

**Members**

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



**Ex-Officio Member**

Chief Justice Thomas Balmer

**Executive Director**

Nancy Cozine

**PUBLIC DEFENSE SERVICES COMMISSION**

Thursday, September 18, 2014  
10:00 a.m. – 2:00 p.m.  
Office of Public Defense Services  
1175 Court St. NE  
Salem, Oregon 97301

**MEETING AGENDA**

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| 1. <b>Action Item:</b> Approval of minutes - PDSC meeting held on June 19, 2014 ( <i>Attachment 1</i> )   | Chair Ellis  |
| 2. <b>Action Item:</b> PDSC Compliance with Best Practices ( <i>Attachment 2</i> )  | Commission   |
| 3. PSDC 2014 Key Performance Measure Report And Proposed New Key Performance Measures ( <i>Attachment 3</i> )   | Nancy Cozine   |
| 4. PDSC Affirmative Action Report   | Cynthia Gregory  |
| 5. PDSC Agency Request Budget: Narrative and Policy Option Packages ( <i>Attachment 4</i> )   | Nancy Cozine<br>Angelique Bowers<br>Contract Providers |
| 6. <b>Action Item:</b> PDSC Approval of Agency Request Budget for the 2015-17 biennium  | Commission   |
| 7. <b>Action Item:</b> PDSC Approval of Contracts for Case Management Services; Parent Child Representation Program ( <i>Attachments 5</i> )  | Nancy Cozine<br>Amy Miller                             |
| 8. <b>Action Item:</b> PDSC Approval of 2013-15 Strategic Plan ( <i>Attachment 6</i> )  | Nancy Cozine   |
| 9. Oregon State Bar – Board of Governors Approval Of New Performance Standards<br><a href="http://www.osbar.org/surveys_research/performancestandard/index.html">http://www.osbar.org/surveys_research/performancestandard/index.html</a> | Paul Levy  |
| 10. Judge Haggerty’s Supervisory Opinion, with Recommendations for OPDS and DOJ   | Paul Levy  |
| 11. OPDS Monthly Report   | OPDS Staff   |

12. Executive Session\*

Commission

**\*Executive Session:** *The Public Defense Services Commission will meet in executive session at approximately 1:30 p.m. The executive session is being held pursuant to ORS 192.660(2)(d)&(f).*

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

**Next meeting:** *October 10, 2014, Salishan Resort, 7760 Highway 101 North, PO Box 118, Gleneden Beach, Oregon 97388. Meeting dates, times, and locations are subject to change; future meetings dates are posted at:*  
<http://www.oregon.gov/OPDS/PDSCagendas.page>

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, June 19, 2014  
9:00 a.m. – 12:30 p.m.  
Mt. Bachelor Village  
19717 Mt. Bachelor Village  
Bend, Oregon 97701

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
John Potter  
Per Ramfjord  
Janet Stevens  
Hon. Elizabeth Welch  
Chip Lazenby

STAFF PRESENT: Nancy Cozine  
Peter Gartlan  
Paul Levy  
Caroline Meyer  
Angelique Bowers  
Amy Jackson  
Amy Miller

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The meeting was called to order at 9:00 a.m.

**Agenda Item No. 1 Approval of minutes – PDSC meeting held on May 15, 2014**

**MOTION:** Commissioner Potter moved to approve the minutes; Commissioner Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

**Agenda Item No. 2 Appellate Division History; Juvenile Appellate Section Report**

Pete Gartlan, Chief Defender, provided a history of the Appellate Division, starting with information about the dramatic reduction in caseloads since 2001, when Commission oversight began. He explained that in 2001, there were 26 criminal defense attorneys, and the median filing date was 338 days. Now, there are 37 attorneys in the criminal section, five in the juvenile appellate session, and the median filing date is 233 days. In 2001, Deputy I attorneys were assigned about 108 cases per year - 67 were trial type (as opposed to plea type)

cases. Mr. Gartlan contrasted that with today, where Deputy I attorneys are assigned about 46 cases, 33 of which are trial type cases. He then summarized Deputy II caseload reductions, which went from 84 cases (43 trial type), to 36 (24 trial type) per year. He explained that Deputy II caseloads involve more serious cases with longer transcripts and more complex issues, and noted that the quality of all briefing has improved dramatically. He recalled the early days, when the *Balfour* rate was about 50%, meaning the office was not filing merit briefs in 50% of the cases. Now, *Balfour* briefs are filed in only about 20% of the cases, which is a more appropriate total.

Mr. Gartlan went on to explain other efficiencies that have been created over the years. Attorneys are provided with a 180 page attorney manual, which addresses about 80 to 90% of the issues attorneys commonly confront. There is a brief bank. Attorneys can flesh out arguments and refine briefs through small team discussions and editing processes. Cases are reassigned quarterly to ensure that cases are briefed as quickly as possible. OPDS has worked with the Court of Appeals, the Supreme Court, and the Attorney General's Office, to reduce tangential or marginal procedural aspects of managing a caseload, allowing attorneys focus on legal work rather than procedural tasks.

Mr. Gartlan emphasized the fact that the office has achieved much of what was envisioned when the Commission assumed its responsibilities. The office hires fairly new lawyers, but invests heavily in each one. Mr. Gartlan shared that it usually takes an attorney three to five years to develop a sufficient knowledge base because the practice has become so specialized. He said that while there are 13 or 14 lawyers with less than three years of experience, the intensive mentoring and team structure allows every attorney to submit very good briefs. The office now receives high praise from members of the Court, and enjoys a very good reputation.

Mr. Gartlan then talked about the Juvenile Appellate Section (JAS), authorized by the Legislature in 2007 to address concerns about extremely different approaches to the law from county to county, and created in 2008. Prior to the creation of this unit, the Court of Appeals and the Supreme Court together were producing about 15 appellate opinions in juvenile cases each year, including on average, about two opinions in the parents' favor. He went on to summarize each year, demonstrating that the number of opinions and reversals has consistently increased each year. In 2013, there were 38 opinions. JAS lawyers were involved in 31 of those cases, and prevailed in 19. He explained that JAS serves as a centralized resource for trial attorneys, and that the communication and litigation has created a body of case law that is providing direction and consistency across the state, which is what the Legislature had envisioned when it created the unit in 2007. He complimented Shannon Storey, JAS Senior Attorney, for her excellent leadership of the section.

Mr. Gartlan concluded by thanking the Commission for its consistent and continued support.

### **Agenda Item No. 3**

#### **Padilla Project Update**

Lane Borg, Executive Director of the Metropolitan Public Defender (MPD), provided an update on the Padilla Project, which provides immigration consultation to defense attorneys across the state. He reported that in the last year there were 270 inquires; 27 percent from MPD lawyers and the rest from other parts of the state. He said that Stephanie Englesman, who was providing the consultation and presented to the Commission regarding the Project last year, is on leave but will return in September. Although there is an attorney covering her workload, the numbers have dropped a bit – from 25 per month to about 17 or 18 per month. Mr. Borg anticipates that the numbers will go up again once Ms. Englesman returns.

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

#### **Capital Resource Center**

Jeff Ellis, capital resource counsel, began with a summary of *Hall v. Florida*, 572 U.S. \_\_\_\_ (2014), decided by the United States Supreme Court earlier this year. The case addresses whether a state violates the Eighth Amendment by defining intellectual disability as including only those with an IQ score of 70 or below. The Court struck down the definition for being too narrowly defined, a ruling Mr. Ellis described as part of the evolving standards of decency. Mr. Ellis noted that the Court referenced 18 states that have abolished the death penalty. The Court then added Oregon to the list of states that have abolished the death penalty, reasoning that Oregon has a death penalty moratorium and hasn't executed anyone, other than volunteers, in over 40 years. Mr. Ellis clarified that, for the 30 plus men and one woman on death row and those facing death penalty trials, capital punishment is anything but over in Oregon. Mr. Ellis then offered to give an update on death penalty cases in Oregon, a summary of his role as capital resource counsel, and indicated that he would also be asking the Commission to request an increase in the hourly rate for death penalty defense providers.

Mr. Ellis indicated that, from a broad perspective, Oregon's use of the death penalty has decreased. Until very recently, it had been three years without a new death sentence, but two new death sentences have been imposed within the last couple of months - one a re-imposition for an individual whose case was remanded for the fourth time for a penalty phase only case - with another capital case now in trial. He said that overall, fewer cases are going to trial, and fewer death sentences are being imposed. He also said that in those cases where sentences have been imposed, there are a greater number of reversals, especially in the post-conviction arena where judges granted relief in five out of the last six cases; one of which resulted in a settlement afterwards. He explained that cases have also been affirmed; one just today in which the Oregon Supreme Court unanimously affirmed the conviction and death sentence. Mr. Ellis explained that Oregon's capital cases are also moving into federal habeas, noting that although no Oregon capital case gone as far as the Ninth Circuit, there are now several cases in the federal district court.

Mr. Ellis described his role as capital resource counsel as primarily focused on providing education. Mr. Ellis organizes annual CLEs through OCDLA and the Metropolitan Public Defender, and also arranged a post-conviction CLE with the federal defender, as well as monthly meetings. He reinforces the idea that, in a capital case, settlement is critical. Mr. Ellis also provides individual support for attorneys regarding specific issues. Finally, Mr. Ellis tries to observe at least part of every capital case.

Commissioner Potter asked whether the questions Mr. Ellis receives have become more sophisticated over the years. Mr. Ellis suggested that Oregon is making progress, and that providers are engaged in an increasingly challenging level of discourse. Commissioner Potter asked about the greatest need, in terms of educating lawyers. Mr. Ellis suggested that Oregon's robust death penalty system will eventually outstrip the availability of qualified counsel who can dedicate their practice to full-time death penalty work. He contrasted Oregon and Washington State, where there is twice the population, twice the number of murders, a relatively similar aggravated murder statute, but only nine people on death row and only about three cases pending. Chair (Barnes) Ellis asked whether the Washington numbers are lower because the prosecutor there must give notice of intent to seek the death penalty. Mr. (Jeff) Ellis speculated that notice was partially responsible, but it was also a function of counties having to pay for the defense costs. Mr. (Jeff) Ellis followed up by stating that Oregon's system is better in that regard because state oversight ensures better quality counsel. He also noted that Washington's culture is one in which prosecutors agree not to seek death if the defendant will plead guilty to the crime.

Mr. (Jeff) Ellis concluded by talking about the need for increased hourly rates for attorneys, investigators, and mitigation specialists, starting with the proposed increase from \$98 to \$125 per hour for lawyers. He shared that in his opinion, this is not where Oregon ought to be, but it is a realistic increase. He explained that right now, lawyers appointed counsel in a federal capital case receive \$180 an hour.

Vice-Chair McCrea thanked Mr. Ellis for his work, and his presentation.

**Agenda Item No. 5      OCDLA Lobbyist Introduction**

Mr. Borg appeared as OCDLA President, and explained that the lobbyist retained to represent OCDLA during the next legislative session changed her practice. He did explain that OCDLA would be hiring someone to represent the interests of all provider types.

**Agenda Item No. 6      OPDS Recommended Policy Option Packages, Discussion and Review**

Nancy Cozine provided a summary of proposed policy option packages for the 2015-17 agency request budget. She reminded Commission members that, at the last meeting, Commission members expressed an interest in seeing separate packages with discrete funding purposes, rather than a single package addressing multiple issues, and had also expressed an interest in seeing what the packages would look like if they were closer to 20% above the agency's 2013-15 legislatively approved budget. Ms. Cozine indicated that the packages presented today are responsive to both of those requests.

Policy Option Package (POP) 100 addresses consistent rates and mileage for public defense contractors. POP 101, contractor parity, attempts to get all providers to within 5% of what prosecutors are making, with caseload adjustments as necessary to avoid caseloads that exceed state and national standards. Policy Option Package 102 addresses contractor quality assurance -part of this package provides compensation for contract administrators to dedicate time to quality assurance efforts, and part provides funding to help providers acquire case management systems, if needed. Policy Option Package 103 addresses hourly rate increases. Policy Option Package 104, Juvenile Dependency Improvement, expands the pilot program from two to four counties (adding Clackamas and Multnomah), and adds permanent funding for OPDS to administer the program and focus on improving juvenile representation across the state. Policy Option Package 105 addresses OPDS employee compensation, aimed at compliance with ORS 151.216(1)(e), which requires the Commission to adopt a compensation plan that is commensurate with other state agencies. Package 106 addresses the need for additional office space at the Office of Public Defense Services, to alleviate the need for lawyers office-shares, add a client interview room, and have a space for all staff meetings, trainings, and Commission and Public Defense Advisory Group meetings.

Commission Potter asked whether the Legislature would again be asking the Commission to prioritize these requests. Ms. Cozine said it was likely, but indicated that all were high priorities. Chair Ellis asked whether there would be statements written in support of each funding package. Ms. Cozine said the budget narrative would be presented at the Commission's September meeting. Commissioner Lazenby asked whether there was optimism regarding state revenue available in the next biennium. Ms. Cozine indicated that while the recent revenue forecast was improved, there were still concerns about budget shortfalls.

Jon Weiner, Director of Marion County Association of Defenders (MCAD), offered his support for funding that would address caseload issues. He indicated that through his work on the OCDLA pay parity committee and as MCAD Director, he has learned that many caseloads are too high. He explained that lawyers might estimate their public defense caseload to be a .5 FTE caseload, when in fact, in order to make ends meet, lawyers are handling one and a half to two times what is recommended in the Oregon State Bar standards. He expressed his commitment to correcting that, but noted that ultimately, it would require an increase in case rates.

**Agenda Item No. 7      PDSC Approval of Policy Option Packages for the 2015-17 biennium**

**MOTION:** Commissioner Potter moved to approve the policy option packages; Vice-Chair McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

**Agenda Item No. 8**

**Key Performance Measures – Trial Level**

Nancy Cozine directed Commission members to Attachment 3: the January 21<sup>st</sup> memo to Co-Chair Devlin and Co-Chair Buckley addressing agency Key Performance Measures. She suggested that in the months of review and discussions, both with the Commission and with contractors, two areas stand out as appropriate for measurement: number of cases per attorney, and attorney participation at first appearance. Ms. Cozine explained the importance of each, but also acknowledged that there is some difficulty in using existing caseload standards, as those are somewhat outdated. Mr. Levy provided more detailed information about the need for updated caseload standards, and outlined a plan to update those standards in the future. Commissioner Lazenby asked whether the standards would be statewide or unique to individual jurisdictions or regions. Mr. Levy suggested a general standard with adjustment according to the circumstances in which a lawyer practices.

Commissioner Lazenby expressed some concern about a KPM focused on cases per attorney, noting that perhaps it could move the Commission away from focusing on quality. Chair Ellis wondered whether such a KPM would be more a measure of the Legislature’s performance, in terms of funding, than of the Commission’s or lawyers’ performance. Ms. Cozine emphasized that adoption of a caseload measure would provide a mechanism for regular reporting by contract administrators to help ensure that cases are being distributed in a way that yields manageable caseloads. Commissioner Ramfjord noted the Commission’s responsibility to ensure that the public defense services that are provided are at a level that is consistent with the Constitution. Commission members had a full discussion of whether a caseload KPM would be an appropriate measure of the Commission’s administration of public defense services. Ms. Cozine indicated that the agency would continue to work on developing concepts and come back to the Commission with a proposal in September.

**Agenda Item No. 9**

**OPDS Monthly Report**

Mr. Levy noted that a peer review team visited Washington County last week. He said it was one of the most ambitious schedules and undertakings for a peer review, with an examination of six providers, most of them providing both criminal and juvenile representation, and that the reports would take some time to complete. He thanked peer review team members: Jim Arneson, who chaired the team, Tom Crabtree, Amy Miller, Karen Stenard, Judge Selander, who is a senior judge from Clackamas County and also the administrator of the Yamhill County Consortium, and Sarah Peterson, an attorney in our juvenile appellate section. Chair Ellis expressed support for the peer review process, and his appreciation for the excellent attorneys who participate in the process.

Amy Miller provided an update on the pilot program, which will include Linn County and Yamhill Counties.

**Agenda Item No. 10**

**Execution Session**

Vice-Chair McCrea announced the Commission’s intent to convene the executive session.

“The Public Defense Services Commission will now meet in executive session for the purpose of considering a memorandum to the Commission from its general counsel, which is privileged under ORS 640.225, and therefore exempt from disclosure under the Public Records Law, pursuant to ORS 192.520(9). The executive session is held pursuant to ORS 192.660(2)(f), which permits the Commission to meet in executive session to consider information and records that are exempt by law from public inspection. Representatives of the news media and designated staff shall be allowed to attend the executive session. All

other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room.”

Following the executive session, Vice-Chair McCrea announced that the Public Defense Services Commission had concluded its executive session and returned the meeting to an open session.

**MOTION:** Commissioner Potter moved to adjourn the meeting; Commissioner Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

**Meeting adjourned**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, June 19, 2014  
9:00 a.m. – 12:30 p.m.  
Mt. Bachelor Village  
19717 Mt. Bachelor Village  
Bend, Oregon 97701

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
John Potter  
Per Ramfjord  
Janet Stevens  
Hon. Elizabeth Welch  
Chip Lazenby

STAFF PRESENT: Nancy Cozine  
Peter Gartlan  
Paul Levy  
Caroline Meyer  
Angelique Bowers  
Amy Jackson  
Amy Miller

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The meeting was called to order at 9:00 a.m.

**Agenda Item No. 1 Approval of minutes – PDSC meeting held on May 15, 2014**

0:11 S. McCrea Good morning. Let's call the meeting to order. Thank you all for being here. I am hoping that Barnes will join us at some point, but I will take it away. Our first item on the agenda is approval of the minutes. Does anyone have any suggested changes or amendments? I would entertain a motion to approve the minutes.  
**MOTION:** John Potter moved to approve the minutes; Per Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

**Agenda Item No. 2 Appellate Division History; Juvenile Appellate Section Report**

0:42 S. McCrea Okay. The minutes are approved. Next on the agenda we have got Appellate Division History; Juvenile Appellate Section Report. Pete and Shannon.

0:52 P. Gartlan

Shannon will not be here.

0:52 S. McCrea

Okay. Pete.

0:56 P. Gartlan

Good morning. For the record, Pete Gartlan with the Appellate Division of the Office of Public Defense Services. At the last meeting, Ernie Lannet gave an appellate review of where the office is right now. Just to round out the picture, one of my roles is to give a historical perspective because I have been with the office so long. I wanted to describe what the office was like a year before this Commission came into existence and OPDS came into existence and just to share the differences. In 2001, we had 26 criminal defense attorneys. The state of affairs was pretty dire. The court set NFE date, which is a no further extensions, was 400 days. The court was telling us that briefs had to be filed within 400 days of record settlement. The median filing date at that time was 338 days. In those dark, dark days, a Deputy I attorney in our office, and the Deputy I is an entry level, this is a person doing mostly misdemeanor and simple felonies. We would assign 108 cases per year on average. Of those 108 cases 67 were trial type cases. The others are called plea cases. Where it is a guilty plea or a pv and the question is whether or not the sentence was correct. Just to compare with today, today a Deputy I caseload, we assign 33 trial type cases as compared with 67. We have reduced it in half. Instead of 188 total, the total is now 46 cases assigned to a Deputy I entry level attorney. The numbers are just as stark for the Deputy II caseload. Deputy IIs are the next level up. They do felonies. The cases are more complex. The transcripts tend to be a little bit longer. Back in the old days we would assign 84 cases per year total. Of those 84, 43 would be trial type. Today we assign 24 on average, 24 trial type cases per attorney for a Deputy II and 36 total. So it would be 24 trial type and 12 of the plea type cases. I personally want to thank the Commission because under your direction the office has improved dramatically. I remember when the *Balfour* rate was about 50%. That meant we were not filing merit briefs in 50% of the cases. Now that has dropped down to where I think it really should be. That is about 20% of cases. We have introduced a lot of innovations in the last 12 years. We manage those plea type cases differently. When the attorney is given a plea type case it is already set up and essentially it is just time to do the attorney work. We have created an attorney manual, an employee manual. That manual is now about 180 pages. It pretty much gives a lot of direction and probably resolves about 80 to 90% of the common issues that are going to come across an attorney's desk during the course of any particular time period. We have a brief bank that we did not have back before the Commission took over. We have more teams and smaller teams. We now approach the cases more on an office basis. What I mean by that is it used to be if you were assigned a case that was your case for the life of the case. Now on a quarterly basis, Ernie reassigns cases so that the cases are more spread out and people are not under the gun of an NFE, a no further extension deadline. He assigns really in a very fair and equitable manner. He assigns them before they get too old so that the people who receive the cases can incorporate them into their schedule. If there are old cases they tend to be with the person who has had that case for a long time and really should be addressing it. It is a self-imposed kind of a stress. We have worked with the Court of Appeals and the Supreme Court and the Attorney General's Office to reduce a lot of the tangential or marginal procedural aspects of managing a caseload. Let me explain a little bit. It had been back in the old days we were subject to the same motion for extension of time rules as a private attorney. We met with then Chief Judge Brewer and arranged - there is an ORAP rule that allows for the Appellate Division and the AG to kind of set different timelines for the briefing. We comprise more than 40% of the Court of Appeals caseload. What we have done is set an initial brief due date of 210 days and if somebody needs an extension there will be another extension of 35 days available. That is dramatically different than it had been 12 years ago when the initial brief due date was 49 days. Then we would move for another extension of 35 days or 42 days. That would go on and on and on. You can imagine if you have over a 100 cases that need to be briefed, we were spending an inordinate amount of time just moving for extensions of time instead of doing work on the cases. So essentially our goal back when this Commission started, and it was with Peter Ozanne, our goal was to create an

environment where there was good legal work being done. I think we are at that place where the attorneys now have the time and resources to focus on thinking about the law, reading about the law, discussing the law, coming together at team and creating a document is really better than what any individual can produce. So every document given the team structure, the document reflects kind of a collective knowledge. The document is ultimately polished because it has input from several attorneys with several different backgrounds and experiences. Our goal was to create an environment that produced really good work. I think our briefs do that. We take on people with little or no experience in appellate law. I would say it take about three to five years to develop an appellate attorney because the practice is that specialized. I think is the office is right there where it wants to be. That is even when we had about 13 maybe 14 people with less than three years experience. The way the system is set up, it is set up to incorporate new people as they come in and give them the support that they need in order to get up to speed relatively quickly and produce good work.

