the judge has agreed in advance. It is going to go pretty fast when we go in there in front of her."

1:56:18 Chair Ellis I am worried about that medical witness. Thanks a lot.

1:56:24 B. Alexander Thanks a lot.

(10-minute recess)

2:11:00 Chair Ellis [Calls the meeting to order.] Welcome to both of you. If you would introduce yourselves, those of us that are paying attention will pay attention.

2:11:25 J. Pritchard Jon Pritchard, administrator for Bend Attorney Group in Deschutes County.

2:11:26 L. Hellis Lori Hellis. I am one of the Bend Attorney Group contractors.

2:11:37 Chair Ellis So you are both with the consortium?

2:11:37 J. Pritchard Correct.

2:11:45 Chair Ellis Any thoughts before we start the cross-examination?

2:11:47 L. Hellis I had a couple of comments to correct the record a little bit. I have been a contractor with the Bend Attorney Group now for about three contract cycles or six years. Mr. Crabtree sort of described the makeup of the Bend Attorney Group. I wanted to clarify that. We have nine providers. We have three who consistently are available to take felonies. We have five of us who do juvenile work. Some do both. A couple of our providers only do juvenile work, and then we have a couple of attorneys who primarily do misdemeanor work. The one thing that I wanted to point out, I understand Mr. Crabtree's concern about the allocation of cases. I wanted to point out that we are sort of the contract of last resort. We primarily take conflicts from all of the other providers. Our caseload, the allocation of cases to our organization, really is always the unknown quantity.

2:13:20 Chair Ellis You are the only one of the four that is not subject to the unit rule?

2:13:27 L. Hellis Right.

2:13:27 Chair Ellis And I did observe that the Crabtree group has lawyers that have been there a long, long time. They are just going to have the history that will generate conflicts.

2:13:38 L. Hellis That is true.

2:13:40 Chair Ellis I understand what you are saying.

2:13:47 L. Hellis I think one of the advantages of the Bend Attorney Group is that we are all sole practitioners in a consortium. In the instance where we have, for example, a shelter hearing on a family where we have several children, one mom, several dads, and everyone of them needs an attorney, we don't have the same problem with conflicts. What generally happens is the PD, Crabtree's office, gets one player. Alexander's office gets a player and then the rest of them are sort of divided up among the Bend Attorney Group attorneys. It is also true that often if one of us has a conflict someone else can take the case because they don't. We don't have the same issues of case allocation because other than misdemeanors, we only pick up what the other organizations can't cover. I know that it gives Ingrid and our contract representatives headaches. It is hard to predict what is going to happen with the other contracts. There were a couple of other things that I wanted to address just in terms of things that make you go "hmm" or wake you up in the middle of the night. One of the things that happens to those of us attorneys that do juvenile dependency work is that we get to the end of a juvenile dependency case and there is no domestic relations order for this family to sort of fall into once DHS gets dismissed out of the case. So when DHS gets dismissed out of the case, there is no court order that says which parent will have custody, what the parenting time schedule will be, any of

those things. In about half of the cases it probably isn't an issue, but in half the cases it is an issue and DHS says to these people, "Well, you need to go down to the courthouse and get the forms and figure out how to get custody of your children." Now these are families that have, in some cases, spent two years in DHS with their kids in DHS custody and with the people trying to get their lives together to the point where they can provide minimally adequate care for their children. They are not people who are well equipped to go down to the courthouse and shuffle through all the paperwork even with a *pro se* assistant and figure out how to get custody of their children. It is also true that these cases are sometimes a little bit complex when it comes to the family issues. What happens is those of us who can often end up volunteering our time to prepare those orders in order to be sure that our clients, often the children, have a clear cut protection once DHS is dismissed out. It is always a concern to those of us who represent particularly the children that once DHS is dismissed that there is a clear plan for which parent will have custody and what will happen as far as parenting time goes. We are very fortunate that we have a family court coordinator who is very, very qualified and extremely helpful in getting these parents to mediated agreements if it is a family court case. Ms. Arnette's time is limited and unfortunately not every one of our juvenile cases falls under that family court heading. So in those cases we end up with parents who do not have a mediated agreement between the two of them, are acting on the minimum orders of DHS, and DHS suddenly says, "Well, one of the parents meets minimally adequate standards, here are your children, we are out." The other unfortunate part about it is that at least one of our providers; the PD's office, their PLF or malpractice protection does not allow them to do any sort of work outside of their proscribed contract. That means that one of the other of us usually ends up volunteering to do that work. It seems to me that it is an important piece of the completion of a juvenile case. If we want that final piece in place that underlies how the family is going to continue to function once DHS is out it seems that we ought to consider paying someone to make sure that order gets done. I know that Jon and I do our fair share of those orders because we feel that it is important. We know that if that underlying order isn't the foundation of the family once DHS has completed their part of it, we are likely going to see that family back again. There is going to be domestic violence. There are going to be issues about leaving children alone. There are going to be all those other issues that came up because this family wasn't functional to begin with. We often try to head off that problem by making sure that there is an underlying order. I don't know how it is done in other counties, but I do know that in our county there are a fair number of us that are doing those on our own dime because we feel that it is that important.

I also wanted to let this Commission how helpful and how significant our family court process has been. I can tell you from my own experience that I have at least three cases where the children would have never returned home had the family court process not worked. I understand that there is always a tension, when you have this sort of a program, between DHS and our family court coordinator over who is doing case planning. I can't even express the importance of getting everyone around the table. When you go to a family court meeting Ms. Arnette has called together all of the providers, all of the therapists, all of the alcohol and drug providers. All of those people are around the table to talk about what it is that we can do to get this family back together. What can we do that is going to be in the children's best interests? What can we do to not get entrenched in our own positions to the point where we don't think creatively about how to resolve the issues for these children? I think the family court as it is designed in Deschutes County has been extremely helpful. I know that family courts are designed differently in different counties. I know that family drug court is designed differently in different counties. Our county family court is an extremely hands-on kind of an experience. The one problem that we are having at this point is that it is only the juvenile district attorneys who are involved in family court. It is not the adult district attorneys. They know what family court is. They don't care. They don't want to be involved, so we do have a disconnect there. I am hoping that with our new district attorney that that may be an issue that we address, but for the most part I think that family court has been responsible for

resolving and reunifying families in cases where I don't think it would have been possible otherwise. It is often the case that we go back in front of the judge and the judge shakes his head and says, "Boy if you had told me 18 months ago that this could happen..." Ms. Arnette is somewhat of a magician when it comes to thinking outside the box, brainstorming ideas for how to bring the families together and looking for resources. I know that there are instances where she gets on the phone and starts calling around to find providers.

- 2:24:12 Chair Ellis She is very impressive. I wanted to ask each of you but, Jon, maybe you are the right one to start with. I noticed in the report that your consortium has moved to have an outside board member.
- 2:24:27 J. Pritchard Correct.
- 2:24:27 Chair Ellis And I want to ask how the process unfolded that lead to that. Tell us a little bit about how they are selected and who they are.
- 2:24:37 J. Pritchard Well, you can see the rope marks around my neck from the lynching that I almost got from our group for doing that. It was met with a lot of resistance. We had been talking about it for about four years with no progress. I stuck my neck out and did it myself and filed the papers to start the corporation so to speak, the non-profit, and selected the initial board members myself. We went forward with that and everybody has kind of settled in and is working with the system at this point but I did it over a whole lot of opposition.
- 2:25:18 Chair Ellis Were you here when the minutes from our last meeting were read? Now that they have been cleaned up take a good, hard look at them.
- 2:25:30 J. Pritchard Okay.
- 2:25:28 Chair Ellis We have gone through quite a discussion about whether to require that or if not that then a very strong plan that has the equivalent. At our last meeting the Commission did adopt a resolution that says that all providers must either have two independent board members, or submit something that really satisfies us that they are looking at the quality issue in a way that is as good as that. We are happy with what you have done. Who were you able to bring on?
- 2:26:14 J. Pritchard As far as board members?
- 2:26:15 Chair Ellis Right.
- 2:26:19 J. Pritchard I brought on a former member of our consortium who basically backed out several years ago.
- 2:26:26 Chair Ellis So he is no longer in defense?
- 2:26:30 J. Pritchard No longer involved, correct, but very capable. She also had experience working for the district attorney's office. She is a district attorney in her own right as well as working for the public defender's office when I came here 20 some years ago. She had broad experience and that is Ms. Spencer, Cindy Spencer. She was selected as board chair. I brought on a local civil attorney, Jim Slothower, one of our local Bend attorneys. At the time Mike Flynn was working for a civil firm in Redmond but has since accepted a position with the district attorney's office in the valley. He is one of our members and continues to act as a board member as well. We have one of our consortia contractors also on the board as kind of a representative for the contractors as well. We only have four board members at this point.
- 2:27:31 Chair Ellis So you have four members, two of which are independent, meaning they are non-providers and not picked by providers.

2:27:37 J. Pritchard Three are non-providers.

2:27:41 Chair Ellis We will watch with interest. Do you mind if we refer a few other cases to you? It has been our view that we really wanted to help, particularly the consortium groups, move from being just a private appointment list to being a community based system with a real sense that this is public money and to get away from the good old boy control mechanism. Sometimes that produces okay representation for a while, but it has been a problem over time.

2:28:32 J. Pritchard It was my understanding that there were some consortia who basically converted to a board that was entirely made up of contract providers. It was the only way that they could actually get approval from their members to form the organization. We went at it probably backwards.

2:28:52 Chair Ellis And you formed a non-profit?

2:28:55 J. Pritchard We did.

2:28:58 Chair Ellis I know some do it different ways. That way certainly seems viable.

2:29:03 J. Pritchard This spring we actually just got our IRS approval. We had been fighting with them for a year. We finally satisfied their questions and got that done.

2:29:16 Chair Ellis Then is the board self-perpetuating from this point on? Is it member elected? Do you have an outside appointing authority?

2:29:29 J. Pritchard It will be self-perpetuating. Basically at this point we are going to need to be replacing one of our members due to health issues. What is going to happen is names will be submitted to the board and then the board is going to make the decision. We will be getting input from our contract members, of course, but they are not going to be the final deciding factor. They have their representative on the board to speak for their position and opinions. It is going to be the board itself that is going to make that final decision.

2:30:04 Chair Ellis How do you decide who is admitted to the consortium? Who stays with the consortium?

2:30:13 J. Pritchard We have a long history but Bend Attorney Group is relatively new. We went through several permutations over the last 15 to 20 years. Traditionally, it was basically if we needed somebody else, "Who knows somebody who needs work?" That was kind of the way it went. Names were suggested by the consortium members and basically because we do frequently cover for each other. If we are out of town on vacation or places like today, I have somebody covering stuff for me downtown because I have got some things that are set. We cover for each other so we want to make sure that it is somebody that we can work with and that everybody feels comfortable working with. When we have an opening we are soliciting names and suggestions, again, from the providers because they have to work with this person. Then that is presented to the board and the board makes the final decision as to whether or not that person is going to be invited to join us.

2:31:20 Chair Ellis I am not particularly interested in who is referred to in this footnote 17.

2:31:34 J. Pritchard I am assuming that it is not one of my attorneys.

2:31:36 Chair Ellis All four groups have said that so far.

2:31:42 J. Pritchard I was not addressed with that particular one when I had my conversation with Ingrid Swenson.

- 2:31:49 Chair Ellis Here is the question that I want to ask. What is your process if you start getting indications that one of your consortia members is underperforming?
- 2:32:01 J. Pritchard Okay. This has traditionally been a problem. Before we formed the board and before we formed the organization here, as administrator I had all the responsibility but no authority. I could not necessarily take on those particular issues. This has been a help for me that I have somebody above me that I can bump it to and someone to tell me what to do. Then I can enforce the consensus from the board. What has happened is that we have tried to get input. Routinely we would only get rumor if there was a problem. The last couple of years we have sent out questionnaires to the courts and to court administrative personnel. People who sit in the court and watch all of the attorneys all of the time, probably have a better read on what is going on with attorneys than I do. I don't get to sit there and watch them. However, the courts are reluctant to send us back evaluations in which they say anything critical of anybody. They particularly don't want to have their name associated with it because I am assuming there is some fear or hesitance that there might be some sort of slander or libel issue going on. They are really hesitant to tell us anything. Our questions that were sent to the court staff were rejected. The employees were not allowed to respond to those questionnaires. It has been extremely helpful for what feedback we have been able to get in order to get a read on what people are seeing when they see our attorneys in court. When we have had issues that have come to our attention, we addressed those with a letter of concern saying, "This is what we have heard. This is what we have been told is going on. Tell us about it. Respond to this if you disagree and explain." Then if we have ongoing problems we can take corrective action which is reducing the types of cases they take. If a person appears to be overwhelmed by what they are getting, we can reduce types of cases, number of cases, and limit what a person is doing to see if that doesn't help them manage. If there are health issues and so forth, we have actually granted sabbaticals for up to a year kind of a thing. They can still remain members. Their cases are basically reassigned to other attorneys. When they feel comfortable and healthy to come back we can put them back in the mix. We have had a situation where we have had to vote to terminate a contract because of inability to meet standards because the judges have expressed concerns.
- 2:35:35 Chair Ellis So you have actually done that?
- 2:35:37 J. Pritchard Yes we have.
- 2:35:39 Chair Ellis People have been let go.
- 2:35:42 L. Hellis If I could just point out, prior to the forming of the LLC we were just a loosely affiliated group and there was really not in any of our contracts the right for anybody to hire or fire. Since the organization has been formed our contracts contain a provision that the board does have the authority to evaluate our effectiveness and to hire and fire. I think that is one of the reasons why some of the old guard in our group were very reluctant to have this change happen, but I think overall it has been a good change for all of us. I am happy to see the "responsibility with no authority" piece off Jon's shoulders. Jon and I have been friends a long time. I know there have been a lot of times he has sort of torn his hair out over, "What do I do because I don't have any authority to act on the concerns." I think it has been a good change. The board does have the authority under our new contracts to dismiss an attorney for underperformance or under certain circumstances.
- 2:37:06 Chair Ellis You call it an LLC and you called it a non-profit.
- 2:37:14 L. Hellis It is a non-profit LLC, actually.
- 2:37:18 Chair Ellis So the answer to my question is "both."

- 2:37:19 C. Lazenby Do you provide any support for attorneys who are underperforming within the group, or is it just up to them to heed the criticism and get better?
- 2:37:32 J. Pritchard I have offered to assist. Part of the situation is going to be: is the attorney willing to accept supervision so to speak, somebody coming around and looking over the files and see what is going on and ask questions just to make sure that stuff is getting done and so forth? That kind of support was offered and we can offer that if they are willing to accept help. There is also the attorney assistance program. We have referred to that if necessary. We try to get it out of discipline if at all possible.
- 2:38:22 L. Hellis I think it is important for the Commission to understand that Bend is a small practice. The attorneys who practice criminal defense, for the most part know one another and have practiced together for many years. People do a little moving around but we know one another. The people in our consortium are people we have worked with for a long time. In my experience it has not been unusual with Bend Attorney Group for the group to say, "We need to pick up the cases for this particular attorney for the next month because they have got a family," or, "We need to make sure that this person's cases are covered for the next several months because they have a health problem."
- 2:39:17 Chair Ellis It can work the other way where a small community protects the underperforming lawyer.
- 2:39:22 L. Hellis Well, I think that is true although I know that it has been important for us to maintain a reputation in the community where we don't have someone saying, "I'll sell my dog before I'd hire one of those people." I don't think that is true. I think that we have balanced those things. I think that within the last year we unfortunately had an attorney that due to his health considerations could no longer perform his job. We started out by trying to offer him support, by trying to offer him as much help as we could and eventually it was sort of decided that he could no longer take cases because his health didn't allow it. We started out assisting but when it got to the point where we realized that he could not effectively represent his clients, then I think we took the position that we had to protect the integrity of the rest of the group.
- 2:40:35 Chair Ellis Sounds like the system was working.
- 2:40:38 L. Hellis I think it is.
- 2:40:40 J. Pritchard My complaint was that it comes to a crisis with the courts because they haven't told us that there is a problem going on. That was one of the valuable things that we could get from our evaluation forms that we sent around. We can actually get some direct feedback and they can tell us where the problems are. Frequently we don't know and unless somebody tells me I don't hear about it.
- 2:41:07 S. McCrea In your evaluation report did anybody tell you what we have in our report at page 17, which is court staff noted that attorneys don't usually have calendars in the courtroom?
- 2:41:22 J. Pritchard I haven't seen that. I do a lot of juvenile court work and our attorneys generally have their calendars. I haven't seen it among our people. I use the paper calendar still.
- 2:41:40 L. Hellis I think we are all trying to be dragged into the technology age, however I can't imagine going anywhere without my paper brain. It would be hard for me to believe that our attorneys were appearing without their calendars. I do both juvenile and felony work and I cannot remember, frankly, in the last couple of years any of the public attorneys appearing without their calendars. I can recall at least two instances where the same attorney, who does not represent indigent clients, appeared without his calendar. I don't know whether someone translated that into indigent defense people. I can tell you that I have been in the courtroom at least twice when one

particular lawyer, who does not do indigent defense cases, who only does retained cases, appeared in court without his calendar.

2:42:55 Chair Ellis

Other questions for these two?

2:42:56 Hon. Elizabeth Welch

I don't have a question but a comment about what Lori wanted so much to tell this Commission - the issue of having real closure in juvenile dependency cases around the issue of custody. This is a very big, long-standing problem everywhere. In some courts there are even more lawyers than here who just do it. Then in Portland, as an example, nobody does. It is a tremendous problem. It is a cost problem. What happens in many counties that I have been to is that when the case is really over in the juvenile court all these lawyers - remember everybody in creation has a lawyer - the cases are continued ad nauseum waiting for a parent to go and get custody. Because they are afraid that without that structure the family won't be able to survive. If there is no way to get there it is extremely expensive.

2:44:10 L. Hellis

I think that is true and even in Deschutes County oftentimes we get cases that are continued multiple times waiting for someone to step up and say, "Okay, I'll do the order." We know that it is really the safety net that that family falls into when the system is out of their lives.

2:44:32 Chair Ellis

We are going to have to move along because we have some other people. Any other questions?

2:44:41 C. Lazenby

I just want to make a comment. The piece about the judges being reluctant to make comments, whether they are positive or negative about the quality of representation. That is a critical piece for us. I understand the sensitivities of being in a small community and not wanting to do that. I have been a public lawyer long enough that I have had these situations in employment matters where people say, "Oh, Bob has been a problem for years." You look at Bob's personnel file and it says, "Excellent, excellent, and excellent" all the way so you can't really do anything. For our purposes it is really critical feedback. As you say you are busy practicing and you don't really have the opportunity to evaluate other attorneys' work. It is the judges that do. In some counties they are not reluctant and we do get very good feedback from the judges. If there is a way to work on that to get them to be more frank and direct in a way that maybe they feel comfortable, at least you are getting information that is going to help us with our evaluation around quality control and the things that involves. Looking at the Chief Justice, maybe he can pick up the phone and make a call.

2:45:52 Chair Ellis

Great. Thank you both.

2:46:00 I. Swenson

One final note. Mr. DeKalb cannot be here. He had hoped to be but you have a letter from him and we will return to this discussion next meeting.

2:46:13 Chair Ellis

Anything else on Deschutes? Tom, did you want to finish?

2:46:19 T. Crabtree

Just real briefly. As far as calendaring, I will send to the Commission a copy of the sample calendar for the county so you get a picture of how it is set up and the days that all the groups are assigned to. I think one of the conflict problems that we get is being kind of the top feeders, if you will. If there is a conflict in one of the other groups it either stays within the Bend Attorney Group or goes down to the others and never comes back up to us. That might have something to do with some of the numbers. The other thing I wanted to briefly touch on is the jail issues. I think Ernie talked about it being four miles away and that is a bit of a problem. The other problem is they aren't real conducive to making time available for attorneys to go and visit. It used to be that you could go anytime night or day as an attorney and meet with your client. Over the years they have gradually restricted the hours that we go. In the new jail they only have one attorney room where you can sit and meet

with your client. Otherwise you are just talking over the phones in an open booth next to somebody else. That creates some issues as well. I just wanted to bring those to the Commission's attention and answer any other questions if anybody had any.

- 2:48:01 S. McCrea I had a question about the first contact. On page 19 and the top of page 20, it references the rule in the contract about initial contact with in-custody defendants as being within 24 hours of the next business day. Do you feel that the PD is able to meet that criteria?
- 2:48:20 T. Crabtree Generally, yes.
- 2:48:23 S. McCrea I know that in Deschutes County it is difficult because the appearances with in custody clients are conducted by video, which for me necessitated my driving over from Eugene because they wouldn't let me do it by telephone because the guy was in custody. Is it is the kind of situation where it makes it more difficult for practitioners in Deschutes County to make contact with the client? I am assuming that maybe you get new discovery but then you don't have the chance to talk to the client because he is in custody and you have got to be at the courthouse for the video arraignment.
- 2:48:59 T. Crabtree Right. Other times when you get into that problem are when you have an entry of plea set out. You have to go out to the jail to get your client's signature and then drive back to the courthouse so you can physically hand the document to the court. You can't just go out to the jail and be with your client on that end, which we do on some occasions, but then you don't have the paperwork. You can't fax it in or get it in any other way. It requires a double trip.
- 2:49:38 S. McCrea What about settlement conferences? Is the defendant transported for the settlement conference?
- 2:49:40 T. Crabtree For in-custody clients, yes.
- 2:49:45 S. McCrea So you have access.
- 2:49:45 T. Crabtree Yes. The client has to be there. The judge wants to have a direct talk with the client to look him eye to eye to say, "Look, if I was the sentencing judge, as I see it this is what you would be getting." I think sometimes that reality from a guy in the robe makes it so they don't feel so strongly that they have to fight this every step of the way.
- 2:50:14 P. Ozanne Tom, on the issue of access to clients in the jail, do you have a local process to raise these issues? I think it would not only be a concern to the defense bar but to the courts. Do you have a Criminal Justice Advisory Counsel or a local Public Safety Coordinating Counsel where the sheriff can hear these system concerns? Is that going on here?
- 2:50:38 T. Crabtree We did have one that was active for a long time. There is only one defense person on that and that is Mr. DeKalb. My understanding in talking to Jacques lately, and maybe Patty will correct me if I am wrong, is that they have not been that active lately. Apparently they are still meeting but nothing has come out of that.
- 2:51:12 Chair Ellis Thank you, Tom. I believe that is everybody on Deschutes. I saw Ron Gray was here earlier. Is he still in the room? Do you want come up and share with us?
- Agenda Item No. 3 Commission Discussion of Service Delivery Plan for Clackamas County**
- 2:51:35 P. Ozanne Marty Cohen is here too.
- 2:51:38 R. Gray Good morning.

2:51:54 Chair Ellis We are interested in how it is coming.

2:51:52 R. Gray We have several things that are in motion right now. Let me just quickly go through those. One, our president has written a draft of a proposed revision of our bylaws which he is reworking and that is the next item of business for our board of directors to work on. This will allow us to bring in two outside people to our board. We still have the consent from retired Judge Ray Bagley to join, but we are also looking for a public member. We have to redo our bylaws to make sure that we are in compliance. There are several modifications that we have to do to our bylaws and that is part of the process that is going on now. As soon as we get those adopted we can start the recruitment process to bring in the additional board member.

2:52:53 Chair Ellis What will that leave for a board? How large of a board?