10:07 S. McCrea Pete, how many lawyers do we have now? There were 26 in 2001. How many are there now?

10:13 P. Gartlan There were 26 defense attorneys then. There are now 37 in the criminal section and five in the juvenile appellate session. What I have been addressing so far is merely the criminal section. We have 37 attorneys in that section.

10:30 S. McCrea Do you know how do we compare with DOJ?

10:35 P. Gartlan I don't know the answer to that. The reason is DOJ is set up a little differently. They may have a core group dedicated to criminal law, but typically there group does a lot of different areas of law and they bill out to those different agencies. I have asked and cannot get a number from DOJ. This is not self-aggrandizement. This is really a compliment to the Commission and, I think, the people who have been in the office. Within the last several months one of the judges gave us a supreme compliment, I think, and it is topical. He said we were like the San Antonio Spurs of the criminal defense.

11:35 C. Lazenby Does that make you Pop?

11:37 P. Gartlan I think it does. He said we have identified really good attorneys and developed them into really successful appellate attorneys. He has a lot of respect for the office. I think another compliment for the office is the number of attorneys who have left the office and then come back. We have six attorneys right now including three senior deputies. Meredith Allen, Mary Reese, and Ingrid MacFarlane and two Deputy IIs and a Deputy I. These attorneys have gone out and come back and seem to be more appreciative of the kind of think tank environment that has been developed at the office. That background is really just to kind of flesh out the picture to give you an idea of where the office was and where it now is and the development over the years. I want to give thanks to the Commission for the support to allow the office to development the way it has. I think it is a compliment and an attribute to the Commission and people like Ingrid and Peter Ozanne. Now I want to switch gears a little bit and go to the Juvenile Appellate Section. The section was created in 2008. The 2007 legislature say a need. That need was to develop a little bit more consistency. My understanding is that different legislatures were hearing from their constituents and kind of complaining about DHS inconsistency, ad hoc treatment of families and children. So in 2007, the legislature created positions in our office with the goal of creating a section that would litigate these juvenile issues in the appellate courts with the hope of creating appellate law that would produce a ripple effect and have consistency throughout the state with respect to the application of the juvenile appellate laws. To give you an idea before 2008, the Court of Appeals and the Supreme Court together were producing about 15 appellate opinions per year. On average there were two wins or reversals for parents per year. In 2009, so this is after the juvenile appellate section is kind of set up and running, the appellate courts issued 32 opinions. Thirteen of those were from our unit, the JAS unit, Juvenile Appellate Section. Fifteen of

those were wins and JAS had five of those wins. In 2010, the appellate courts issued 23 opinions. Thirteen of them were from the JAS unit with nine wins. In 2011, 27 opinions from the appellate courts; JAS had 16 of those. It goes on like this. In 2012, 42 opinions, 21 involving the JAS unit including 16 JAS wins. In 2013, last year, 38 opinions and 31 were from the JAS unit and we had 19 wins out of those 31 opinions. As you can see there has been a body of case law that has developed as a result of the appellate courts, I think, feeling a little bit more secure and comfortable with respect to making rulings based on law. If we step back a couple of paces, I think what we can, ultimately, is that the practice the changed, the juvenile practice has changed, and it has shifted from what had been kind of a paternalistic equitable model with judges making rulings based upon what they felt about situations. I think with the appellate courts and more appellate opinions, I think what we have seen is a shift towards more legal analysis. Treating juvenile appellate law as actually involving statutory scheme and it has to be analyzed just as law is analyzed and applied. I think that has produced more consistent opinions and consistent practice statewide. I think the vision of the legislature has been realized. It is not just the unit. I want to make sure I am careful. It is not just the unit. I think with the existence of the unit now there is kind of a centralized body that trial attorneys can use as a resource. I think there is kind of a synergy and a development of consistent, coherent kind of rules of law that are being advanced. That has helped create some of the appellate law that is filtering down to the trial court level. Our JAS section has five attorneys and it is led by Shannon Storey. Shannon has done an excellent job. The unit is really cohesive. It meets at least once a week. Their briefs are also a product of kind of group collaborative. Shannon edits the merit briefs and other attorneys edit other briefs. I have seen significant growth in that unit. We are really proud of that unit. The members of the JAS are routinely now presenters at CLEs. They are going to be presenting here tomorrow. They are also a resource for the legislature. That is about it for the historical perspective on AD. Again, thank you for the support over the years. I really appreciate it.

18:55 S. McCrea

Thanks. Our Chair has arrived. I think you are just back from Ireland?

18:58 Chair Ellis

I am sleep deprived.

19:03 S. McCrea

So he told me to carry on. Welcome, Barnes. Anybody have any questions for Pete or any comments? Thank you.

**Agenda Item No. 3**

**Padilla Project Update**

19:16 S. McCrea

Next we have the Padilla project update.

19:21 L. Borg

Alex won't be here. Thank you Commission, Chair, co-Chair or Vice-Chair. My name is Lane Borg. At this point in the agenda, I am appearing as the Executive Director of the Metropolitan Public Defenders to give you an update on the Padilla consultation/immigration project. This was a change in our contract last contracting cycle. This is the first contracting cycle that we are halfway through where it has been part of the contract for the whole one year of a two year contract. Just to give you some raw numbers, in the last year we have done about 270 consultations and it is running about 27% are in house and the rest are people who are from other parts of the state – not MPD cases. We notice because the person who was doing it, the woman who presented last year to you on an update was Stephanie Englesman. We are learning the importance of sort of key personnel and motivation. She really threw herself into it. She went up to Tacoma to the facility there and watched hearings so she could be a little better informed about what the next steps would be should somebody be moved up to at least Tacoma. She went out on a maternity leave in December. She will come back in September and re-begin that. The person who has taken over it now has been doing it in the interim, an attorney in Washington County. A very fine attorney. A bright guy, Scott Sharp. I think Stephanie saw herself as the Padilla attorney first and secondarily doing other cases to stay current and relevant on criminal law. I think Scott kind of sees it as reverse. He is one of our major felony attorneys in Hillsboro. That, as you may have heard, presents its own set of

challenges and struggles. What we have seen and Alex and I talked this yesterday as he ran these numbers for me, is that we have seen that there has been a drop off on average. We were doing about 25 a month under Stephanie. Now we are doing about 17 or 18 a month. We are hoping when she gets back that we will see those numbers then kick up again. We have noticed that I suppose somebody who does advertising or direct marketing would say, "Duh," but every time that we advertise this. Every time you put something on the pond, anyplace, we see a surge in that. So clearly there is still a need out there and I am hoping that when Stephanie gets back we will see that kind of resurgence happen. It is reinforcing to me looking at these numbers that you really do need to have somebody that primarily thinks of themselves as the Padilla project attorney first, but then happens to do some other criminal cases so that they are focusing on that. Short and sweet. That is the report unless there are questions.

22:27 J. Potter

Lane, did I hear you say 27% were in house cases and the remainder, do you have the graphic breakout of those remaining cases? Are they mainly metro area cases?

22:39 L. Borg

I don't. I know, and this is anecdotally, and I don't have the numbers to back that up. The model is set up to be completely online, completely on paper, there is no need to visit and face anybody. My understanding in talking with Stephanie was getting them from around the state. One of the things that I need to comment on is we are a lesson learned from what we have been doing. I think one of the things that I want to talk with Stephanie when she gets back is it would be nice if everybody could plan their schedules and say, "I have a whole month to learn the answer to this." That is not really what happens. I know we have built into our process almost a triaging where one of the first questions is how quickly do you need to know this? It is better if you look somewhere else or do something else if you are literally in a settlement conference and you need the answer now. We are trying for a very quick turnaround on that. I think that is going to be the other part of it is having the ability to get back to people is another aspect of making that person Padilla first and other cases second.

23:53 J. Potter

When is Stephanie going to be back?

23:58 L. Borg

September.

23:58 P. Levy

I think I could make an observation. Since the Supreme Court charged defense attorneys with the responsibility of advising their clients of the immigration consequences of their cases, it is natural that I think we perceive that other providers, other attorneys, are becoming better educated and have available resources to provide immigration advice. I would think that there might be a natural drop off over time.

24:30 L. Borg

That very well may be. We will have a good opportunity to test that this fall when she comes back to see how it affects the numbers on that. I think that is a good point, Paul. I am reminded, as Paul made that comment, that I think the defense bar, in general, is getting better at the routine questions. I know that in talking to Stephanie the questions that she was getting before she left were more and more not getting to be like will there be consequences. It was more if I get convicted of this, what will happen versus.... As she has gotten more sophisticated in her knowledge and the office and Alex supervising that group, were able to give some advice on like if the charge is this as opposed to that it could give them an argument at least. It is rarely going to avert the problem totally, but at least it gives them an argument before ICE in terms of whether they get removed or not.

25:33 S. McCrea

Like I said last year, I had availed myself of her services. She was crackerjack. She was great. She got right back to me. She was really helpful. Gave me some ideas on some issues that I hadn't thought about and it was wonderful to have a resource to go to. I think it is a great project. Anything else? Okay. Thanks, Lane. Barnes, if you get ambitious you can take over whenever you want.

**Agenda Item No. 4**

**Capital Resource Center**

26:08 S. McCrea

Next we have got the Capital Resource Center report.

26:15 J. Ellis

Good morning, Mr. Chair and Madam Co-chair, distinguished members of the Commission. My name is Jeffrey Ellis. I am capital resource counsel. Earlier this year the United States Supreme Court decided a case called *Hall v. Florida*. *Hall* appears to present a relatively narrow issue. Whether it violates the Eight Amendment for a state to write a definition of intellectually disability that requires an IQ test score of 70 or below. They struck that down and said that Florida couldn't write their exemption for intellectually disability that narrowly. In doing so, of the things that the court focused on, as they have over the last decade, are how states treat the death penalty. In other words the evolving standards of decency. One of the things that they noted was that 18 states had abolished the death penalty and then they lumped Oregon in that category too. They said you add Oregon in which has a moratorium and which hasn't executed, at least against their will, in over 40 years. They essentially count us as an abolition state. I would like to thank you all and say my job here is done and move on, but of course for the 30 plus men and one woman on death row and those facing death penalty trials, it is anything but over here. Let me talk a little bit about what is happening in the death penalty in Oregon and what my role is. I also want to speak on a future action item and speak in favor of increasing the rate of pay for capital defense attorneys here. If you look at the death penalty in Oregon from sort of a board perspective, there certainly has been a slowdown in the use of the death penalty at the front end. We went three years without a new death sentence. Unfortunately, that streak came to an end and there were two new death sentences imposed here within the last couple of months. One was a re-imposition of the death sentence for an individual whose case was remanded for the fourth time for a penalty phase only case. We have a capital case that is in trial right now. But overall the trend has been downward. We are seeing fewer and fewer cases go to trial where the death penalty is in play. When those cases go to trial we are seeing fewer and fewer death sentences. On the other end, on the back end for sentences that have already been imposed, we are seeing a greater number of reversals. That is especially true in the post conviction arena where five out of the last six cases that have been decided by the trial courts in post conviction have granted relief. That includes one case that then resulted in a settlement afterwards, a terrific result. But cases still get affirmed. In fact there was a direct appeal that came out this morning that the Oregon Supreme Court unanimously affirmed the conviction in the death sentence. And cases are moving invariably into federal habeas, which is sort of an unknown area for the Oregon death penalty. We have never had a case go as far as the Ninth Circuit. We have several cases now that are in the federal district court. We are seeing the cases at the back end start their march through the full process. In terms of the role as resource counsel, my job involves a variety of components. On the front end, I try to provide education in terms of setting up CLEs, both CLEs through OCDLA that happens every year. We set up a CLE that we run through Metropolitan Public Defender. We have also coordinated with the federal defender to do a post conviction CLE. We run individual meetings both dealing with appeals and trials at least once a month, so there is a lot of education that happens. I also try to reinforce the idea that in a capital case the best decision is a decision to settle the case. These are not cases that should be going to trial on a regular basis. You are much better settling the case. We have spent a lot in the resource center really focusing on settlement. Going to settlement conferences and working on that. But I also do a lot of spot work. To just use this morning as an example, I have met with an attorney already this morning to talk about cert petition that will be filed in a case. I also have an ongoing email conversation right now on a discovery issue that came up last night in a case where the judge wants an answer by 5:00 today on a very sort of unique issue of law. So a lot of my work just ranges from (inaudible) to dealing with the particular issues that arise every day. To try to set some sort of a consistent theme along the way. If a case is in a trial, then I try to be present at least for part of the trial and assist the attorneys and let them know that I am available. So for instance when the two cases that were recently tried, one in Lane County and one in Marion County, I spent a great deal of time in those

counties during various portions of the trial. Let me pause there and ask if there are questions that the board has?

32:04 J. Potter

You have heard Lane say that the Padilla project, the questions that they are getting are becoming more sophisticated. Lawyers are learning about immigration consequences. Similarly in the death penalty arena from when you started to now, are the questions more sophisticated? Are we making progress?

32:20 J. Ellis

I think we are making progress. The questions are always challenging for me. I think we are focusing on what we need to focus on. I have tried to shy away from saying, "You want my resources. Go to trial and you will get my resources." A lot of what I try to say is we need to be more sophisticated in our settlement practice. That is the best to avoid the death penalty. At the back end I think we are doing a much better job. I think one of the reasons we have won five out of the last six post conviction cases is because the lawyers doing those cases did a much better job and are focusing on the bigger issues. I certainly am always encouraged by the level of conversation. For instance, every first Monday, I will have a meeting in Portland and invite attorneys to come. Later in the month I hold a meeting in Salem and invite appellate and post conviction attorneys to come. The levels of discourse that happens at those meetings has increased and improved and really been quite challenging. I like to say that this is the hardest job I have ever done, but it is also the best or my favorite job of what I have done in my career.

33:47 J. Potter

What would you think is the greatest need out there in terms of educating lawyers?

33:53 J. Ellis

Oregon still has a robust death penalty. We still have too many cases going on and that at some point will outstrip both quality counsel and counsel that can concentrate full-time on death penalty work. To me the focus is really the specialization that has to happen with the death penalty. It is both a rapidly evolving field and it is a unique field. You usually don't encounter this Eight Amendment body of law in a regular, non-capital practice. In contrast, for instance, in Washington State that has twice the population and twice the number of murders and has a relatively similar statute in terms of what is aggravated murder, they have nine people on their death row. Right now, I think, they are three cases in the state that are pending that are possible death penalty cases.

34:56 Chair Ellis

Do you still attribute that to the late notice?

34:59 J. Ellis

That is part of it. I think some of has really to do with the county funding that happens on the defense side. If you are a county prosecutor in say Yakima County, you have got to pay for the entire death penalty case. Here county prosecutors get to use state money because we are state funded. I am not suggesting that we ought to change the system. I think the system here in Oregon works better. We have better quality counsel. We don't have the great differences that I saw in Washington where I practiced for a number of years. But I do think that the economic reality is a prosecutor does have a bigger influence on whether they seek. I think there is also a cultural that came with in Washington there is a requirement that a prosecutor at the beginning of the case indicate whether it is a death penalty case or not. There was a culture that developed in that state where prosecutors decided not to seek death in over 80% of the cases and didn't tie that decision to, "I will not seek death if you pled guilty to the crime." So they didn't make it a plea bargaining system, which is very much the culture that exists here in Oregon where removing the death penalty is necessarily tied to a guilty plea.

36:22 C. Lazenby

Are you typically seeing that the agreed upon sentence is life without, or 25 before the possibility of parole or is it all over the board?

36:33 J. Ellis

In the majority of cases it is life without. The settlement process is difficult because that life without is sort of the middle thing. What happens is usually at settlement conference you usually have the prosecutor say, "Nope. This is a death case." And the defense on the other

side saying, “No. You should give me parole.” So moving to the middle is sometimes the difficult thing.

37:01 S. McCrea

Anybody else? How do you avoid burnout, Jeff?

37:01 J. Ellis

I guess I believe that the end is in sight. A great thing happened shortly after I started this job which is Governor Kitzhaber declared the moratorium. That was a thrilling day. I was present in his office when he made that announcement. It really led me to believe that the end was in sight. One of the most central events in my career happened when I worked in Texas, which was in early 2000. If you know anything about Texas, not only do they execute a lot of people, but they were the last state to execute juveniles. So I knew some of the last kids to be executed before we stopped that practice. Their conversations with me recognizing that they were going to be killed, but hoping that the other people who were juveniles that were on Texas’s death row and on the other death rows in the United States wouldn’t. The urgency that is associated with that really left this lasting impression that you need to see it through until it no longer exists.

38:33 S. McCrea

I salute you for your work. Thank you very much. Any other comments?

38:37 J. Ellis

Let me talk a little bit about the money. There is a proposal to raise the capital rate across the board. I will focus right now on the attorney pay but, of course, I support the investigators and mitigation specialists. The proposal is to move it up from \$90 an hour to \$125. I fully support that. In my opinion that is not where we ought to be. That is a realistic increase. Right now if you are appointed counsel in a federal capital case you get \$180 an hour. We lag far behind that. I think that really should be the national standard. If you want to compare us to the going rate, I read a 2008 survey that the state bar did for people involved in litigation both criminal and civil. They found that the average rate of pay was between \$200 and \$250 an hour. If you consider the complexity of capital cases and the years of experience and it takes and the fact that they are all encompassing, in other words, if you take on a capital case you are going to set aside your practice for a large period of time. Certainly the \$125 and the other rates are justified.

40:03 S. McCrea

Okay.

40:08 J. Ellis

Thank you.

40:08 S. McCrea

Thank you very much.

**Agenda Item No. 5**

**OCDLA Lobbyist Introduction**

40:12 S. McCrea

Lane, I understand there has been a change regarding introduction of the OCDLA lobbyist. Would you like to speak to that?

40:18 L. Borg

Yes.

40:19 S. McCrea

Please do.

40:19 L. Borg

So now I am here as the president of OCDLA in my last 24 hours of a two-year term. Is that Rob Raschio clapping? The intent was to introduce Angela Willhelm as our lobbyist. Unfortunately, she changed her practice and will not be doing this. But I do want to talk just briefly about why we are doing that and what the thinking is and I think what the commitment by the organization for next steps on this. At the last Commission hearing in Salem, Lynne Dickison and I presented to you about the findings of the pay parity committee that met with OCDLA over this last winter. I think they learned a lot and I don’t want to revisit that. There was a lot of information that we learned about the way that contract get administered. The realities for attorneys and offices throughout the state are in doing this and really the lesson

and I will paraphrase Commissioner Potter on this from two meetings ago. The real lesson is the state is getting a hell of a bargain for indigent defense and they need to pay more. They are getting it for about \$400 a case or something like that. There isn't enough money in the system to compensate and have a healthy system that is sustainable that pays people a "living wage" but allows them to make a living as they should and have all those great things like families and houses and pay off loans and food after that. So really this is the next step from that Commission meeting and the adoption of that report that we presented. That there is a commitment by the board and by listening to the membership to reengage a fiscal lobbyist separate and apart from what Gail Meyer says is an excellent job on substantive issues, but to have somebody whose focus is on dealing with Ways & Means. Pushing the agenda on the fiscal issue and really I believe that the policy option package that Nancy's office has put together that is going to be presented to the Commission later today, it really fits hand and glove with what we want to do. There is a commitment to spend OCDLA resources hiring a lobbyist to promote that policy option package. Because the things that we see in it that are good are it is statewide. It is comprehensive but it is regionally tailored. It tries to address issues important to various regions because they are not all the same. One side does not fit all. As we learned in this last year through this process, and sometimes painful and challenging process within the organization, is that it needs to be more unrestricted money, money that supports indigent and not just money for this project or that project or some particular item. It needs to be money that is put into the system that is given to the trust of OPDS as guided by this Commission to address regional issues and increase the compensation and hopefully eliminate some of the barriers to quality and sustainability in the system. We are in the process. I have not gotten an update yet from one of your Commissioners on whether we have been able to reach out. But we are in the process to reaching out to another candidate. This process really just ended about a month and a half ago. We are trying to contact the other finalists. It wasn't just a situation where there was only one person and nobody else was able to do that. We are hopeful that within the next 30 days we will have somebody on board and we can start this process.

44:42 J. Potter

Hopefully within the next five days.

44:50: L. Borg

The next five days. I am feeling like there is a coming together from the challenges and the work that we have dealt with over the last year from where we were from say last September or October to now. In terms of a commitment to work for more money and a commitment to work for getting money to people that are doing this. I am not just saying the attorneys but the support staff, investigators, and other people that are doing this work and really address the regional concerns so that all of this can be done in an equitable, sustainable and beneficial way for the people that are doing this work so they can do it for a long time. Questions?

45:32 S. McCrea

I think we are good. Thank you, Lane.