2:52:57 R. Gray What we will end up with is our president has retired just recently - that is Brad Jonasson - he has consented to remain on as a president for a year.

2:53:10 Chair Ellis But as a non-practitioner?

2:53:14 R. Gray Right. He has now finished with his caseload. He has done his last trial. He is enjoying fishing and all that fun stuff. Then we are going to have the position where we have the retired judge. Then we are going to have a public member. Then the proposal is to go to two permanent board members and then the rest will be rotating out of the attorney pool as we do on a two-year basis.

2:53:38 Chair Ellis So a total board of five?

2:53:40 R. Gray Nine. Our idea is to stay with nine.

2:53:59 Chair Ellis The two independents, who will appoint them?

2:53:57 R. Gray Part of our discussion is the recruitment process. How do we do this? We stumbled onto Judge Bagley through a conversation. As far as getting somebody who is not a practicing attorney or somebody from the business community, what I have asked the board to do as we consider the bylaws is to bring in ideas about whether they have people in the business community that might be people we would contact and ask if they are interested in participating in the process, or should we do something like through the Chamber of Commerce, some kind of open request to anybody who is interested and we will tell them what is involved. We are still kind of feeling around how to do that.

2:54:42 Chair Ellis You might want to talk to Paul Levy. At our last meeting we went the route that we had indicated to you that we were headed. We defined as an independent board member someone who is not a practitioner or accepting public money for cases and who is not appointed by those who are. It is that latter piece that you might want to talk with Paul about.

2:55:17 R. Gray It is a work in progress. We first have to clearly revise our bylaws so we can get this process officially sanctioned. The reason that that is now a step, instead of a month ago, is because we had a member of our group appointed to the bench and a member retire. We prioritized seeking lawyers and applications. We published it and we got a tremendous number of applicants. A little over a month ago we picked an attorney to take a full-time contract who has been in practice about 10 years, has spent a lot of that in the DA's office in Clackamas County and is in private practice. On Tuesday of this week we met again and finally, and I am not patting myself on the back, but I got the board to agree to do something that I have wanted to do for a long time as way of bringing in younger attorneys. This hasn't even been officially announced yet but the lawyers have been contacted. One of our applicants is an attorney who has moved to Clackamas County and is opening an office in Clackamas County, who found out late that we were seeking applicants and applied and has consortium

experience in another county and comes with an extremely good resume and has been in practice for about 10 years.

2:56:42 Chair Ellis

Your secret is safe with us.

2:56:42 R. Gray

I am not going to name the name but the reference checks and background checks came in and this person was in the top three. We had three really qualified attorneys that could take full-time loads immediately. Based upon her criteria, experience, and her age she fit the kind of mold that we wanted. I have already contacted her and she is going to meet with me and we are going to get her up and going. We also have, as you know, apprenticeship positions on an ongoing basis that are a training ground and a way to get to know new lawyers. We have two lawyers. We just finished a second six month apprenticeship with one lawyer. We have another lawyer who is in an apprenticeship but who is clearly qualified to do more based on prosecutorial and defense experience, but who is a young lawyer with five or six years experience. The step that I have managed to get our board to take and which I wanted to do for a long time, is what we call a "work up contract." That attorney is going to meet with me on Monday and what we are going to do is, whenever a lawyer is not qualified to take everything or does not meet all of the state certification requirements, but is somebody we are looking to be a full-time lawyer, he is going to start out taking misdemeanor and minor felonies which he is clearly capable of doing and qualified to do. We are going to do a six month review. He is going to keep the mentor from the apprentice program as a reference attorney. Then as he progresses up the ladder at the six month review if nothing is wrong then we will extend automatically to the end of our contract and he will become a full-time lawyer but he will still have to work up. I have to work that contract language out. It is going to be a model for future such contracts when people apply. That will get us up to 30 lawyers. That is our highest point. I have also suggested to one who has just done bailiff duties for a judge and is now working in his own law office in Clackamas County to come on board as an apprentice lawyer. He is going to meet with me on Monday. We had over 20 resumes and applications to look through in filling these positions, and it looks like we may have to fill another position in a month or two because I think one of our lawyers is going to become a full-time justice of the peace instead of just a part-time JP in Clackamas County. That is on the table and I am guessing it is going happen. We will lose her and we will have to look for another. We are modifying our bylaws. We are going to change how we structure our board to meet the concerns we've heard. We are bringing in three relatively young lawyers so that we can deal with that issue.

2:59:48 Chair Ellis

I want to commend you. We have had this dialogue over at least two to three years. I think you are making really good progress and becoming the kind of entity that we hoped you would become.

3:00:05 R. Gray

We have had dialogues, arguments, and eventually it gets to where it ought to be. I appreciate that.

3:00:14 Chair Ellis

I appreciate the way you have responded to our concerns. Do you want to add to anything?

3:00:22 M. Cohen

Since our last meeting I think there were three major areas that we had discussed that you wanted us to try to deal with. One was evaluation of attorneys, the board issues, and the number of attorneys in our group and how we add attorneys. Since we last got together we have put together and sent out an online questionnaire to various entities who deal with the juvenile court, judges, CASAs, juvenile court counselors, DHS workers, OYA workers, and I'm probably forgetting somebody here. In sending that out we got a fairly good response, well over 60 percent, and for the most part people thought that the attorneys were doing well. We didn't specify attorneys name by name, so they dealt with performance issues in terms of the attorneys altogether. Some of the comments we got back were that they would have liked us to list attorneys specifically. That is something that we might do in the future. Some

responded with specific names of people that either were doing very well or they felt needed some improvement. Others that had some negative comments didn't list any names and I'm trying to find out from supervisors or other people in those organizations who those people are. If I know that there are some people who feel we aren't doing the job that we need to do but if I don't know who the attorneys are who are doing poorly, it doesn't help me a whole lot.

3:02:28 Chair Ellis

Look for people with dogs.

3:02:35 M. Cohen

For the most part I think that there were a number of comments that said that we had been doing better. There were a number of attorneys who were doing a very good job. A lot of the comments were that communication in general between the parties seemed to be better. We have been trying to improve on that as well. In the past we met on an annual basis at least with the CASAs. Since our last meeting we had a group meeting with all of the attorneys and the CASAs trying to get to know each other a little better outside of the court context and answer each other's questions about various things. I think that that was a very successful meeting. Hopefully that will have an ongoing, positive effect for us. As to the board, we have not added any new people yet. I have talked to some retired judges who might be willing to be on the board. One judge. Also some members of our group have left. One who left might be willing to be a board member. It gets me back to the comment about not taking any public money but not appointed by the board. We have the same issue that Ron has. We would have to change our bylaws as well. I will have to have some discussions. I will talk to Paul about that.

3:04:19 Chair Ellis

He has taken an inventory of all the consortia around the state and how they are structured. I think there is a lot each of us can learn from each other.

3:04:30 M. Cohen

I think that our working relationship with the judges is fairly good. I am getting some feedback if there are issues from Judge Darling and am able to respond to that both with the attorneys and then get back to the judge. Over the last few months that seems to have worked out fairly well. As far as I can tell she seems satisfied with the progress in that area. The number of cases that we have had – I think when we last spoke our caseload was way down. It has fluctuated fairly widely over the last six months or so. Although delinquency cases are still probably at historic lows since we have been doing this, the dependency cases have gone up quite a bit. We are not sure how that – what is going to happen with those with the budget issues and everything else. For the moment we have added one new attorney because of the attorney who left. We are just going to hold for now in terms of the number of attorneys that we have in our group and wait a few more months and see, perhaps in the fall, where things are in terms of our numbers as to whether or not we are going to need to add another attorney.

3:05:57 Chair Ellis

Any other questions?

3:06:00 P. Ozanne

I just wondered about individual attorney evaluations. How are those going?

3:06:03 M. Cohen

I do those on a fairly informal basis with the attorneys. It is something that we did talk about at our last meeting and we need to set up – I would agree that that is an important thing and we need to set up a more formal process to do that. We have been working on some of these others things and that is something that will be done.

3:06:37 R. Gray

We assigned board members to attorneys that were criticized and considered them works in progress but told them we were watching whether they would improve. I will just give you an example. At the last board meeting we assigned a board member to one of the attorneys who was reported to be good in court but very disorganized and scattered. The court staff was even noticing this and worried about it. That attorney actually hired a consultant to come in and help her organize her office better. Then the reports came back much better as far as the appearance of

being on time, organized, having the right files, and bringing the calendar to court as we heard this morning.

3:07:18 P. Ozanne

So you are focusing on people who received complaints?

3:07:26 R. Gray

No. We evaluated everybody. With the ones where there were identifiable weaknesses one of the board members that was involved in the interview of that lawyer to start with then took on the mantle of working with them to solve the problems that were designated. Then we get reports back as to whether progress is being made or not so we can decide ultimately whether they are going to move forward or disappear.

3:07:55 M. Cohen

I think, Peter, part of the evaluation process that we need – I understand meeting with everybody perhaps on an annual basis - but we need to get the raw data from the other players in the system to give us some input in terms of their problems.

3:08:14 P. Ozanne

But you are not asking for specific information about attorneys.

3:08:19 M. Cohen

Well, if there are problems then my job is to go back to the agencies or perhaps the department heads and ask for specific information. “Somebody in your department said that there are problems here and can you help me identify who those specific people are?”

3:08:41 R. Gray

We did individual polls. We put the names down of all of our lawyers. Sometimes it works and sometimes it doesn't. It depends on who gets it and whether they feel like talking.

3:08:55 Chair Ellis

Okay. Thanks a lot.

Agenda Item No. 4

Update on Service Delivery in Marion County

3:09:00 Chair Ellis

I'm not sure who all is here from Marion County. I see Paul is here and Olcott. I saw Tom earlier. Get one more chair and we will have everybody. Who wants to start?

3:09:55 T. Sermak

I am happy to say that I am satisfied with the current state of affairs in Marion County. I think that my office is doing quite well. I said when we started the public defender's office that I hoped to see some sort of watershed at about two years and I think that happened. I think there was a shift in our level of acceptance within the criminal justice community. I think that we have a good working relationship with the court, with the judges, and with the sheriff's department. In the best of all possible worlds I would be hiring one more lawyer now but our case count is a little bit down. I am anticipating that there may be some financial difficulties in the near future here, so we are probably not going to fill our last position.

3:10:46 Chair Ellis

You apparently read the local papers in Salem.

3:10:50 T. Sermak

I do and then I talk with some people who also have some knowledge about that area. Within the office I would say that we have sort of completed the growth and developmental stage. Now I am looking at the next year or year and half as sort of a refinement process where we hope to improve our internal procedures, make modifications to the research tools we have available to us, and refine the operation so that we can be more efficient in providing services to our clients. As we have from the beginning we are polling our clients on a regular basis. We continue to get good reports from them. I talk with the judges on a regular basis. I go to them to find out how my lawyers are doing as well encourage them to call me if they have any problems. I am not seeing any difficulties in those areas. I know we have a good working relationship with the bulk of the MCAD lawyers. They are supportive of our group and our group is certainly supportive of them. Paul and I have a good working relationship as well. I am satisfied. There is room for improvement. There

always is but I am quite satisfied with where we are right now. I hope that the Commission is as well.

- 3:12:14 Chair Ellis Let Paul or Olcott give their report and then we will have questions.
- 3:12:25 P. Lipscomb I think just speaking for MCAD we are doing well. I still see room for us to continue to improve. We set the standard of excellence for ourselves, which really means that it is a process of continual improvement. I hope and expect that when you get our third annual report you will see that we have had some additional accomplishments in the year that we are just beginning now. I think we have done well. I think the state of indigent defense in Marion County is good, but I am hoping that next year when we are here we are able to report further improvement.
- 3:13:13 Chair Ellis Okay. Olcott do you want to add anything or shall we turn it over to cross-examination?
- 3:13:22 O. Thompson Let's turn it over to the Professor.
- 3:13:24 P. Ozanne Tom, you rightly said in your report and it is true for MCAD as well, service to the clients is the main objective and I commend both groups because it looks like there has really been good progress in that regard. One of the thoughts about a public defender office, and it is not necessarily because consortia can't do that too, but as you all know the district attorney's office in Marion County has often played an active role in the legislature. I think that for some of us there was an expectation and hope that that would be a role, you know over time once the basic stuff was done as you are saying, that the public defender's office could fill, institutionally. What is your thinking on that score? Has that been a subject to discussion with the board?
- 3:14:25 T. Sermak I have told my board of directors that I wanted to be active, and have our organization be active, in legislative matters, as well as influencing the system in other ways. We have had the opportunity to – we have a seat on the E-Board advisory group on the electronic court system that is coming in. I work with Gail Meyer from OCDLA. She helps me stay on top of issues that are before the legislature that are important to public defense. I have been up to the legislature two or three times on those issues. We also work with Gail kind of behind the scenes to make our resources available to her. We have the capacity to do research and things like that on legislative issues. I sort of think of us as the emergency first line. If there is something that comes before the legislature and this has happened a couple of times, on Senate Bill 1007, for example, and House Bill 3508. We never actually had to testify or speak to the legislature but we did confer with a couple of the legislators who were concerned about that on an emergency basis. We are right there in town. It is a five minutes walk from my office to the capital. That means we have to stay somewhat abreast of the issues and we try to do that. We hope to be able to play a larger role in that as time goes by.
- 3:16:11 Chair Ellis I want to ask Paul about the professional improvement plans that you mentioned in your report. They sound pretty interesting.
- 3:16:35 P. Lipscomb Within the last probably 18 months when I had a lawyer that seemed to be struggling and hadn't been able to get off probation - they'd have something new come up and remain on probation - I would sit down with the lawyer and we would discuss what the issues were and what possible strategies there would be for moving forward. Then the lawyer would be sent away to come up with a proposed written professional improvement plan. Basically it caused them to take ownership of the problem and to develop a strategy for addressing it. We would then sit down together and discuss their draft improvement plan. Typically, but not in at least one instance that I can recall, it was necessary to send them back to revise it. Once I was satisfied with that professional improvement plan, it went in their file and then periodically if the probation period was long enough, or in some instances it was relatively short, at the conclusion we would address their efforts in coming through

the professional plan. "Did you do this? Tell me your progress on this," etc. We stay in touch with each other and in order to successfully get off probation they have to complete that plan. The plan then stays in their file.

- 3:18:10 Chair Ellis That just sounds like a terrific program to me.
- 3:18:19 P. Lipscomb I have had really good success with it. I would give the lawyers the credit for the success. They are the ones who made those plans work.
- 3:18:29 Chair Ellis The way you describe it is exactly right. They take ownership of the process.
- 3:18:37 P. Lipscomb I really look at my role in quality improvement as pretty much a coaching kind of role. I use my experience to work with them to point out the issues. There is often a fair amount of denial around those in the beginning. We have to break through and then once they take ownership they are really pretty successful in coming up with what they need to do to address it. Sometimes I offer suggestions. Going through the Professional Performance Standards is typically something that is required for everybody on a professional improvement plan. That is a suggestion that I make and they usually adopt it. Some people have been sent to talk with the Oregon State Bar efficiency people. I can't remember their official name but I think of them as the files on the floor people that come in and assist lawyers of every field of expertise in improving their organization so that they can improve their performance.
- 3:19:45 Chair Ellis I do want to say that several of us were here in 2005 when we began the process of reviewing Marion County. You guys have made so much progress and you just turned around a situation that was a real problem. A very large county that wasn't working the way it should have been, and now it is a model in the state. I commend both groups. I think you have just done a terrific job.
- 3:20:18 P. Lipscomb Thank you.
- 3:20:19 Chair Ellis Any comments or questions?
- 3:20:25 J. Potter In the past when you have made reports I have felt a sense of maybe competitive tension when we were talking about case numbers, for example. I am not hearing that now. Has that settled down? Is the public defender happy with, what, eight lawyers?
- 3:20:38 Chair Ellis Should we be worried?
- 3:20:45 P. Lipscomb Let me speak directly to that and I want to be as transparent as possible on this issue. To the extent that there becomes a perception amongst our membership that this Commission has any interest in shifting the workload from MCAD to the public defender's office, there is going to be fear and there is going to be concern and there will be some degree of push back from our organization. We are talking about lawyers and their livelihood. I think that is just natural and unavoidable.
- 3:21:22 J. Potter I am not hearing it now. That is my point.
- 3:21:23 P. Lipscomb We just finished our contract negotiations a few months ago.
- 3:21:28 T. Sermak Mr. Potter, to sort of address that issue from a more pragmatic standpoint, Paul and I confer on an as needed basis as to where our case count is. I have no interest in trying to cause him any difficulty within his organization. Olcott, I think, gets the records. He makes public records requests and finds out what my caseload is. He might know it before I do. We are very open with each other about that and if it ever becomes necessary to make adjustments we will. The way we are allocating cases now our boats seem to rise and sink together, which is more happenstance, I think, than anything else. I take them one day a week and they take them four days a week. It kind of averages out to where we can both meet our contractual requirements, or as

it happens now we are both a little bit down. I learned through the Marion County Public Safety Coordinating Council that the filings are down in the district attorney's office as well. That is an unusual occurrence for Marion County. We know what is going on within the system. We talk to each other about it. There is always going to be friction because we are talking about people's livelihoods. I think absent some radical change in the relationship between the two organizations I don't anticipate it will be an insurmountable problem.

- 3:23:05 J. Potter I have to echo the Chair. I am impressed with the professional harmony of this.
- 3:23:15 O. Thompson Part of it was just both organizations getting used to each other. Paul and Tom worked out a way so the days got allocated in a way that worked for both organizations. We were constantly switching days back and forth, which just added to the tension. Now it is a relatively settled process as far as who picks up cases on which days. We know what they are. I expect in another year, when it is time to start talking about contracts, will be talking about numbers again.
- 3:23:58 Chair Ellis Other questions or comments?
- 3:24:01 T. Sermak Thank you.
- 3:24:01 P. Lipscomb Can I just say something in answer to Peter's question about leadership in the legislature? Both Tom and I have worked with Gail pretty consistently. Both of us have appeared at the legislature to testify. I think if you asked Gail she would probably tell you that we have been eager to perform that responsibility.
- 3:24:29 Chair Ellis Okay. Thank you. It has been brought to my attention that lunch is here. Do you want to eat and work simultaneously?
- 3:24:58 S. McCrea Yes.

Agenda Item No. 5

PDSC 2011-13 Budget Request Policy Option Packages; Contractor Recommendations

- 3:34:47 K. Aylward I think I will start. Even though the agenda says we are going to talk about the '11-'13 budget, I would like to talk a little bit about the current biennium because there has been some activity. As I am sure you know the latest revenue forecast was down and that triggered the Governor asking executive branch agencies to reduce their current biennium general fund expenditures by 4.63% of their total biennial appropriation. That would go into effect July 1. So because you are implementing it in just one year's time it is like a 9% cut during the second year of the biennium. We are not on the allotment system. These are referred to as allotment reductions. Most agencies get a quarter of their money at a time and then that way there is a little more control over how much is spent. They are talking about reducing the allotments that would come in the second year. We are not on the allotment system and the governor does not have authority to just reduce our budget, but the legislative leadership contacted us and said would we please also prepare the same sort of reduction options that executive branch agencies are preparing, and we did that. In our case the figure is a little over \$9.7 million. That reduction would be to the Public Defense Services Account. We talked a little bit about where these cuts would be made. In the past whenever we had cuts we took as much as we could out of operating. When you go deeper and deeper it has to come out of the account. That represents about 32 days' worth of representation. That also assumes that we would get the full amount from House Bill 2287, which is referred to as the fee bill. We have expenditure authority for \$12.4 million out of the fee bill. So far we have received \$3.2. We may get all the way up to the \$12.4. Even if we do that is still not enough to cover our existing budget which is why we have a \$3.5 million dollar reserve in the Emergency Board. Obviously we are in the hole already, so another \$9.7 is just a deeper hole. Whatever is done to address the problem it is now just a bigger problem if these cuts take effect.

Now, on to '11-'13. First of all we have what are known as essential packages and policy option packages. Essential packages are packages that are amounts of money that are required just to retain the current service level, whereas policy option packages are literally policy options. You can choose to do something different as an agency and here is what it would cost. Then the legislature will choose based on policy. As far as essential packages, we have a big one, mandated caseload. Mandated caseload includes not only projections for caseload increases and decreases - and we are actually projecting a decrease in caseload for next biennium - it also includes inflationary factors. It also includes appellate mandated caseload. These figures we work out and I don't have an exact figure. It is going to be just a little under \$20 million. I'd like to leave it as long as possible to have as much current data as possible. One thing that is of note is the appellate caseload which, as I think I have mentioned to you before, is skyrocketing. It is significantly increasing. Depending on what timeframe you look at, it is anywhere from 20 to 33%. We have included it in mandated caseload and I know this sounds astounding, but we are requesting 12 additional attorney positions. Our office currently has 39 attorney positions. This is a huge increase for AD, so 12 attorney positions and two support staff positions. That is about \$2.6 million which is included in that figure of just under 20. Altogether mandated caseload should be just under \$20 million.

3:39:34 Chair Ellis

Is this driven by the probation appeal piece, or is there something else going on?

3:39:42 K. Aylward

Pete and I have been looking at the distribution of these cases. Obviously some of them were HB 3508, the resentencing hearing appeals, but even excluding those - we will keep working on it. We see them now coming in the door and we know that in six to nine months time is when the workload is really going to hit. We may actually have a problem in this current biennium. We have talked to LFO about it. It may involve Emergency Board action. It may involve limited duration positions. We just don't know at this point.

Now as far as policy option packages, in your materials I wanted to provide a history of what the Commission has decided to include in budgets in the past just to sort of give you some perspective. I won't go through all of these unless you have questions about what is different or what they were. As instructed, I worked up the figures for '11-'13 for any of the possible policy option packages that we brought forward in the past, with the exception of the one policy option we got which was juvenile dependency appellate attorneys in our office.

3:41:14 Chair Ellis

Why is PCR so much less than it used to be?

3:41:19 K. Aylward

A couple of reasons. When I first started including PCR as a policy option package this was to do additional caseload that we had on hand. Somebody needed to do this. We saw the caseload growing. I didn't anticipate that it would be taking caseload away from someone who was currently doing it and paid under the account. It was just new bodies to do new cases. Then, like in the '07-'09 biennium you will see that it dropped down quite a bit. It actually says to add four attorneys and reduce the account. I estimated the number of cases that four FTE attorneys could do and looked at our then current rate for PCR and subtracted that. The reason it continues to drop is that we have increased the rates for post conviction relief. We wanted to improve the practice and one way that you do that is by valuing those cases at a higher rate. Our PCR cases went up in value. Now the amount that is subtracted from the account, because the account is not paying for those, makes it almost a wash whether FTEs do it or it is paid for out of the account. The only recommendation that I would make based on the buzz around Salem is that although you do want to express your needs and make the record, I think it is probably a time to be realistic about what is going to be doable. Frankly, I don't think any of these policy option packages are likely to get funded.

3:43:20 Chair Ellis

Do you need a formal motion?

3:43:23 K. Aylward I do.

3:43:28 Chair Ellis Because we are going to lose Commissioner Potter in about two minutes.

3:43:33 K. Aylward Okay. I just don't want you to tell me to do them all.

3:43:31 S. McCrea What is your recommendation?

3:43:39 J. Stevens Would you recommend doing none of them?