#### **Agenda Item No. 6**

#### **OPDS Recommended Policy Option Packages, Discussion and Review**

45:37 S. McCrea

My suggestion is that we go ahead and start with the OPDS recommended policy option packages, begin our discussion and review, and then at some point we will likely take a break before we get to the action item. Is that acceptable? Since I am the one in control we will have a break. Nancy, would you and Angelique like to start us out with that?

46:13 N. Cozine

Chair Ellis, Vice Chair McCrea, and members of the Commission, you have in your packet as Attachment 2, a complete listing of the policy option packages that OPDS is recommending the Commission adopt for inclusion in the budget for 2015-17. In front of you, you will find a slightly revised version. There was one number that hadn't been updated. It was included in the total it just hadn't been updated in the grid. I think we have additional copies of those available for the audience. Policy Option Package 100 is the package – let me back up. When we met in our last meeting, we heard your feedback that rather than lumping all of the different components together and doing single package that there was merit in breaking them

out into separate packages with more discrete funding purposes. We have done that. We also talked about whether or not to submit a package that was within the 20% over legislatively approved budget from last time or above. The package that we are presenting to you today takes care of both of those things. So Policy Option Package 100 addresses consistent rates and mileage for public defense contractors. We have listed for you the counties that are actually not impacted by this policy option package. In POP 101, the defense contractor parity, again, we have attempted to get all providers within 5% of what the prosecutors are making. There are some counties that aren't impacted by this policy option package. They are also listed in the footnote. Policy Option Package 102 addresses contractor quality assurance. This package is what will allow us to make sure that each group has someone dedicated to quality assurance. It also includes funding for a case management system for entities that don't yet have that. When we spoke with providers and in fact with met with a Bend consortium yesterday, they expressed to us their experience. They started with four lawyers. They now have 10. Their contract administrator carries a full caseload. When there are problems he has a hard time getting to them because his first priority is addressing his clients' needs in a full caseload. This quality assurance package allows us to provide some compensation - 2% of every contract - dedicated to administration of the contract so that when problems arise someone is available to address those problems. The feedback we have had from judges across the state is that that would be very helpful, so that they can contact their local administrator and that administrator has time to address problems. Policy Option Package 103 addresses all of the hourly rate increases. Those are spelled out very specifically. On the next page we move into packages that are more targeted towards OPDS. The first one is a mix Policy Option Package 104, Juvenile Dependency Improvement. As you know we have talked about our pilot program which we are starting in which we reduce caseloads and increase quality assurance. We are very close to a final agreement with our two counties and I will give an update on that later. What we would like to do is ask for funding to expand from two to four counties. So the two additional counties we would like to address in 2015-17 are Clackamas and Multnomah. That package also includes what we didn't include initially, which is OPDS program administration and quality assurance. We would like to that position not a limited duration position but a permanently funded position. Amy Miller our new Deputy General Counsel is with us today. She is taking on the role of program manager for this. She is also taking over all of the non-routine expense requests in juvenile cases and all of the complaints in juvenile cases. Those used to always be part of Paul's workload; this will help allow Paul, our General Counsel, to focus on some of the contract improvements that we want to do in our contracting cycle. It will also allow us to continually improve our representation in dependency cases across the state. Policy Option Package 105 is employee compensation to put OPDS in compliance with ORS 151.216(1)(e). This is the statutory requirement that this Commission adopt a compensation plan that is commensurate with other state agencies. We have done a full evaluation of our current compensation steps as compared to the Department of Justice and other state agencies depending on what the position is. Some of our positions are more business related and DOJ doesn't have the right comparable position. What we have found is that but for four positions, we are behind by anywhere from three to 18% depending on the position and where you are on the step. We want that remedied. We have some strategies for moving forward, hopefully even in this biennium but we need to work with the legislative fiscal office on that. So this package would represent parity for our office given existing pay scales, or at least getting within 5%, with existing pay scales. I understand that other agencies are actually involved in pay increases themselves that may set us apart again. It is a continually process of getting to parity. We feel this is a very critical package.

52:32 Chair Ellis

How hard was it to find comparables?

52:38 N. Cozine

I should let Angelique speak to that. She worked very closely with Cynthia Gregory and they did comparisons between position descriptions and they looked at many before settling on the one that was the closest match.

52:52 A. Bowers For most of our positions there are the same type of a position in other state agencies.

53:03 Chair Ellis Okay.

53:03 N. Cozine So finally we have a package, Package 106 that addresses the need for additional office space at the Office of Public Defense Services. As you all know we have lawyers doubled up in offices. We have had to dedicate our client interview room to one of those office spaces that houses two lawyers. We are in the process of looking at whether we can convert our server room into an additional space to help elevate some of the constraints. We are currently also using a file room as office space for our new deputy general counsel. Additionally, as you have all experienced when you come to our office for Commission meetings, we really don't fit very well. We would like to have a space where we can meet with room for all of our contractors. Also to be able to have educational seminars and webinars that we can actually produce in our office. So those are the priorities that we would like you to consider and that we would like to build into our budget for 2015-17. And Angelique is available for any detailed questions if you have them.

54:11 Chair Ellis What are the items that add up to the \$2,306,000. It looked to me like it was all of 106, all of 105, and maybe that third bullet and 104.

54:26 J. Potter Nancy, do you think as the legislature has done in prior years, they will request prioritization of the POPs?

54:37 N. Cozine I would not be shocked if that were a request. I don't think we have specifically had that request yet. After all of the discussion, I think clearly the packages that rise to the top in terms of priorities moving backwards are 105, reaching parity for the OPDS staff, 104 which is continued expansion and permanency of our pilot project, Package 101 which is pay parity for our contract providers, and 100 which is the consistent rates. Oh I shouldn't have skipped 103. I think quality assurance is in there too, but I think quality assurance is easier to manage if you aren't so thinly funded at the outset.

55:33 S. McCrea Okay. So go through for me again if you had to prioritize.

55:41 N. Cozine All of them.

55:42 S. McCrea So essentially what your recommendation is to the Commission is that we approve and recommend all of the six option packages. Is that right?

55:54 N. Cozine It is. We have met with our providers. We have talked with people in our office. These are all necessary. We had the debate about whether or not to present to the legislature smaller packages, you know, ask for less hoping that it is an achievable amount. We tried that strategy last time. The feedback that I have had on the whole is tell me what you need? What really is the number you need? I have had legislators consistently ask me that question. I think while this package doesn't get us to complete parity across the board, every little component of it really is to get us to a point where we are close as we can be right now without knowing where other agencies are going to land in the next biennium.

56:54 S. McCrea Questions? We talked about this extensively at the previous meeting. Anything more the two of you would like to add?

57:06 N. Cozine I just want to note that when we talk about key performance measures, we are going to have a little bit more information about caseload and the challenge of tracking caseloads. When of the things that this Commission had suggested at their last meeting was can we tease out a little bit more carefully this idea about increased rates and reduced caseloads, and I was explaining that it is so particular to each individual entity that we have a lot more analysis to

do and we need to do it on a provider by provider basis as we move into contacting during the next cycle. We will talk a little bit more about that when we talk about KPMs.

- 57:40 Chair Ellis Will you be preparing a written statement of reasons for each of these?
- 57:46 N. Cozine Yes. When we prepare our budget binder it includes not only the numbers but also a narrative portion. The narrative portion includes all of the information that we know that backs up why these are best deserving.
- 57:57 Chair Ellis When will those be ready?
- 58:01 N. Cozine What we would like to do is we do not have a Commission meeting scheduled in either July or August. Those will be our drafting months. We will come back to you in September, we hope, with a complete budget request for your review and approval. If there are changes that need to be made we can push it as far as October but then we need to submit.
- 58:20 Chair Ellis I would like to really see those before we get pushed to the question that I think we will get pushed to.
- 58:31 C. Lazenby In general are you getting a sense that people are a little more optimistic about available revenues for 2015-17?
- 58:43 N. Cozine Certainly the last forecast was higher than expected. That is good news. There are other things that aren't good news. The fire suppression cost we have heard about. They are anticipated to be high again this year. Not to put anybody on the spot, but we actually have Steve Bender here from Legislative Fiscal Office. I don't know if he is at liberty to comment on what we expect to see in the next biennium. We are certainly hopeful that there will be more resources available.
- 59:15 P. Ramfjord Do you have a sense of which of these the legislature is most likely to be receptive too. If there is some difference in terms of their receptiveness to these?
- 59:29 N. Cozine Not as a whole. I could tell you about different legislators that I have spoken with. I think we have more work to do in figuring out where we have consensus across the board within the legislature.
- 59:42 S. McCrea Any other questions or comments for Nancy or Angelique?
- 59:48 Hon. Elizabeth Welch I have one. (inaudible).
- 59:58 N. Cozine Representative Williamson who is Co-Chair of the Ways & Means, Public Safety Sub-Committee understands our business and she understands the struggles that we have. She understands that we are underfunded. I would say that she is a champion for the cause of public defense and that has an interest in making sure that resources are allocated to public defense. She has other priorities as well, clearly. Public Safety is high on her list.
- 1:00:38 Chair Ellis Last session the Chief made a big push for the courts. Do you think that will also occur here? Or do you less of that?
- 1:00:48 N. Cozine Well, Chair Ellis, you just submitted to the Oregon State Bar a letter requesting support by the Oregon State Bar for public defense funding. We are hoping to have the Oregon State Bar and other entities supporting our request for additional funding. I am not sure if that gets at what you were asking.
- 1:01:12 Chair Ellis It doesn't. I am worried about the "Sophia's Choice Project."

1:01:14 N. Cozine Oh, I see. If the Chief Justice is going to be promoting (inaudible) with the Judicial Department as opposed to within public defense?

1:01:19 Chair Ellis Right.

1:01:19 N. Cozine I think that the Chief Justice's primary obligation is probably to the Judicial Department.

1:01:28 Chair Ellis He made a particular effort last year and he got rewarded, at least in some areas. Do you think he will make a special effort this year or a normal year?

1:01:43 N. Cozine I don't know. I haven't spoken with him about it.

1:01:51 Chair Ellis And our friends in the prosecution community are they likely to be pushing this year?

1:01:56 N. Cozine I think they are likely to be pushing this year. I think there is significant frustration among that group. They rely so heavily on county funding. Interestingly when you look at district attorney compensation across the state, in most jurisdictions we find that it is much higher than our providers. That is not necessarily true for the elected district attorneys. They have very limited state funding. If they have a county overlay then it gets their compensation up to a higher level, but if I would not be surprised if they had a push to increase their state funding.

1:02:40 S. McCrea Any other comments or questions for Nancy or Angelique? Okay. Thank you. I would like to ask any providers or others who want to address this or make comments to come forward.

1:03:03 C. Lazenby Such a shy group.

1:03:03 S. McCrea Well we had a lot of discussion at the previous meeting. Apparently no one feels the need to discuss this further. Anybody on the Commission?

1:03:26 J. Weiner I have a 1:30 post conviction hearing so I thought I would jump in now.

1:03:26 S. McCrea Jump in now.

1:03:26 J. Weiner Thank you. I am Jon Weiner, Director of MCAD, Marion County Association of Defenders. I think I spoke to Director Cozine and she ask me if I would be able to speak with you today about, I think, primarily caseloads and trying to figure out how to measure that. The difficulty in the self-reporting of the FTE is how do we really figure out where any particular provider's caseload is because we rely on self-reporting. When we fill out contracts the appendix will say something to the effect that you need to estimate your FTE. The problem is those are just self-reported. What we tried to do is see if there is some kind of relationship between self-reporting and the actual bar caseload standards. I think this is worth mentioning because it may of use when it comes time to ask for more money. I think what you are going to find, and what we found already, I have some data that is not quite prettied up for the Commission yet. It has some raw financial information that doesn't take into account of office staff and things like that. I think what you are going to find probably isn't surprising. The estimated FTEs are probably about half of what you are actually finding. For instance you have an attorney, I will just pick a couple of randoms, estimating a .5 FTE. That attorney is actually carried 113% of the bar standard. You have got some people that are .65 estimated FTE and actually it is 113%. You are going to find a lot of people doubling the caseload. The reason for that is there is no other way to stay in business. If I were to try to impose a bar standard upon the MCAD attorneys there would be no MCAD attorneys to provide services. The business model just doesn't work. What people have to do to stay in business is to "abuse" and I will use that because I think that is what it is, the bar standard and 160%, 180%, over 200% is not that usual. Yet the numbers we are seeing for gross income when you sort of intuitively deduct what it might total to run a law office. You have got people that have been

doing this for 20 years that might be taking home \$80,000 or something like that, \$90,000 perhaps, by grossly exceeding the bar standards. MCAD is trying to get this data together to give the Commission. I have only been doing this since January and most of what I know is what I have been graciously told and lead by John Potter and Nancy Cozine, Paul Levy, Lane Borg, and Shelley Winn. They have been very generous in sort of trying to get MCAD to understand what MCAD's appropriate place is in the whole service delivery model. It seems like right here, right now, one of the things that we can do because we have a good database that can generate some data, is to help provide compelling cases why it is absolutely imperative that we get more money. I will tell you some of the numbers. I think that I recall in *Wilbur* it was something like a 1,000 cases that they were handling, or 1,500, and if you are having people that are two and a half times the bar standards you are getting close to that. You are getting 800 cases and misdemeanors. I do believe that we are going to be able to come up with some data for the effort to obtain more money. If the state really wants to improve the level of indigent defense that is being provided, the funding and compensation model is going to have to be different. What you are finding is that people are grossly exceeding the case limits with very little support because you can't afford it. The money isn't there. You won't have anybody to perform the services if we try to actually enforce, at today's dollars, the compensation, the ABA National Standard if you will. We are happy to provide a report to the Commission if the Commission would like in September. We are trying to get a handle on our caseloads to the extent we can. I can't enforce anything like compliance because I won't have anybody to do the cases. We do the best we can to ride herd. We are trying to redo our case assignment system. Right now it is an attorney of the day kind of thing. You show up and you might get 18 felonies one day. We have met with Lane Borg. I think we are going to morph it into something more like what Metro is doing. We can help modify and smooth out the case assignment system, but there is only so much we can do with the money that we have. We are happy to cooperate and provide whatever we can to the Commission. Our first job is to do a good job on our cases and to monitor our caseload effectively and provide these services. My understanding is we are the biggest consortium in the state, so we are also trying to also assume a more iatrical place in the whole service delivery model. We were fortunate enough to participate in the lobbyist selection and pay parity and those sorts of things. Really that process is helping MCAD understand what we can do right now at a really important time. Anything the Commission needs from us in that regard we are happy to provide. I don't know if you have any questions at all.

1:10:00 S. McCrea I want to say thank you very much. The data would be extremely helpful and thank you for coming over here when you have to do a trial this afternoon.

1:10:10 J. Weiner It is an important time. I think you can wait until September because everything is crunch time right now. We at MCAD thought it would be important to provide that to the Commission .

1:10:26 S. McCrea Thank you very much.

1:10:26 J. Weiner Thank you.

**Agenda Item No. 7 PDSC Approval of Policy Option Packages for the 2015-17 biennium**

1:10:30 S. McCrea Any other comments from anyone? Before we take a break let's move to our action item, which would be the PDSC approval of Policy Option Packages for the 2015-17 biennium. Do we have discussion or does anyone want to make a motion.

**MOTION:** John Potter moved to approve the policy option packages submitted by OPDS staff; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

(Break)

**Agenda Item No. 8                      Key Performance Measures – Trial Level**

- 0:18 S. McCrea                      The next item on the agenda is the Key Performance Measures at the trial level. Nancy does not appear to be in the room. Paul, are you prepared to start us out with that.
- 0:52 P. Levy                              No. I am prepared to go find Nancy. I have a fairly small role on that agenda item. She needs to set the stage for that.
- 1:09 S. McCrea                        We can have Barnes tell us about his trip to Ireland.
- 1:20 P. Levy                              I could tell you about my bike ride.
- 1:54 N. Cozine                        Good morning again. This is Attachment No. 3. I attached again something you have seen before. It is our January 21<sup>st</sup> memo to Co- Chair Devlin and Co-Chair Buckley. It addresses the request to examine our Key Performance Measures. We have continued to have discussions and we will continue to have them through September. I want to bring us back to this topic because we do need to build into our budget request new Key Performance Measures that attempt to assess the work we are doing with our trial level providers as opposed to within our office. In discussions with this Commission and with our Contract Advisory Group, two measures really seem to rise to the top. The first is participation of lawyers at the first appearance in all case types. The second is the number of cases per lawyer in each of our contract providers. We think we can come up with a good KPM that addresses the presence and participation of lawyers at the first appearance. We know we aren't at 100% yet, but the target would be to have that in 100% of our cases. The case per attorneys is a little bit harder. Paul is here with me today to talk about some of those challenges. You also heard from Jon Weiner. It is very interesting because when we get a proposal we do rely on self-report of how much time people are going to be allocating. But then because cases roll in, often times at a higher clip or lower clip than what is expected and FTE within the group changes, the caseload that is projected at the outset is very different than what ends up happening in terms of actual numbers. It is really imperative that we work closely with each contract administrator and that each contract administrator is cognizant of what those numbers are and is constantly tracking them. That goes back to the quality assurance funding component where we actually have administrators with time to do that analysis. But the other issue is really centered around what are the appropriate standards. I was hoping Paul could talk about that.
- 4:26 P. Levy                              I can. This is a critical area and one in which we really need time to work with the provider community and perhaps even above the entity before we can define a Key Performance Measure. A Key Performance Measure, of course, is a measure of ultimately how well we and you as a Commission are performing. It would ultimately be phrased in terms of the extent to which we are able to confirm that each contractor is providing services within appropriate caseload or workload standards. There is a lot of work that needs to be done and it starts with what is an appropriate caseload standard. You hear mention of state and national standards and ABA standards. That is a little bit of a misnomer. The standards, to the extent that there is a national standard now, was developed and adopted in 1973 by an organization called The National Advisor Council - of some special task force. Those standards from 1973 have been endorsed, readopted, regurgitated, repeatedly since and most significantly in 2007, by the American Council of Chief Defenders. It turns out that Norman (inaudible), who was a Professor of Law at Indiana University at Purdue. I called it "owey pooie." I think they have a more dignified name now. Anyway he is a professor there. He has traced the history of these standards and found that there was really no rational to those numbers when they were adopted in 1973. There is very little rational to any of the numbers that have been proposed since. What is or should be the standard for caseload is a big question. To the extent that are Oregon standards, the state bar gave a sort of endorsement to a model that MPD that was proposing, but to my knowledge and Jim may be here, was never really used at MPD. They

were outdated the moment they were proposed because they had assumptions that never existed. So we have a lot of work to do at reaching a consensus and arriving at valid caseload standards. To the extent that you can look at these numbers that were first proposed in 1973, I think Jon Weiner is absolutely right. We are undoubtedly in many places well over those standards. If you look at the MPD model numbers in the state bar it is especially so. We have work to do at arriving at a consensus of what the standard should be. I won't go into detail now about some of the efforts that have been undertaken to come up with standards. We have a lot of work, and in some ways technical work, at how to measure caseloads and how to have it reported to us from providers. There are challenges. What I think we would like to do is actually convene a work group of the provider community devoted specifically to this subject. Just a brief bit of history on this. Our RFP use to have numbers in them and they set out these numbers from 1973. Those numbers were last in the RFP for 2005. They came out and it was replaced by language that simply said, "A provider should not propose caseloads that by reason of the size or complexity interfere with the ability to provide adequate representation." Which, by the way, also corresponds to an Oregon State Bar (inaudible) that says roughly the same thing. Even that language came out when we no longer asked providers to give us matrixes of the types of cases, number of cases, so we have a lot of work to do in order to know, as a Commission and as an agency, if we are contracting appropriately. It is not work that is going to be done and completed by the time that we need to have our KPMs in our next budget submission.

10:08 S. McCrea

Well that is not comforting.

10:13 N. Cozine

I would like to say that all of that being said that the existing standards are at least a starting point. We are already above them. From everything that we know about how they are put together, those standards are likely too high. They contemplate a full-time support staff for each lawyer. They were built in a period of time where you didn't have all of the collateral consequences that you have now. You didn't have the obligation to provide advice on things like immigration consequences. The reality is that since 1973, the practice of criminal law and juvenile law has become much, much more complex. So while we acknowledge that we have work to do in terms of defining what appropriate caseload standards are, for this day and age, we also feel that we can do a lot of work with our providers just using what exists now to make sure that we are in a position to have intelligent conversations about what caseloads are and where they need to be reduced.

11:21 P. Levy

I don't mean to say that we have completely failed to do our job here. We do know, actually, from work such as the work that Jon Weiner has done and from our surveys and from peer reviews and other specific inquiries and information that we get from providers and stakeholders that we are consistently told that caseloads are too high. What we need is a better way of measuring and knowing exactly what they are.

11:59 C. Lazenby

So are you holding out hope that you are going to be able to develop a sort of one size fits all statewide standards? Or do you think it might be more efficient to end up looking at it maybe regional?

12:19 P. Levy

I think what we would like to have is a general standard that requires adjustment according to the circumstances in which a lawyer practices. Really the whole notion of caseload standard is becoming a bit outdated. More significantly is the question of workload. The circumstances in which a lawyer practices and what is the mix and complexity of individual cases. Other demands on the lawyer's time outside of case work. That is national where the focus is more on is what is the workload of an attorney. We ought to have some guideline or standard that where individual or local circumstances would require an adjustment.

13:17 C. Lazenby

It seems to me the case per attorney ratio can be misleading and can move us away from focusing on more on quality.