3:43:41 K. Aylward With the post conviction relief because we didn't get the funding in the past, we ended up putting together a group under contract that we thought would be PCR central and could handle it under contract. Then in the meantime the PCR caseload dropped. It may be picking up again now but it did drop. I am thinking we would have to either delay the start of such a unit or take cases away from someone who has them under contract. I also have some issues about whether this kind of work meshes with the appellate division. If the appellate division is named as possibly providing inadequate assistance of counsel in the post conviction case that limits the number of cases this unit could do.

3:44:35 I. Swenson Mr. Chair, we had a preliminary discussion at the last meeting about this particular policy package. We do want to go forward with an evaluation of the current provider who is handling most of these post conviction cases at this point. We have decided that probably the best way to do that is through a site visit, to have Paul and a team of attorney peers examine what is going on there. We don't have a good read right now on the quality of the work they are doing. We hope it has improved significantly in the last couple of years. Before doing that I don't think we should assume that we should go forward with the same package we had before. It may be that this group is fulfilling all the needs and expectations which gave rise to that policy option package.

3:45:23 Chair Ellis Am I hearing from the two of you that maybe the best thing now would be to not seek the PCR piece, that things are under control, more or less, and you want to review how the contract provider is doing? If that method has addressed the problem?

3:45:47 K. Aylward Right. I didn't mention this but part of it is if there are FTEs available the appellate division needs them more than we need them for a new PCR unit. It is going to be a tough sell to get 12 more attorneys.

3:46:01 Chair Ellis That is a remarkable number.

3:46:03 K. Aylward I know. It may change. We may reforecast as the months go by.

3:46:12 Chair Ellis Is there discussion among the Commission on whether to keep or drop the PCR piece?

3:46:26 S. McCrea I defer to these guys.

3:46:26 Chair Ellis My inclination is to drop it. I think LFO will appreciate that.

3:46:40 C. Lazenby So we have these particular policy packages that we could put in. It is just basically asking for additional money. In the politics of the negotiation around our budget, in going forward with this is it opening a negotiation that we can then walk back from or if we drop policy packages do we get credit for being frugal? How does that play out?

3:47:09 K. Aylward It depends on who is producing numbers. Sometimes you will see a spreadsheet floating around that will say, "Oh, they have been cut 20% from their agency request

budget.” Most people know that you haven’t even hit bone depending on how much you ask for. To some extent, I think there is more backlash from going in and saying, “We have got to have \$300 million.” I think we fare better by having a reputation for being lean and realistic. I think the policy package options pretty much go off the table in a bad biennium right away anyway. Then people start to look at cuts to your current service level.

- 3:48:07 I. Swenson But it does allow us during budget hearings to talk about these issues. It is part of our presentation even though we acknowledge that we don’t expect funding for it. We say these are real, ongoing and important issues and we want you know about them.
- 3:48:26 Chair Ellis The gist of it is always to hold out something big that you can give up. It does seem to me that I would not want to seek 101 without also seeking 103.
- 3:48:44 K. Aylward It was decided that last biennium we wouldn’t put 101 in there because we were managing to make some progress with savings elsewhere. LFO reminded me that it is important to continue to make the record on that one in particular.
- 3:49:12 Chair Ellis I am fine with that. I don’t want us to go forward with giving the FTE lawyers more but not doing anything for the contract providers. That is not how I see it.
- 3:49:25 K. Aylward That is 103.
- 3:49:25 Chair Ellis Right. I think if you do one you do the other.
- 3:49:30 J. Potter I agree. I have to step out.
- 3:49:39 Chair Ellis Are we at the point we can do a motion before you leave? I think the motion would be to propose 100, 101, and 103.
MOTION: Chip Lazenby moved to approve the motion; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE: 7-0.**
- 3:50:09 C. Lazenby I came across a memo that was prepared the Multnomah County District Attorney’s Office to the Multnomah County Commissioners in anticipation of budget cuts. In that memo they were outlining crimes that they were no longer going to prosecute if they ended up getting five or six positions cut. I don’t know what the fate of that was, but I guess my general question is are we monitoring the prosecutorial rollback around the state?
- 3:50:48 P. Ozanne Is Jim still working on the numbers for you, Lane?
- 3:50:51 L. Borg No, I am doing that. There was a memo and there was an explanation that rolls that back. They were saying they were not going to prosecute like 5,000 misdemeanors if they got the four positions cut. On the approved budget that they are going on until the next forecast they knocked it down from 11,500 person misdemeanors to 9,000 – essentially somewhere around 2,000 less. He is adding deputies to property, to drug, to gangs, and DV. They are going down two, maybe three, in misdemeanors but they may be able to backfill them with law students. I don’t know if they are going to prosecute any fewer misdemeanors, but they are saying 2,000.
- 3:41:54 C. Lazenby I am looking at the numbers that we got from the trial court administrator for Deschutes County showing that there are increases in civil and in domestic violence cases. They are having a decline in felonies over a period of time and other crimes too. Then budget cuts are hitting not only local governments but also these prosecutorial offices.
- 3:52:20 P. Ozanne The workload has gone down steadily for the last few years.

- 3:52:21 Chair Ellis Will there be a fiscal impact on us if this Mannix initiative, which seems to have enough signatures to be on the ballot, passes?
- 3:52:36 I. Swenson We have to resolve that question by next week. We have been asked to participate in a discussion about the potential impact of that measure. [Comment to Kathryn Aylward] I don't know if you have had a chance to work on it yet. I didn't think so. We will be developing numbers. I don't think the volume of cases will be high but there will be increased penalties. In response to Commissioner Lazenby's question, I think what Kathryn does is to monitor the caseload and despite what a particular district attorney is doing – for example, if they do file more of one kind of case instead of another - we are going to see the same case numbers but if they are more serious cases then they are going to be more expensive for us. We provided the E-Board with our caseload history and it is the last exhibit in there. Short of seeing the number of cases coming in the door declining, it is pretty hard to predict what is going to happen.
- 3:53:44 C. Lazenby Just a concern. It is Multnomah County but the same thing may be happening in other places. It is not going to be a decline in crime, just prosecution.
- 3:54:01 I. Swenson There is a decline in crime. The Criminal Justice Commission provided a report to the legislature a couple of weeks ago. It is a very impressive decline statewide. In some categories there are quite remarkable reductions and it follows a national trend. It corresponds to victimization studies as far as I am aware. So crime is actually down, not just the reporting of crime, and it is a national phenomena.
- 3:54:35 C. Lazenby And is it tied to that 15 to (inaudible).
- 3:54:34 I. Swenson Yes, partly. Commissioner Ozanne probably knows a lot more about those statistics.
- 3:55:00 Chair Ellis It wasn't clear to me what this contractor recommendation piece was?
- 3:55:08 I. Swenson Every biennium before you approve the budget proposal, you generally hear from contractors if they have any information to present on what you should be requesting.
- 3:55:28 Chair Ellis You cleverly scheduled this so they are all in another room.
- 3:55:37 I. Swenson I know that most of them were here to listen and if they had something they wanted to tell you they would have. It may be that there isn't anybody who wants to provide input today. Anybody?
- 3:55:50 Chair Ellis Anything more on Item 5? Are we ready to go to Item 6?
- Agenda Item No. 6 OPDS Monthly Report**
- 3:55:58 I. Swenson The E-Board report that we submitted in May is attached. It includes this caseload trend which we are required to report. We will be reporting to all future Emergency Board meetings, as well as the interim Ways & Means Committee, on caseload trends as well as on our expenditures and where we expect to find ourselves by the end of the biennium. Of course the Judicial Department is our constant companion at these meetings. They are also required to report and to provide information on revenue under House Bill 2287.
- 3:57:01 Chief Justice Paul De Muniz If I might, Mr. Chair, just an addendum to that. We are tracking what we call the House Bill 2287 piece. These are the fees that are split 65 to the judicial department and 35 to PDSC. At the time that Ms. Swenson's letter went in some of the data that was used about the trending of those fees was old. We update those every three weeks. I can report now that that the trend reversed itself over last the three months. The trend is now almost matching the expectations that we originally had. We will

keep our finger crossed. It is a more positive picture than it was at the time that you had to submit your letter.

- 3:58:16 I. Swenson So, unless there are questions, we just wanted to advise you that we continue to report to the E-Board and that they accepted our report.
- 3:58:36 K. Aylward I have some good news. After 11 months we have finally signed a lease on the new building at 1175 Court Street. Within hours, the ink wasn't even dry, the general contractor was in there framing, putting up walls, and calling me and asking how many BTUs the mini-split in the server room needed. I have a lot of stuff going on and it is nothing that I know anything about. Laura Kepford in ...
- 3:59:06 Chair Ellis Did you ask if he had a number in mind?
- 3:59:08 K. Aylward The lease requires them to have it completed by August 25, which is a lot to do. It is a 10-year lease. It has one percent annual increases built into it which we are very happy about. We got two and a bit months' rent free. Our rent is about \$25,000 a month. That \$50,000 will cover our move costs. The quote for the move is \$30,000. It is a big chunk of it. The remainder will go to filling budget holes or buying bits and pieces of furniture that now need attachments since they are in a different location. I am excited about it and I think it is going to be great.
- 3:59:57 Chair Ellis You think the move is in September?
- 3:59:59 K. Aylward August 26, 27, 28, and 29.
- 4:00:05 Chair Ellis Perfect.
- 4:00:05 K. Aylward It is unfortunate that oral argument for the appellate division is on August 26. That has been scheduled for a long time and involves so many people they are not going to be able to move it. Maybe we will move CBS on Thursday and try to leave them behind. We have to be out by September 1.
- 4:00:37 Chair Ellis This feels remarkably smooth.
- 4:00:42 K. Aylward I have resigned myself that it is going to be chaotic but it will pass. Everybody will get settled in. It will disrupt our productivity. You plan in advance and just as if you were on vacation those four days, you don't plan to be able to get anything done. You won't have a phone. You won't have a computer. You won't have a desk.
- 4:01:02 Chair Ellis Now you are walking distance to the legislature and the court.
- 4:01:16 J. Potter If in the future you receive 12 more lawyers can this building accommodate that?
- 4:01:19 K. Aylward No, unfortunately. We might have to look at opening an office in Portland if we have to. I don't know.
- 4:01:45 C. Lazenby I am drawing a blank on the address. Can you physically tell me where the office is?
- 4:01:49 K. Aylward The Justice Building, if you stood on the front steps and threw a rock you would hit our building. It is directly across the street.
- 4:02:02 Chief Justice De Muniz It is the northwest corner of 12th and Court.
- 4:02:05 Chair Ellis So the parking lot and what used to be gas station is on this block?
- 4:02:23 Chief Justice De Muniz The Justice Building is on Court Street. Across the street from the Justice Building on the north side of Court Street is their new building. It is a beautiful building.

- 4:02:54 K. Aylward One of the things that we are doing that has actually worked out very well is we are getting the same kind of key card system that judicial uses in their buildings. In talking to them I was saying that sometimes judicial people need to get into our building, the IT support people, and then somebody else was saying there might be areas of our buildings where we want to allow your attorneys access and that would be simple to do. We are getting a lot of help from judicial on specifics for how big the server room should be and things like that. It is going to have super high speed internet. It is not going to have a whole lot of space but that will force us to go even more paperless than we are now. That is a good thing.
- 4:03:45 Chair Ellis Okay. What else?
- 4:03:52 I. Swenson Very quickly on delinquency representation. Commissioner Welch and I need to talk. We haven't had a chance to compare notes in a little while. We did send a mailing to the juvenile court directors including some information that they had requested at the meeting we had with them, as well as a legal memorandum that was prepared in response to what we had heard here. We sent information about the impact on juveniles of juvenile adjudications, in other words, some of the long-term collateral consequences for juveniles. We sent all of that material to the juvenile court directors. We also just recently sent all of that with a cover letter to the juvenile court judges. Chief Justice De Muniz permitted me to use his name in my letter. As a result we have gotten a lot of responses, which is very helpful. I haven't thoroughly reviewed them but I think they fall into two camps. There are those who believe that all juveniles should be represented whenever possible. They tend to appoint routinely in all categories of cases. Then there is probably a larger group of juvenile court judges who do not routinely appoint. They express a concern about increasing appointments particularly in probation violation cases, and indicate a probable need for some additional training for juvenile judges on waiver of counsel and what should be included in the colloquy that judges have with juveniles contemplating waiver of counsel. We will talk about what the next steps should be. We may bring this back to you at a meeting in the near future. Pete do you have anything?
- 4:06:30 P. Gartlan Good afternoon. I only have a couple of items. The first one is sort of a follow up on the report of the appellate division that we did in April. Mr. Chair you had asked me then if we had regular communication with the trial bar. Just by happenstance, Bronson James, who used to be a chief deputy with our office, had a brilliant idea. He recommended that we assign attorneys to different regions of the state where the service providers are. Our current chief deputy, Ernie Lannet, went about implementing it by devising this system. He went through and he looked at our notices of appeal. Then he apportioned the regions in the state based on their percentage of the notices of appeal. Then he allocated attorneys to different regions. What we are going to try to do is have attorneys in our office - everybody above a Deputy I level, so attorneys with experience - be the designated representatives to different parts of the state. Hopefully that will develop a relationship and communication with the attorneys in that area. We will see how the communication develops and hopefully they will have much better contact between trial attorneys and our office. We will assist them in the development of issues and just talk about issues and communicate back and forth. I am kind of optimistic that this is a major step toward development of a much better relationship with the trial bar.
- 4:08:30 Chair Ellis That sounds great.
- 4:08:36 S. McCrea Are you going to post this on the website? How do the local attorneys know that they can make contact?
- 4:08:37 P. Gartlan This is still developing. What we anticipate doing is working through the analysts. Maybe use the analysts as an entrée to that first meeting and communication. I was hoping that we could meet people here at this conference. Our budget for CLEs was

severely cut so we don't have a lot of people here to meet with the providers. That option fell off the table but we will do it and we hope to do it probably within a couple of months, working through the analysts. I will report back on how that is going at a future meeting. The only other item is that Shannon Storey, who has been an attorney with our office for about six or seven years, or so, has been appointed to a senior deputy position and now will be in charge of the JAS unit, the Juvenile Appellate Section within the office. We have someone with enough appellate experience and now juvenile experience to assume that position and be more hands on, in charge of that section on a daily basis.

- 4:10:04 Chair Ellis So are you going to talk to us about the 12 attorneys? I know how the record exists now, "Well, we told you about it."
- 4:10:18 P. Gartlan I don't have an explanation. I can't explain why there is an up tick, a dramatic up tick, in the appellate intake. I can speculate, but it is only speculation, and that is that even though perhaps the number of prosecutions is going down at the trial court level, perhaps the more serious crimes ...
- 4:10:38 Chair Ellis Higher percent of crime?
- 4:10:38 P. Gartlan Right, and then we have – typically our clients are more invested and involved in the appeal if they are incarcerated. Misdemeanants who are not incarcerated tend to lose interest or don't even seek to appeal. People who are incarcerated have a greater interest in pursuing the appeal. Perhaps that is an explanation but I really don't have one.
- 4:11:08 Chair Ellis Twelve would be about a 30% increase?
- 4:11:10 P. Gartlan Yes.
- 4:11:13 Chair Ellis That is a big number.
- 4:11:13 P. Gartlan Yes it is. I agree.
- 4:11:20 Chair Ellis Is there any way to get a handle on whether what we are seeing at the notice of appeal level – anyway to tell whether this is an episode and not a trend?
- 4:11:40 P. Gartlan I had hoped it was an episode at the end of 2009, but it is not. It is a trend. Our caseload just keeps going up and we are routinely taking in over a 100 cases a month just in the trial types. It used to be that we would take in about 900 a year. How we are up to 1200 on average. It is problematic.
- 4:12:12 Chair Ellis With numbers that big you think we would be able to disaggregate the data in some way and find out where these cases are coming from and what is causing it.
- 4:12:31 P. Gartlan Um-hm.
- 4:12:31 Chair Ellis Can't you plug the damn leak?
- 4:12:38 P. Gartlan This gives you an idea percentage wise. If you look at that fourth column.
- 4:12:45 Chair Ellis But that doesn't look to me like – the only thing surprising that I saw in there was Columbia and Washington seemed kind of high. That doesn't tell you about the increase it just tells you where they are coming from.
- 4:13:04 Hon. Elizabeth Welch I assume there is no pattern in terms of the kinds of cases?
- 4:13:10 P. Gartlan No. We are still trying to clear that up. I think the Chair had mentioned that maybe it was 3508 cases but it is not just that. Our trial type cases are on the increase and

that is completely unrelated to the 3508 cases and the guilty pleas cases. Our trial type – what I mean by that is jury trial, court trial, stipulated facts, and conditional pleas. Those numbers are increasing.

4:13:47 Chair Ellis It is not only the numbers but those are the cases that take the most time to prosecute. Are your counterparts across the street seeking similar numbers?

4:14:06 P. Gartlan Yes. I think the Court of Appeals has been inundated with cases for the last couple of years. It is not going to get any better for them.

4:14:30 Chair Ellis I guess all I can say is keep working the data. I am sure the legislature is going to have exactly the same set of questions. It is our not fault that these things happen but it is our responsibility to try figure out where they are coming from.

4:14:49 P. Gartlan We are kind of receiving serve in tennis. The DA is prosecuting.

4:14:59 Chief Justice
De Muniz Barnes, from a systematic point the court feels Peter was being very polite. They are drowning in their caseload.

4:15:12 Chair Ellis Becky has only been there a couple of months. She will straighten it out.

4:15:12 Chief Justice
De Muniz I hope so. This is really a serious problem. I said I was going to advocate for another panel. This will be very difficult in this budget session to do that. The Court of Appeals is going to two judge panels. I think they have had one experimental panel already where they gave the lawyers the option to opt into this two judge panel, or stay with the three judge panel. Eighty percent, I think, opted in to do that. They are going to do it again next month but we have to have some structural changes in order to do this. The public defender's office has become, in my humble opinion, a very sophisticated advocacy group and one that we should all be proud of. When they are delivering those blows the court is on the receiving end, so to speak, in terms of having to wrestle with these very difficult legal problems that are being presented. We are going to have to have some changes. The AWOP percent right now in the Court of Appeals is up to 75%. That ought to make everyone in this room shudder. For Oregonians that is their last answer. No one buys the advance sheets anymore. Our publication department until about five years ago was self-supporting. No one buys the advance sheets anymore. No one buys the reporters. Now we have to figure out a way to fund that.

4:17:26 Chair Ellis Like the newspaper industry.

4:17:34 Chief Justice
De Muniz Peter is correct about his observations from both his standpoint and the court's standpoint.

4:17:41 Chair Ellis Okay. Any other questions for Pete?

4:17:49 P. Gartlan Thank you.

4:17:47 Chair Ellis Anything else, Ingrid?

4:17:51 I. Swenson I think we are done.

4:17:51 Chair Ellis Anything for the good of the order from any corner? Is there a motion to adjourn.
MOTION: Peter Ozanne moved to adjourn the meeting; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting was adjourned at 1:23 p.m.

Attachment 2

**CLACKAMAS COUNTY UPDATE AND PROPOSED SERVICE
DELIVERY PLAN– August 2010**

(1) SUMMARY OF INFORMATION AND TESTIMONY RECEIVED BY PDSC
FROM AUGUST 2009 to JUNE 2010

Information from previous PDSC meetings relating to the public defense delivery system in Clackamas County is available on the Commission's website:
<http://ww.oregon.gov/OPDS/docs/Agendas/03-04-10.pdf>.

At the time of its previous discussion of Clackamas County on March 4, 2010, further discussion of a service delivery plan for Clackamas County was deferred until resolution of the question about whether or not boards of directors should be required for all PDSC contractors, and, if so, what the composition and responsibilities of those boards should be.

At its April 22, 2010 meeting PDSC adopted a policy statement requiring, with respect to contracts beginning in January of 2012, that every public defense contractor (a) be governed by a board of directors with at least two independent members or, in the alternative, (b) demonstrate to PDSC's satisfaction that the contractor has appropriate financial safeguards and quality assurance mechanisms in place.

At its June 2010 meeting the Commission continued its discussion on Clackamas County and received testimony from Ron Gray of CIDC and from Marty Cohen representing IDI. They reported as follows:

Ron Gray said that the Clackamas Indigent Defense Consortium's (CIDC) president has written a proposed revision of the group's bylaws. The new bylaws will allow the group to bring in two outside members. Judge Ray Bagley is still available and when the new bylaws are in place, recruitment for the second member will begin. The board will continue to have nine members, two of whom will be permanent. The others will rotate out of the attorney pool for two-year terms. The President of the board, Brad Jonasson, has recently retired but will remain president for a year. They are still discussing how to recruit the second outside board member. Chair Ellis suggested that they confer with Paul Levy about the method of selecting the outside members since the Commission has defined independent board members as persons who are not receiving public money for cases and who are not selected by those who do.

Mr. Gray said that another CIDC member had been appointed to the bench and one had retired. In seeking to replace those two members, the group received a large number of applications. One attorney with approximately 10 years of practice has been accepted. A second attorney who has been

practicing in another consortium is being considered. She was one of three well-qualified attorneys who applied. There are also two new lawyers in the apprenticeship positions. CIDC has now approved a “work up contract” which would allow an attorney to start out taking only misdemeanors and minor felonies. He will continue to work with his mentor from the apprenticeship program and will be reviewed after six months. After six months it will be determined whether he will be a permanent members and, if so, he will continue to “work up” to handling more serious cases. With this member the group will have 30 members, its highest number. A former court bailiff will be starting the apprentice program.

Chair Ellis commended CIDC for making good progress and responding to the Commission’s concerns.

Marty Cohen said that Independent Defenders, Inc. (IDI) had conducted an online survey of judges, CASAs, juvenile court counselors, DHS and OYA workers. More than 60% responded. For the most part respondents thought that the attorneys were doing well. The survey did not identify lawyers by name. Respondents were asked to assess quality of representation by the entire group. Some respondents said that they would prefer to provide information about individual attorneys. Some responses did talk about the work of individual attorneys. Some who provided very negative information did not identify the attorneys about whom their comments were made. Mr. Cohen said he was trying to obtain additional information. Commentators said that communication with the group has improved. IDI members meet annually with the CASAs. The last meeting was very successful. No new members have been added to the board but Mr. Cohen has talked to a retired judge about serving. If independent members must be selected by someone other than the consortium members, the group will have to revise its bylaws.

Mr. Cohen reported that the group’s working relationship with the judges is fairly good. Judge Darling seems satisfied with the progress that has occurred. The caseload has fluctuated over the last six months. Delinquency cases are down but dependency cases have gone up. One new attorney has been added to fill a vacancy but no others will be added until it appears that the caseload will require another attorney.

In terms of attorney evaluations, Mr. Cohen said that he does them on an informal basis. The group is planning to create a more formal process.

Ron Gray said that CIDC had evaluated all of its attorneys and included the names of individual attorneys on the questionnaire. Board members were then assigned to attorneys who were criticized. In one case an attorney was reported to be effective in court but very unorganized. That attorney hired a consultant to her organize her office. There have been reports of significant

progress.

(2) PROPOSED SERVICE DELIVERY PLAN FOR CLACKAMAS COUNTY

Comments

The public defense delivery system in Clackamas County relies on a single provider for criminal defense representation and a single provider for juvenile and civil commitment representation. Lack of competition does not in itself, appear to have negatively affected the delivery of public defense services in the county but when the sole provider is a consortium it is more likely than other types of providers to lack a system for evaluating the work of member attorneys, a method for addressing underperformance and mechanisms for admitting new members and preparing for transitions in leadership.

Overall the representation provided by members of CIDC is rated as “good,” and representation by IDI as “good to excellent.” The quality of representation provided in individual cases, however, is reported to vary from one attorney to another in both consortia.