- 13:29 P. Levy Absolutely. These are guides and quality is a combination of how much work a lawyer is being asked to do and the circumstances of that lawyer. There are some lawyers for which a caseload of one is too much.
- 13:55 P. Ramfjord It is in part the case as a percentage of the attorney's overall workload. There shouldn't be more of a minimum percentage of time devoted to a certain type of case or another type of case so that you make sure that you are not over doing it.
- 14:13 Chair Ellis I am worried that this going to measure not the Commission's performance or even trial level performance, it is really measuring the legislature's performance. I thought the whole logic of KPMs was to find objectively measurable activity that we can seek to improve our performance. I am not sure caseload does that. Caseload has been with us forever.
- 14:45 P. Levy I not sure ultimately what the rational is. I shouldn't say this for KPMs. I think that every other KPM that we have had or looked at is to some extent our success is a reflection of how well we are funded and supported.
- 15:10 Chair Ellis I think things like the speed with which extraordinary expenses are reviewed, approved, and acted on. That is something within our ability to do better and I think we have. That kind of input measurement is what I thought KPMs addressed. I think caseload – I am not sure anybody here knows what to do to reduce caseload other than to have more money and more lawyers.
- 15:43 P. Levy The case for more money and more lawyers needs to be built on reliable data. The measure is the extent to which we can measure and confirm our caseload burden of our contractors.
- 16:09 Chair Ellis I am not against trying to capture that information and making it audible to the legislature. But I don't think it addresses what I thought KPMs were intended to address, which is agency performance in areas that you can measure and can improve. So things like the max filing date on opening briefs. There are issues with that but that is a measure that we can improve on that and we have, hopefully.
- 16:43 N. Cozine I think one of the concerns that we see is what we realized when we started to look at this issue is that we don't have regular reporting mechanisms in place, so that we have the ability to consistently report to you what the caseloads are. So we hear in a statewide survey that caseloads are too high. We hear from providers that caseloads are too high and we are not as an agenda necessarily collecting the right information to provide that statistical information. I think from our perspective the idea was we are not going to be able to, in one fell swoop, be able to create those metrics. It actually will take time and it will be provider by provider. It requires a contract entity with an administrator who has time to develop the metrics and can work with us on that. I think our vision was that if we were to adopt something like this, the measure really is for how many contractor providers can we confirm? It is our ability to confirm that that individual provider is distributed cases in a way that keeps everyone at a reasonable caseload amount and at a reasonable workload amount. Right now we just don't have that and it will take time.
- 18:15 P. Levy We are not asking you to approve anything.
- 18:18 P. Ramfjord Mr. Chair, just one comment on that. I think that our charge as a Commission is really to provide public defense services in the most cost efficient manner consistent with the Constitution and the law.
- 18:34 Chair Ellis You are quoting that law. That is good. I am impressed.
- 18:35 P. Ramfjord I think that to some extent that involves trying to ensure that the public defense services that are provided are at a level that is consistent with the Constitution.

18:48 Chair Ellis I have no objection to collecting the information. I just have this issue in my mind that it is not an agency performance measure, it is a system performance measure. It has more to do with the legislature than it does with are we doing, within our ability, our job as best we can.

19:15 N. Cozine And the measure isn't are all of our contracts in compliance. The measure is for how many do we have the metrics developed to know whether we are in compliance. Do you see what I am saying? Does that make sense?

19:27 J. Potter We don't know what compliance is.

19:29 N. Cozine That is true. The first step is developing the metric so that we know what the numbers are on a consistent basis with each contract provider.

19:40 Chair Ellis I have forgotten the outcome but there was a time when Jim Hennings at MPD was pressing whether it was ethical for him to submit a budget where he knew the caseloads were way high.

19:56 P. Levy I can speak to that because I helped write the state bar's formal ethics opinion on this. There was a model ABA opinion on reasonable caseload and workload for public defense providers. Our formal ethics opinion in Oregon went a step further than the ABA opinion and said that it could be misconduct for a contract administrator to knowingly contract for caseloads that asked subordinate lawyers to handle excessive caseloads. You may recall that an earlier draft of that had the responsibility going up the chain of command.

20:47 Chair Ellis I remember cutting it off.

20:54 P. Levy And that was not ultimately adopted. The responsibility stops with the administrators right now. The opinion does mention appealing to the Commission itself as a remedy for lawyers who think they have caseloads, workloads that are too large. Unlike other states this has not been the subject of litigation here yet but it certainly is happening elsewhere.

21:26 J. Stevens Nancy, am I understanding then that the KPM you want says in effect, "Our measurement will be our ability to gather and use this information" not the numbers that you come up with?

21:41 N. Cozine Right. Recognizing that it is a funding issue.

21:48 J. Stevens You set the number here and then you walk in and say, "Well we have this number but you guys didn't give us the money so it is your fault not ours."

21:56 P. Levy But what we are saying is this is not one that we will ready and proposed for our upcoming budget submissions. It really does require a great deal more work with the provider community and in our agency as well.

22:15 N. Cozine But it is something that we think is important. We have heard it in many different areas and we just want you to know that it is something that we are starting to look at closely within our agency and that we would like to work towards in future years.

22:28 P. Levy So a heads up.

22:28 S. McCrea So we will be satisfying House Bill 5041(a) because we have done a review. We are going to report to the Legislative Assembly with our budget about the outcome of our review and our proposed revision that is that we are studying this and whether it would better measure the effectiveness and efficiency of the agency's programs.

22:49 N. Cozine Yes. We did actually report to the legislature in February. We made one adjustment to our Appellate Division Key Performance Measure, adjusting it from 210 to 180 days to filing of the opening brief. When we submit our budget during the next cycle, we would like to ask the Commission to approve something that focuses on the participation of lawyers at first appearance. Then we would also like to work internally on this caseload issue so that the next time we have an opportunity to report to the legislature on KPMs, we might have something developed and ready to submit at that time.

23:30 P. Ramfjord There is mention of this National Legal Aid Defender Association research report that is going to be coming out in June. Is that out that? Or when that does come out might it be circulated to members of the Commission. That might be a useful discussion point.

23:45 N. Cozine Yes. I did attend the Research and Data Advisory Group meeting in May in Washington, D.C. It is still in development. They are not as far along as they wanted to be. It was a very good discussion. I think what they are finding at the national level is very similar to what we are finding here. That is that the raw data doesn't exist yet and a lot more work needs to go into development of the data points. They have a few pilots and they might instructive once the findings are released. I will certainly update the Commission on that information when it is available.

24:24 S. McCrea Other questions or comments? Okay. Thank you.

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

24:31 S. McCrea We will move into the OPDS monthly report by staff.

24:40 P. Levy Because I am sitting here, and before I vacate my seat which is now quite warm, on the staff report I just want to mention that last week we had a site visit as part of a peer review process of our providers in Washington County. I think it was one of the most ambitious schedules and undertakings for a peer review. We were looking at six providers and most of them providing both criminal and juvenile representation. There is still a good deal of work to be done before we are in a position to even write a report. I just wanted to acknowledge the participation of team, some of whom are here. Jim Arneson chaired that team. Tom Crabtree is here and was on the team. Amy Miller was there and that was great having her see this process unfold. Then Karen Stenard, myself, and Judge Selander, who is also the senior judge from Clackamas County and also the administrator of the Yamhill County Consortium. Did I leave anybody out? Sarah Peterson, an attorney in our juvenile appellate section. Since all of these providers did juvenile work, we needed a really strong juvenile component and we had that on our team.

26:29 Chair Ellis Is MPD still the largest in Washington County?

26:33 P. Levy Yes.

26:33 Chair Ellis I think by a significant margin.

26:34 P. Levy There is a consortium that also handles a significant number of cases there. After the consortium and MPD then there are smaller providers.

26:47 Chair Ellis Just to say it, I think these peer reviews are one of the best things that happen. I think it is great that the people, of the quality that you have listed, will take their time and share their experience and knowledge and do that. I think it is very positive.

27:06 P. Levy I thank you. It is nice to hear you say that so that some of them can hear that and it is on the record. They devote a significant amount of time and effort and it is great to have people on the time. The team members come away benefiting significantly from the effort as well. In

some instances people come away with great ideas for their own entities. Sometimes they come away saying, "Boy, and we thought we had it bad."

- 27:45 Chair Ellis Just to ask an obvious question, how did you find the language ability of Washington County?
- 27:55 P. Levy Whatever our providers said when asked that question. Most of them were fairly good with English.
- 28:05 Chair Ellis Hopefully they have one other.
- 28:07 P. Levy There are so many languages spoken in that county that some of the providers do have lawyers and staff who are proficient in Spanish. Beyond that it is heavily dependent on interpreters.
- 28:30 S. McCrea Thanks, Paul.
- 28:31 N. Cozine So following up on that the peer review before Washington County was Marion County. We would actually like our September meeting to be the follow up service delivery review where we provide you with the report and we make a visit down there and hear from all the providers there. That will be something that we work on the next few months as well. I also want to give an update on a pilot project. Amy, do you want to do it or do you want me to? This is Amy our deputy general counsel and the project manager for the dependency pilot program. We have had two counties whose boards have taken a vote and they have voted to participate in the program. We are very excited. Do you want to say who they are?
- 29:20 A. Miller Good morning, Chair, Vice-Chair, and members of the Commission. Thank you for taking your time to hear us today. Both Linn County and Yamhill County have decided to come on board as the pilot project groups. We are thrilled with that and we are in the process of finishing up some details and begin to move forward. I have been in this position for about three weeks, so I am learning quickly. I am meeting with folks doing everything from doing some of the hard and fast detail work, to start to thinking about training. I am going to be going up to the State of Washington here in the next week and half to meet with their folks and learn a little bit more about how they implemented their project. The two counties are excited and looking forward to working together. We have got some great targets and goals that we are looking to achieve. We will be back with more information. Any questions?
- 30:22 S. McCrea Thank you. Welcome.
- 30:22 A. Miller Thank you so much. It is a pleasure to be here.
- 30:28 N. Cozine I think that concludes our OPDS updates.
- 30:38 S. McCrea Then we will be moving into the executive session. This is the announcement to convene the executive session. The Public Defense Services Commission will now meet in executive session for the purpose of considering a memorandum to the Commission from its general counsel, which is privileged under ORS 640.225, and therefore exempt from disclosure under the Public Records Law, pursuant to ORS 192.520(9). The executive session is held pursuant to ORS 192.660(2)(f), which permits the Commission to meet in executive session to consider information and records that exempt by law from public inspection. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room. Can general counsel advise us concerning any designated staff?

32:12 P. Levy

The staff of OPDS.

**Agenda Item No. 10**

**Execution Session**

0:05 S. McCrea

The Public Defense Services Commission has now concluded its executive session and is back in open session. Is there any other business we need to discuss? Hearing none, I would entertain a motion to adjourn.

**MOTION:** John Potter moved to adjourn the meeting; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

**Meeting adjourned**

# Attachment 2

# Self-Assessment Criteria

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

# Attachment 3

Proposed KPM #1:

Short title	Trial Level Representation: During the term of the OPDS contract, percent of attorneys who obtain at least 16 hours of continuing legal education credit in the area(s) of law in which they provide public defense representation. <sup>1</sup>
Goal	Attorneys have sufficient training to understand and adhere to their professional and ethical responsibilities and pursue with knowledge and skill whatever lawful and ethical measures are required to advocate for a client's cause.
Target	100%
HLOs (Oregon Context)	OPDS Mission Statement
Rationale	Public defenders face unique challenges which require specialized training and expertise in a broad area of both legal and practical skills. Organizations that provide public defense services must ensure that their lawyers receive sufficient training. <sup>2</sup> From complex sentencing schemes to an increased role of scientific and forensic experts to a continuously developing body of substantive and procedural law, lawyers must not only master trial advocacy skills but also manage complex legal and factual issues. <sup>3</sup> In addition, as criminal and delinquency cases have become more complex, the collateral consequences of convictions and adjudications have become more significant. <sup>4</sup> Public defenders representing clients in juvenile court also require knowledge and expertise concerning complex state, federal and international regulatory schemes, specialized age-appropriate interviewing skills, familiarity with services and placement options, and an awareness of current research on the impact of childhood and adolescent development in these types of cases. <sup>5</sup>
Data source	Attorney CLE Compliance Report <sup>6</sup>

<sup>1</sup> Case types listed in the 2014-2015 Public Defense Legal Services Contract General Terms are: criminal cases, probation violations, contempt cases, civil commitment cases, juvenile cases, and other civil cases. (<http://www.oregon.gov/OPDS/docs/CBS/ModelContractTerms/documents/ModKJan2014.pdf>)

<sup>2</sup> Office of Public Defense Services, *Best Practices for Oregon Public Defense Providers* (revised March 16, 2010), I.3. Client-Centered Practice. (<http://www.oregon.gov/OPDS/docs/Reports/BestPracticesMarch2010Revision.pdf>)

<sup>3</sup> Oregon State Bar, *Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases Standard 1.2* (2014).

<sup>4</sup> See generally, ABA Criminal Justice Section: Adult Criminal Consequence Statute Demonstration; Oregon Statutes (Total: 813, as of September 23, 2011): (<http://isrweb.isr.temple.edu/projects/accproject/pages/GetStateRecords.cfm?State=OR>)

<sup>5</sup> Office of Public Defense Services, *Best Practices for Oregon Public Defense Providers* (revised March 16, 2010), I.4. Client-Centered Practice.

<sup>6</sup> Attorneys report CLE credit to OPDS at the end of the contract cycle. Attorneys also submit CLE compliance reports to the Oregon State Bar, which are available for auditing purposes.

Proposed KPM #2:

Short title	Parent Child Representation Program (PCRCP): Percent of PCRCP attorneys who report spending 1/3 of their time meeting with court appointed clients.
Goal	To provide competent, effective and high quality legal representation throughout the life of case.
Target	100%
HLOs (Oregon Context)	OPDS mission statement.
Rationale	Our goal is to improve the quality of legal representation of parents, children, and youth in juvenile dependency and delinquency cases in the PCRCP counties. Regular client contact is essential to the attorney-client relationship and is “necessary for the client to effectively participate in the representation.” <sup>7</sup> The Oregon State Bar standards of representation in both dependency and delinquency cases emphasize the essential nature of consistent client communication throughout the case. A trusting client relationship allows the lawyer to support the client, act as counselor and advisor, assess the client’s mental status, and more effectively ascertain work that needs to be done to advocate for the client. <sup>8</sup> In addition, good lawyer-client communication is directly linked to reduction of complaints from clients and/or requests for substitute counsel. <sup>9</sup>
Data source	PCRCP Monthly Attorney Reports (reports collected and stored at the Office of Public Defense Services)

<sup>7</sup> NJDC, National Juvenile Defense Standards Standard 2.4 cmt. (2012).

<sup>8</sup> Oregon State Bar, Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases (2014). Oregon State Bar, Report of the Task Force on Standards of Representation in Juvenile Dependency Cases (2014).

<sup>9</sup> Oregon State Bar, Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases Standard 2.2 cmt. (2014).

# Attachment 4

# BUDGET NARRATIVE

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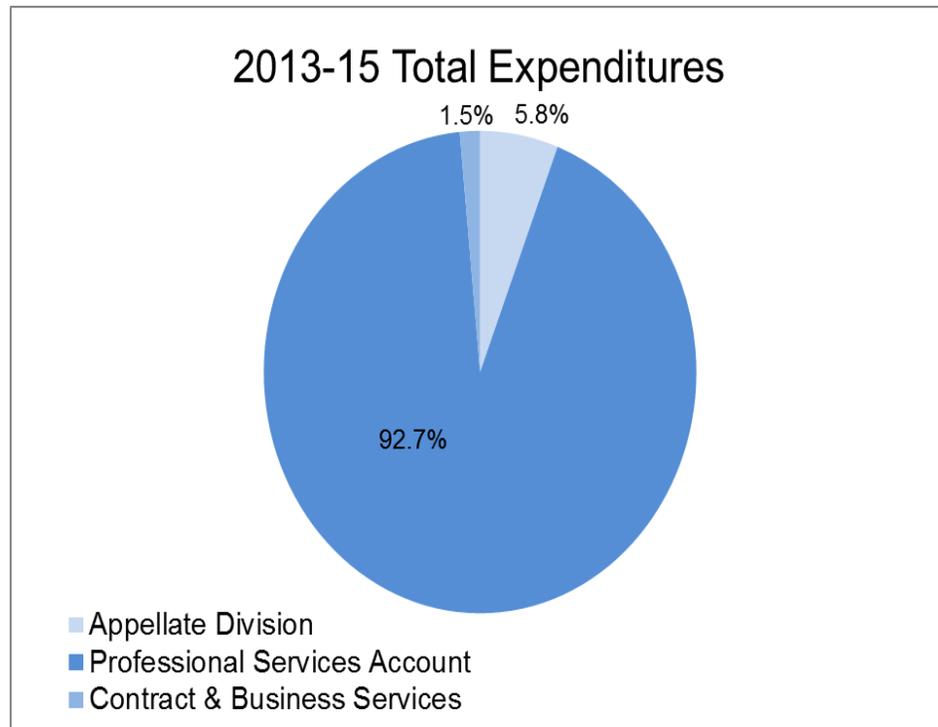
## Public Defense Services Commission

### 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

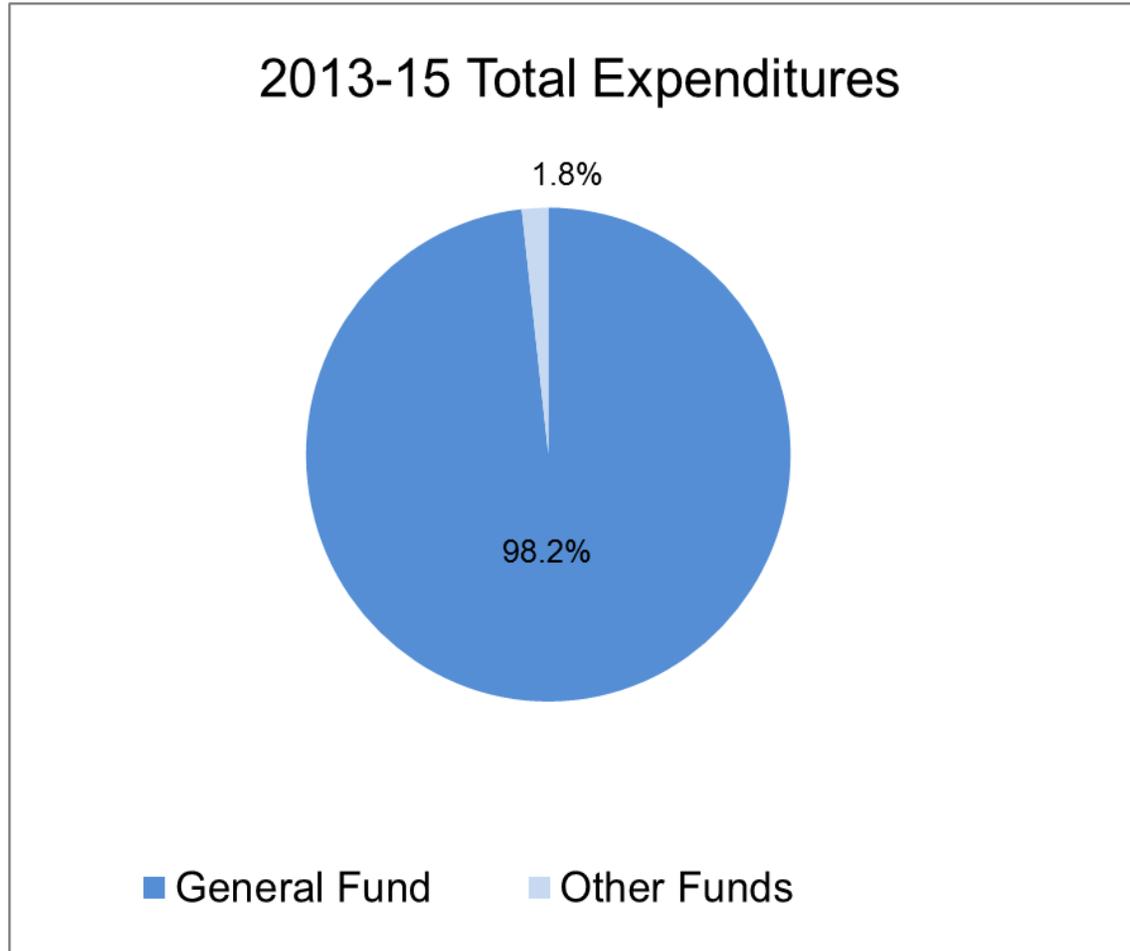
#### How the budget is allocated among programs or activities



# BUDGET NARRATIVE

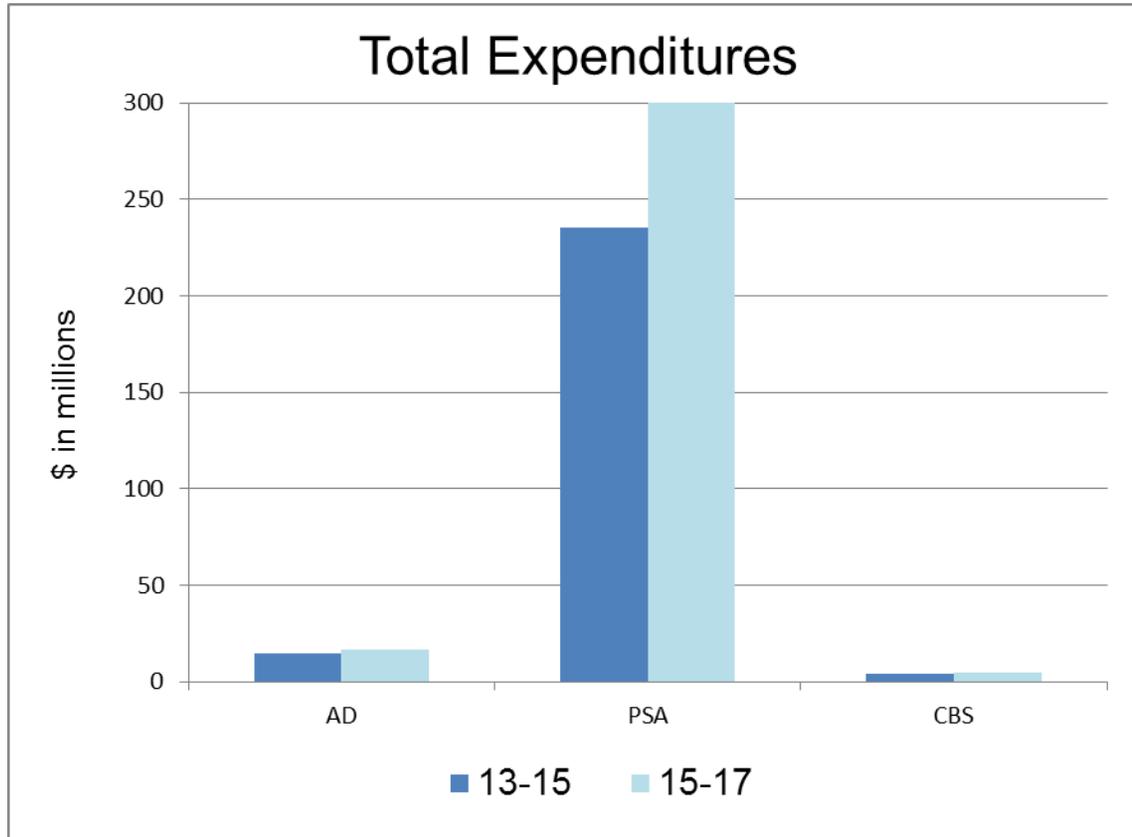
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## Distribution by fund types



# BUDGET NARRATIVE

## Comparison of 2013-15 Legislatively Approved Budget (as of April 2014) with the 2015-17 Agency Request Budget



AD = Appellate Division    PSA = Professional Services Account    CBS = Contract & Business Services

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## **Mission Statement and 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 is a vital partner in Oregon’s public safety system. As noted below and as illustrated very clearly in the ’01-03 biennium, the system as a whole cannot function without adequately funded public defense services. When public defense is appropriately fulfilling its statutory and constitutional role, however, the entire system benefits.

While a defense attorney’s first duty is to represent individual clients with skill, loyalty and zeal, the fulfillment of those obligations generally benefits the entire system. No public interest is served in allowing the innocent to be convicted or in allowing children to be removed from their parents without just cause or in committing persons to mental institutions who do not require such placements. Judges and prosecutors rely on the defense to protect their clients’ interests and the integrity of the system. When the defense does not meet its obligations, the court, prosecution, and community, cannot be confident that justice is done.

In communities around the state, judges, prosecutors and defense attorneys work together to find efficient methods of handling large volumes of cases while preserving the rights of all involved. There are early resolution programs in many communities which help identify cases that can be resolved without trial and moved out of the system so that resources can be concentrated on the cases that require litigation. Drug courts, family courts, and mental health courts rely on judges, prosecutors and defenders to identify, engage and support appropriate clients for participation in and successful completion of these treatment focused systems. All parties participate in moving ceremonies to celebrate successful completions. When clients are convicted of criminal offenses, defense attorneys aid the system by helping to identify appropriate evidence-based programs and sanctions that can assist in their clients’ rehabilitation. Attorneys for parents and children have been able to identify family members or others who can help address the family’s needs without requiring that the family be separated. Some of these attorneys also identify treatment resources previously unknown to the child welfare system.

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In order for the public defense system to perform its statutory and constitutional function, it must be adequately funded. Quality representation requires that there be qualified, experienced, dedicated defenders. In order to sustain Oregon's unique public defense system comprised entirely of private providers at the trial level, defense providers and their employees must be adequately compensated and assured of continuing support. The public defense system sustained significant, but fortunately not long-term damage in 2003. In a series of special legislative sessions during the 2001-03 biennium, public defense funding was reduced by 27.5 million (17%) from the legislatively adopted budget. Although \$5 million of that cut was later restored, these cuts occurred so late in the biennium that public defense funding was virtually eliminated during the last quarter.

On February 28, 2003, the State Court Administrator issued a notice of insufficient public defense funds to pay for appointments accepted and services rendered on certain types of cases filed between March 1, 2003, and June 30, 2003. District attorneys, including Multnomah County District Attorney Mike Schrunk, joined in a suit seeking to compel appointment of counsel. A federal court challenge under the 5th, 6th and 14th Amendments to the United States Constitution was ultimately dismissed when the 9th Circuit Court of Appeals found the case moot since funding had been restored after the start of the new biennium before the court could issue its ruling. In finding the issue to be moot, the court found no reason to believe that a similar situation would arise again since it was an unprecedented occurrence at the time.

The withholding of funding from public defense providers caused layoffs, furloughs, closures and other major disruptions to law firms and individuals. Crime rates increased, and repeat property offenders could not be held. Portland Police Chief Mark Kroeker told the *New York Times* that officers had to give a new version of the Miranda warning when they arrested a suspect for a non-violent crime: "If you can't afford a lawyer, you will be set free. Enjoy." He noted a significant increase in shoplifts, car break-ins and other crimes. Lane County District Attorney Doug Harclerod told the *Eugene Register Guard* that the cutbacks in funding for public safety had placed "the rule of law in serious jeopardy," and that the most critical issue was the cutting off of funds for public defense, since, as stated by the newspaper, "The problem is simple: In the absence of a defense, there can be no prosecution." Harclerod told the editorial board that while cuts in public defense violate the rights of defendants, the real impact is on victims.

Fortunately for the entire public safety system, the fiscal crisis was temporary and restoration of funds could begin in the following biennium. A caseload "bulge" at the beginning of that biennium included the cases that were still prosecutable after significant delay. Some were not and were simply dismissed or treated as minor offenses and dealt with summarily. Some public defense providers did not survive the crisis; all experienced shortages and lost skilled defenders who could not be assured that such measures would not be repeated in the future. In the 2003 Legislative session, representatives of the Citizens' Crime Commission, judges, sheriffs, chiefs of police, district attorneys and the Oregon Department of Justice came to PDSC's budget hearings and urged lawmakers to provide adequate funding for defenders as a critical component of the public safety system.

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Although the crisis of 2003 has not recurred, the system continues to face challenges to its long-term stability. The PDSC's budget and strategic plan target the three main challenges faced by the agency: 1) the need to attract and retain quality public defense providers; 2) the need to improve the quality of representation, especially 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 difficulty of attracting new 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 2015-17 budget policy option packages address these challenges using several strategies, including:

- increased case rates to ensure consistency between similarly situated counties to improve recruitment and retention for providers who currently have lower rates;
- case rate increases to allow providers to improve compensation and reduce caseloads;
- funding to enhance the ability of contract administrators to provide oversight and quality assurance;
- increased rates for hourly paid attorneys and investigators to ensure continued participation of hourly providers;
- funding to expand the Parent Child Representation Program and improve the quality of representation in juvenile proceedings across the state;
- compensation increases for staff at the Office of Public Defense Services who are currently earning approximately 3-18 percent less than comparable employees in other state agencies; and
- funding for additional office space to alleviate current crowding issues.

Taking these steps will keep employees and providers from leaving public defense and improve the quality of representation in all case types.

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## 2015-17 Short-Term Plan

Agency Programs – The Office of Public Defense Services is divided into two primary work areas: The Appellate Division (AD) and Contract and Business Services (CBS):

- The Appellate Division (AD), lead by the Chief Defender, 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, AD plans to continue making progress in increasing office efficiencies and, as a result of such efficiencies, continue the elimination of historic criminal case backlogs in the state’s appellate courts and achieve established timelines for briefing in these cases.
- Contract and Business Services has two distinct functions, as well as executive services:
  - Contract Services, lead by the Contracts Manager, negotiates and administers approximately 96 public defense contracts with individual lawyers and groups of lawyers, and with nonprofit law firms, for the delivery of legal services across the state in criminal, juvenile, civil commitment and post-conviction relief cases, and an additional 16 contracts for non-attorney services, such as mitigation services. This unit also reviews requests for expenses for public defense cases, and 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 Professional Services Account.)
  - Financial Services, administered by the Budget and Finance Manager, processes expenses for public defense cases across the state, and will continue to ensure accurate and timely processing of all bills.
  - Executive Services includes general counsel, and human resources, information technology, and operations support.
- PDSC’s Executive Director and General Counsel, in collaboration with the Chief Defender and Contracts Manager, 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 25 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

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justice systems. PDSC prepares written reports that include final service delivery plans for each district; these reports are on its website for review by any interested person or group. The service delivery 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 48 of these assessments have been performed. 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) two conferences each year. The first is a two-day training for public defense managers which includes training on best practices for law office 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. PDSC also co-sponsors, along with OCDLA, the Juvenile Court Improvement Program, Department of Justice, and other juvenile law stakeholders, a two day Juvenile Law Training Academy for all participants in the juvenile law system.
- (4) The agency's Parent Child Representation Program (PCRCP), implemented in 2014 as a pilot project in Yamhill and Linn counties, specifically targets improved representation in juvenile cases. Modeled after a very successful Washington state program that reduced time children spent in foster care and reduced the time required to achieve permanency, the PCRCP ensures that lawyers have reduced caseloads, the assistance of social workers, and additional training. The PDSC would like to add two larger counties, Multnomah and Clackamas, as participating counties in 2016.

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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 other areas of practice, but also by their counterparts in public prosecutors' offices. Qualified lawyers are increasingly unavailable to provide public defense services. As a result, local public safety systems throughout the state suffer with caseloads that are too high, and systems that are at risk 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 eight 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 provides funding for consistent case rates within each county, and within similarly situated counties, and increases funding available to reimburse mileage expenses for providers who practice in more rural areas. This enhances providers' ability to recruit and retain attorneys because contract earnings are not unfairly reduced due to high mileage costs.
- Package No. 101 provides increased case rates to allow contract providers to reduce caseloads where they exceed Oregon and national standards, and increase compensation to within 5 percent of compensation received by deputy district attorneys in an effort to comply with PDSC's statutory mandate to adopt policies that provide for a "fair compensation" system. ORS 151.216(1)(f)(C). This package will also improve providers' ability to attract and retain qualified lawyers.
- Package No. 102 provides compensation for the time contract administrators dedicate to quality assurance efforts, and limited funding for case management systems to support contract administrator efforts to use data-driven quality assurance assessments. Currently, contract administrators are not compensated by the PDSC for time spent managing the contract,

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measuring performance, and engaging in quality assurance efforts. Providing compensation for these activities will allow contract administrators to reduce their caseloads and spend more time monitoring caseloads of attorneys in the group and ensuring quality services.

- Package No. 103 increases 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).
- Package No. 104 expands the Parent Child Representation Program (PCRP) to Multnomah and Clackamas Counties. The PCRP is modeled after a successful program in Washington state, where improved representation reduced the amount of time children spend in foster care and improved the time to permanency. The PCRP provides lawyers with reduced caseloads, the assistance of social workers, and additional training. Implementing the program in Multnomah and Clackamas Counties will impact a greater number of clients, and allow the agency to compare results between smaller and larger counties. This package also includes funding for administrative support of the PCRP.
- Package No. 105 provides funding required for PDSC to carry out the statutory directive to adopt a compensation plan for the office of public defense services that is commensurate with other state agencies. ORS 151.216(1)(e). Lawyers and staff are paid consistently below comparable employees at other state agencies, which negatively impacts staff morale and employee retention efforts. Given the length of time required to train lawyers and staff, rapid turnover is an unnecessary drain on state resources.
- Package No. 106 would allow OPDS to acquire additional office space. Currently, attorneys must share offices, and do not have a dedicated client interview room. Additionally, it would offer conference space that is sufficient for all staff meetings and trainings.
- Package No. 107 restores general fund expenditures in the Professional Services Account that were previously funded with other funds from the Application Contribution program (ACP).

### **Criteria for 2015-17 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.

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## **Reduction Options**

### Appellate Division

A 10% reduction (\$1.5 million GF) of the agency's current service level for the Appellate Division would require the elimination of 5 attorney positions and one support staff position. 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.

### Professional Services Account

A 10% reduction (\$24.6 million GF; \$329,198 OF) of the Professional Services Account represents the level of funding required for two and a half months of public defense services. Unless the 2015 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 2015-17 biennium. Generally, if counsel is not available, the cases will be dismissed or held in abeyance.

### Contract and Business Services

A 10% reduction (\$382,133 GF; \$54,178 OF) of this section's current service level will require the elimination of approximately 2.5 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 1,800 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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### 10% REDUCTION OPTIONS (ORS 291.216)

ACTIVITY OR PROGRAM	DESCRIBE REDUCTION	AMOUNT AND FUND TYPE	RANK AND JUSTIFICATION
(WHICH PROGRAM OR ACTIVITY WILL NOT BE UNDERTAKEN)	(DESCRIBE THE EFFECTS OF THIS REDUCTION. INCLUDE POSITIONS AND FTE IN 2015-17 AND 2017-19)	(GF, LF, OF, FF. IDENTIFY REVENUE SOURCE FOR OF, FF)	(RANK THE ACTIVITIES OR PROGRAMS NOT UNDERTAKEN IN ORDER OF LOWEST COST FOR BENEFIT OBTAINED)
1. Appellate representation will be further delayed	REDUCTION OF 5 FTE ATTORNEY POSITIONS AND 1 FTE SUPPORT STAFF POSITIONS WILL AT FIRST EXTEND THE CURRENT DELAY IN FILING AN OPENING BRIEF. OVER TIME AS THE BACKLOG OF CASES GROWS, ALL CASES WILL BE DELAYED MORE THAN 350 DAYS AT WHICH POINT FEDERAL INTERVENTION IS LIKELY.	\$1,518,376 GENERAL FUND	THE AGENCY CANNOT RANK THE RELATIVE IMPORTANCE OF CONSTITUTIONALLY MANDATED SERVICES.
2. Trial-level representation will not be provided during the final 2.5 months of the biennium.	IN THE ABSENCE OF FUNDING FOR LEGAL REPRESENTATION, PROSECUTIONS CANNOT PROCEED.	\$24,659,004 GENERAL FUND \$329,198 OTHER FUNDS	THE AGENCY CANNOT RANK THE RELATIVE IMPORTANCE OF CONSTITUTIONALLY MANDATED SERVICES.
3. Auditing of fee statements and caseload reports.	REDUCTION OF 2.5 FTE WOULD REDUCE AGENCY'S ABILITY TO AUDIT FEE STATEMENTS AND TO VERIFY CONTRACT CREDITS CLAIMED.	\$382,133 GENERAL FUND \$54,178 OTHER FUNDS	IN THE ABSENCE OF AUDITING, IT IS LIKELY THAT THE EXPENDITURES FROM THE PROFESSIONAL SERVICES ACCOUNT WOULD INCREASE.

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### Revenue Discussion

ORS 151.487, et seq., provides 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 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 is deposited in the Public Defense Services Account, pursuant to ORS 151.225(3). The same ORS authorizes funds in the account 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 21.94 FTE VS positions in the courts and 2.47 FTE positions within PDSC. The VS positions are distributed throughout the state with partial FTE in a number of counties.

Anticipated revenues for the 2015-17 biennium are \$3,705,255. Of that amount, \$3,291,980 will be transferred to the Judicial Department to fund the VS positions and \$541,784 will be expended by PDSC. 2015-17 revenue will not provide sufficient resources to fully fund Judicial Department and PDSC expenditures. The additional amount needed for PDSC to cover its current service level is \$1.2 million. Without this funding, the PDSC will not have adequate funding for trial-level representation.

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## Appellate Division

### Program Description

The agency's Appellate Division is the defense counterpart to the Appellate Division of the Oregon Department of Justice. The centralization of court-appointed direct appeals in one office establishes an institutional defense entity in the appellate court system, promotes the consistent and rational development of appellate law, and facilitates the identification and implementation of system-wide efficiencies.

The Appellate Division has two sections: the Criminal Section and the Juvenile Section.

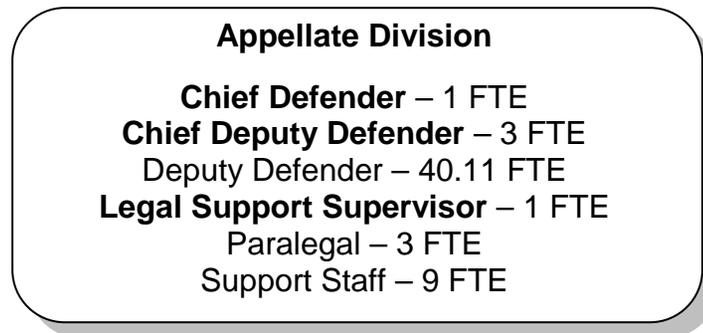
The Criminal Section provides statutorily and constitutionally mandated appellate representation to financially eligible individuals in a wide variety of case types, including: misdemeanor and felony appeals (including capital cases); contempt cases; DNA-related appeals; appeals by crime victims; mandamus actions; and appeals of decisions by the Board of Parole and Post Prison Supervision.

The Juvenile Section provides appellate representation to parents in juvenile dependency and termination of parental rights cases.

Appellate Division attorneys appear regularly in the Oregon Court of Appeals and the Oregon Supreme Court. The division has appeared and argued in the United States Supreme Court on two occasions in the past eight years.

### Organizational Chart

The Appellate Division has 57.11 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, and outreach.

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

A Senior Deputy has a caseload of complex cases and serves as the leader of a team of five to seven attorneys who meet weekly. The senior leads team discussions, serves as a resource for attorneys outside the team meeting setting, and edits the team members' meritorious Court of Appeals briefs.

A Deputy Public Defender II has several years' experience and provides representation in moderate to complex felony and parole cases.

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

## Case Assignments and Production Levels

### Criminal Section

For case weighting purposes, the section identifies two primary case categories: (1) the *trial*-type case and (2) the *plea*-type case.

A trial-type case includes jury trials, trials to the court, conditional pleas, parole appeals, appeals involving requests for DNA testing, appeals initiated by the Attorney General, mandamus actions, and appeals initiated by crime victims. The transcript length for a trial-type case ranges from 50 pages to several thousand pages.

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A plea-type case refers to guilty pleas, no-contest pleas, probation violation hearings, and re-sentencing proceedings. Transcript length typically ranges from 20 to 80 pages for plea-type cases.

Historically, the criminal section has received between 3,200 to 4,000 case referrals per biennium. For example, the criminal section received 3,694 case referrals during the 2007-09 biennium, 4,020 referrals during the 2009-11 biennium, 3,302 referrals during the 2011-13 biennium, and 1585 case referrals during the first year of the 2013-15 biennium, which projects to 3,170 cases for the current biennium. Unlike past years when up to 289 overflow cases were assigned to outside providers annually, since 2012 the criminal section has handled all criminal case referrals, excluding conflict cases.

Appellate Division attorneys are assigned a significant annual workload. According to the Institute for Law and Justice, the annual appellate public defender workload ranges from 25 to 50 cases per attorney. Georgia and Indiana set the maximum appellate caseload at 25 cases per attorney; Nebraska sets the maximum appellate caseload at 40 cases per year; and Florida and Louisiana set the maximum appellate caseload at 50 cases per attorney. *Compendium of Standards for Indigent Defense Systems (2000)*; *Keeping Defender Caseloads Manageable*, Spangenberg Group, 2001. On average, a Deputy Defender I is assigned 46 cases per year, and a Deputy Defender II is assigned 36 cases per year.

### Juvenile Section

At the end of the 2007 session, the Legislature funded the creation of a four-attorney Juvenile Appellate Section in the Appellate Division. The unit is intended to centralize and enhance appellate representation for parents in juvenile dependency and termination of parental rights cases, act as a resource to the trial bar, and promote more consistent state-wide application of the juvenile code through published appellate opinions.

To minimize the disruption to children's lives, dependency and termination of parental rights cases have an expedited appeal schedule. ORAP 10.15. Consequently, the Juvenile Appellate Section can never have a backlog.

The section represents parents in approximately 70 percent of the dependency cases on appeal. It retains the cases it can resolve within the established timelines. Cases that cannot be kept in-house due to conflict or workload issues are referred to a panel of appellate attorneys approved by the agency.

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In 2012, the agency reassigned one attorney position from the criminal section to the juvenile section to address the significant increase in juvenile case referrals and to cover absences within the unit due to parental leave, sick leave, and vacation time. Case referrals have risen over the past several years: 151 case referrals during the fiscal year ending June 30, 2010; 234 referrals during the year ending 2011; 304 referrals during the year ending 2012; 263 cases during the year ending 2013; and 313 cases during the fiscal year ending 2014.

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### **Appellate Division**

#### **010 Non-PICS Personal Services / Vacancy Factor**

##### **Package Description**

This package includes standard adjustments to PERS Pension Bond Contribution and standard inflation for non-PICS personal services accounts. The components of this package increase general fund expenditures by \$30,839.

#### **031 Standard Inflation & State Government Service Charge**

##### **Package Description**

This package includes standard inflation adjustments on services and supplies in the amount of \$49,523 in general funds. State government services charges increased by \$19,502, making the total amount of the package an increase of \$69,025 in general funds.