Neither of these contractors, at the time of the Commission hearing in March of 2009, had in place a process for systematic evaluation of the work of their attorneys and both had sometimes failed to address significant performance issues even when they were well known. After the March 2009 hearing both contractors took some very positive steps to address attorney performance. At the January 28, 2010 PDSC meeting it was reported that CIDC had nearly completed its initial round of attorney evaluations. IDI had begun research on an evaluation process and implemented some quality improvements. One attorney was terminated from IDI consortium membership. Two attorneys began specializing in child representation as part of a six-month pilot project. IDI members met with Judge Darling, with CASAs, and with DHS to discuss ways of enhancing their effectiveness as community partners.

Further progress was reported at the June 17, 2010 PDSC meeting. Ron Gray said that CIDC’s bylaws were being revised to require two independent board members. The consortium had not had difficulty replacing two members who left, they had created a “work-up” program and added another apprentice. Attorney evaluations were completed and board members were monitoring those with negative performance reports. Chair Barnes Ellis commended CIDC for its progress and for responding to the Commission’s concerns.

Marty Cohen said that IDI had established an evaluation procedure which included obtaining input from a broad group of those involved in the juvenile court system. The group has continued to seek an outside member for its board and, in view of the Commission’s new policy on board members, will have to revise its bylaws to meet the new requirements.

It is hoped that these positive developments will continue. Both groups have made significant strides towards implementation of effective quality control mechanisms. CIDC has been able to replace retiring members with qualified attorneys, to continue its apprenticeship program and to implement a new “work-up” program to help attorneys become qualified to handle serious cases. While IDI has not made as much progress on its attorney evaluation process, it has addressed the issues raised by Judge Darling and is clearly striving to meet PDSC’s expectations. The principal concerns identified in the initial report on Clackamas County have been or are in the process of being addressed.

Recommendation

While it will be critical for both consortia to ensure that they have the capacity to “evolve” to meet changing circumstances, the current public defense delivery system in Clackamas County appears to be functioning satisfactorily and no changes are recommended.

Attachment 3

ORBITS Budget Narrative

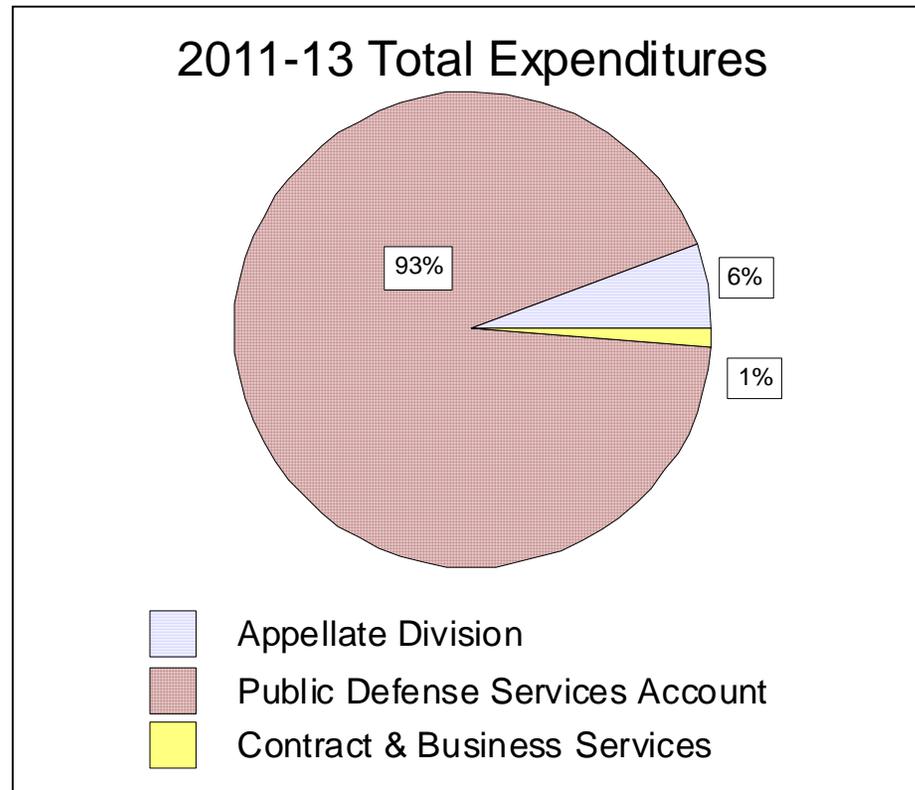
Public Defense Services Commission

Agency Summary

The Public Defense Services Commission (PDSC) is the judicial branch agency responsible for establishing and maintaining a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.

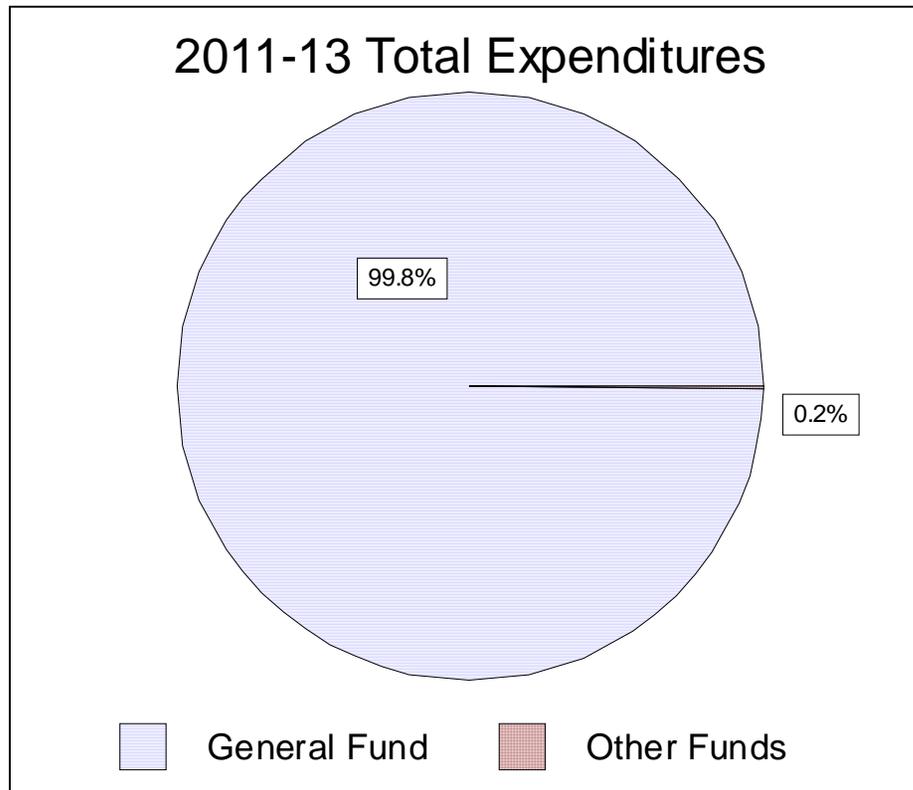
Budget Summary Graphics

How the budget is allocated among programs or activities



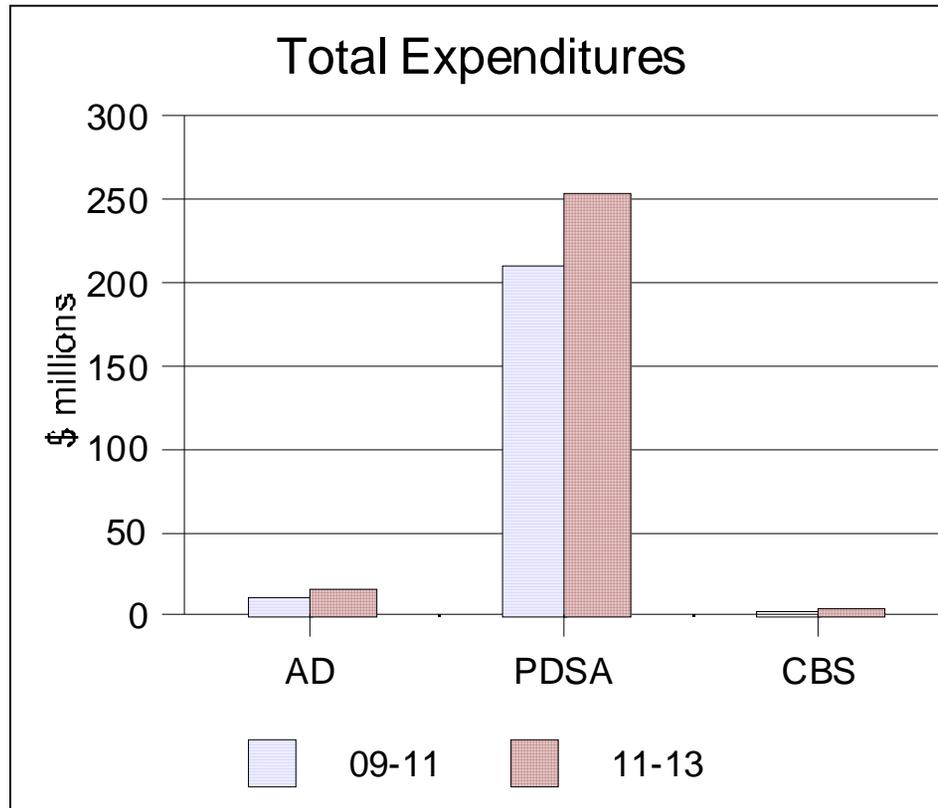
ORBITS Budget Narrative

Distribution by fund types



ORBITS Budget Narrative

Comparison of 2009-11 Legislatively Approved Budget (as of April 2010) with the 2011-13 Agency Request Budget



AD = Appellate Division PDSA = Public Defense Services Account CBS = Contract & Business Services

ORBITS Budget Narrative

Mission Statement & Statutory Authority

The Legislative Assembly enacted a mission statement for PDSC in 2001. ORS 151.216 directs PDSC to administer “a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.”

Oregon Revised Statutes: PDSC’s authority is derived from ORS 151.211 et seq.

Long-Term Plan

PDSC’s long-term goal is to ensure the future viability and stability of Oregon’s unique public defense system which is comprised entirely of private providers at the trial level. That system was severely jeopardized in 2001-2003 and which faces the continuing loss of older attorneys and increasing competition for younger attorneys to replace them. This plan targets the three main challenges faced by the agency: 1) the need to attract and retain more public defense providers; 2) the need to improve the quality of representation, primarily in juvenile dependency cases; and 3) the need to enable contractors to reduce caseloads while maintaining adequate revenue to support continued operation.

All three of these challenges are interrelated. Among the agency’s long-term providers, some of the most senior attorneys are reaching retirement age. Due to increases in the cost of living over the past two decades and the lack of a corresponding increase in the public defense budget, these providers have experienced increasing difficulty recruiting and retaining new attorneys. High caseloads also contribute to the loss of attorneys. The major reason that public defense caseloads in Oregon exceed national standards is that public defense contractors accept ever-increasing caseloads in order to meet rising costs. Quality of representation as well as morale and long-term job satisfaction have been negatively affected by excessive caseloads.

The agency’s 2011-13 budget will address the hourly rate for hourly paid attorneys and investigators, the salaries of attorneys employed by not-for-profit public defender offices (accounting for 32% of the statewide caseload), and some of the quality of representation issues in juvenile dependency cases.

In 2007 the Legislature provided funds sufficient to allow the agency to increase the hourly rate for attorneys for the first time since 1991. The rate which had been in effect for 16 years was \$40 per hour for non-death penalty cases and \$55 for death penalty cases. In 2007 PDSC was able to increase those rates by \$5 per hour. Investigator rates were also increased by \$3 per hour for non-death penalty cases and \$4 per hour for death penalty cases. In this biennium the agency is seeking funding to increase the hourly rates to the levels sought by the agency in 2007 — \$9,140,960 to increase the rate to \$70 an hour for attorneys in non death penalty

ORBITS Budget Narrative

cases and \$95 in death penalty cases, and \$2,585,226 to increase the hourly rate for investigators to \$35 in non death penalty cases and \$45 in death penalty cases.

In addition, in 2007 the agency was provided sufficient funding to increase public defender salaries to a level that would move them one-sixth of the way to parity with district attorney salaries in the same counties. Unfortunately, since average district attorney salaries also increased over the course of the last two biennia, the cost of achieving parity with district attorney salaries would actually be greater in this biennium than it was in 2007. The cost of reaching parity this biennium will be \$6,497,372. Also in this biennium the agency will address deficiencies in juvenile dependency representation by reducing caseloads by 20% to allow attorneys to devote more time to each case. Reducing juvenile dependency caseloads by 20% would require an additional \$11,033,520.

These steps will keep providers from leaving public defense and will improve the quality of representation in the key area of juvenile dependency representation.

In subsequent biennia, the agency will include policy packages aimed at reducing caseloads across the board to levels recommended by national standards and in accordance with the agency's mandate to provide public defense services "consistent with...national standards of justice." Reduced caseloads would be a powerful recruitment and retention incentive for public defense attorneys and would promote high-quality representation and long-term stability throughout the public defense system.

If the agency achieves the goals discussed above, it can then focus on establishing and rigorously enforcing standards of representation. Policy packages in subsequent biennia will likely include funding requests to meet training and resource center needs, and additional staffing to enable the agency to better monitor the quality of representation.

2011-13 Short-Term Plan

Agency Programs – the agency is comprised of two divisions:

- The Appellate Division (AD) provides direct legal services in the Oregon Supreme Court and Court of Appeals on behalf of financially eligible clients appealing trial court judgments of conviction in criminal cases, and trial court judgments in juvenile dependency and termination of parental rights cases. Through best practices in performance management, results-based attorney work plans and regular performance evaluations of every employee in the office, AD plans to continue making progress in increasing office efficiencies and, as a result of such efficiencies and any additional positions that may be authorized by the Legislature, eliminate historic criminal case backlogs in the state's appellate courts and achieving established timelines for briefing in these cases.

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- The Contract and Business Services Division (CBS) negotiates and administers over 100 public defense contracts with individual lawyers and groups of lawyers and with nonprofit corporations for the delivery of legal services across the state in criminal, juvenile and civil commitment cases. After assuming the responsibility from state circuit courts in 2003 to review, approve and pay fees and expenses for public defense cases, CBS plans to continue developing and refining policies and practices that ensure the cost-effective administration of public defense contracts and payment of necessary and reasonable fees and expenses. (Contract costs and fees and expenses are funded from the Public Defense Services Account.)
- PDSC's Executive Director and General Counsel in collaboration with its division heads will continue to implement quality assurance programs that evaluate the operations and performance of PDSC's major contractors throughout the state and their adoption of best practices in public defense and law office management:
 - (1) PDSC has reviewed the public defense delivery systems in 21 of Oregon's 27 judicial districts and will continue to hold meetings and conduct investigations throughout Oregon for the purposes of developing a "Service Delivery Plan" for every county or judicial district in the state. Such reviews are conducted with the cooperation of the public defense contractors in the area, the Circuit Court judges, the District Attorneys and many other representatives of the local criminal and juvenile justice systems. PDSC prepares written reports that include final service delivery plans for each district and that are on its website for review by any interested person or group. These plans establish the most cost-effective local organizations, structures and policies for the delivery of public defense services, taking into account the justice system practices and resources in each locality.
 - (2) The agency's General Counsel performs quality assurance assessments of providers in each judicial district. This unique program involves the volunteer effort of dozens of public and private defense attorneys and other professionals who devote two and a half days to the study and analysis of the quality of representation being provided by a particular contractor or contractors in the county or district. To date 19 of these assessments have been performed. The Quality Assurance Task Force, which oversees the program, has been able to assemble a list of best practices from information obtained during the course of these assessments. Detailed reports are provided to the subject contractors identifying areas of special achievement as well as areas in which improvement is needed and recommendations for actions to be taken to address any deficits. PDSC is not aware of any other state public defense system that is able to achieve thorough assessments of its providers with the use of an all volunteer group of lawyers and other professionals. The contribution made by these volunteers is an indication of their commitment to supporting high-quality representation for public defense clients.
 - (3) PDSC co-sponsors, with the Oregon Criminal Defense Lawyers Association (OCDLA) (a membership organization of defense providers), an annual two-day training for public defense managers which includes training on best practices for law office

ORBITS Budget Narrative

management, quality improvement initiatives, updates on technical developments that can affect productivity, and many other issues of interest to contractors. OCDLA is the organization that provides the great majority of continuing legal education programs for lawyers engaged in the practice of criminal law.

Environmental Factors – The public defense services that PDSC provides are mandated by state and federal constitutions and statutes.

The factors that drive the demand for these public defense services are beyond the control of PDSC. These factors include demographic factors such as population growth and growth in the at-risk population for juvenile and criminal offenses, the state's crime rate, policy decisions regarding criminal law by the Legislative Assembly and by the voters through ballot initiatives, and law enforcement policies and practices of state and local police agencies and 36 independently elected district attorneys.

PDSC is committed to ensuring that taxpayer funds devoted to public defense services are spent wisely by carrying out its mission of providing quality legal services cost-efficiently. PDSC is accomplishing that mission through results-based agency operations and management and a commitment to performance measurement and evaluation, as well as through collaborations with public defense contractors to implement best practices in law office management and quality assurance throughout the state.

Public defender compensation is well below the compensation received for legal services not only by attorneys in all other areas of practice but by their counterparts in public prosecutors' offices as well. Qualified lawyers are increasingly unavailable to provide these services, particularly in rural areas of Oregon. As a result, local public safety systems throughout the state, especially in those rural areas with a short supply of lawyers, are at risk of potential collapse because of the legal impossibility of prosecuting criminal and juvenile cases without public defense attorneys, as occurred statewide in the 2001-2003 biennium.

Agency Initiatives – This budget request contains three policy packages that are designed to ensure the availability of qualified public defense attorneys throughout Oregon and the continuing operation of the state's public safety system.

- Package No. 100 would provide funding to reduce trial-level juvenile dependency caseloads by 20% in order to address chronic and serious quality of representation issues. This package would allow the agency to significantly improve the quality of legal services in juvenile dependency matters.
- Package No. 101 would carry out the statutory directive to PDSC to adopt a compensation plan for the office of public defense services that is commensurate with other state agencies. ORS 151.216(1)(e).

ORBITS Budget Narrative

- Package No. 102 would bring public defender attorney salaries in line with deputy district attorney salaries, and increase the hourly rates for attorneys and investigators to rates that are more competitive in order to allow the public defense system to recruit and retain a sufficient number of qualified attorneys and investigators as well as to comply with PDSC's statutory mandate to adopt policies that provide for a "fair compensation" system. ORS 151.216(1)(f)(C).

Criteria for 2011-13 Budget Development

To continue to provide constitutionally and statutorily mandated legal representation to financially eligible persons while improving the quality of representation and maintaining the long-term viability of the program.

PUBLIC DEFENSE SERVICES COMMISSION

Annual Performance Progress Report (APPR) for Fiscal Year (2009-2010)

Proposed KPM's for Biennium (2011-2013)

Original Submission Date: 2010

Finalize Date: 7/29/2010

2009-2010 KPM #	2009-2010 Approved Key Performance Measures (KPMs)
1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.
2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.
3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.

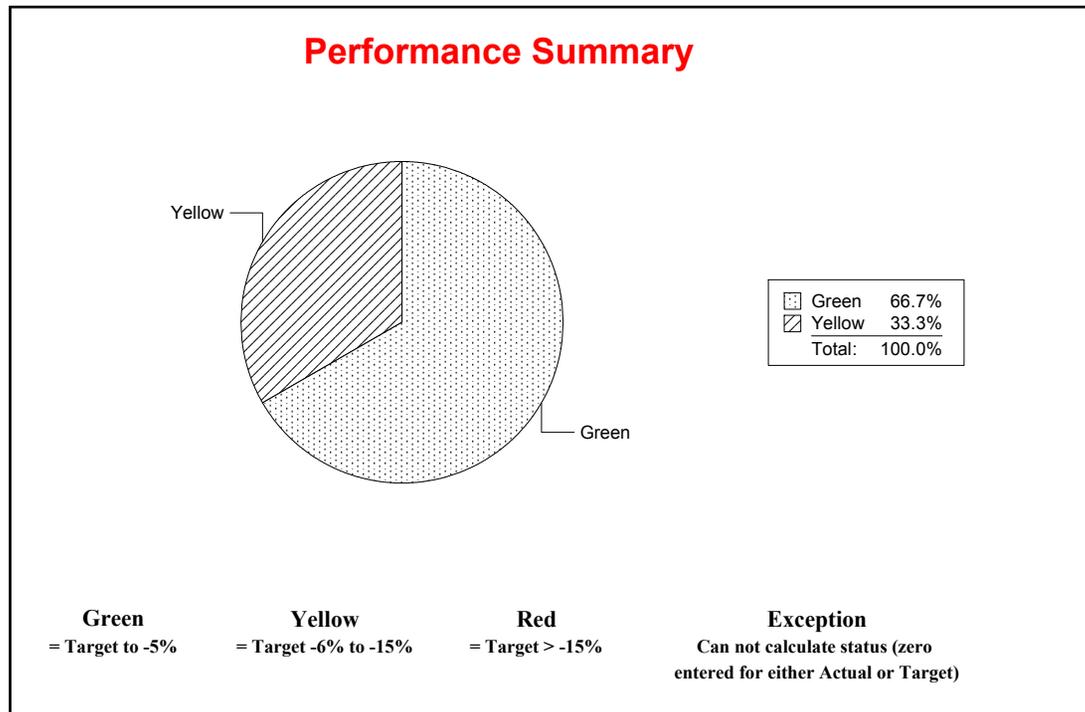
Agency Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

Contact: Kathryn Aylward

Contact Phone: 503-378-2481

Alternate: Peter Gartlan

Alternate Phone: 503-378-2371



1. SCOPE OF REPORT

Key performance measures address all agency programs.

2. THE OREGON CONTEXT

The Public Defense Services Commission is responsible for the provision of legal representation in Oregon state courts to financially eligible individuals who have a right to counsel under the US Constitution, Oregon's Constitution and Oregon statutes. Legal representation is provided for

individuals charged with a crime, for parents and children when the state has alleged abuse and neglect of children, and for people facing involuntary commitment due to mental health concerns. In addition, there is a right to counsel in a number of civil matters that could result in incarceration such as non-payment of child support, contempt of court, and violations of the Family Abuse Prevention Act. Finally, there is a statutory right to counsel for petitioners seeking post-conviction relief.

3. PERFORMANCE SUMMARY

The agency is making progress in all of its Key Performance Measures.

4. CHALLENGES

The primary challenge for the agency is that public defense in Oregon has been chronically underfunded. Prior to fiscal year 2008, the hourly rate for an attorney appointed on a non-Aggravated Murder case was \$40 per hour (the rate established in 1991). Over time, the skills, abilities, and experience-level of the attorneys willing and able to work at that rate had steadily declined. Although the 2007 Legislature provided funding to increase that rate to \$45 per hour, this still represents a decline in real dollars based on Consumer Price Index increases over the 17-year period. Contractors who are paid a flat rate under a contract are assigning excessively high caseloads to their attorneys in order to cover operating expenses. This combination of being either over-worked or under-paid, and in most cases both, prevents attorneys in some cases from being able to provide an acceptable level of representation.

Another challenge for the agency is that workload is driven by a variety of factors outside the agency's control. The enactment of laws that create new crimes or increase penalties for existing crimes impact the agency's expenditures and workload. Federal requirements have shortened the timelines and increased the complexity of cases involving abuse and neglect of children. If additional funding is not provided to address such changes, the quality of representation is further eroded.