#### **032 Above Standard Inflation**

##### **Package Description**

This package includes inflation above the standard inflation adjustment for services and supplies in the amount of \$123 in general funds. Telecommunications and other services & supplies line items increased by \$70,565 for estimated charges provided by the Department of Administrative Services, making the total amount of the package an increase of \$70,688 in general funds.

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## **Appellate Division**

### **105 Employee Compensation ORS 151.216(1)(e)**

#### **Package Description**

##### **Purpose:**

This package will enable the PDSC to provide quality legal representation through recruitment and retention of attorneys and staff capable of providing and securing quality and cost-efficient appellate representation by providing funding needed to establish salary schedules comparable to salary schedules at the Department of Justice and other state agencies. For over ten years, the PDSC has been attempting to accomplish its statutory mission of adopting “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). All but three employee classifications are 3 to 18 percent below their counterparts in other state agencies. This difference negatively impacts staff morale and the agency’s recruitment and retention efforts.

##### **How Achieved:**

In developing the requested salary structure, the agency used the Department of Justice’s Appellate Division as the comparable agency for the majority of the positions, as Department of Justice attorneys appear on the exact same cases from opposing sides. Contract analyst positions were compared with employees in the Judicial Department because comparable positions weren’t part of the Department of Justice structure.

Historically, the agency hires recent law school graduates into the entry-level Deputy I attorney position and devotes significant management-level resources to training during an attorney’s first six months of employment. The training investment shows returns for the agency after twelve months, when the typical entry-level attorney becomes increasingly self-sufficient and productive. After two to three years, the Deputy I attorney has demonstrated sufficient competency to warrant consideration for the Deputy II position. After two to three years in the Deputy II position (or five years with the agency), the attorney is an experienced, competent, and valued contributor to the agency. Unfortunately, this time period coincides with the greatest salary disparity between the agency and the Attorney General’s office, the attorney is experienced and attractive to other firms, and the time loss and fatigue associated with a two-hour daily commute from Portland or Eugene leads many attorneys to consider and seek employment elsewhere. Since 2003, twenty eight attorneys have left the agency, many at the the four-to six-year mark.

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The policy package helps address the glaring compensation inequity between state employees on opposite sides of the same cases. It would mitigate the brain drain that occurs around the five-year employment mark, and enables management to direct training resources into case production. Providing parity for lawyer staff while ignoring the disparity that exists in other classifications, particularly those employees in the lowest salary ranges, would decrease employee morale and productivity. This policy package would enable the agency to recruit and retain employees 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:** This package would require an additional \$1,397,424 from general funds.

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## 106 Office Space

### Package Description

#### Purpose:

The purpose of this package is to increase the amount of office space available for agency employees, clients, contract providers, and Commission members. There are three primary issues with the current limitation on available office space: first, all available work spaces, including hallways and file rooms, have been filled to capacity; second, the office lacks a client interview room; and third, the building does not have a conference space large enough to safely hold all staff meetings and regularly scheduled meetings of the Public Defense Services Commission, or to host training sessions with trial-level providers.

When the agency acquired its current location, it offered sufficient space for the agency's day-to-day operations. Additionally, the location increased agency efficiency through its proximity to the Court of Appeals and Department of Justice; daily court runs and meetings with system partners and the legislature no longer required staff to drive to the capital mall area, as they had in the past. The office had one room dedicated to client interviews, and each lawyer had an office space. Legal secretaries and staff cubicles were placed as efficiently as possible, with very little space left beyond what was required by fire code regulations.

As the agency has grown, all available spaces have been filled. The client interview room was converted into an office, with two attorneys sharing the space. The agency created two additional office-share spaces in standard attorney office spaces, which are a ten foot-by-ten foot configuration. The ideal work environment for appellate lawyers is a space that is free of distractions, and the current office-shares, while as functional as possible, do impact attorney productivity.

The agency has one small conference room and a very small library space. Both are often dedicated to meetings with work "teams," leaving no space left for client interviews or meetings with external system partners. Additionally, the conference room is not large enough to accommodate all agency staff meetings (75 employees), which limits the agency's ability to bring employees together for regular meetings. The conference room is also a very small space for meetings of the Public Defense Services Commission, which generally meets in Salem at least five or six times each year (it meets in other locations an additional three times per year).

Because the agency is responsible for management of the statewide public defense system, the limited space also impairs the agency's ability to host training sessions and other meetings of defender groups. Additional conference space would increase the agency's ability to provide training and oversight of its providers.

## BUDGET NARRATIVE

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**How Achieved:**

The agency will acquire approximately 8,410 square feet of additional space to expand its office, cubicle, conference, and client interview spaces.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would require an additional \$354,012 from general funds.

# BUDGET NARRATIVE

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## Professional Services Account

### Program Description

The Professional 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 2013 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 170,000 cases in FYE 2013.

The Professional 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 2013 are noted in parentheses.

- Criminal proceedings, ranging from misdemeanors to death penalty cases (42%);
- 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 (34%);
- Probation violation and extradition proceedings (15%);

## BUDGET NARRATIVE

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- Contempt proceedings, including nonpayment of court-ordered child support and violations of Oregon's Family Abuse Prevention Act (2%);
- Civil commitment and Psychiatric Security Review Board proceedings (2%);
- Post-conviction relief and Habeas Corpus proceedings (<1%); and
- Juvenile delinquency and probation violation proceedings (4%).

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 Professional 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 ten 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 – VSs) 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, has historically more than paid for itself, and preserved funds that would have been spent from the Professional Services Account.

## BUDGET NARRATIVE

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

## BUDGET NARRATIVE

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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 2013, the Federal food stamp gross income eligibility level for a family of four is \$30,624 per year.

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 \$2,500. If an applicant has available income and assets exceeding \$2,500, 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 Professional 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 Contracts Manager and Contract Analysts. 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 98% 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, 2014, there were 96 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

## BUDGET NARRATIVE

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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 16 contracts for non-attorney services, such as 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.

The agency has received two limited opportunities to increase compensation for providers over the last then years. 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. The Legislature provided three million dollars to improve compensation for non-profit public defense providers during the 2013 legislative session, but this did not improve the case rates for other provider types (law firms and consortia groups). Unfortunately, since average district attorney salaries have increased over the course of the last two biennia, the cost of achieving parity with district attorney salaries is actually greater now than it was in 2007.

Policy Option Package 100 would create consistent rates for all public defense providers within the same county and among similarly situated counties. Historically, the Public Defense Services Commission has paid a higher rate for representation provided by public defender offices than representation provided by attorneys at private law firms and in consortia groups. There were several reasons for the difference in case rates. First, case rates for public defender offices include compensation for constitutionally required services, such as case investigation, in addition to legal services. In contrast, private law firms and consortia attorneys secure those additional services by submitting a request for additional funding to secure the services. Additionally, attorneys handling public defense cases at private law firms or as members of a consortia have a mix of privately retained and public defense cases. When the public defense caseloads fluctuate, providers stabilize their income through privately retained cases. Conversely, at public defender offices, lawyers are prohibited from taking privately retained cases, and have no ability to offset variations in caseload by taking private cases.

Over the last ten years, attorneys practicing at private law firms and in consortia groups have become less able to rely upon retained cases to stabilize their income. This change is a result of several factors, including but not limited to the increasing need to handle a larger volume of public defense cases, a high level of complexity in public defense cases, trial court docketing practices that require lawyers to spend more time in court waiting for their case to be heard, and the need for contractors to specialize in particular

## BUDGET NARRATIVE

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areas of the law. As a result, most law firms and consortia take more public defense cases than in the past, and have less opportunity to handle privately retained work to either cushion variations in public defense workload or supplement the income from those cases.

With respect to the much smaller portion of the Professional Services Account that is expended for attorneys handling cases on an hourly rate basis (and not as part of a public defense contract), the current guideline rates (\$46 per hour for non-death penalty cases and \$61 per hour for death penalty cases) have increased by only \$6 per hour since June 1991. The funding requested in Policy Option Package 103 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 2015-17 biennium.

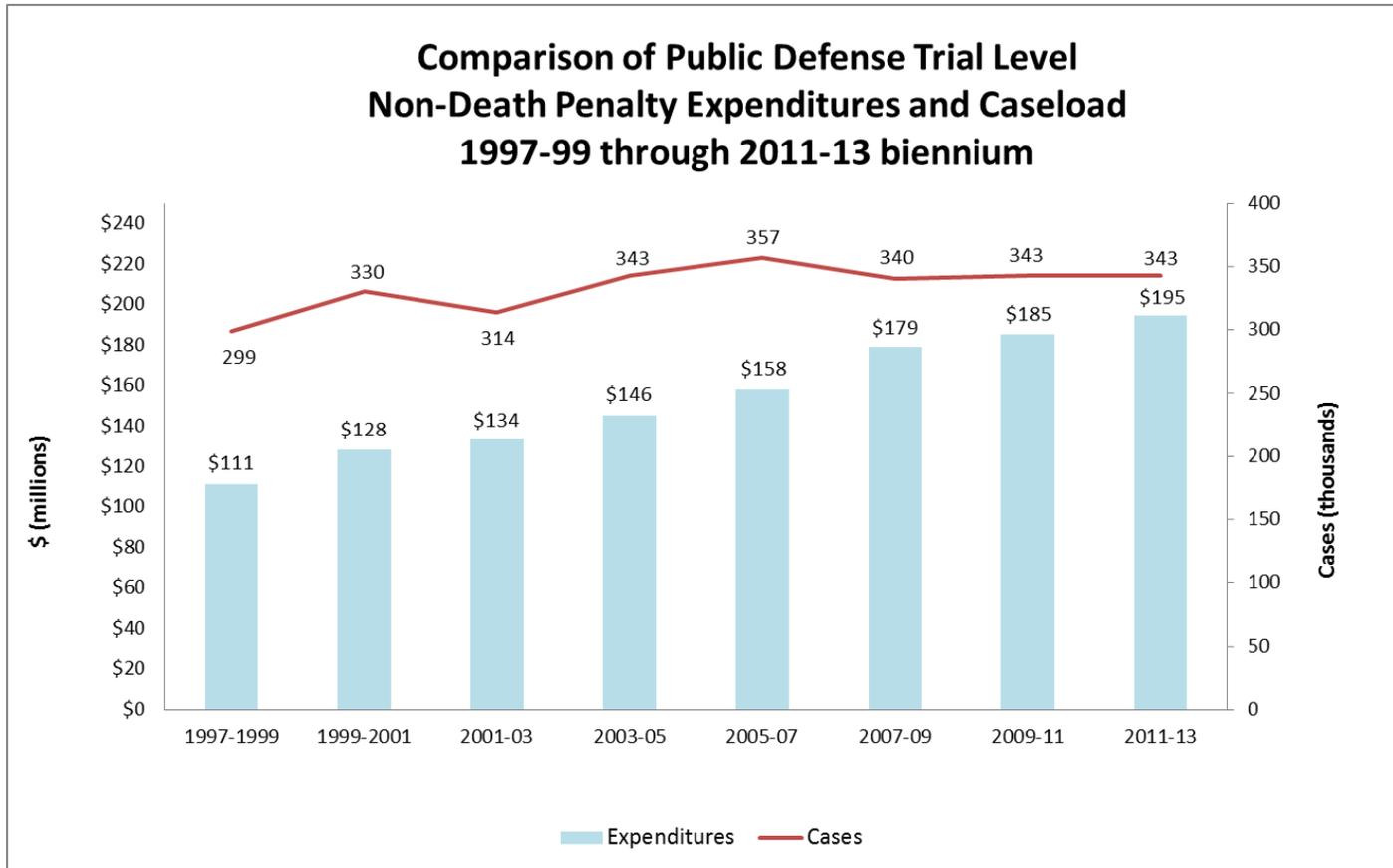
Persons who are financially eligible for appointed counsel are also eligible for non-attorney services that are "reasonable and necessary" for the preparation, investigation, and presentation of the case (ORS 135.055(3)). Examples of such non-attorney services are interpreters, investigators, transcriptionists,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

Policy Option Package 103 would also allow increases in the rates paid to investigators from \$29 to \$35 per hour in non-death penalty cases and from \$40 to \$45 per hour in death penalty cases.

### **Program Costs**

Generally, program costs have increased due to 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. Below is a chart displaying a "Comparison of Public Defense Trial Level Non-Death Penalty Expenditures and Caseloads" for the last eight biennia.

## BUDGET NARRATIVE



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, costs should remain constant (plus inflation). However, the real cost driver is whether or not a sentence of death is imposed.

## BUDGET NARRATIVE

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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 Professional Services Account. However, the Appellate Division has a limited capacity to accept death penalty cases so, depending on the timing of such cases, some must be assigned to counsel payable from the Professional 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 Professional 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.

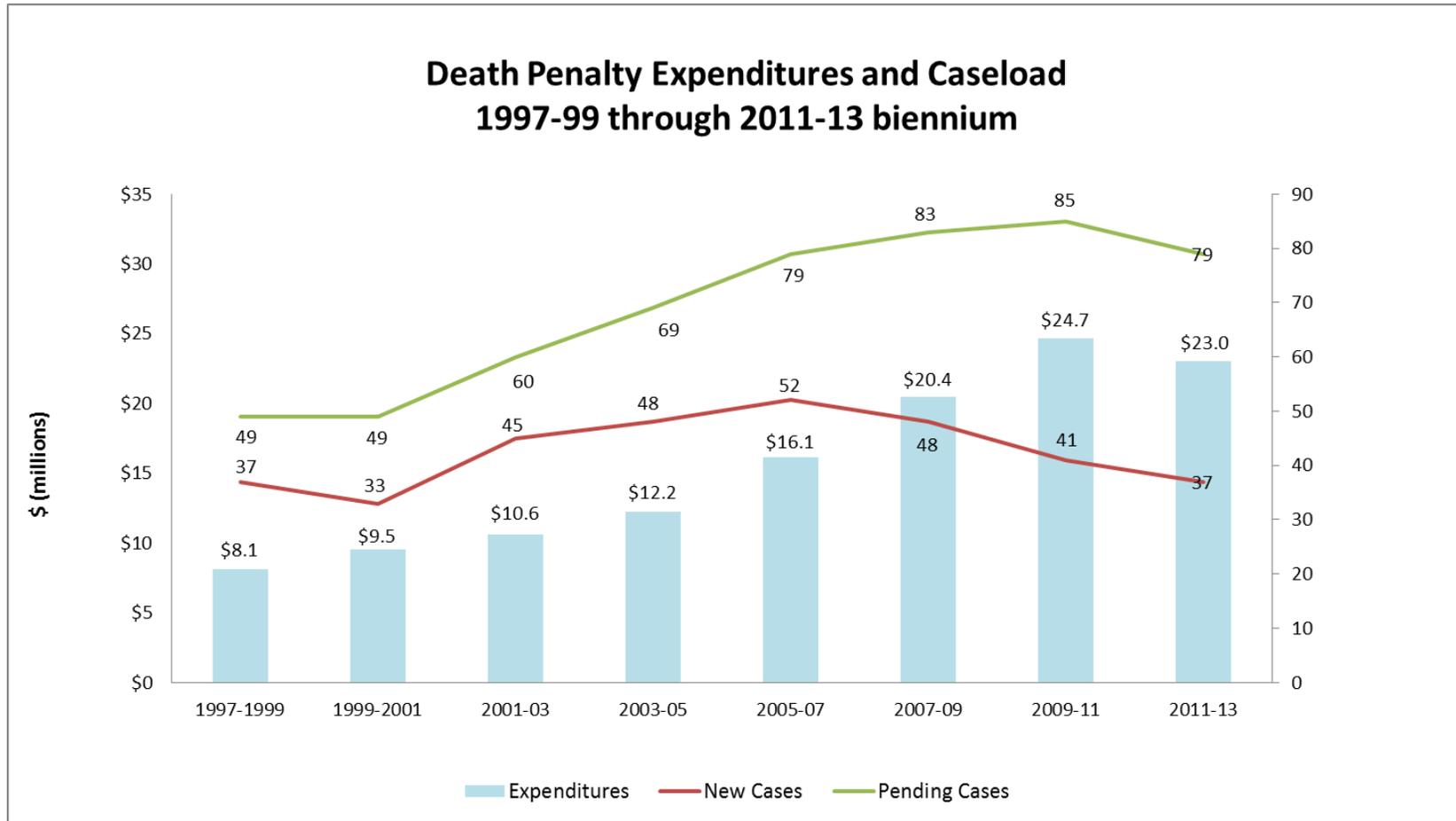
If the post-conviction relief case is unsuccessful, the next step is an appeal of the post-conviction relief case. Post-conviction relief appeals are also handled exclusively by attorneys payable from the Professional Services Account. If a post-conviction relief appeal is unsuccessful, all state remedies 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 62 defendants sentenced to death since the death penalty was reinstated in 1984. Of those, two have been executed, three died while their cases were still pending in the state court system, one had his sentence overturned, and 21 were later resentenced to a lesser sentence. Of the remaining 36 defendants, only four 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 below shows death penalty expenditures relative to new aggravated murder filings during each biennium and relative to the number of cases that are pending from previous biennia on July 1st (the start of each biennium).

# BUDGET NARRATIVE



## BUDGET NARRATIVE

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### **Professional Services Account**

#### **021 Phase In**

##### **Package Description**

This restores funding in the 2015-17 biennium that was removed from the 2013-15 Legislatively Approved Budget (HB5041) for expenditures that were included in the 2013-15 current service level, but would not be paid until after the biennium ended. These expenses should be budgeted and paid for in the 2015-17 biennium. This package will increase expenditures by \$3,436,193 in general funds.

#### **031 Standard Inflation**

##### **Package Description**

This package includes standard inflation adjustments in the amount of \$6,946,076 in general funds and \$119,475 in other funds.

#### **032 Above Standard Inflation**

##### **Package Description**

This package includes inflation above the standard inflation adjustment in the amount of \$2,263,214 in general funds and \$376,897 in other funds. Included in this adjustment is the non-attorney provider cost increases for expert and medical services. 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.

# BUDGET NARRATIVE

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## 040 Mandated Caseload

### Package Description

This essential package provides the additional funding required for the 2015-17 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 two components to this essential package:

1. Trial-level non-death penalty caseload change

The caseload in recent years has been more challenging to project in part due to unprecedented changes in the economy. Budget reductions for law enforcement, prosecution, probation, corrections, social services, and the judicial system create unpredictability in the caseload as each entity adjusts its current practices to cope with budget shortfalls. For budgetary purposes, the caseload is projected to remain flat compared to the caseload funded for the 2013-15 biennium. The agency will adjust the projection throughout the remainder of the 2013-15 biennium and periodically during the 2015-17 biennium.

2. 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 2015-17 biennium for death penalty cases from prior biennia is \$2,408,706 in general funds and \$13,108 in other funds.

## BUDGET NARRATIVE

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### 070 Revenue Reduction

#### Package Description

2015-17 revenue will not provide sufficient resources to fully fund Judicial Department and PDSC current service level expenditures. This package reduces other fund expenditures by \$1,200,000 to leave a sufficient ending balance. Policy Package 107 will restore these expenditures with general funds.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would reduce the other fund expenditures by \$1,200,000

# BUDGET NARRATIVE

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## 100 Consistent Rates & Mileage for Public Defense Contract Providers

### Package Description

**Purpose:** To provide funding necessary to:

- ensure consistent case rates for public defense providers within each county and among similarly situated counties;
- provide mileage reimbursement for specific regions.

This funding would create consistent rates for all public defense providers within the same county and among similarly situated counties.

Historically, the Public Defense Services Commission has paid a higher rate for representation provided by public defender offices than representation provided by attorneys at private law firms and in consortia groups. There were several reasons for the difference in case rates. First, public defender offices provide constitutionally required services, such as case investigation, in addition to legal services.<sup>1</sup> In contrast, private law firms and consortia attorneys secure those additional services by submitting a request for those services and additional funding to secure the services. Additionally, attorneys handling public defense cases at private law firms and or as members of a consortia have a mix of privately retained and public defense cases. When the public defense caseloads fluctuate, providers stabilize their income through privately retained cases. Conversely, at public defender offices, lawyers are prohibited from taking privately retained cases, and have no ability to handle variations in caseload by taking private cases.

Over the last then years, attorneys practicing at private law firms and in consortia groups have become less able to rely upon retained cases to stabilize their income. This change is a result of several factors, including but not limited to the increasing need to handle a larger volume of public defense cases, a high level of complexity in public defense cases, trial court docketing practices that require lawyers to spend more time in court waiting for their case to be called, and the need for contractors to specialize in particular areas of the law. As a result, most law firms and consortia take more public defense cases than in the past, and have less opportunity to handle privately retained work to either cushion variations in public defense workload or supplement the income from those cases.

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<sup>1</sup> Public defender offices tend to have the infrastructure necessary for including a staff investigator; consortia groups handle cases where there are conflicts of interest, and use of a single investigator would violate Oregon State Bar Rules of Professional Responsibility.

## BUDGET NARRATIVE

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Private law firms and consortia lawyers report that lower case rates combined with the need to take more public defense cases results in caseloads that exceed national and Oregon standards, reducing their ability to provide quality services. This policy option package will ensure that all provider types are on equal footing in the provision of public defense services.