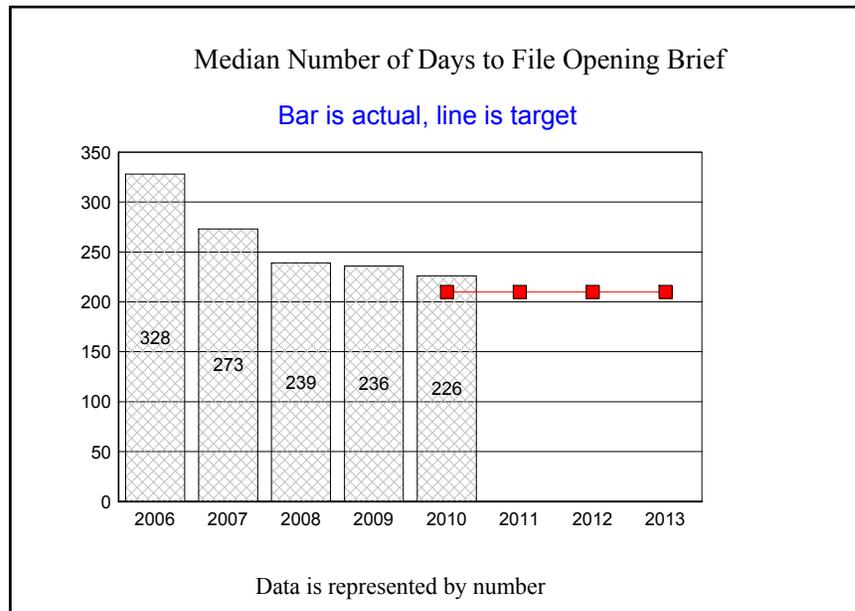
5. RESOURCES AND EFFICIENCY

The agency's 2009-11 Legislatively Approved Budget was \$222,656,135.

Within existing resources, the agency continues to convert to electronic storage and retrieval of documents; has further automated document production with improvements to the case management database; and has expanded use of email instead of regular mail.

With the implementation of e-filing, the agency is moving toward a largely paperless office. In addition to saving paper and file storage costs, it saves attorney and staff time by having files instantly available at the click of a button.

KPM #1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.	2009
Goal	GOAL 1: Reduce delay in processing appeals. GOAL 2: Ensure cost-efficient service delivery.	
Oregon Context	Mission Statement.	
Data Source	Case Management Database Reports.	
Owner	Appellate Division, Peter Gartlan, (503) 378-2371.	



1. OUR STRATEGY

Our goal is to reduce the delay in the appellate system. Reducing the number of open cases in the pre-briefing stage enables Appellate Division attorneys to address and resolve cases more efficiently, instead of "managing" – without resolving – an ever-increasing caseload.

2. ABOUT THE TARGETS

The Appellate Division wants to file the opening brief within 210 days of record settlement. The 210-day target addresses several considerations. First, the agency considers it intolerable that an individual would have to wait more than seven months for an appellate attorney to advise the client concerning the viability of an appellate challenge to his conviction and/or sentence. Second, past budget reductions in the Attorney General's Office caused the Solicitor General to slow its briefing schedule in criminal cases, which causes additional delay in the appellate process and additional delay for the client. Third, federal courts have intervened when a state appellate system routinely takes two years to render decisions in criminal appeals. The 210-day target represents a reasonable attempt to meet various systemic considerations.

3. HOW WE ARE DOING

The agency has made significant progress. In 2006, the median number of days to file the opening brief was 328; in 2010 it was 226. The agency anticipates reaching the target by 2011 assuming adequate resources.

4. HOW WE COMPARE

Appellate Division attorneys significantly exceed national caseload standards. Nationally, the appellate public defender workload ranges from 25 to 40 cases annually. For example, Georgia, Indiana, and Washington set the maximum annual appellate caseload at 25 cases per attorney; Nebraska sets the maximum annual appellate caseload at 40 cases per year. US Department of Justice, Compendium of Standards for Indigent Defense Systems, vol. IV, C 1-5 (2000). The average annual caseload for an Appellate Division attorney in fiscal year 2010 was 65 case assignments per year, well above recommended standards and actual practices nationwide.

5. FACTORS AFFECTING RESULTS

Clearly the ability to meet and exceed the target correlates positively to the number of attorneys and negatively to the number of cases. The agency has seen a significant increase during the last year in the number of appeals being referred to the office. Consequently, the 2011-13 Agency Request Budget includes an essential package that would add 12 attorney positions and two support staff positions. The extent to which these positions are funded will impact the agency's ability to meet the target.

6. WHAT NEEDS TO BE DONE

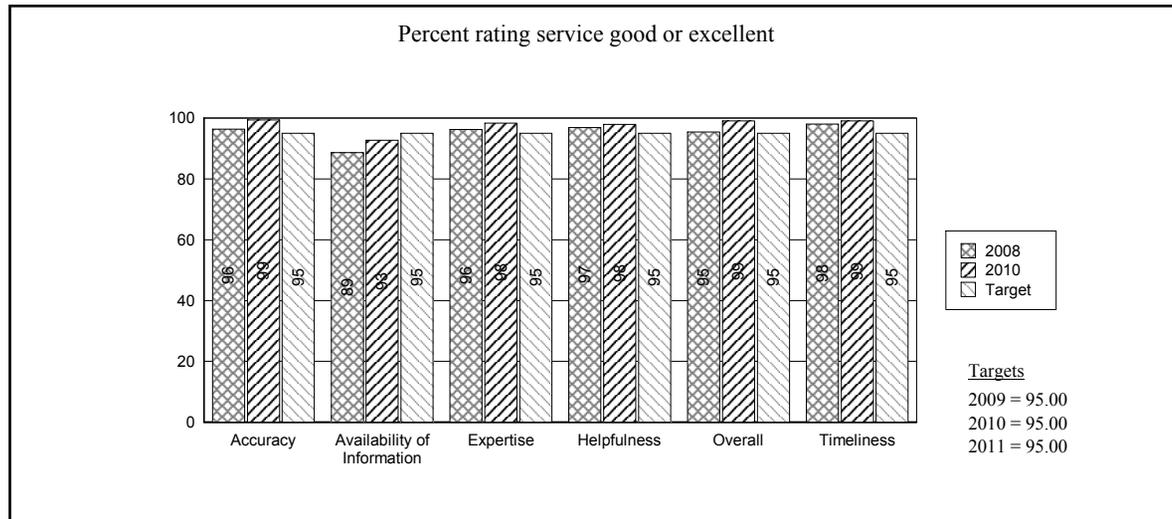
The agency is undergoing a shift to a paperless file system in order to improve case management, case tracking, and document production. The

agency is modernizing a brief bank repository to improve research and writing efficiencies, and recently reorganized its internal procedures to create efficiencies in processing a specific class of cases. The agency continues to work closely with the appellate courts and the Attorney General's Office to identify lead cases with recurring issues for more efficient treatment of categories of cases.

7. ABOUT THE DATA

The data is derived from the agency's case management database. The strength of the data lies in historical comparison with prior years. The weakness is attributable to the inherent difficulty in quantifying appellate caseloads. The agency continues to refine caseloads based on case type, transcript length, and issues presented.

KPM #2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	2007
Goal	To provide greater accountability and results from government by delivering services that satisfy customers.	
Oregon Context	To maintain and improve the following category ratings of agency service: overall quality of services, timeliness, accuracy, helpfulness, expertise and availability of information.	
Data Source	Customer Service Surveys (survey and results stored on SurveyMonkey).	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481.	



1. OUR STRATEGY

The general strategy is to utilize feedback to address cited problems and improve the general level of service provided by the agency.

2. ABOUT THE TARGETS

Targets for 2009-11 have been set at 95% of respondents rating the agency as good or excellent.

3. HOW WE ARE DOING

The survey results indicate a high level of customer satisfaction with the agency. Service was rated as good or excellent by more than 98% of the respondents in all categories except the Availability of Information (93%). Although the standard reporting measure for state agencies groups both "good" and "excellent" into one category, the more telling aspect of the agency's results is the percentage of respondents who rated the service as excellent. In the categories of Timeliness, Accuracy, Helpfulness, Expertise and Overall, over 64% of respondents rated the agency's service as excellent.

4. HOW WE COMPARE

Services and customers differ greatly among state agencies, so a direct comparison to other state agencies may lack validity. Similarly, comparisons to public defense systems in other jurisdictions would not be useful due to variations in the survey questions, the survey pool, and the types of services provided. Given the high percentages of positive ratings received by the agency, we would likely compare favorably were such a comparison possible.

Some of the survey responses included references to how the agency compares to other entities:

"It is hard to overstate just how efficient OPDS is when it comes to receiving, handling, and responding to my requests for unusual expenses. I have never dealt with a state agency anywhere near as efficient and timely as them. If all state agencies were this good, government would not have a bad name."

"I have worked for the State my whole life and OPDS functions better than any other part of State Government that I was involved with."

"PDSC is the best and most responsive state agency with which I deal in a professional capacity."

"I've dealt with Washington State on indigent matters and You folks take the cake!!!"

"The PDSC is the most competent, efficient and professional agency I have ever dealt with in a government bureau in the State of Oregon."

5. FACTORS AFFECTING RESULTS

The agency is fortunate to have dedicated, knowledgeable employees and low turnover.

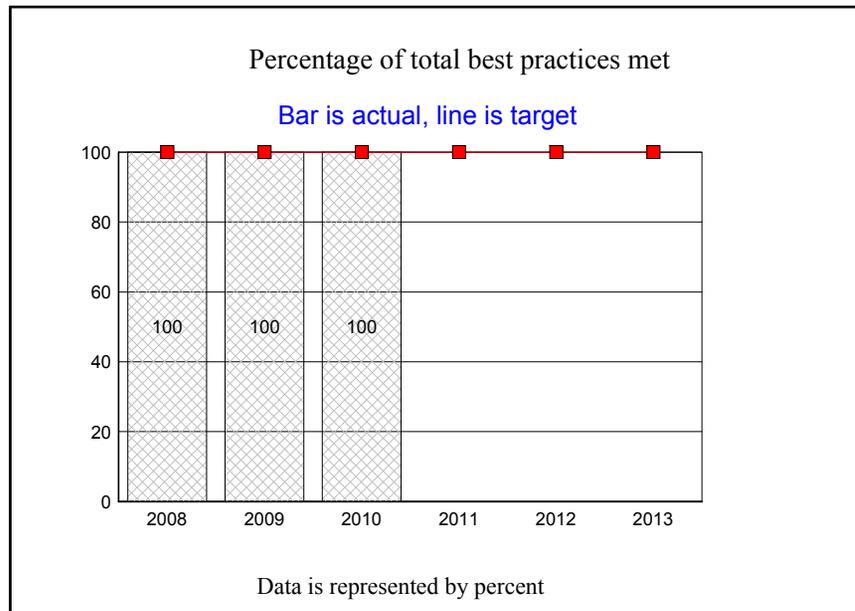
6. WHAT NEEDS TO BE DONE

In the 2008 survey, the agency's lowest satisfaction rating (89%) was in the category of Availability of Information. In order to improve this rating, the agency restructured its website so that information is better organized and easier to locate. The agency is pleased that the 2010 survey results show that 93% of the respondents now rate the Availability of Information as good or excellent. The agency will continue to make improvements in this area.

7. ABOUT THE DATA

A total of 900 contract attorneys, private bar attorneys, and service providers were invited to complete the agency's Customer Service Survey. The survey was administered in July 2010 as a snapshot for fiscal year 2010. There was a 37% response rate (332 responses) to the survey. The agency administers the customer service survey every two years to coincide with its two-year contract cycle. The next survey will be conducted in July 2012.

KPM #3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.	2007
Goal	Best practices as a pathway to improved performance and accountability.	
Oregon Context	Required KPM for all Oregon boards and commissions.	
Data Source	Commission agendas and minutes.	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481.	



1. OUR STRATEGY

The agency's commission currently follows all of the best practices.

2. ABOUT THE TARGETS

The agency anticipates meeting all of the best practices for boards and commissions.

3. HOW WE ARE DOING

In fiscal year 2010, the agency met all of the best practices for boards and commissions.

4. HOW WE COMPARE

The agency assumes that most boards and commissions will be able to implement all best practices.

5. FACTORS AFFECTING RESULTS

There are no factors that would prohibit the agency from meeting all of the best practices.

6. WHAT NEEDS TO BE DONE

No change is needed.

7. ABOUT THE DATA

The Commission continues to meet all of the best practices as documented in the Commission meeting minutes.

PUBLIC DEFENSE SERVICES COMMISSION**III. USING PERFORMANCE DATA****Agency Mission:** Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.**Contact:** Kathryn Aylward**Contact Phone:** 503-378-2481**Alternate:** Peter Gartlan**Alternate Phone:** 503-378-2371**The following questions indicate how performance measures and data are used for management and accountability purposes.****1. INCLUSIVITY**

* **Staff:** The agency's Management Team drafted initial performance measures.

* **Elected Officials:** The Joint Legislative Audit Committee and the interim Judiciary Committee assisted the agency in refining and finalizing its performance measures. After five years of data collection, it was apparent that some performance measures were not providing useful information and were eliminated by the Legislature during the 2009 session.

* **Stakeholders:** Input was received from the agency's Contractor Advisory Group comprised of public defense service providers.

* **Citizens:** The agency developed, discussed and revised its performance measures during two public meetings.

2 MANAGING FOR RESULTS

The agency's lowest customer service rating in 2008 (89% good or excellent) regarding availability of information caused us to restructure our website so that more information is available and is easier to locate. As a result, the rating for 2010 improved to 93%.

3 STAFF TRAINING

The agency has advised staff of the goals outlined in the performance measures and staff is directly involved in the data collection and/or direct daily implementation of the measures. The performance measures serve as important tools for the agency's managers as they identify and develop necessary staff skills as well as determine the best use of overall resources in order to attain the goals enumerated in the measures.

4 COMMUNICATING RESULTS

* **Staff:** The Annual Performance Progress Reports are posted on employee bulletin boards. The results and future plans are discussed at staff meetings.

* **Elected Officials:** The agency communicates results to the Legislature through the Executive Directors biennial report to the Legislature, and by the inclusion of the APPR in the Agency Request Budget binder.

* **Stakeholders:** Performance results are communicated through the agency's website and DAS's website as well as being provided in the materials distributed at public meetings.

* **Citizens:** Performance results are communicated through the agency's website and DAS's website as well as being provided in the materials distributed at public meetings.

ORBITS Budget Narrative

Reduction Options

Appellate Division

A 25% reduction (\$3.7 million GF) of the agency's current service level for the Appellate Division would require the elimination of 13 attorney positions and 3 support staff positions. The existing backlog of appellate cases would increase and the average length of time an appeal is pending would increase. The Court of Appeals may order the dismissal of pending cases that exceed 350 days from the date the record settles to the filing of the opening brief.

Public Defense Services Account

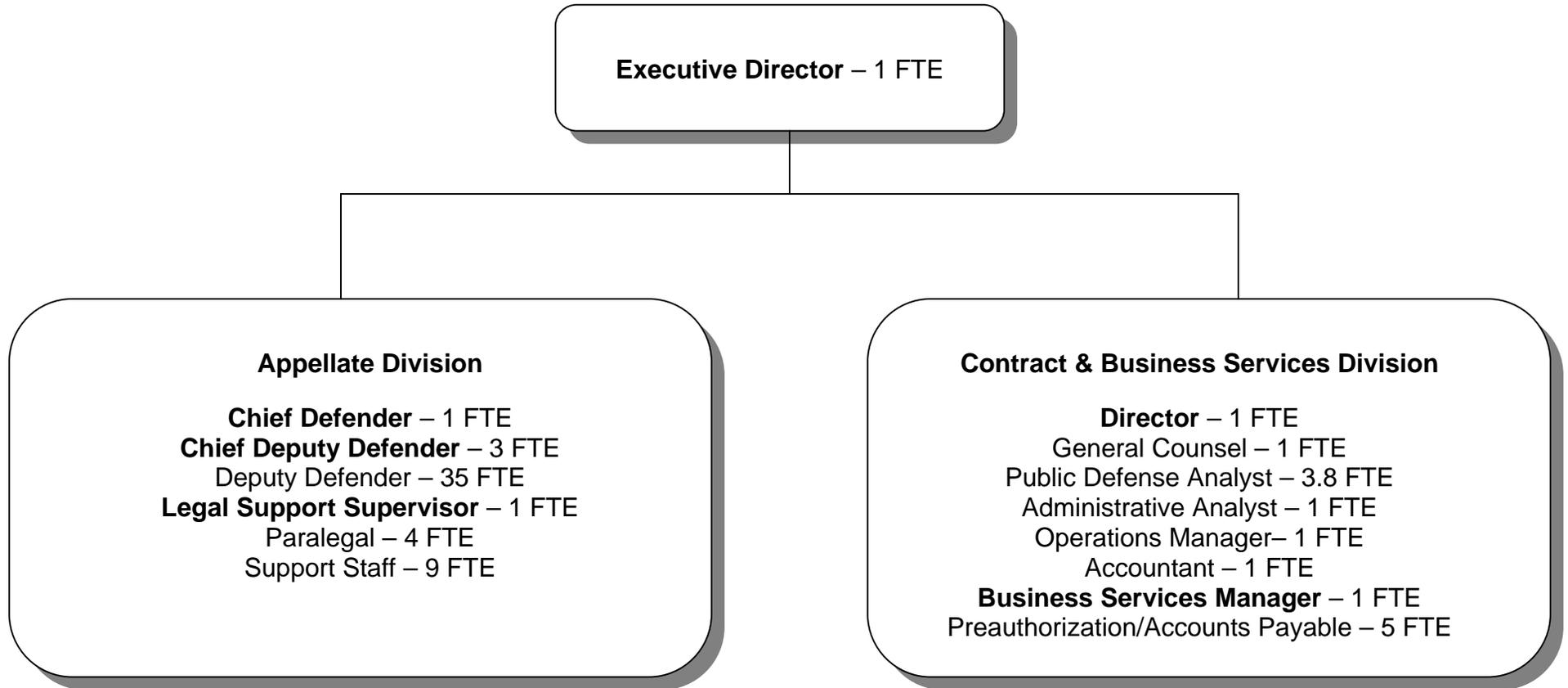
A 25% reduction (\$56 million GF) of the Public Defense Services Account represents the level of funding required for over six months of public defense services. Unless the 2011 Legislature acts to either decriminalize some behavior or reduce the seriousness level of some offenses and thereby reduce the number and cost of the cases on which counsel must be appointed, or funds this caseload, PDSC will have to cease payment for appointed counsel and related expenses during the last quarter of the 2011-13 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.

Contract and Business Services Division

A 25% reduction (\$782,000 GF; \$117,000 OF) of the division's current service level will require the elimination of approximately 5 positions (contract analysts and accounting staff), which will result in delays in paying providers and a substantially reduced ability for staff to audit contractor caseload reports, fee statements and expense requests. Delayed payments will impact over 1,500 individual service providers and businesses in Oregon. Failure to adequately review payments will likely result in the inappropriate expenditure of funds.

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Organization Chart



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Revenue Discussion

ORS 151.487, et seq., provide the authority for judges to order individuals who apply for court-appointed counsel to pay the administrative costs of determining the eligibility of the person and the anticipated cost of public defense services prior to the conclusion of the case. Judicial Department Verification Specialist (VS) staff assist the courts in determining whether a person will be ordered to pay what is currently a \$20 application fee and a “contribution amount” toward the anticipated public defense cost of the case. The program is referred to as the Application/Contribution Program (ACP).

ACP revenue that is collected is deposited in a subaccount of the Public Defense Services Account, pursuant to ORS 151.225(3). The same ORS authorizes funds in the subaccount to be used to reimburse the actual costs and expenses, including personnel expenses, incurred in the administration and support of the public defense system. Currently, ACP revenue funds 22.7 FTE VS positions in the courts and 2.37 FTE positions within PDSC. The VS positions are distributed throughout the state with partial FTE in a number of counties.

Anticipated revenues for the 2011-13 biennium are \$3,554,291. Of that amount, \$2,696,475 will be transferred to the Judicial Department to fund the VS positions and \$468,312 will be expended by PDSC. The remaining \$389,504 will be held in reserve.

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Appellate Division

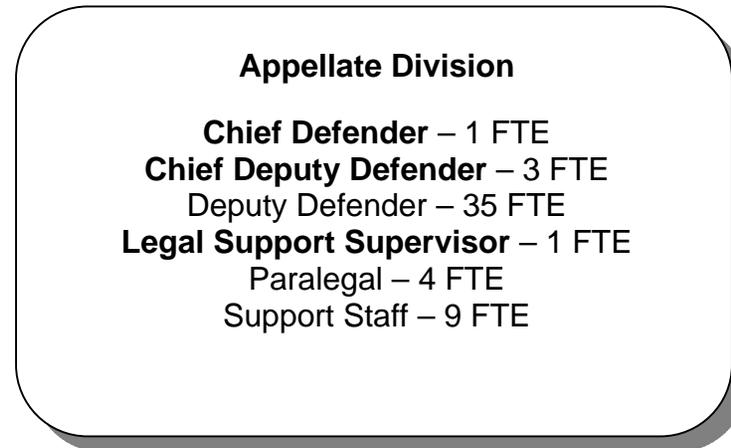
Program Description

The OPDS Appellate Division (AD) is the defense counterpart to the Appellate Division of the Oregon Department of Justice. The AD provides statutorily and constitutionally mandated appellate representation to financially eligible individuals in misdemeanor and felony appeals, inmates requesting judicial review of decisions by the Board of Parole and Post Prison Supervision, and parents in juvenile dependency and termination of parental rights appeals.

The majority of AD's representation occurs in the Oregon Court of Appeals and the Oregon Supreme Court. The division has appeared and argued in the United States Supreme Court twice in the past four years.

Organizational Chart

The Appellate Division has 53 FTE in the following positions:



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Summary Description of Attorney Positions

Chief Defender: The Chief Defender is responsible for managing the division. The responsibilities include recruiting and training new attorney employees and directly supervising the division's litigation in the Oregon Supreme Court and the United States Supreme Court. The Chief Defender has a minimal caseload that emphasizes practice in the Oregon Supreme Court.

Chief Deputy Defenders: Three Chief Deputies support the Chief Defender in managing the division. Each Chief Deputy carries half a caseload and is responsible for a discrete management area: personnel, operations, or outreach.

Deputy Defenders: The remaining Deputy Defender classifications are Senior Deputy, Deputy Defender II, and Deputy Defender I.

A Senior Deputy Defender provides representation in the most complex cases, such as death penalty litigation, and acts as leader for a team of four to six Deputy I and Deputy II attorneys. In the team leader role, a Senior Deputy leads discussions, serves as a resource for team members within and outside the team meeting setting, and edits the team members' meritorious Court of Appeals briefs.

A Deputy Public Defender II attorney provides representation in moderate to complex felony cases.

The Deputy Public Defender I position is the entry level attorney position. A Deputy Defender I provides representation in misdemeanor, simple felony, and parole appeals.

Case Assignments, Production Levels, and Backlog

Criminal Section

There are two primary case types for direct criminal appeal: (1) a *trial-type* case and (2) a *plea-type* case. A trial-type case includes a jury trial, trial to a judge, conditional plea, parole appeal, and an appeal initiated by the Attorney General. The transcript length for a trial-type case varies from 50 to several thousand pages.