This funding also provides a specific allocation for mileage reimbursement. Current contracts require providers, in the majority of cases, to cover mileage costs from contract proceeds. In some regions<sup>2</sup>, mileage costs associated with client visits and court appearances, especially in case types with a lower rate such as misdemeanors, can exhaust the entire case rate, leaving contractors with no earnings from which to pay other expenses, such as office rent, cost of equipment and supplies, and staff salaries. Because lawyers are ethically required to consult with clients, the lack of funding available for mileage costs imposes an unfair economic burden on the provider. This policy option package allows contract providers to perform their work and meet their ethical responsibilities to clients without exhausting their contract funds on mileage expenses alone. This funding will ensure providers are not exhausting their contract funds to cover their mileage costs.

### **How Achieved:**

This policy option package would permit the agency to provide the same case rates used in contracting with public defender offices to all provider types within each county and between similarly situated counties. It would also allow the agency to reimburse providers for necessary mileage expenses.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would require an additional \$7,548,195 from general funds.

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<sup>2</sup> Mileage reimbursement is limited to the following regions: Eastern, North Coast, Central, Southern Oregon and the Willamette Valley.

# BUDGET NARRATIVE

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## 101 Public Defense Contractor Parity

### Package Description

**Purpose:** To provide funding necessary to:

- attract and retain qualified attorneys in public defense organizations throughout the state;
- reduce disparity between public defense provider and district attorney salaries and reduce caseloads that are above Oregon and National standards.

### **How Achieved:**

#### **Public Defender Contractor Parity**

The first component of this policy package would allow some adjustments to be made in response to the difficulty public defense providers have attracting and retaining qualified attorneys. 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 defense attorney salaries and prosecution salaries in the same counties (based on the Oregon District Attorneys Association 2013 salary survey) showed that, based upon average salaries, public defense salaries in many counties lagged behind prosecuting attorneys. Neither benefits nor non-attorney staff salaries were compared in the 2013 study. 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 2012 Economic Survey report noted that average full-time public defense attorneys' and prosecutors' salaries (\$68,246 for public defenders, and \$93,979 for public prosecutors) were well below any area of private practice. (Business and corporate litigation lawyers reported an average salary of \$192,715. Family law practitioners received an average salary of \$99,637 and private criminal defense lawyers received an average of \$134,779.)

Approval of the amount requested would allow the agency to increase case rates in those counties where there is significant disparity with prosecutor salary levels. Some providers may need to use rate increases to reduce caseloads by adding attorney members to their law firm or consortium group. The agency will work with entities that submit proposals in response to the Request for

## BUDGET NARRATIVE

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Proposals issued in May 2015 to ensure that increased case rates are appropriately allocated toward compensation increases or caseload reduction.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would require an additional \$21,574,168 from general funds

# BUDGET NARRATIVE

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## 102 Contractor Quality Assurance

### Package Description

#### Purpose:

To provide funding necessary to permit public defense contract administrators to devote sufficient time and tools to effectively monitor and improve the quality of services provided by contract attorneys. PDSC contracts with public defense providers obligate contractors to provide “a level of legal service that meets Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice.” For guidance in fulfilling this obligation, the Office of Public Defense Services has published [\*Best Practices for Oregon Public Defense Providers\*](#), which detail numerous recommended practices for delivering cost-effective, quality public defense representation by all provider types, including public defender offices, consortia and law firms. Among those practices recommended are establishing written performance expectations; establishing protocols for the orientation, training and mentoring of new attorneys; conducting effective supervision of the work performed by provider attorneys; performing regular performance reviews of provider attorneys and staff; implementing written policies and procedures to remedy deficient attorney performance, including provisions to terminate attorney employment or membership in a consortium; and publishing to justice system stakeholders and clients a procedure for receiving, investigating and resolving complaints about the quality of the provider’s representation.

In addition to the above, other best practices recommended to contract administrators relate to establishing a case assignment protocol that assures that cases are assigned to attorneys with the appropriate level of experience and expertise, and that caseloads are such that provider lawyers are able to provide each client with competent and diligent representation.

The Best Practices also recommend that public defense providers implement a case management system that supports the mission of each provider to provide quality, cost-effective representation and provides the Office of Public Defense Services with data it requires to effectively monitor the contractual obligations of each contractor to provide quality representation. An effective case management system would, among other things, monitor the number, type and current status of assigned cases; assist with making appropriate case assignments and identifying and avoiding potential conflicts of interest; document and evaluate case outcomes; and support responsible fiscal management by the contractor.

## BUDGET NARRATIVE

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### **How Achieved:**

For most public defense contractors, the administrator is an attorney with his or her own caseload duties, often leaving little time for the administrative responsibilities outlined in the Best Practices referenced above. Under the current system, funds to compensate for the time devoted to contract administration and for the software and other materials needed to support that administration must come from the case rates paid to contractors for legal representation. For public defender offices and other law firms, this means a commensurate reduction in the salaries of attorneys and other staff. For consortia, which is the contractor type that provides the bulk of public defense representation in the state, the compensation for the time and other expenses needed for effective contract administration must come from a reduction in the earnings of member attorneys. Understandably, administrators are reluctant to reduce what is already perceived in many instances to be inadequate compensation for public defense attorneys. As a result, in many instances contract administrators are currently not compensated sufficiently to devote the time and attention required for effective contract administration that fulfills the best practices recommended to achieve consistent quality representation.

This funding would permit PDSC to allocate funding to contractors for the specific purpose of achieving effective contractor administration without requiring a commensurate reduction in the compensation of contract attorneys. The funding would also permit PDSC to assist contractors with the acquisition of case management systems that would support the work of contractors and provide the Office of Public Defense Services with the data it requires for effective contract management and oversight.

The table below summarizes the two components of this package.

1.	Compensation for Contract Administration/Quality Assurance	\$3,727,040
2.	Case Management System Funds	\$898,900
	Package total	\$ 4,625,940

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would require an additional \$4,625,940 from general funds

# BUDGET NARRATIVE

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## 103 Providers Hourly Rate Increases

### Package Description

**Purpose:** To provide funding necessary to increase hourly rates for:

- attorneys who provide legal representation in public defense cases on an hourly rate basis;
- attorneys providing legal representation under contract in aggravated murder cases;
- mitigators providing services under contract in aggravated murder cases;
- investigators who accept work on public defense cases.

### **How Achieved:**

#### **Hourly Rate Increase for Hourly Paid Public Defense Attorneys**

The current guideline rates (\$46 per hour for non-death penalty cases and \$61 per hour for death penalty cases) have increased by only \$6 per hour since June 1991. The requested funding would allow an increase in the current rates from \$46 to \$70 per hour for non-death penalty cases and from \$61 to \$95 per hour for death penalty cases.

The 2007 legislature provided funding for the 2007-09 biennium that permitted the agency to increase the guideline rates for hourly-rate paid counsel statewide for the first time since 1991. In 2012, the legislature provided funding to increase hourly rates by \$1 for the 2013-15 biennium.

The small increases in hourly rates that were implemented in 2007 and 2012 did not result in rates that bear any relation to rates regularly charged for services by attorneys who handle criminal and family cases for retained clients. The Oregon State Bar's 2012 Economic Survey reports statewide average and median criminal defense hourly rates at \$214 and \$200 per hour. Family law attorneys statewide charge \$214 (average) and \$200 (median). To the extent attorneys who performed 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.

## BUDGET NARRATIVE

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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 \$46 per hour would receive \$82,800 per year, with half of that amount (\$41,400) paying for overhead and half being available as attorney salary.

The Consumer Price Index increased 75% between 1991 and 2014. Adjusted for inflation, the 1991 rates of \$40 and \$55 per hour should be \$70 and \$96 per hour in 2014.

### **Hourly Rate Increase for Attorneys and Mitigators Under Contract In Aggravated Murder Cases**

The agency has worked to achieve consistent case rates for representation in capital cases for many years. Contract providers received limited rate increases in 2008, and in 2010, the agency provided a modest increase for those contractors who had an office with a staff, as well as contractors specializing in capital post-conviction relief. In 2013, after a thorough review of the services provided by capital contractors, and revision of the qualification standards for capital representation, the Commission approved funding to increase all capital contracts to \$98.

This policy option package would increase the hourly rate for capital providers from \$98 to \$125, which is still considerably behind the rate paid by the federal government (\$180) for the same services. Oregon lawyers who provide representation in Oregon's capital cases have the opportunity to provide representation in federal cases, where the rate is \$180 per hour. If Oregon does not make some effort to continue improving this rate, it will lose providers to the federal system.

Prior to 2010, mitigation services were paid on an hourly basis at \$39 per hour, and it was very difficult for capital attorneys and OPDS to find trained mitigators capable of providing high quality work for this rate. In 2010, the Commission approved funding to change the rate to \$59 per hour for mitigators who were willing to enter into a contract for services. In 2012, the agency added several more mitigation contracts to match the caseload, with no rate increase. In 2014 the agency was able to increase the rate to \$62 per hour. This policy option package would increase the rate to from \$62 to \$70 per hour, which still lags significantly behind rates paid by the federal government for the same services.

## BUDGET NARRATIVE

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

The amount requested for the 2015-17 biennium is the amount needed to increase investigation rates from \$29 to \$35 per hour in non-death penalty cases and from \$40 to \$45 per hour in death penalty cases.

The public defense guideline rate for investigation services has remained fairly constant since it was initially set, at \$25 per hour, when the state assumed responsibility for public defense services in approximately 1983. The rate for very experienced investigators in death penalty cases increased from \$25 to \$34 per hour in 1996, and in 2007 the Legislature provided funding to permit the agency to raise the rate from \$25 to \$28 per hour in non-death penalty cases and from \$34 to \$39 in death penalty cases. In 2012, the Legislature provided funding to allow OPDS to increase the hourly rates for all hourly providers by \$1, resulting in a rate of \$29 per hour for non-death penalty cases and \$40 per hour for death penalty cases. Despite these increases, investigator rates remain inadequate. If investigation rates had kept pace with inflation, current rates would be \$60 per hour for non-death penalty cases, and \$81 per hour for death penalty cases.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would require an additional \$9,561,682 from general funds

# BUDGET NARRATIVE

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## 104 Juvenile Representation Improvement

### Package Description

#### Purpose:

The purpose of this policy package is to improve the quality of trial level representation in juvenile cases in order to address longstanding and chronic quality of representation issues. Excessive caseloads continue to be a significant cause of deficient representation in juvenile cases. The Oregon Criminal Defense Lawyer Association estimates caseloads to be 40% above national standards.<sup>3</sup> “More and more data are showing that when parents are represented by attorneys who have reasonable caseloads, are paid a reasonable amount of money for their services, and, most important, spend time with their clients in between court hearings, they have better experiences with the child-welfare system, and this means their children also do better.”<sup>4</sup>

In August 2014, the Agency implemented the Parent Child Representation Program (PCRP), focused on providing high quality representation for parents and children in juvenile dependency and delinquency cases. The program, which began in Linn and Yamhill Counties, has 4 key components: (1) reduced caseload for lawyers, (2) additional training requirements, (3) greater oversight and (4) independent social work support. This program was modeled after a successful effort in Washington State, where quality representation for parents has been shown to be highly successful in helping children reach permanency in a more timely manner. Reduced caseloads, multidisciplinary decision making, and adherence to training and performance standards are key components of the program which began as a pilot in 2000 and is now in 25 of Washington’s 39 counties.

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<sup>3</sup> The Oregon Criminal Defense Lawyers Association Pay Parity Committee’s Findings, Conclusion and Recommendations (as adopted by the OCDLA Board of Directors May 2, 2014). [http://www.ocdla.org/pdfs/pay\\_parity/Pay\\_Parity\\_Committee\\_Findings.pdf](http://www.ocdla.org/pdfs/pay_parity/Pay_Parity_Committee_Findings.pdf)).

<sup>4</sup> Laver, *Improving Representation for Parents in the Child-Welfare System*, American Bar Association Children’s Rights Litigation, <http://apps.americanbar.org/litigation/committees/childrights/content/articles/fall2013-1013-improving-representation-parents-child-welfare-system.html> (October 2013)).

## BUDGET NARRATIVE

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### **How Achieved:**

If this policy package were funded, the Agency would build upon the existing Parent Child Representation Program by expanding to Clackamas and Multnomah Counties. Together, Clackamas and Multnomah county represent 29% of Oregon's foster care population and 24% of the trial level juvenile cases in the state.<sup>5</sup>

The Agency would ensure that reduced attorney workload results in high-quality legal representation through regular monitoring and evaluations, required multidisciplinary training, strict adherence to best practices for representation, and use of collaborative decision making.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would require an additional \$5,646,547 from general funds.

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<sup>5</sup> Oregon Department of Human Services, *2012 Child Welfare Data Book, point in time data on 9/30/2012*, (<http://www.oregon.gov/dhs/abuse/docs/2012%20Child%20Welfare%20Data%20Book.pdf>). *Oregon Public Defense Services 2013 Juvenile Caseload Data*.

## BUDGET NARRATIVE

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### 107 ACP Revenue Shortfall

#### Package Description

**Purpose:**

This package will restore general funds expenditures in the Professional Services Account that were previously funded with other funds from the Application Contribution Program (ACP). The funding shift from general fund to other funds happened in the 2013-15 biennium to use the available ending fund balance from the ACP account to help offset expenditures in the Professional Services Account.

**How Achieved:** Restores funding not available through Application Contribution Program revenues.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would restore \$1,200,000 in general funds

# BUDGET NARRATIVE

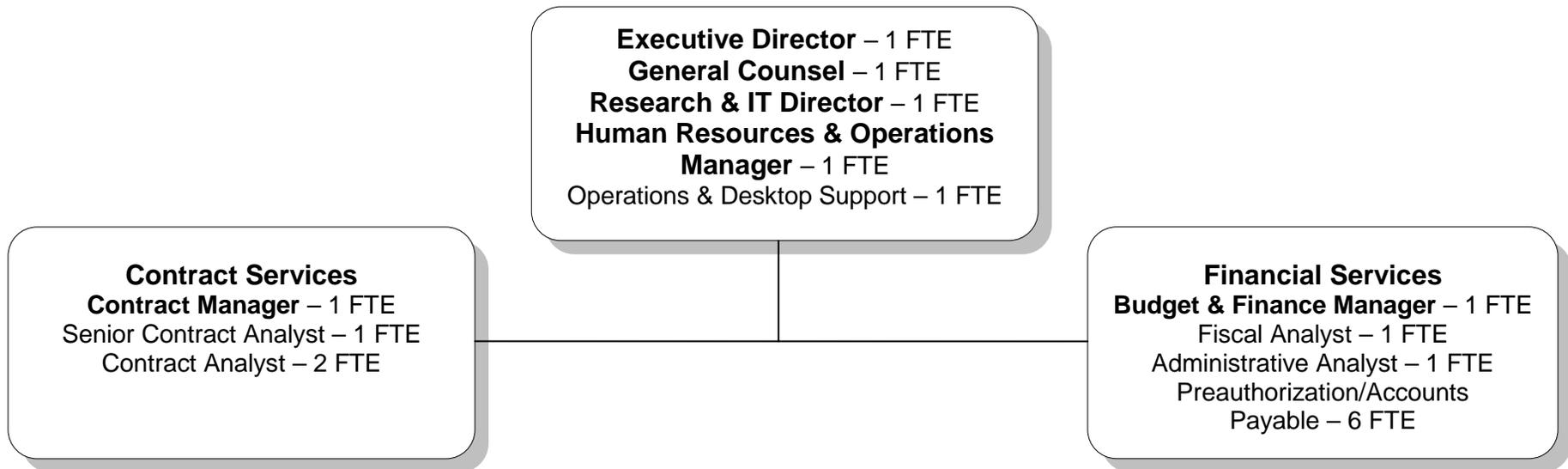
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## Contract & Business Services

### Program Description

Contacts and Business Services 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, this section provides administrative support (accounting, budget development, human resources, information technology, facilities management and general operations) for the agency as a whole.

### Organizational Chart



# BUDGET NARRATIVE

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## **Major functions**

### Contract Administration:

Contract Services staff negotiate and administer approximately 96 contracts for the provision of legal services, and an additional 16 contracts for non-attorney services, such as mitigation services. Three Contract Analysts as well as the Contracts Manager have primary responsibility for contracts assigned to them. In addition, Contracts and Financial Services has one temporary Office Specialist 1 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 17,000 requests for pre-authorization are submitted per year.

### Accounts Payable:

Six accounts payable staff process the operating bills for both the Appellate Division and Contract and Financial Services as well as all fee statements submitted for payment from the Public Defense Services Account. Over 25,000 payments are reviewed and processed per year.

### Quality Assurance and Complaint Processing:

PDSC's Office of General Counsel coordinates peer reviews of public defense providers. Review teams of experienced public defense administrators and attorneys from across the state conduct evaluations of public defense contractor management and operations to identify strengths and weaknesses, and make recommendations for change where needed. In addition to document and data review, review teams usually devote three days to interviewing contractors and other justice system stakeholders, including judges, prosecutors, corrections officers and other law enforcement, probation and parole officers, juvenile department officials, Department of Human Services case managers, and others. To date, OPDS has completed 48 comprehensive contractor evaluations through the peer review process. General Counsel also receives and coordinates the handling of complaints regarding expenditures and the quality of legal representation, pursuant to the PDSC's Complaint Policy and Procedure. A Deputy General Counsel, who

## BUDGET NARRATIVE

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focuses on issues arising in juvenile court representation, assists with complaints. Other quality assurance initiatives include an annual statewide performance survey with detailed follow-up on survey results and comments; review of certificates of attorney qualification; planning and participation in continuing legal education programs; participation in performance standards revision projects; and participation in other workgroups and initiatives aimed at improving the quality of public defense services.

## BUDGET NARRATIVE

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### **Contract & Business Services**

#### **010 Non-PICS Personal Services / Vacancy Factor**

##### **Package Description**

This package includes standard adjustments to PERS Pension Bond Contribution. The total of this package is \$21,041 in general fund and \$2,954 in other funds.

#### **031 Standard Inflation & State Government Service Charge**

##### **Package Description**

This package includes standard inflation adjustments on services & supplies in the amount of \$13,006 in general funds. State government services charges are increased by \$7,863, making the total amount of the package an increase of \$20,869 in general funds.

#### **032 Above Standard Inflation**

##### **Package Description**

This package includes inflation above the standard inflation adjustment for services & supplies in the amount of \$34 in general funds. Telecommunications and other services & supplies line items are increased by \$25,914 for estimated charges provided by the Department of Administrative Services, making the total amount of the package an increase of \$25,968 in general funds.

# BUDGET NARRATIVE

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## Contract & Business Services

### 104 Juvenile Representation Improvement

#### Package Description

##### Purpose:

The purpose of this policy package is to improve the quality of trial level representation in juvenile cases in order to address longstanding and chronic quality of representation issues. Excessive caseloads continue to be a significant cause of deficient representation in juvenile cases. The Oregon Criminal Defense Lawyer Association estimates caseloads to be 40% above national standards.<sup>6</sup> “More and more data are showing that when parents are represented by attorneys who have reasonable caseloads, are paid a reasonable amount of money for their services, and, most important, spend time with their clients in between court hearings, they have better experiences with the child-welfare system, and this means their children also do better.”<sup>7</sup>

In August 2014, the Agency implemented the Parent Child Representation Program (PCRP), focused on providing high quality representation for parents and children in juvenile dependency and delinquency cases. The program, which began in Linn and Yamhill Counties, has 4 key components: (1) reduced caseload for lawyers, (2) additional training requirements, (3) greater oversight and (4) independent social work support. This program was modeled after a successful effort in Washington State, where quality representation for parents has been shown to be highly successful in helping children reach permanency in a more timely manner. Reduced caseloads, multidisciplinary decision making, and adherence to training and performance standards are key components of the program which began as a pilot in 2000 and is now in 25 of Washington’s 39 counties.

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<sup>6</sup> The Oregon Criminal Defense Lawyers Association Pay Parity Committee’s Findings, Conclusion and Recommendations (as adopted by the OCDLA Board of Directors May 2, 2014). [http://www.ocdla.org/pdfs/pay\\_parity/Pay\\_Parity\\_Committee\\_Findings.pdf](http://www.ocdla.org/pdfs/pay_parity/Pay_Parity_Committee_Findings.pdf)).

<sup>7</sup> Laver, *Improving Representation for Parents in the Child-Welfare System*, American Bar Association Children’s Rights Litigation, <http://apps.americanbar.org/litigation/committees/childrights/content/articles/fall2013-1013-improving-representation-parents-child-welfare-system.html> (October 2013)).

## BUDGET NARRATIVE

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### **How Achieved:**

If this policy package were funded, the Agency would build upon the existing Parent Child Representation Program by expanding to Clackamas and Multnomah Counties. Together, Clackamas and Multnomah county represent 29% of Oregon's foster care population and 24% of the trial level juvenile cases in the state.<sup>8</sup>

This package also includes funding for a program attorney manager. When the program launched, it became clear that the additional training and oversight components required dedicated staff. The PRCP managing attorney will also serve as the agency's Deputy General Counsel, managing quality assurance oversight for juvenile cases across the state, including review of non-routine expense requests and complaints. Additionally, the agency is requesting funding for a position to perform data entry and audit functions.

The Agency would ensure that reduced attorney workload results in high-quality legal representation through regular monitoring and evaluations, required multidisciplinary training, strict adherence to best practices for representation, and use of collaborative decision making.

**Staffing Impact:** This package adds one Deputy General Counsel position and one Office Specialist 1, for a total of 2.0 FTE.

**Revenue Source:** This package would require an additional \$315,144 from general funds.

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<sup>8</sup> Oregon Department of Human Services, *2012 Child Welfare Data Book, point in time data on 9/30/2012*, (<http://www.oregon.gov/dhs/abuse/docs/2012%20Child%20Welfare%20Data%20Book.pdf>). Oregon Public Defense Services 2013 Juvenile Caseload Data.