A plea-type case refers to a guilty plea, no-contest plea, probation violation hearing, and re-sentencing proceeding. Transcript lengths typically range from 20 to 80 pages for plea-type cases.

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During the 2003-05 biennium, the Appellate Division assigned 3,240 cases to its attorneys (2,075 trial type and 1,165 plea type cases); during the 2005-07 biennium, the division assigned 3,945 cases (2,104 trial type and 1,841 plea type cases); during the 2007-09 biennium, the division assigned 3,690 cases (2006 trial type and 1684 plea type cases). During the first half of the 2009-11 biennium, the division assigned 2,240 cases (1,007 trial and 1,233 plea type cases); those numbers project to 4,480 cases for the biennium, a 21% increase in case assignments from the prior biennium. The agency's budget request includes an essential package that adds 12 attorney positions to address this caseload increase.

AD attorneys significantly exceed national workload standards. According to the Institute of Law and Justice, the annual appellate public defender workload ranges from 25 to 50 cases per attorney. Arizona, Georgia, and Indiana set the maximum appellate caseload at 25 cases per attorney; Florida and Louisiana set the maximum appellate caseload at 50 cases per year. *Compendium of Standards for Indigent Defense Systems* (2000). The average annual caseload for an AD attorney is currently 65 case assignments per year.

The division measures its backlog as cases that have not been briefed within 210 days of record settlement. In June 2005, the backlog was 228 cases; in June 2006, the backlog was 218 cases. For the 2007-09 biennium, the Legislature funded eight new attorney positions in the AD allowing the agency to retain the four limited-duration attorneys hired during the 2005-07 biennium and to add additional attorneys. As a result of this additional staffing, the backlog was down to 49 cases by June 2008.

Unfortunately the progress made toward reducing the backlog has now been eroded by two factors: HB3508 (2009) appeals and an across-the-board increase in direct criminal appeals. HB3508 was a cost-saving measure intended to reduce Department of Corrections expenditures by increasing the early release calculation from 20% to 30% for certain offenders. The measure provided for a resentencing hearing at the trial court. The AD received 242 referrals to appeal those resentencing hearings.

The second and far greater factor impacting workload is the increase in the number of direct criminal appeals. Although trial-level caseload decreased slightly in FYE2009 and has remained essentially flat in FYE2010, the rate of appeals has increased significantly. The rate of appeals generally correlates to the length of the sentence, the likelihood of success on appeal and the perceived injustice of the sentence. As district attorney offices face budget cuts, they often focus more resources on prosecuting the more serious cases (i.e. those that have longer sentences). New legislation that increases mandatory minimum sentences or reclasses misdemeanors to felonies will also increase the rate of appeals. The agency cannot pinpoint one particular cause of the increase in the rate of appeals as it is evident in all case types in all geographic areas of the state. The unanticipated additional appellate caseload has caused the backlog to increase to 93 cases as of July 2010.

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Juvenile Section

At the end of the 2007 session, the Legislature funded the creation of a four-attorney Juvenile Appellate Section in the AD to centralize and enhance appellate representation for parents in juvenile dependency and termination of parental rights cases.

The section is responsible for the representation of parents in 75% of the dependency and termination cases appealed to the Court of Appeals. In addition, the section functions as a statewide resource for trial-level counsel.

Juvenile dependency and termination of parental rights cases have an expedited appeal schedule. These cases must be resolved quickly so that the permanent placement of children can be established with the least disruption to the child's life. For this reason, the Juvenile Section of the AD can never have a backlog. The section only accepts the number of cases that can be resolved within the established timelines. Cases that are referred to the agency that cannot be kept in-house due to workload issues are referred out to a panel of appellate attorneys.

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Appellate Division

010 Non-PICS Personal Services / Vacancy Factor

Package Description

This package includes standard adjustments to the PERS Pension Bond Contribution, adjustments to Mass Transit Tax and adjustments to the division's anticipated vacancy savings. The components of this package increase general fund expenditures by \$67,401.

031 Standard Inflation & State Government Service Charge

Package Description

This package includes standard inflation adjustments on services and supplies in the amount of \$35,358 in general funds. State government services charges have increased by \$76,528, making the total amount of the package an increase of \$111,886 in general funds.

040 Mandated Caseload Increase

Package Description

This package adds four Deputy Defender 1 positions, eight Deputy Defender 2 positions and two Legal Secretary positions. In fiscal year 2009, an average of 113 cases per month were initiated by the filing of a Notice of Appeal or a Motion for Leave to Proceed. In fiscal year 2010, that number increased to an average of 131 cases per month. Based on data through June 30, 2010, the agency is filing an average of 101 opening briefs per month (which completes the bulk of the work on a case). Absent further caseload increases, the agency is taking in 30 cases more per month than can be handled at current staffing levels.

The packages totals \$2,595,900 in personal services and services and supplies.

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Appellate Division

101 Employee Commensurate Compensation

Package Description

Purpose:

This package will enable the Appellate Division of PDSC to provide quality legal representation through recruitment and retention of expert attorney staff who will be capable of providing quality and cost-efficient appellate representation. The package sets an attorney salary schedule comparable to attorney salary schedules at the Department of Justice, a goal that is consistent with legislative directive: "The Public Defense Services Commission shall * * * [a]dopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies." ORS 151.216(1)(e).

How Achieved:

In developing the requested salary structure, the agency used the Department of Justice's Appellate Division as the comparable agency. The following chart compares agency attorney salary ranges with the ranges of comparable positions in the comparison agency. (Steps are current as of the April 2010 PICS freeze used for budget preparation.)

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Percentage increase required to match top step
Asst Atty General	5210	5469	5739	6030	6333	6637				
Deputy Defender 1	4718	4963	5210	5468	5739	6030				10%
Sr Asst Atty General	7325	7693	8084	8489	8908	9353	9820			
Deputy Defender 2	5468	5739	6030	6329	6643	6975	7323	7689	8074	22%
Attorney-in-Charge	7224	7585	7969	8365	8774	9213	9668	10156		
Sr Deputy Defender	6030	6329	6643	6975	7323	7689	8074	8478	8902	14%

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These comparisons demonstrate the disparity in rates of compensation for positions that require an equivalent level of skills, responsibilities and experience. This package would eliminate the disparity.

Consistent with legislative directive, this package seeks to establish a salary structure consistent with attorney positions in comparable state agencies, particularly the Oregon Department of Justice. The policy package would enable the agency to recruit and retain attorneys who are committed to and capable of achieving the agency's goal of providing quality, cost efficient legal representation.

Staffing Impact: No impact on staffing.

Revenue Source: At current staffing levels, this package would require an additional \$792,246 from general funds. If essential package 040 (Mandated Caseload) is fully funded, the additional 12 attorney positions would increase the cost of this package to \$1,040,235 from general funds.

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Public Defense Services Account

Program Description

The Public Defense Services Account pays the cost of legal representation in criminal cases for financially eligible persons at trial, and for persons who are entitled to state-paid legal representation if they are financially eligible and are facing involuntary civil commitment proceedings; contempt; probation violation; juvenile court matters involving allegations of delinquency and child abuse or neglect; and other limited civil proceedings. The Account also funds the costs of all transcripts and the cost of appellate legal representation for cases not handled by the Appellate Division.

The United States Constitution, the Oregon Constitution, and Oregon statutes require the provision of legal representation, at state expense, for persons who are determined to be “financially eligible” (see “Financial Eligibility Guidelines” below) and who face the types of state court proceedings listed below.

- Although “court-appointed counsel” and “public defenders” generally are associated by the public with criminal cases, only 58% of the FYE 2009 public defense caseload was for representation in criminal trial court proceedings. Another 38% of the caseload, for example, was for representation in juvenile cases.
- Public defense representation was provided in over 169,000 cases in FYE 2009.

The Public Defense Services Account provides funding for legal representation in the following types of state trial court proceedings for persons who are determined to be financially eligible for appointed counsel. The percentages of the total public defense trial-level caseload that each of the following case types represented in FYE 2009 are noted in parentheses.

- Criminal proceedings, ranging from misdemeanors to death penalty cases (46%);
- Child abuse and neglect proceedings, including dependency and termination of parental rights proceedings and review hearings—all of which require the appointment of counsel upon request for children who are the subject of these proceedings and the appointment of counsel for most financially eligible parents (32%);
- Probation violation and extradition proceedings (13%);
- Contempt proceedings, including nonpayment of court-ordered child support and violations of Oregon’s Family Abuse Prevention Act (2%);

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- Civil commitment and Psychiatric Security Review Board proceedings (1%);
- Post-conviction relief and Habeas Corpus proceedings (<1%); and
- Juvenile delinquency and probation violation proceedings (6%).

In addition, persons who are determined to be financially eligible are entitled by constitutional provisions or statutes to appointed counsel on appeal of any of the above types of cases.

The Appellate Division is responsible for the majority of criminal and probation violation appeals and for the majority of parents' appeals from juvenile dependency and termination of parental rights judgments. The Public Defense Services Account provides funding for counsel in all other appeals – for all the case types set out above.

Oregon's Eligibility Verification Program and Financial Eligibility Guidelines

The Oregon Judicial Department established one of the first eligibility verification programs in the nation in 1989. For years, Oregon's program for screening applications for appointment of counsel and verifying applicants' income and assets was nationally recognized. Its structure remains intact, but the resources available for the program have been adversely impacted, particularly over the past eight years.

From implementation of the verification pilot project in 1988 until 1993, the Judicial Department's Indigent Defense Services Division had total responsibility for the verification program and verification positions in the courts. Effective January 1, 1993, the verification positions (Verification Specialists – "VS"s) and supervision of VSs were transferred to the individual trial courts. Since that time and increasingly so, these positions have been among the first in many local courts to be reduced or laid off due to reduced funding or utilized for court functions other than verification.

The verification program, which continues to be administered by the Judicial Department, historically more than pays for itself; i.e., for every dollar expended for the program, approximately \$2 is saved from the Public Defense Services Account.

VSs assist judges in their decision whether to order the appointment of state-paid counsel. The VSs are responsible for ensuring that Affidavits of Eligibility are completed and that the information provided by applicants is complete. Using an "Eligibility Worksheet",

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a VS performs calculations relating to an applicant's available income and liquid assets and the eligibility guidelines addressed below to make a determination whether to recommend to the judge the appointment of counsel. This process is called "screening" for eligibility.

In addition, VSs are responsible for verifying financial information provided to the court, such as income, assets and dependents. This process, which generally occurs after the applicant first appears in court, is called the "verification" process. VSs routinely verify the financial information provided by applicants, using information obtained from the Department of Motor Vehicles, local county assessors' offices (property value), federal and state agencies (e.g., Social Security, Food Stamps, Employment Division) and private businesses (credit reports).

Financial Eligibility Guidelines

The United States Constitution, Oregon's Constitution and/or Oregon statutes require the appointment of counsel at state expense for those who are unable to retain suitable counsel in certain legal proceedings. Generally, these proceedings are limited to those that involve the potential for the loss of one's liberty (e.g., criminal, probation violation and civil commitment cases) or the loss of other rights determined to be so essential as to demand the assistance of counsel (e.g., termination of a person's parental rights).

The following is a summary of the statutory provisions and policies/guidelines adopted with respect to the courts' determinations of whether a person who applies for court-appointed counsel will be provided such counsel, i.e., whether the person is financially eligible for state-paid counsel.

The Oregon statutory standard for determining who is financially eligible to receive services paid from the Public Defense Services Account mirrors that established under the federal constitution. Specifically, ". . . a person is financially eligible for appointed counsel if the person is determined to be financially unable to retain adequate counsel without substantial hardship in providing basic economic necessities to the person or the person's dependent family..." (ORS 135.050 and ORS 151.485). An applicant for state-paid representation is required to provide a verified financial statement, listing detailed information regarding income, assets, debts, and dependents.

The eligibility standard is implemented statewide under a two-pronged means test.

First prong: Federal food stamp guidelines (130% of the federal poverty level) serve as the first determinant of eligibility. If the applicant's income is less than or equal to the eligibility level for food stamps, the applicant is presumed to be eligible for appointed counsel, unless the applicant has liquid assets that could be used to hire an attorney. As of October 2009, the Federal food stamp gross income eligibility level for a family of four is \$28,665 per year.

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Second prong: If an applicant's income exceeds food stamp standards, that person is eligible for state-paid counsel only if the applicant's available income and liquid assets are determined to be insufficient to hire an attorney, depending upon the seriousness of the pending case(s). The "privately hired attorney" guideline rate currently used, for example, for a DUII case is \$850. If an applicant has available income and assets exceeding \$850, guidelines provide that eligibility verification court staff recommend that the person be denied appointed counsel.

Program Service Delivery

There is no position authority associated with the Public Defense Services Account. The Account funds mandated legal representation entirely by independent contractors or hourly paid attorneys in the private sector.

PDSC provides legal services through the Account principally pursuant to two-year contracts under which compensation is paid on a per-case basis, based upon the types of cases included within a specific contract. The contracts are negotiated and monitored for compliance by the director and staff of the Contract and Business Services Division. In addition PDSC provides legal services through "private bar appointed counsel" (individual case-by-case assignments where compensation is on an hourly rate basis).

In approximately 97% of all trial-level, non-death penalty public defense cases, legal representation is provided pursuant to contracts entered into between the PDSC and private sector, non-state employee attorneys. These contracts are with nonprofit public defender offices, law firms, consortia of attorneys, and sole practitioners. By comparison, in FYE 1993, legal representation was provided pursuant to contracts (versus hourly rate individual case appointments) in 85% of the total caseload. Unlike public defense cases in which an attorney is appointed on a case-by-case, hourly paid basis, a number of PDSC's contractors also provide additional non-attorney services such as investigation and interpreter services.

As of June 30, 2010, there were 103 contracts in all 36 counties for the provision of public defense representation. The contracts vary with respect to the types and number of cases covered. The contracts range from "specialty contracts" (limited to specific case types such as death penalty, post-conviction relief, juvenile, or civil commitment) to contracts that include representation in virtually all case types for which state-paid counsel is mandated. The PDSC also has ten contracts for non-attorney services, such as forensic services and mitigation services.

Among the agency's long-term providers, some of the most senior attorneys are reaching retirement age. Due to increases in the cost of living over the past two decades and the lack of a corresponding inflationary increase in public defense funding until recent biennia, these offices have experienced increasing difficulty recruiting and retaining new attorneys.

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Based on testimony presented to the Public Safety Subcommittee of the Joint Ways and Means Committee in the 2007 Legislative Assembly about the extreme difficulty one type of provider — nonprofit public defender offices — was having attracting and retaining a sufficient number of qualified attorneys to fulfill their contract obligations, the Legislature provided the agency with sufficient funding in the 2007-09 biennial budget to increase public defender salaries to a level that would move them one-sixth of the way to parity with district attorney salaries in the same counties. Unfortunately, since average district attorney salaries also increased over the course of the last biennium, the cost of achieving parity with district attorney salaries is actually greater this biennium than it was in the last.

But public defense offices don't compete only with prosecutor's offices for qualified attorneys. It is also important to note that both prosecutor and public defender salaries lag significantly behind the average salaries of attorneys engaged in other types of practice. The Oregon State Bar's 2007 Economic Survey report noted that average full-time public defense attorneys' and prosecutors' salaries (\$55,388 for public defenders, and \$78,872 for public prosecutors) were well below any area of private practice. (Business and corporate litigation lawyers reported the highest average salary of \$169,769. Family law practitioners received an average salary of \$92,980 and private criminal defense lawyers received an average of \$92,021.)

Even though public defense providers may not have lost ground in the last two biennia, many years of declining compensation (in terms of real dollars adjusted for inflation) and increasing caseloads (which providers had to accept in order to make ends meet) means that Oregon's public defense system will remain in jeopardy until some of the lost ground can be recovered through the provision of more reasonable rates of compensation.

With respect to the much smaller portion of the Public Defense Services Account that is expended for attorneys handling cases on an hourly rate basis, the current guideline rates (\$45 per hour for non-death penalty cases and \$60 per hour for death penalty cases) have increased by only \$5 per hour since June 1991. The funding requested in Policy Option Package 102 would allow an increase in the current rates to \$70 per hour for non-death penalty cases and \$95 per hour for death penalty cases for the 2011-13 biennium.

Persons who are financially eligible for appointed counsel are also eligible for non-attorney services that are "reasonable and necessary" for the preparation, investigation, and presentation of the case (ORS 135.055(3)). Examples of such non-attorney services are interpreters, investigators, transcriptionists, and psychologists. Non-attorney services must be sought and approved on a case-by-case basis.

Policy Option Package 102 would also allow increases in the rates paid to investigators from \$28 to \$35 per hour in non-death penalty cases and from \$39 to \$45 per hour in death penalty cases.

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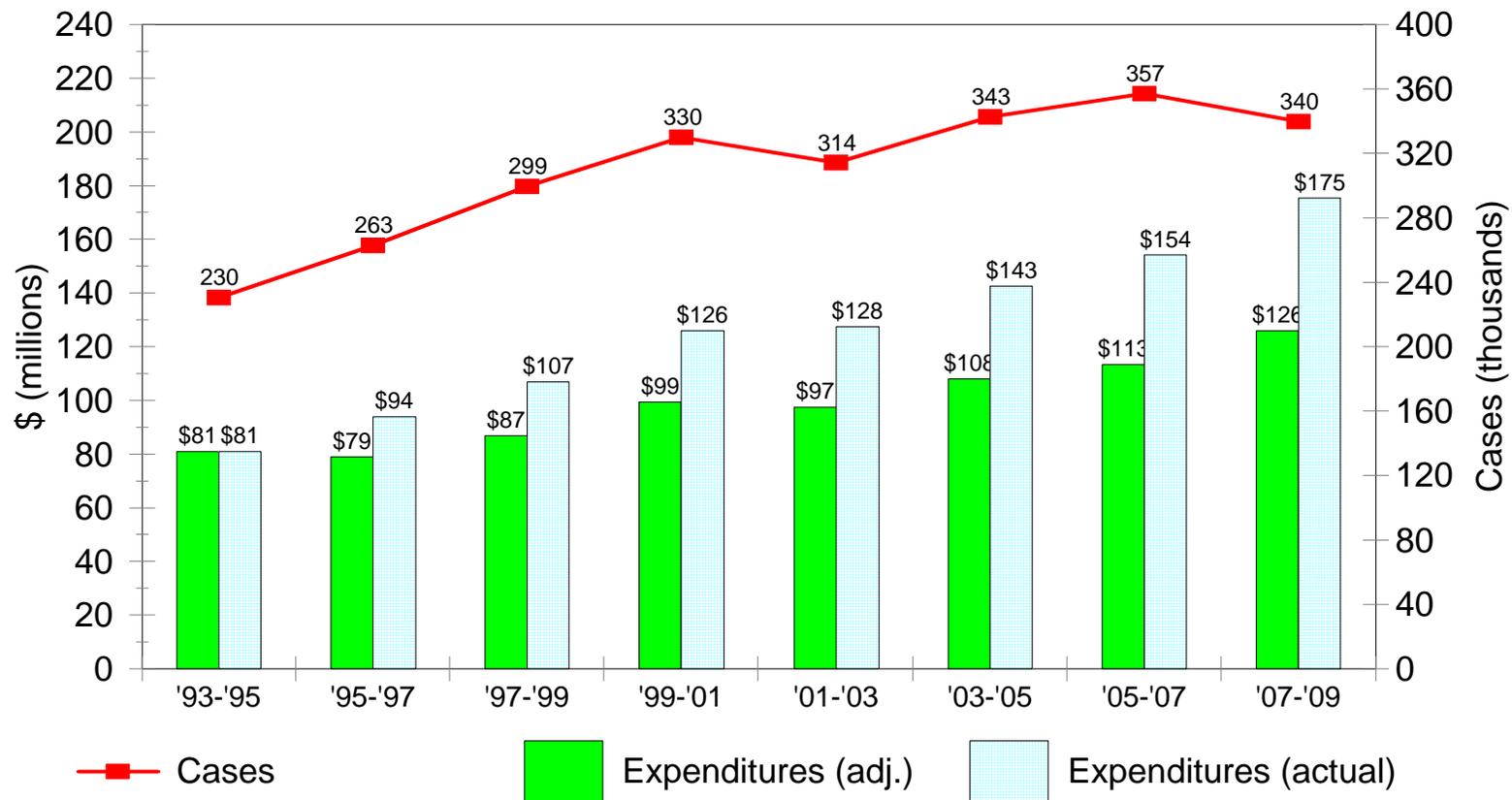
Policy Option Package 100 would provide funding to reduce trial-level juvenile dependency caseloads by 20% in order to address chronic and serious quality of representation issues. This package would allow the agency to ensure the delivery of quality, cost-efficient legal services in an important area of representation.

Program Costs

Generally, program costs have increased due to increased caseloads and the complexity of the caseloads; e.g., Measure 11, “Jessica’s Law” prosecutions, juvenile dependency and termination of parental rights and death penalty post-conviction relief cases. A chart displaying a “Comparison of Public Defense Trial Level Non-Death Penalty Expenditures and Caseloads” for the last eight biennia is included on the following page.

The chart includes figures that have been adjusted for inflation. Viewing the actual program costs versus inflation-adjusted costs shows that a significant portion of the increase in costs for non-death penalty cases is attributable to simple inflation.

Comparison of Public Defense Trial Level
 Non-Death Penalty Expenditures and Caseloads
 1993-95 biennium through 2007-09 biennium
 (Inflation Adjusted and Actual)



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The costs associated with death penalty representation do not follow the same pattern as costs for non-death penalty cases. A charge of Aggravated Murder with a possible sentence of death is the most costly case type to defend. Even so, one would expect that if the number of new cases each biennium remains constant, then costs should remain constant (plus inflation). However, the real cost driver is whether or not a sentence of death is imposed.

When a death sentence is imposed, the case is subject to automatic review by the Oregon Supreme Court. The majority of these appeals would be handled by the Appellate Division and would not impact expenditures from the Public Defense Services Account. However, the Appellate Division has a limited capacity to accept death penalty cases so, depending on the timing of such cases, some would need to be assigned to counsel payable from the Public Defense Services Account.

If an appeal is unsuccessful, the next step is post-conviction relief. All post-conviction relief cases are handled by attorneys payable from the Public Defense Services Account. A post-conviction relief case with a sentence of death will often cost as much or more than the original trial-level case. Post-conviction relief attorneys must not only review the work performed by the original trial counsel but must also explore avenues of defense that were not pursued in the original case.

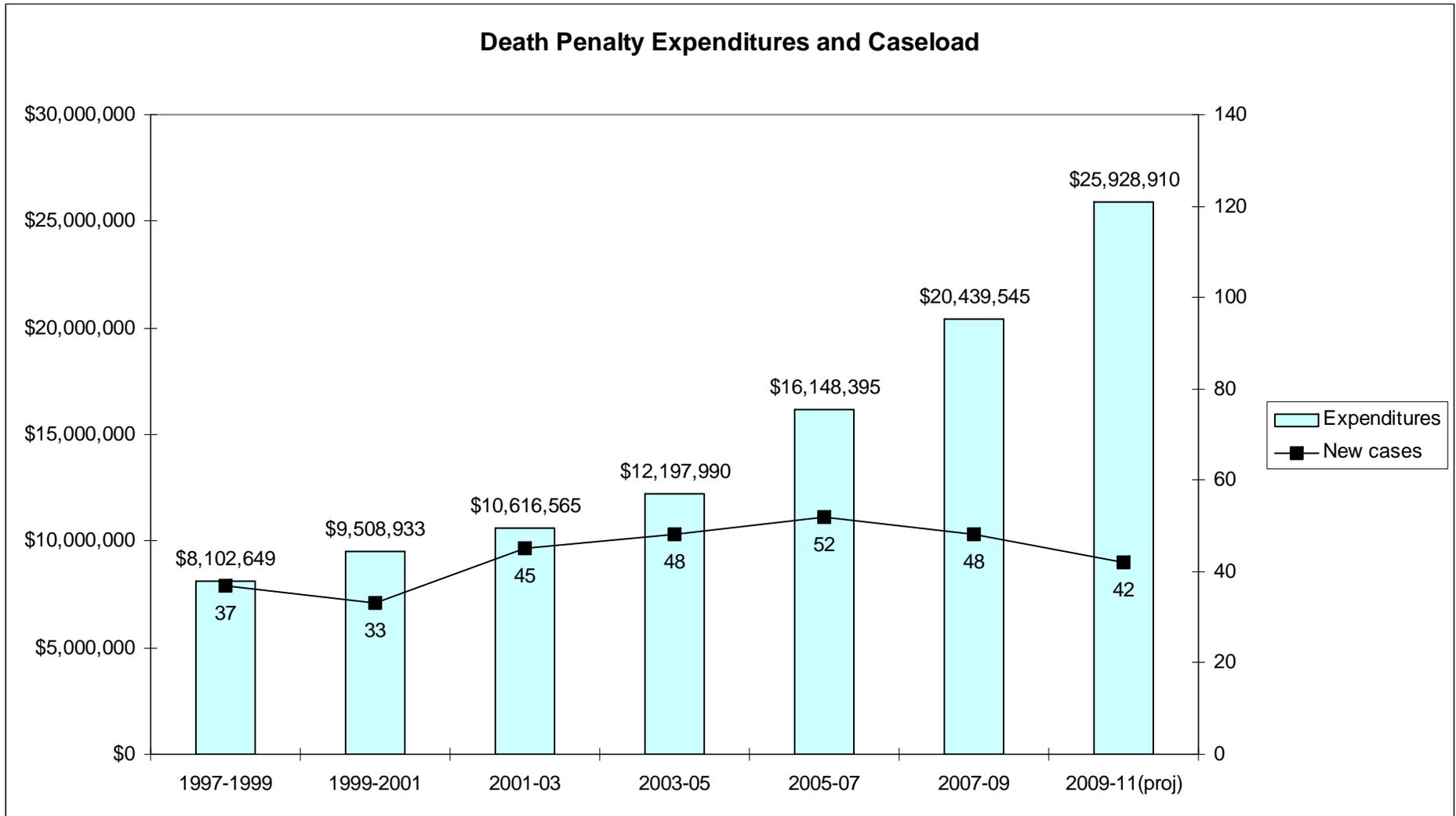
If the post-conviction relief case is unsuccessful, the next step is an appeal of the post-conviction relief case. Post-conviction relief appeals are also handled exclusively by attorneys payable from the Public Defense Services Account. If a post-conviction relief appeal is unsuccessful, then all state remedies have been exhausted and a case moves to the federal court with representation provided by the Federal Defenders office.

If a direct appeal, a post-conviction relief, or a post-conviction relief appeal is successful, then a case can return to the trial court for a new trial or resentencing.

There have been 57 defendants sentenced to death since the death penalty was reinstated in 1984. Of those, two have been executed, two died while their cases were still pending in the state court system, one had his sentence overturned, and 18 were later resentenced to a lesser sentence. Of the remaining 34 defendants, only two have exhausted their state remedies and moved to the federal system.

What this means in budgetary terms is that there will be an exponential growth in expenditures for death penalty cases until the point at which new sentences of death each year match the number of cases that are resolved at the state level or move to the federal system. The chart on the following page shows death penalty expenditures relative to new aggravated murder filings.

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Public Defense Services Account

040 Mandated Caseload

Package Description

This essential package provides the additional funding required for the 2011-13 biennium. The package assumes no changes in PDSC policies regarding financial eligibility and no changes in guideline payment rates. The package does not include any additional funding that may be necessary due to the passage of ballot measures or new legislation.

There are five components to this essential package:

1. Standard inflationary adjustment

The Department of Administrative Services has set the standard inflationary adjustment for the 2011-13 biennium at 2.4% for services and supplies and 3.1% for personal services. For the Public Defense Services Account, the inflationary adjustment is \$5,731,373.

2. Trial-level non-death penalty caseload decrease

The caseload is projected to decrease by 3.12% from the caseload funded for the 2009-11 biennium. This component of the package reduces the Account by \$6,522,289.

3. Death penalty caseload from prior biennia

Although the annual number of new death penalty cases filed has been fairly stable in recent years, the cumulative cost of these cases increasingly impacts each subsequent biennium. After the initial trial-level case, which often spans a year or more, there is an appeal, then post-conviction relief, then an appeal of the post-conviction relief case. So every year, in addition to expending funds for representation on new cases filed, the agency continues to have expenditures for cases filed in previous years. Death sentence post-conviction relief appeals currently pending are the result of cases originally filed as far back as 1986. The additional expenditure during the 2011-13 biennium for death penalty cases from prior biennia is \$4,044,918.

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4. Non-attorney provider cost increase.

The agency's guideline rate for forensic services is \$90 per hour. Most forensic experts in Oregon have raised their rates to \$125-\$150 per hour. The guideline rate for medical experts is \$110 per hour. Many medical experts now charge \$150-\$300 per hour. Because the federal defender pays higher rates, providers have a sufficiency of work available to them and do not need to accept public defense work at the state level at reduced rates. The agency has therefore had to allow exceptions to the guideline rates in order to obtain such services.

5. Personal services adjustment

The standard inflationary adjustment for services and supplies is not applicable to personal services. Personal services expenditures (principally salary and health insurance) increase at a greater rate. An adjustment of 6.57% of the personal services portion of contracts corresponds to the Department of Administrative Services personal services adjustment for state employees.

The table below summarizes the components of this essential package.

1. Standard inflationary adjustment	\$5,731,373
2. Trial-level non-death penalty caseload decrease	(\$6,522,289)
3. Death penalty caseload from prior biennia	\$4,044,918
4. Non-attorney provider cost increase	\$3,016,498
5. Personal services adjustment	\$8,894,750
Total	\$15,165,250

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Public Defense Services Account

100 Juvenile Dependency Representation

Package Description

Purpose:

The purpose of this policy package is to provide funding to reduce trial-level juvenile dependency caseloads by 20% in order to address chronic and serious quality of representation issues. This package would allow the agency to improve the quality of legal services in juvenile dependency and termination of parental rights cases.

Over the last six years, the agency has evaluated and sought to improve the work of its juvenile contractors through a number of approaches including comprehensive performance reviews; promotion of best practices; provision of education and training opportunities; investigation and resolution of complaints from judges, attorneys and clients; the creation of a juvenile law resource center; and the creation of a juvenile appellate section within the Appellate Division. Despite these efforts, a statewide survey and the agency's site visit evaluations and structural reviews disclose continuing deficiencies in the quality of representation being provided statewide.

How Achieved:

This policy package would permit the agency to reduce current caseload levels in juvenile dependency and termination of parental rights cases by 20%. The agency has followed with interest an ongoing effort in Washington State to address similar issues. Significant caseload reduction was a key component of a highly successful parent representation pilot project in that state. What began as a pilot project in three counties has now been extended to twenty-five counties.

If this policy package were funded, the agency would ensure that reduced caseloads actually resulted in improved representation by making such reductions conditional upon agreement to implement established best practices, participation in mandatory training sessions, and rigorous evaluation.

Staffing Impact: No impact on staffing.

Revenue Source: \$11,033,520 from general funds.

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Public Defense Services Account

102 Public Defense Provider Compensation

Package Description

Purpose: To provide funding necessary to:

- attract and retain qualified attorneys in nonprofit, public defender organizations, primarily in Multnomah, Lane, Jackson, Deschutes, and Washington Counties;
- increase the hourly rates paid to attorneys who provide legal representation in public defense cases on an hourly rate basis (versus a flat, average cost per type of case basis under contract) — hourly-rate compensated cases represent a small portion of the public defense caseload; and
- increase the hourly rates paid to investigators who accept work on public defense cases.

How Achieved:

Adjustment Toward Public Defender Contractor Parity

The first component of this policy package would allow some adjustments to be made in response to the difficulty nonprofit, public defender organizations are having attracting and retaining qualified attorneys. Eleven of the current public defense contracts are with nonprofit public defender offices. Full-time attorneys and staff employed with these organizations are restricted to performing state-paid, public defense work only. In other words, the nonprofit contractors differ from their private law firm and consortium public defense contractor counterparts in that private, retained work is not available to the nonprofits to supplement their state-funded contracts.

One measure of their ability to attract and retain attorneys is whether the salaries of such attorneys are competitive within their local communities with attorneys engaged in comparable types of legal practice. A comparison of public defender attorney salaries and prosecution salaries in the same counties (based on the Oregon District Attorneys Association 2009 salary survey) showed that, based upon average salaries, public defender salaries for nine of eleven nonprofits were less than those for prosecuting attorneys¹. The

¹ In two counties, Coos and Umatilla, public defender attorneys, on average, received higher salaries.

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differences between public defender attorney salaries and their prosecution counterparts ranged from \$4,475 to \$40,780 per attorney per year. The projected full biennium cost of increasing public defender attorney average salaries to the level of prosecution average salaries in their respective counties totals \$6,497,372 based upon 2009 salary levels. Neither benefits nor non-attorney staff salaries were compared in the 2009 study.

Benefits (such as PERS) that generally are available for government-employed attorneys (versus independent contractors, such as public defenders) make it more difficult for public defender offices to attract new hires. Retirement benefits available to public defender attorneys range from 6% to 10% employer contribution programs. Two of the 6% programs have been in effect for less than fifteen years. Prior to their establishment, there was no provision for retirement.

Approval of the amount requested would allow for some adjustments and improvements in salary for public defender offices in those counties where there is significant disparity with prosecutor salary levels. It is clear, however, that the amount does not represent the total cost of establishing salary and benefit parity for public defenders and their staff. The requested funding would be allocated to public defenders based upon greatest salary needs. For example, no improvements in the current public defenders' benefit program, such as retirement programs, are contemplated within the requested funding. Rather, the amount is viewed as a first step in establishing greater consistency in salary levels between public defender and district attorney staff. Reaching full parity in terms of both salary and benefit levels is a longer-range effort.

But public defense offices don't compete only with prosecutor's offices for qualified attorneys. It is also important to note that both prosecutor and public defender salaries lag significantly behind the average salaries of attorneys engaged in other types of practice. The Oregon State Bar's 2007 Economic Survey report noted that average full time public prosecutor and public defense attorneys' salaries, (\$55,388 for public defenders, and \$78,872 for public prosecutors) were well below any area of private practice. (Business and corporate litigation lawyers reported the highest average salary of \$169,769. Family law practitioners received an average salary of \$92,980 and private criminal defense lawyers received an average of \$92,021.)

Hourly Rate Increase for Hourly-Paid Public Defense Attorneys

The current guideline rates (\$45 per hour for non-death penalty cases and \$60 per hour for death penalty cases) have increased by only \$5 per hour since June 1991. The requested funding would allow an increase in the current rates to \$70 per hour for non-death penalty cases and \$95 per hour for death penalty cases for the 2011-13 biennium.

The 2007 legislature provided funding for the 2007-09 biennium that permitted PDSC to increase the guideline rates for hourly-rate paid counsel statewide for the first time since 1991. Prior to 2007 public defense funding was inadequate, despite inflationary adjustments, to permit the agency to increase the rates, due to the fact that actual public defense caseloads generally exceeded the

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projected caseloads on which appropriations were based. Other demands on the Public Defense Services Account, such as continuing expenditures on death penalty cases filed in previous biennia, also contributed to the need to adopt a conservative approach toward administering public defense funding and prevented the Commission from increasing rates. A limited number of exceptions to the guideline hourly rates had been made in years just prior to 2007 on an individual case-by-case basis or for certain types of cases, such as post-conviction relief cases. For a number of years, there has been a shortage of attorneys who are qualified and willing to accept appointment to post-conviction relief cases.

The small increases in hourly rates that were implemented in August of 2007 did not result in rates that bear any relation to rates regularly charged for their services by attorneys who handle criminal and family cases for non-indigent clients. The Oregon State Bar's 2007 Economic Survey reports statewide average and median criminal defense hourly rates at \$176 and \$175 per hour. Family law attorneys statewide charge \$188 (average) and \$180 (median). Family law practice is similar to the work performed by public defense attorneys in juvenile dependency and termination of parental rights cases. To the extent attorneys who perform public defense representation at \$45 and \$60 per hour responded to the Bar's survey, those hourly rates would have helped contribute to the lower overall rates.

Just as with automobile mechanics or plumbers who are paid on an hourly basis, hourly rates paid to attorneys, whether in the public or private sector, are meant to include overhead costs such as staff salaries, taxes and benefits, rent and other office costs, and necessary capital. Overhead expenses frequently are estimated by attorneys to be 50% of the hourly rate. Assuming 50% overhead expenses and an average of 1,800 billable hours in one year, an hourly-rate paid public defense attorney working full time at \$45 per hour would receive \$81,000 per year, with half of that amount (\$40,500) paying for overhead and half being available as attorney salary.

The Consumer Price Index increased 60% between 1991 and 2010. Adjusted for inflation, the 1991 rates of \$40 and \$55 per hour should be \$64.08 and \$88.10 per hour in 2010.

Hourly Rate Increase for Hourly Paid Investigators Who Provide Public Defense Services

The amount requested for the full 2011-13 biennium would allow increases in the rates paid investigators from \$28 to \$35 per hour in non-death penalty cases and from \$39 to \$45 per hour in death penalty cases.

Until 2007, with the exception of some investigation services in death penalty cases beginning in 1996, the public defense guideline rate for investigation services had been \$25 per hour since at least 1988. It appears that in most and perhaps all counties, the rate has been \$25 per hour since the state's assumption of responsibility from the counties for public defense in 1983. For death

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penalty cases, the hourly rate had been \$25 per hour until mid-1996 when that rate was increased to \$34 per hour for the most experienced investigators. In 2007 the Legislature provided sufficient funding to permit the agency to raise the rate in non-death penalty cases from \$25 to \$28 per hour and from \$34 to \$39 in death penalty cases.

Despite the increases that took effect in August 2007, investigator rates remain inadequate. The Public Defense Study Commission, established to study the public defense system during the 1999-01 interim, received testimony from investigators and non-investigators that the number and the quality of investigators who accept public defense work has diminished overall. This is due in significant part to the lack of increases in the hourly rates paid to these investigators and the hourly rates available in other public and private sectors for the same pool of investigators.

The table below summarizes the three components of this package.

1.	Funding to increase full-time public defender salaries to corresponding deputy district attorney salaries.	\$6,497,372
2.	Funding to provide an increase in the hourly rate paid to attorneys (\$70/hour non-capital; \$95/hour capital).	\$9,140,960
3.	Funding to provide an increase in the hourly rate paid to investigators (\$35/hour non-capital; \$45/hour capital).	\$2,585,226
Package total		\$18,223,558

Staffing Impact: No impact on staffing.

Revenue Source: \$18,223,558 general funds.

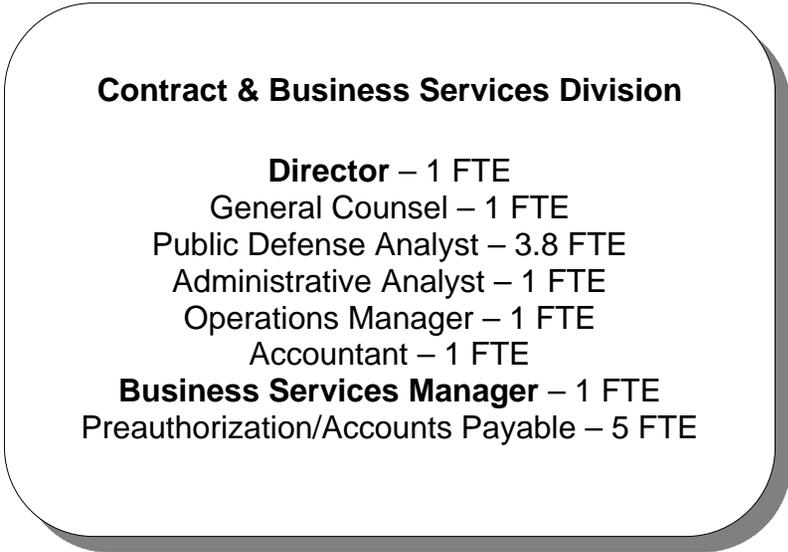
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Contract & Business Services Division

Program Description

The Contact and Business Services Division (CBS) is responsible for administering the public defense contracts that provide legal representation for financially eligible persons, and for processing requests and payments for non-contract fees and expenses. In addition, the division provides administrative support (accounting, budget development, human resources, facilities management and general operations) for the agency as a whole.

Organizational Chart



Contract & Business Services Division

Director – 1 FTE

General Counsel – 1 FTE

Public Defense Analyst – 3.8 FTE

Administrative Analyst – 1 FTE

Operations Manager – 1 FTE

Accountant – 1 FTE

Business Services Manager – 1 FTE

Preauthorization/Accounts Payable – 5 FTE

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Major functions

Contract Administration:

CBS staff negotiate and administer over 100 contracts for provision of legal services. Four Contract Analysts have primary responsibility for contracts assigned to them. In addition, CBS has one Administrative Analyst position to audit monthly caseload reports submitted by contractors.

Review of Non-Routine Expense Requests:

ORS 135.055(3) requires that PDSC pay the cost of "reasonable and necessary" expenses for public defense cases. Routine expenses, such as copying costs, do not require pre-authorization. Non-routine expenses, such as investigation, must be approved by PDSC before the expense is incurred. Over 10,000 requests for pre-authorization are submitted per year.

Accounts Payable:

Five accounts payable staff process the operating bills for both the Appellate Division and CBS as well as all fee statements submitted for payment from the Public Defense Services Account. Over 20,000 payments are reviewed and processed per year.

Quality Assurance and Complaint Processing:

PDSC's General Counsel coordinates the efforts of the Quality Assurance Task Force made up of experienced public defense managers and attorneys from across the state. The task force developed PDSC's contractor site visit process to identify strengths and weaknesses in the management and operations of public defense contractors. PDSC measures the desired outcome of quality and cost-efficiency in the delivery of services by tracking and reporting the extent to which contractors adopt best practices and resolve problems in the management and delivery of public defense services. In addition, CBS receives and investigates complaints regarding expenditures and regarding the quality of legal representation.

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Contract & Business Services Division

010 Non-PICS Personal Services / Vacancy Factor

Package Description

This package includes standard adjustments to the PERS Pension Bond Contribution, adjustments to Mass Transit Tax and adjustments to the division's anticipated vacancy savings. The components of this package increase general fund expenditures by \$2,333 and decrease other funds expenditures by \$6,606.

031 Standard Inflation & State Government Service Charge

Package Description

This package includes standard inflation adjustments on services and supplies in the amount of \$11,389 in general funds. State government services charges have increased by \$10,751, making the total amount of the package an increase of \$22,140 in general funds.

PUBLIC DEFENSE SERVICES COMMISSION'S NON-DISCRIMINATION AND AFFIRMATIVE ACTION PLAN

Introduction

The purpose of this plan is to initiate and maintain a non-discrimination and affirmative action program consistent with directives of the Governor and applicable state and federal laws and regulations.

Non-Discrimination and Affirmative Action Policy

It is the policy of the Public Defense Services Commission that no person shall be discriminated against by reason of race, color, national origin, religion, gender, marital status, sexual orientation, age (if the individual is 18 years of age or older), or disability not directly and substantively related to effective performance. It is also the policy of PDSC to establish a program of affirmative action to address the effects of discrimination intended and unintended, which is indicated by analysis of present employment patterns, practices and policies.

PDSC's Non-Discrimination and Affirmative Action Plan shall be followed by all PDSC staff. All personnel actions of PDSC shall be administered according to this policy. PDSC's supervisory and management staff shall ensure that the intent as well as the stated requirements of the Plan are implemented. In addition, it is the duty of every employee of PDSC to create a job environment that is conducive to non-discrimination and free of any form of discriminatory harassment.

This Non-Discrimination and Affirmative Action Plan will be posted in plain sight at all times for employees' use and referral. Any agency or member of the public requesting a copy of the PDSC Affirmative Action Plan shall be provided one at no cost.

Harassment in the Workplace Policy and Procedures

Harassment is a form of discrimination that is prohibited by state and federal law and by PDSC's Affirmative Action Policy. Any person who believes that he or she has been harassed at PDSC based on race, color, national origin, religion, gender, marital status, sexual orientation, age, or disability, or based on opposition to discrimination or participation in investigation or complaint proceedings under this policy may file a formal or informal complaint with PDSC's Executive Director. Confidentiality will be maintained to the fullest extent permitted.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or creating an intimidating, hostile, or offensive working environment.

Harassment based on race, color, national origin, religion, gender, marital status, sexual orientation, age, disability, or because the employee opposed job discrimination or participated in an investigation or complaint proceeding under this policy is any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, intimidation or threat engaged in by an individual that is directed at and offensive to another person or persons in the workplace, that the individual knew or ought reasonably to have known would cause offense or harm when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or creating an intimidating, hostile, or offensive working environment.

PDSC's informal complaint process affords an opportunity to gather information to either establish a suspicion of harassment or to attempt to resolve a disagreement without following PDSC's formal complaint procedure. An informal complaint involves the following procedures:

- The complainant submits a written or oral complaint to the Executive Director or his designee,¹ who advises the complainant of her or his right to file a formal complaint with PDSC or with other state and federal agencies.
- The Executive Director contacts the individual or individuals accused of harassment to discuss the alleged harmful act.
- The Executive Director develops a proposed resolution, if appropriate, and informs the parties of that proposed resolution within fifteen (15) calendar days of receipt of the informal complaint.

¹ The Executive Director will appoint as her "designee" for the purposes of PDSC's informal and formal Harassment in the Workplace complaint procedures a PDSC employee who has no management or supervisory responsibilities and who possesses personal characteristics that will not discourage employees' reports of harassment. All references to "Executive Director" in the informal and formal complaint procedures are meant to include this designee.

- If the proposed resolution is unacceptable to the complainant, she or he may file a formal complaint with the Executive Director.

PDSC's formal complaint process ensures the investigation of cases of alleged harassment, the determination as to whether or not harassment has occurred and, where appropriate, the resolution of a complaint. A formal complaint involves the following procedures:

- The complainant submits her or his complaint in writing to the Executive Director or his designee, which must be filed within 365 days of the alleged harmful act.
- The Executive Director acknowledges in a Letter of Acknowledgement receipt of the formal complaint, which includes information on the complainant's right to file a complaint with other state or federal agencies. Copies of the Letter of Acknowledgement are sent to the individual or individuals accused of harassment and the director of the relevant division of PDSC. Upon determining that the complaint is facially valid, the Executive Director conducts a thorough investigation of the complaint.
- Within thirty (30) calendar days of receipt of the formal complaint, the Executive Director informs the complainant and all persons who received copies of the Letter of Acknowledgement of the formal complaint by a Letter of Determination of the final status of the complaint, its disposition and the complainant's rights to file a complaint with other state or federal agencies.