## BUDGET NARRATIVE

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### **105 Employee Compensation ORS 151.216(1)(e)**

#### **Package Description**

##### **Purpose:**

This package will enable the PDSC to provide quality legal representation through recruitment and retention of attorneys and staff capable of providing quality and cost-efficient appellate representation, as well as contract and financial services. The package provides funding needed to establish salary schedules comparable to salary schedules at the Department of Justice and other state agencies. For over ten years, the PDSC has been attempting to accomplish its statutory mission of adopting “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). All but three employee classifications are 3 to 18 percent below their counterparts in other state agencies. This difference negatively impacts staff morale and the agency’s recruitment and retention efforts.

##### **How Achieved:**

In developing the requested salary structure, the agency used the Department of Justice’s Appellate Division as the comparable agency for the majority of the position, as Department of Justice attorneys appear on the exact same cases from opposing sides. Contract analyst positions were compared with employees in the Judicial Department because comparable positions weren’t part of the Department of Justice structure.

Historically, the agency hires recent law school graduates into the entry-level Deputy I attorney position and devotes significant management-level resources to training during an attorney’s first six months of employment. The training investment shows returns for the agency after twelve months, when the typical entry-level attorney becomes increasingly self-sufficient and productive. After two to three years, the Deputy I attorney has demonstrated sufficient competency to warrant consideration for the Deputy II position. After two to three years in the Deputy II position (or five years with the agency), the attorney is an experienced, competent, and valued contributor to the agency. Unfortunately, this time period coincides with the greatest salary disparity between the agency and the Attorney General’s office, the attorney is experienced and attractive to other firms, and the time loss and fatigue associated with a two-hour daily commute from Portland or Eugene leads many attorneys to consider and seek employment elsewhere. Since 2003, twenty seven attorneys have left the agency, many at the the four-to six-year mark.

## BUDGET NARRATIVE

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The policy package helps address the glaring compensation inequity between state employees on opposite sides of the same cases. It would mitigate the brain drain that occurs around the five-year employment mark, and enables management to direct training resources into case production. Providing parity for lawyer staff while ignoring the disparity that exists in other classifications, particularly those employees in the lowest salary ranges, would decrease employee morale and productivity. This policy package would enable the agency to recruit and retain employees 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:** This package would require an additional \$147,068 from general funds and \$7,801 in other funds.

# BUDGET NARRATIVE

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## 106 Office Space

### Package Description

#### Purpose:

The purpose of this package is to increase the amount of office space available for agency employees, clients, contract providers, and Commission members. There are three primary issues with the current limitations on available office space: first, all available work spaces, including hallways and file rooms, have been filled to capacity; second, the office lacks a client interview room; and third, the building does not have a conference space large enough to safely hold all staff meetings and regularly scheduled meetings of the Public Defense Services Commission, or to host training sessions with trial-level providers.

When the agency acquired its current location, it offered sufficient space for the agency's day-to-day operations. Additionally, the location increased agency efficiency through its proximity to the Court of Appeals and Department of Justice; daily court runs and meetings with system partners and the legislature no longer required staff to drive to the capital mall area, as they had in the past. The office had one room dedicated to client interviews, and each lawyer had an office space. Legal secretaries and staff cubicles were placed as efficiently as possible, with very little space left beyond what was required by fire code regulations.

As the agency has grown, all available spaces have been filled. The client interview room was converted into an office, with two attorneys sharing the space. The office created two additional office-share spaces in standard attorney office spaces, which are a ten-by-ten configuration. The ideal work environment for appellate lawyers is a space that is free of distractions, and the current office-shares, while as functional as possible, do have some negative impact on attorney productivity.

The agency has one small conference room and a very small library space. Both are often dedicated to meetings with work "teams," leaving no space left for client interviews or meetings with external system partners. Additionally, the conference room is not large enough to accommodate all agency staff (75 employees), which limits the ability of management to bring employees together for regular meetings. The conference room is also a very small space for holding meetings of the Public Defense Services Commission, which usually meets in Salem at least five or six times each year (and in other locations an additional three times per year).

## BUDGET NARRATIVE

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Because the agency is responsible for management of the statewide public defense system, the limited space also impairs the agency's ability to host training sessions and other meetings of defender groups. Additional conference space would increase the agency's ability to provide training and oversight of its providers without securing spaces from outside agencies and commercial entities.

**How Achieved:**

The agency will acquire approximately 8,410 square feet of additional space to expand its office, cubicle, conference, and client interview spaces.

**Staffing Impact:** No impact on staffing.

**Revenue Source:** This package would require an additional \$94,105 from general funds.

# BUDGET NARRATIVE

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## **Public Defense Services Commission's Affirmative Action Plan 2015 – 2017 Biennium**

### **Agency Description**

The Public Defense Services Commission (PDSC), an independent body of Oregon's Judicial Branch of government, is a seven-member commission appointed by the Chief Justice of the Oregon Supreme Court that serves as the governing body for Oregon's public defense system. The Commission provides policy direction and oversight for the administration of the system. As required by ORS 151.216(1)(b), the Commission established the Office of Public Defense Services (OPDS) to serve as the administrative agency responsible for carrying out the Commission's directives and other statutorily defined duties. The legal services provided by OPDS represent an essential component of Oregon's public safety system.

PDSC is comprised of an Appellate Division, 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 the trial court judgments in juvenile dependency and termination of parental rights cases; Contract Services, administers the state's public defense contracting; Financial Services administers the payment system. Human Resources and Operations; General Counsel, and Research/IT support services.

### ***Mission***

The mission of OPDS is to establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.

## BUDGET NARRATIVE

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### ***Objectives***

- An agency that is a model for other agencies in its responsiveness to clients, customers and stakeholders;
- An Appellate Division that serves as a vigilant guardian of the legal rights of public defense clients and the public's interest in equal justice and due process of law;
- Contract and Financial Services that provide efficient and effective management of public defense resources statewide;
- A Public Defense Services Commission that strives to be a visionary planner, a responsive and cooperative policy maker, and a responsible steward of taxpayer dollars.

### ***Agency Affirmative Action Policy Statement***

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 and maintain 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 discrimination or 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.

# BUDGET NARRATIVE

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## **Agency Diversity & Inclusion Statement**

PDSC recognizes a diverse workforce is crucial in service to Oregonians. We treat all people with dignity and respect and will not discriminate on the basis of race, color, national origin, religion, gender, age, marital status, sexual orientation, political or religious affiliation, or physical or mental disability.

## **Training, Education, and Development Plan**

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 ethnic diversity and cultural competency. PDSC presents in-house training programs that satisfy these requirements, and also includes all non-attorney employees.

## **Programs**

### **Career Fairs/Community Outreach**

PDSC employees participate annually in career fairs at each of Oregon's three colleges of Law and with the Oregon Bar Association's Diversity & Inclusion program which "serves to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, by educating attorneys about the cultural richness and diversity of the clients they serve, and by removing barriers to justice."

### **Trade-specific Events**

PDSC attorneys regularly participate in the Oregon State Bar's recruitment and retention program, Opportunities for Law in Oregon (OLIO), for law students, who contribute to the bar's historically or currently underrepresented membership; who have experienced economic, social, or other barriers; who have a demonstrated interest in increasing access to justice; or who have personally experienced discrimination or oppression. The OLIO program provides PDSC the opportunity to provide mentoring and career planning skills to student members.

In addition, PDSC attorneys work closely with the three Oregon law schools, Lewis & Clark Law School, Willamette University College of Law and University of Oregon School of Law, to provide mentoring and career planning assistance to law school students.

## BUDGET NARRATIVE

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### ***Roles for Implementation of Affirmative Action Plan***

The person responsible for discharging this policy is PDSC's Executive Director, Nancy Cozine.

The Chief Defender of PDSC's Appellate Division and the Human Resources Manager 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 in 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.

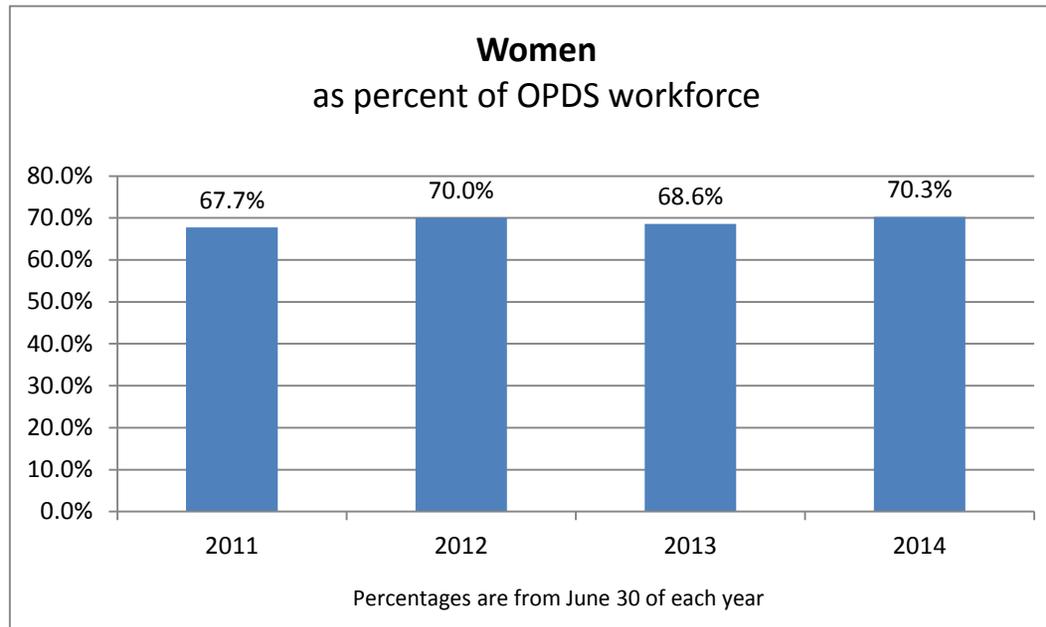
# BUDGET NARRATIVE

## ***Accomplishments***

With a total workforce of 75 employees, PDSC employs 53 women and seven people of color.

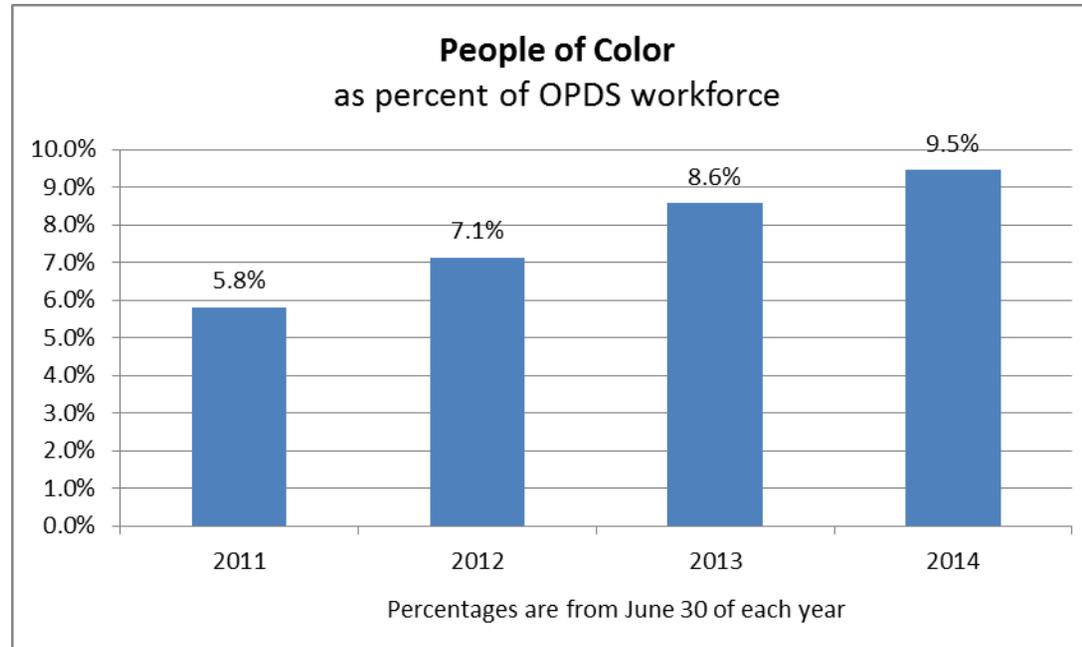
PDSC has four job groups: official/administrator, professional, paraprofessional, and administrative staff. The official/administrator group has five positions, four of which are filled by women, one by a person of color. The professional group has 47 positions, 29 of which are filled by women and four of which are filled by people of color. The paraprofessional group has three positions, two of which are filled by women. There are 19 positions within the administrative staff group, 17 of which are filled by women and two of which by people of color.

The agency meets (or is within a fraction of a position) or exceeds goals for women and people of color. The agency does not have data on the goal for disabled persons, since disclosure is voluntary for employees.



## BUDGET NARRATIVE

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### July 1, 2012 – June 30, 2014

- Hired Figure 8 Consulting to deliver diversity and inclusion training to all staff on May 30, 2014. This program Perception and Prejudice: Understanding the Attitudes, Stereotypes and Hidden Biases that Influence Judgment and Action satisfied the CLE requirements of the Oregon State Bar for attorney staff and was also presented to all non-attorney employees.
- Attended and made presentations regarding employment in public defense at job fairs and recruitment events at Oregon law schools and at national and regional events sponsored by minority law student groups and others.

## BUDGET NARRATIVE

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- Continued to develop working relationships with criminal law faculty, career counselors, and placement offices in Oregon's three law schools to identify and recruit law students of color, with disabilities, veterans and women who might be interested in internships and attorney positions in the state's public defense system.
- Continued to participate in job fairs and recruitment programs throughout the Pacific Northwest for law students and attorneys of color, with disabilities, veterans and women who are interested in careers in public service and public defense.
- The agency's goals and strategies for diversity in sourcing, recruiting, hiring and retention practices, as well as the agency's ability to attract and retain a diverse workforce were improved with the hire of a Human Resources Manager in late 2013.
- Use of [www.Oregonjobs.gov](http://www.Oregonjobs.gov) and the Oregon Employment Department's iMatch system for all agency external recruitments. These systems provide a wider range of outreach and sourcing of job candidates with the benefit of statistical recruitment data to better identify areas of disproportionate representation in recruitment and hiring.
- Continued to 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.
- Prepared and presented an elimination of bias training to OPDS attorneys and staff.
- Developed and held a Leadership Workshop to PDSC managers which focused on the lifecycle of the workforce: workforce planning, recruitment, onboarding, performance management, employee development and employee transitions.

## BUDGET NARRATIVE

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### ***Goals and Strategies***

#### **July 1, 2015 – June 30, 2017**

- 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 PDSD has included in its 2015-2017 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.
- Expand outreach for employment opportunities to members of protected classes not represented in PDSC's current workforce.
- Assess minority group staffing on an ongoing basis to ensure PDSC is making progress toward meeting these objectives.
- Refine recruitment strategies and hiring practices to facilitate the placement and promotion of minority group personnel for both internal and external recruitments.
- Actively participate on trade and state-wide affirmative action committees, organizations and activities to promote PDSC's Affirmative Action Plan.
- Continue to distribute job announcements to all PDSC diversity partners to ensure that a diverse workforce is encouraged to apply for our job openings.
- Continue to provide outreach to people of color, people with disabilities, veterans and women through job fairs, career centers and college visits.
- Support a welcoming environment that is attractive to a diverse pool of applicants and our current employees and is inclusive, accepting and respectful of others differences and recognizes the value of each individual's unique contributions.

## BUDGET NARRATIVE

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- PDSC will survey its contractors to obtain reliable data about workforce composition and establish appropriate goals 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.

## BUDGET NARRATIVE

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### ***Appendix A – PDSC Policy Documentation***

### ***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.

## BUDGET NARRATIVE

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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,<sup>9</sup> 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.

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<sup>9</sup> 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.

## BUDGET NARRATIVE

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- 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.
- 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.

## BUDGET NARRATIVE

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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.

# Attachment 5

Public Defense Contracts (Parent Child Representation Program Case Manager) Recommended  
for Approval by the Public Defense Services Commission at Its  
September 18, 2014 Meeting

COUNTY	PROPOSED CONTRACTOR	CASE TYPE	SERVICE PROVIDED	VALUE	EXPIRATION DATE
Linn and/or Yamhill	to be determined	juvenile	case management	\$277,200	12.31.2017
Linn and/or Yamhill	to be determined	juvenile	case management	\$277,200	12.31.2017
Linn and/or Yamhill	to be determined	juvenile	case management	\$277,200	12.31.2017
Linn and/or Yamhill	Brandon Social Work	juvenile	case management	\$281,400	12.31.2017
<b>TOTAL</b>				<b>\$1,113,000</b>	

# Attachment 6

# **Public Defense Services Commission**

## **Strategic Plan 2013 – 2015**

**September 2014**

### **Background**

The Public Defense Services Commission's strategic plan for the 2013-2015 biennium reflects the Commission's statutory responsibilities, and its vision, mission, values, policies, and standards.

### **Vision**

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

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

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

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

### **Mission**

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

## Values & Policies

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

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

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

### **Organization and Decision Making**

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

OPDS is comprised of several work units:

- (1) Executive Services provides support to the entire office and includes human resources, information technology, operations, and general counsel;
- (2) Contract Services administers the state's public defense contracting;
- (3) Financial Services manages agency funds and processes all payments and reimbursements; and
- (4) the Appellate Division (AD), provides (a) appellate legal services to financially eligible individuals on direct criminal appeal and parole and post prison supervision appeals, DNA appeals, victim's rights appeals, and mandamus support (b) appellate legal services in juvenile dependency and termination of parental rights appeals, and (c) training and support to public defense attorneys at the trial level in criminal and juvenile matters.

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

- establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the state and federal constitutions and state and national standards of justice;
- establish OPDS and appoint its Executive Director;
- review and approve the Executive Director's budget proposals, and submit the final budget proposal to the Legislature;

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

PDSC has delegated to the Executive Director its authority to execute public defense services contracts that it has reviewed and approved.

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

ORS 151.216 directs PDSC **not** to:

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

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

### **Standards of Service**

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

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

All of OPDS's employees will:

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

### **Accomplishments**

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

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

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

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

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

Peer reviews of 48 providers who handle a majority of public defense services across the state.

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

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

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

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

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

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

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

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

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

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

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

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

Reduction of the Appellate Division's median number of days to filing of the opening brief, from 330 days to 227 days.

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

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

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

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

Quarterly meetings of the Public Defense Advisory Group, experienced contract administrators who volunteer their time to offer guidance on general public defense matters and contribute to oversight of the peer review process.

Eight separate meetings with contract providers in all regions of the state to gather perspectives on the benefits and challenges of providing public defense services and suggestions for improving representation across the state.

Review of all lawyers providing representation in capital cases, and a complete revision of the lawyer certification process to require a full explanation of qualifications as well as writing samples, continuing legal education attendance report, and letters of reference.

Launch of the Parent Child Representation Program, a pilot program implemented in Yamhill and Linn counties, which specifically targets improved representation in juvenile cases. Modeled after a very successful Washington state program that reduced time

children spent in foster care and reduced the time required to achieve permanency, the PCRCP ensures that lawyers have reduced caseloads, the assistance of social workers, and additional training.

## **2013-2015 Goals and Strategies**

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

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

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

Adequate funding for the public defense system is also a critical component of the public safety system. In the 2001-2003 biennium, the Public Defense Services Account was reduced by \$27.6 million (17%) over the course of several special sessions. Though \$5 million was restored, the cuts were so late in the

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

biennium that Oregon's public defense system was drastically underfunded, and the state was unable to appoint attorneys during the last four months of the biennium. Cases had to be dismissed or deferred to the following biennium, and the entire public safety system suffered. Crime rates increased and repeat property offenders could not be held. Fox Butterfield reported in the June 7, 2003, edition of the *New York Times* that "[b]ecause [there is] little money for public defenders, Mark Kroeker, the Portland police chief, said officers were now giving a new version of the Miranda warning when they arrested a suspect in a nonviolent crime. They effectively have to say, 'If you can't afford a lawyer, you will be set free. Enjoy.' Chief Kroeker said. Noting a significant increase in shoplifts, car break ins, and other crimes, Kroeker said, 'The scary thing is that the worst results are still six months down the road, as the bad guys realize nothing is going to happen to them....'"

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

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

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

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

*Strategy 5: Continue to focus on quality improvements within juvenile dependency and delinquency representation.*

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

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

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

*Strategy 9: Encourage the adoption of best practices for public defense contract providers as identified by the Quality Assurance Task Force, including the regular evaluation of attorneys, a plan for recruiting new attorneys, and a system for training and mentoring new attorneys and experienced attorneys found to be in need of such training or mentoring.*

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

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

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

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

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

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

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

*Strategy 4: Continue to encourage the creation and existence of boards of directors or advisory boards for public defenders and consortia that include*

*outside members in order to (a) broaden the support and understanding of public defense in local communities, (b) strengthen the management of contractors, (c) ensure that adequate quality assurance and monitoring systems are in place, (d) facilitate communication with PDSC and OPDS, and (e) increase the number of advocates for adequate state funding for public defense.*

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

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

**Challenges Addressed by Achieving this Goal:** OPDS manages approximately 96 contracts within Oregon's 27 judicial districts. In order for the public defense system to operate smoothly, OPDS must be able to execute contracts and reimburse providers through a predictable, reliable, systematic, and efficient process.

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

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

*Strategy 3: Ensure that PDSC and OPDS adhere to strategic plan goals and objectives.*