Persons with Disabilities Policy and Procedures

It is the policy of PDSC to comply fully with Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA) as amended by the 2008 ADA Amendments Act, and other applicable federal and state laws that prohibit discrimination on the basis of disability. The Rehabilitation Act and the ADA require that no qualified person shall, solely by reason of disability, be denied access to, participation in, or the benefits of, any program or activity operated by PDSC. Each qualified person shall receive the reasonable accommodations needed to ensure equal access to employment, educational opportunities, programs, and activities in the most integrated setting.

For a disability to be protected by the ADA, an impairment must substantially limit one or more major life activities. These are activities that an average person can perform with little or no difficulty, such as walking, seeing, or working. Temporary impairments, including pregnancy, are not covered as disabilities under the ADA.

PDSC's employees or qualified applicants for employment by PDSC with disabilities shall be responsible for:

- notifying PDSC in a timely fashion of their need for reasonable accommodations;

- submitting appropriate documentation of the disability from an appropriate professional prior to receiving the accommodations requested; and
- demonstrating and documenting how the disability affects the employee's job processes, functions, responsibilities or performance evaluation criteria when requesting reasonable accommodations.

Upon receiving such notification and documentation from a disabled employee or applicant for employment requesting reasonable accommodation, PDSC shall be responsible for:

- making reasonable accommodations for a physical or mental disability, including but not limited to job restructuring, reassignment to a vacant position, part-time or modified work schedules, assistive technology, or aides or qualified interpreters, which do not create an "undue hardship" (defined as significantly difficult or expensive), and excluding the creation of new jobs or the reallocation of essential functions to another employee;
- engaging in an interactive process with the disabled employee or qualified applicant for employment with regard to the type of accommodation that will enable the individual to perform the essential functions of the relevant position;
- evaluating the employee's or applicant's physical or mental limitations in order to determine the accommodation that will be effective, excluding accommodations of a personal nature such as a guide dog for a visually impaired employee, or a wheelchair;
- keeping confidential any medical information obtained from a disabled employee or applicant; and
- using qualification or performance standards, tests and other selection criteria that screen out individuals with disabilities only when they are (a) job-related and consistent with business necessity and (b) cannot be satisfied through the provision of a reasonable accommodation.

Employee Training and Education

The Oregon State Bar requires every attorney licensed to practice law in the state to attend Continuing Legal Education (CLE) programs that train and educate lawyers concerning issues of elimination of bias in the legal profession and the practice of law. PDSC presents in-house training programs that satisfy these requirements. PDSC is currently developing an in-house training program that will still satisfy the Bar's CLE requirements, but will also involve all its nonattorney employees.

Responsibilities for Implementation

The person responsible for discharging this policy is PDSC's Executive Director: Ingrid Swenson, 1320 Capitol Street N.E., Salem, OR 97301; (503) 378-2515.

The Chief Defender of PDSC's Legal Services Division and the Director of PDSC's Contract and Business Services Division are assigned the following responsibilities:

- Brief all new employees on PDSC's affirmative action plan and their role in supporting it.
- Periodically review training programs and hiring and promotion patterns in order to remove impediments to attaining affirmative action goals and objectives.
- Regularly discuss PDSC's affirmative action policy with employees to ensure the policy is being followed.
- Periodically review office policies, practices and conditions to ensure that:
 - Equal Employment Opportunity information and PDSC's affirmative action policy are properly displayed;
 - all facilities for the use and benefit of employees are in fact desegregated, both in policy and use, exclusive of those areas excepted by federal laws and regulations;
 - minorities, females, and disabled employees are afforded a full opportunity to participate in PDSC's educational, training, recreation and social activities; and
 - all facilities are accessible to disabled employees or clients.

Analysis of PDSC's Workforce and Job Groups (As of 6/30/10)

With a total workforce of 64, PDSC employs 43 females and four people of color (two Hispanic and two Asian).

PDSC has four job groups: management, professional, paraprofessional, and support staff. The management group has four positions, two of which are filled by females. The professional group has 40 positions, 23 of which are filled by females and two of which are filled by people of color. The paraprofessional group has two positions, one of which is filled by a female. There are 18 positions within the support staff group, 16 of which are filled by females and two of which by persons of color.

The agency meets (or is within a fraction of a position) or exceeds goals for women and people of color. The agency's current workforce does not meet the goal for disabled persons.

Goals and Objectives

PDSC will pursue the following goals and objectives in order to carry out its affirmative action policy:

- Expand employment opportunities for members of protected classes not represented in PDSC's current workforce.
- Increase the distribution of PDSC's protected class employees at all salary range levels in an effort to approximate the proportion of protected class members in the workforce from which PDSC employs.
- Assess minority group and female staffing on an ongoing basis to ensure that PDSC is making progress toward meeting these objectives.
- Refine recruitment strategies and hiring practices to facilitate the placement and promotion of minority group and female personnel.
- Actively participate on affirmative action committees, organizations and activities to promote PDSC's Affirmative Action Plan.

PDSC'S AFFIRMATIVE ACTION STRATEGIES AND ACCOMPLISHMENTS

PDSC is comprised of two divisions: The Appellate Division (AD), which provides direct legal services in the Oregon Supreme Court and the Court of Appeals on behalf of financially eligible individuals appealing trial court judgments of conviction in criminal cases, and trial court judgments in juvenile dependency and termination of parental rights cases; and the Contract and Business Services Division (CBS), which administers the state's public defense contracting and payment systems.

PDSC's Non-Discrimination and Affirmative Action Plan includes both policies and procedures governing PDSC's own activities as an employer and strategies for working with the private contractors who provide the great majority of public defense representation in the state to help them attract and retain attorneys and staff that more closely reflect the diversity in their communities.

PDSC's Accomplishments in 2009 - 2010

- Attended and made presentations regarding employment in public defense at job fairs and recruitment events at regional events sponsored by minority law student groups and others.

- Continued to develop working relationships with law faculty and placement offices at Oregon’s law schools to identify and recruit law students of color who might be interested in attorney positions in the state’s public defense system.
- Conducted a survey of public defense provider offices as recommended by a diversity task force or PDSC’s Contractor Advisory Group in order to establish a baseline from which to measure changes in the composition of staff within these offices. Provided a summary of the results to PDSC’s contractors along with a list of best practices for recruiting and retaining a diverse workforce.
- Created a planning group to prepare a one-day “Elimination of Bias” training for attorneys and staff at the Office of Public Defense Services as well as interested attorneys from the Marion County area.

PDSC’s Strategies for 2011- 13

- Work with public defense contractors to create more recruitment opportunities, possibly in conjunction with prosecutors, to interest first-year law students and college students in the practice of criminal law.
- Work with Affirmative Action office of the Oregon State Bar to identify new strategies for increasing diversity in public defense.
- Improve outreach efforts of OPDS to attract more diverse applicants for all job categories in both divisions.
- Continue to participate in job fairs and recruitment programs throughout the Pacific Northwest and elsewhere for law students and attorneys of color who may be interested in careers in public defense.
- Encourage public defense attorneys to examine the causes of disproportionate representation of minority clients in the criminal justice, juvenile justice and child welfare systems and to identify and implement strategies to address overrepresentation.
- Prepare and present an elimination of bias training to OPDS attorneys and staff and other members of the Marion County legal community.

PDSC’s Strategies for 2013-19

- The demand for minority attorneys and other legal professionals such as trial assistants and investigators is high in Oregon as it is elsewhere in the country. In order to attract these professionals to public defense work, PDSC needs to be able to offer compensation that is at least comparable to the compensation offered to district attorneys and other government lawyers in the state. In support of this effort PDSC has included in its 2011-2013 budget request policy packages that would help it achieve parity in

compensation with prosecution lawyers for its appellate lawyers and for at least some of its private contractors. The achievement of parity may well take more than a single biennium.

- Over the next six years PDSC will develop and present an integrated series of trainings for its own employees designed to address some of the underlying biases and misconceptions that can impair one's judgment about members of other cultural groups. The agency's general counsel is well qualified to assist in the development of this series, having served as the trainer for the largest public defense office in the state and having planned and presented many such trainings in the past. The training series will be open to interested contract providers and may be recorded for possible future use by others.
- PDSC intends to continue working with its contractors to obtain reliable data about workforce composition and establish appropriate goals for each year of the next six-year period to expand the number of minority attorneys and staff members employed in public defense in Oregon.
- In anticipation of the difficulty of recruiting successfully from the small group of minority attorneys graduating from Oregon law schools each year, PDSC will work with its contractors to develop strategies for promoting legal careers and, specifically, careers in public defense, among Oregon high school and college students.

Attachment 4

Public Defense Services Commission
Service Delivery Plan for Deschutes County
(August 2010)

Introduction

[The first portion of this report, the Introduction, was included in the initial draft of the report that was provided to Commissioners and others prior to the June 17, 2010 meeting of the Commission. That portion of the report may be viewed on the PDSC website: <http://www.oregon.gov/OPDS/docs/Agendas/06-17-10.pdf> on pages 58 - 66 of the document.]

PDSC's Preliminary Investigation in Deschutes County

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

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve two other important functions. First, they provide useful information to public officials and other stakeholders in a local justice system about the condition and effectiveness of that system. The Commission has discovered that "holding a mirror up" to local justice systems for all the community to see can, without any further action by the Commission, create momentum for local reassessments and improvements. Second, the history, past practices and rumors in local justice systems can distort perceptions of current realities. PDSC's investigations of public defense delivery systems can correct some of these local misperceptions.

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

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

OPDS's Initial Findings in Deschutes County

The Circuit Court

There are seven Circuit Court judges in Deschutes County. Judge Michael Sullivan is the presiding judge. The others are Michael Alder, Alta Jean Brady, Stephen Forte, Barbara Haslinger, Edward Perkins, and Stephen Tiktin. The Trial Court Administrator is Ernest Mazorol. Steven Kurzer is a part time referee who handles primarily juvenile delinquency cases. All of the judges handle criminal matters. Judge Forte is the principal juvenile judge. Two of the Circuit Court judges restrict their caseloads to what were District Court cases prior to the consolidation of the state courts¹.

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

District Attorney

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

Procedure in Criminal Cases

The court uses a hybrid docketing system. While cases are assigned to individual judges at the time of filing, they do not actually go to the assigned judge until after the entry of plea. The five felony judges alternate handling the arraignment docket on a weekly basis, with out-of-custody arraignments in the morning and in-custody arraignments at 1:30 daily. All in-custody arraignments are done by video from the jail. Attorneys are present in the courtroom and can communicate with incarcerated clients over a secure telephone connection. The judge assigned to handle arraignments also handles changes of plea².

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

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

Misdemeanor cases are assigned to the two “District Court” judges, with odd numbered cases going to one judge and even numbered cases going to the other. These two judges alternate between hearing trials and hearing short matters. Delays in resolution of misdemeanor cases resulted in a backlog of unresolved cases that required the court to bring in an out of county judge to help clear the docket³.

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

Obstacles to resolution in felony cases were reported to include: not having a deputy district attorney present with authority to settle the case, defense attorneys not meeting with their clients⁴, defense attorneys not making counter offers to the offers made by the deputy district attorney at the time discovery is provided.

An entry of plea date is set in both felony and misdemeanor cases within 21 days after the arraignment for in-custody defendants and 35 days after arraignments for out-of-custody defendants. At the entry of plea hearing a case may be resolved, set for trial or continued. Settlement conferences are scheduled frequently. Cases are sometimes settled on the day of trial. Trial rates in Deschutes County are below average⁵

Procedure in Juvenile Cases

Delinquency cases

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

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

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

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

⁵ In 2009, according to the State Trial Court’s “Cases Tried Analysis,” 3.4% of felonies and 2.2% of misdemeanors went to trial, compared to a statewide average of trials in 5.7% of felonies and 4.4% of misdemeanors.

One juvenile department team handles only formal accountability agreements (FAAs). According to a spokesperson for the juvenile department, the county seeks to divert as many youth as possible to FAAs and to informal diversion programs operated by the Bend City Police, the Redmond City Police and the cities of Sisters and LaPine. Minor offenses such as Theft II, Assault IV and Minor in Possession are handled informally and do not require involvement of juvenile department staff⁶. Probation violations are prosecuted as motions to revoke probation.⁷

It is rare for a juvenile in Deschutes County to waive counsel⁸.

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

Dependency cases

In Deschutes County the Department of Human Services provides factual information for dependency petitions and the District Attorney's office prepares and files them. Preliminary hearings occur in the afternoon and are scheduled only as needed. The Oregon Judicial Department reported that there were 77 petitions filed in Deschutes County in the one year period ending September 30, 2009. Attorneys are appointed for both children and parents in almost all cases according to DHS. No discovery is provided prior to the hearing and usually only the petition and the temporary custody report are available. DHS staff indicated that initial hearings are never contested. A custody review hearing and settlement conference is generally scheduled for several weeks after the initial

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

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

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

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

hearing. The great majority of cases are resolved at this hearing or at a third hearing, if needed. Statistics for the year ending September 30, 2009 indicate that 11 cases were tried.

The court and the Citizen Review Board (CRB) both conduct regular reviews in dependency cases. The Judicial Department reported that there were 555 review hearings in the year ending September 30, 2009 in Deschutes County, which is a ratio of approximately seven review hearings to each new dependency case filed¹⁰. The Deschutes County District Attorney's Office appears at these hearings.

Contested trials in termination of parental rights cases are reported to be rare in Deschutes County¹¹. Most of the cases that proceed to termination are family court cases in which an array of services have already been provided in an effort to reunite the family.

Deschutes County has an active CASA program.

Civil Commitment Cases

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

Specialty Courts

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

The county also has a family court that was started in 1994. It was the first pilot site in the country and has been written up as a best practice model by a number of organizations including the National Center for State Courts and the National Institutes of Justice. All of the judges have cases that have been designated as family court cases. Currently each judge has between 15 and 20 cases¹². Participation in the court is not voluntary. Cases are subject to family court treatment if members of a family have multiple cases before the court, at least

¹⁰ The statewide ratio according to Oregon Judicial Department data is less than 2 review hearing for every new dependency petition.

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

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

one of which is a juvenile dependency case. Once the cases are “bundled” and sent to one judge, any new cases will also be transferred to that judge. Active involvement of the court requires that family members be willing to execute releases and waive confidentiality. If they choose not to, the cases remain bundled but are processed in the traditional manner. Active family court cases involve frequent court hearings and occasional family meetings with participation by multiple treatment providers. Brie Arnette is the Family Court Coordinator.

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

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

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

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

Public Defense Providers

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

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

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

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

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

Non-contract attorneys are not needed on a regular basis but there are some Bend attorneys in private practice who are willing to accept occasional public defense cases and one of the contractors in Crook County also accepts Deschutes County cases when necessary.

Comments regarding Local Public Safety System and PDSC Providers

Criminal Cases

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

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

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

Representation of parents

Juvenile dependency system representatives reported that most attorneys provide good representation to parents but some are more skilled than others at collaborative efforts on behalf of their clients in family court, with some appearing to prefer the adversarial model of representation. Several interviewees said that some contractor attorneys are not meeting with their clients before court, necessitating the rescheduling of hearings. Individual attorneys were identified as providing particularly zealous representation and others as providing relatively apathetic representation.¹³ It was said to be unusual for all but two of the attorneys to have any contact with DHS between court hearings. One state's representative said that sometimes attorneys are too passive and sign off on terminations without a fight. Attorneys are said to use the CRB process well.

Representation of children

¹³ One interviewee said that if he were a public defense client and either of two attorneys he identified were appointed as his counsel, he would sell his dog to be able to retain his own counsel. Information about the reported performance of particular attorneys was provided to contract administrators in each office.

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

Delinquency cases

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

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

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

The Structure

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

Currently, the caseload is declining in the county. Over time it is possible that fewer providers will be needed although there appears to be general agreement that there is a need for more attorneys qualified to handle serious felony cases. Attorneys are still described as "stretched thin" and many interviewees acknowledged that as a result of the hybrid docketing system attorneys appear to be scheduled in multiple places at the same time, a situation that is aggravated

by the fact that the jail and the juvenile court are located several miles from both the county court house and the law offices of most of the attorneys.

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

The Juvenile Dependency System

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

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

7.1.4.1 In-Custody Initial Interviews

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

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

7.1.4.2 Out-of-Custody Interviews

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

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

do to schedule an interview time.

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

EDP Representation

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

Information Provided at June 17, 2010 PDSC Meeting

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

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

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

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

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

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

Brie Arnette, the manager of the family court program in Deschutes County, said that the Deschutes County program was the first in the nation. It was started in 1994 and is designed to bring all of a family's cases before a single judge who works with a team to address the underlying needs of the family. To be eligible, a client must have an open dependency case, a criminal case and a domestic relations case. Attorneys are involved from the beginning and attend family court meetings. Generally speaking, the group does not discuss matters that could affect the criminal case. Very few cases involve termination of parental rights, none in the past two and a half years. Parents in the program are usually successful in getting their children returned to them or else agree to another permanent plan for the children. There are approximately 300 families that have participated in the court. About 100 are currently active. The family court judge generally hears all of the cases, including the criminal case. Occasionally, however, another judge will hear a case if that is what the parties prefer. Most parents who also have criminal cases are represented by a single attorney in all of the matters but occasionally there is more than one attorney for a party. When there are multiple attorneys they appear to communicate effectively with each other. Clients generally represent themselves in the domestic relations case.

Some attorneys assist their clients with paperwork and legal advice but do not represent them on the domestic relations case.

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

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

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

Mr. Crabtree said there has been an increase in the juvenile caseload, which may be due to a temporary drop that occurred when the Oregon Safety Model was implemented by the Department of Human Services. The caseload dropped dramatically but is coming back to previous levels. The family court program is excellent. It provides better results for clients than the adversarial system has.

Ms. Arnette has excelled at bringing in outside community partners to provide services that aren't available in the normal case.

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

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

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

Brendon Alexander of Alexander and Associates said that his office had reluctantly agreed to handle early disposition cases after the OPDS analyst for the county told him that his firm's contract would not be renewed unless it agreed to take responsibility for the EDP program. He said that he had run the program as well as he could have, given the resources available. It is a burden for a small firm to provide coverage for this court on a daily basis. He would not be unhappy if responsibility for the program went to another provider. It is a money losing kind of representation for him. The number of clients varies from two or three a day to 15 or more. Discovery is provided in advance. Most of the cases involve pleas with a set-over for sentencing. If all of the conditions are met, the case is closed. The goal is to keep people off probation. At the initial appearance the defense attorney tries to identify the cases that are not appropriate for EDP. Even if a civil compromise were possible in some of these cases, the firm does not receive adequate compensation to explore this option for EDP clients. Most cases are second degree thefts, primarily shop lifts. In most of these cases the defendant has already had an opportunity to get the case dismissed through a victim/offender reconciliation program but has failed to complete the conditions. Other case types include misdemeanor hit and run cases and other motor vehicle cases. Most of the time there is a plea offer that reduces it to a careless driving, which means the defendant will not be convicted of a crime and his license will

not be suspended. Oftentimes they are very questionable cases, but the attorney can usually identify those by reading the reports. Criminal mischief is the third major category of cases in the program.

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

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

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

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

Commissioner Lazenby expressed concern about whether these programs are really making the system more efficient. Does the benefit outweigh the limitations imposed on the attorney/client relationship? Mr. Alexander said that one benefit is that PDSC is saving \$300 to \$400 per case through the use of this model. Chair Ellis said that a decision by the Commission on whether to continue funding this type of representation should be postponed until willingness of local officials to change the program had been explored. Ingrid Swenson was directed to discuss possible changes with Deschutes County officials. Commissioner Stevens inquired whether there wasn't a value in having someone inform this group of defendants about the program and what they could expect

from it without actually representing them. Commissioner Ozanne inquired whether most of these defendants wouldn't otherwise be waiving their right to counsel. Mr. Alexander said that he does believe it is important for them to have some legal advice about the impact of their criminal histories and how they could be affected by the property crime measures, and whether they are eligible for expunction of their records. People want someone to tell them that they will not be going to jail, tell them what the maximum punishment is going to be. Even though the judge is responsible for taking a knowing and informed plea time does not allow the judge to provide all the information people want and clients understand it better coming from an attorney than from the judge's comments to a whole roomful of people.

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

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

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

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

The handling of complaints about consortium members was a problem in the past. Mr. Pritchard as the administrator had all of the responsibility but no

authority. In the past he has been given only hearsay information so recently the consortium distributed questionnaires to the courts and administrators but they were reluctant to provide information and court staff was not permitted to respond. When issues do come to the consortium's attention, it responds to them by sending a letter of concern to the attorney and requesting a response. The consortium can take corrective action if needed, by reducing the seriousness of cases the attorney can take. If attorneys appear to be overwhelmed, the volume of cases can be reduced. Attorneys with health issues have been given sabbaticals for up to a year. One contract had to be terminative because an attorney about whom the judges had expressed concern was unable to meet required standards. People have been let go.

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

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

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

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

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

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

Mr. DeKalb.

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

Additional Information and Developments After June 17, 2010

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

Information about early disposition programs in other jurisdictions has been forwarded to the trial court administrator and he has indicated that he would like to review the information and talk further with the judges before convening a discussion about the future of the program in Deschutes County. He has briefed Presiding Circuit Court Judge Michael C. Sullivan about the issue, however and Judge Sullivan is open to looking at existing procedures and any proposed changes. Additional information was requested about the current program from Brendon Alexander and an inquiry has been sent to the incoming district attorney about his view of the EDP program and his willingness to explore other models. Data was still being collected and reviewed at the time of this report but information collected to date indicates that there are approximately 60 new cases per month that are being processed through the EDP program. If the defendants in each of those cases had been provided with appointed counsel on the underlying case or cases, the cost to PDSC would have been approximately

\$23,400 per month. The Alexander firm receives \$5,000 per month for the representation it provides in these cases. One of the things that is not known is how these cases would be handled if there were no EDP program. In some counties at least some of these offenses would be diverted or processed through a community court; some would probably be treated as violations rather than misdemeanors. Regardless of how they might be treated in other jurisdictions, it is largely up to the Deschutes County District Attorney to decide how they will be handled in that county. Until Mr. Flaherty takes office and decides whether he will continue the EDP program and, if not, whether he will prosecute all of these offenses and at what level, any changes attempted by others might be temporary.

A Service Delivery Plan for Deschutes County

[This portion of the report will be completed after the PDSC has developed its service delivery plan for Deschutes County.]

In accordance with Chair Ellis's direction, approval of a service delivery plan for Deschutes County will be postponed until Deschutes County officials have had an opportunity to consider whether they wish to make any changes to their EDP program.

Attachment 5

Self-Assessment Criteria

Best Practices Criteria	Yes	No
<ol style="list-style-type: none"> 1. Executive Director's performance expectations are current. 2. Executive Director receives annual performance feedback. 3. The agency's mission and high-level goals are current and applicable. 4. The board reviews the <i>Annual Performance Progress Report</i>. 5. The board is appropriately involved in review of agency's key communications. 6. The board is appropriately involved in policy-making activities. 7. The agency's policy option packages are aligned with their mission and goals. 8. The board reviews all proposed budgets (likely occurs every other year). 9. The board periodically reviews key financial information and audit findings. 10. The board is appropriately accounting for resources. 11. The agency adheres to accounting rules and other relevant financial controls. 12. Board members act in accordance with their roles as public representatives. 13. The board coordinates with others where responsibilities and interests overlap. 14. The board members identify and attend appropriate training sessions. 15. The board reviews its management practices to ensure best practices are utilized. 16. Others 		
Totals		
Percentage of Total		