

**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, December 12, 2013  
10:00 a.m. – 2:00 p.m.  
Office of Public Defense Services  
1175 Court St. NE  
Salem, Oregon 97301

**MEETING AGENDA**

- |   |                                      |
|---|--------------------------------------|
| 1. PDSC and OPDS Meet & Greet   | All                                  |
| 2. <b>Action Item:</b> Approval of minutes - PDSC meeting held on October 25, 2013 ( <i>Attachment 1</i> )                          | Chair Ellis                          |
| 3. Update: Regional Meetings with Contract Providers  | Nancy Cozine                         |
| 4. Review and Discussion of Contractor Comments Regarding Goals and Challenges for Public Defense Providers ( <i>Attachment 2</i> ) | Caroline Meyer<br>Commission Members |
| 5. Contractor Concerns – Avoiding Antitrust Violations; Use of Contract Funds for Lobby efforts ( <i>Attachment 3</i> )             | Paul Levy                            |
| 6. Compensation Plan and Budget Update  | Nancy Cozine<br>Angelique Bowers     |
| 7. <b>Action Item:</b> Approval of Hourly Rate Increase ( <i>Attachment 4</i> )   | Angelique Bowers                     |
| 8. Commission Feedback Regarding 2014 Contracting Process   | Caroline Meyer                       |
| 9. Discussion of PDSC Key Performance Measures ( <i>Attachment 5</i> )  | Nancy Cozine                         |
| 10. National Juvenile Defender Center Annual Leadership Summit ( <i>Attachment 6</i> )  | Paul Levy                            |
| 11. OPDS Monthly Report   | OPDS Staff                           |

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

**Next meeting: January 16, 2013, 10:00 a.m. – 2:00 p.m. at the Office of Public Defense Services. Meeting dates, times, and locations are subject to change; future meetings dates are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>**

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Friday, October 25, 2013  
1:00 p.m. – 4:00 p.m.  
Salishan Lodge  
7760 Highway 101 North  
Glenden Beach, Oregon 97388

MEMBERS PRESENT: Barnes Ellis  
Chip Lazenby  
John Potter  
Per Ramfjord (by phone)  
Hon. Elizabeth Welch (by phone)

STAFF PRESENT: Nancy Cozine  
Peter Gartlan  
Paul Levy  
Amy Jackson  
Caroline Meyer  
Billy Strehlow

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The meeting was called to order at 1:00 p.m.

**Agenda Item No. 1 Approval of minutes – PDSC meeting held on September 24, 2013**

Chair Ellis requested correction of three typographical errors in the September minutes.

**MOTION:** Commissioner Lazenby moved to approve as amended; Commissioner Potter seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Chair Ellis took a moment to recognize the recent loss of Ross Shepard, a wonderful person and an ardent advocate for public defense. He remarked upon Ross's critical role in the creation of Oregon's current public defense model, described Ross's sustained, profound, and personal commitment to his work, and noted that in addition to a great sense of personal loss, there is also a sense of institutional loss.

**Agenda Item No. 2 Contractor Reports on Management Conference Sessions and Budget Building for 2015-17**

Nancy Cozine began by providing background information about the OCDLA Public Defense Management conference, which ended that morning with three separate facilitated sessions: one for consortia, one for public defenders, and one for law firms. She indicated that each

group had a professional facilitator as they discussed their goals and what is needed to achieve them, and a scribe, each of whom is prepared to report to the Commission regarding their group discussion. Ms. Cozine explained that OPDS would continue exploring provider needs by convening regional meetings in order to define different needs within different regions of the state.

Chair Ellis invited Tom Crabtree (public defender scribe), Jim Arneson (law firm scribe), and Jennifer Nash (consortia scribe) to present information about the work of each group.

Mr. Crabtree began by explaining that each group was asked to consider five challenges for public defense providers as a starting point for the process:

- Providing zealous and effective client centered representation
- Effective quality assurance practices including recruitment, training, mentoring, supervision, performance reviews, and procedures for corrective actions
- Case assignment protocols that match seriousness of case types
- Information systems that support effective management and provider work and to assist with documenting and evaluating case outcomes
- System and community engagement that furthers understanding and appreciation of public defense providers and assists policy makers with substantive and budgetary decisions that support public defense providers and the work that they do

Mr. Crabtree shared that the public defender group thought the most important goal for the next five years would be to develop a normalized set of workload standards that would apply to all provider types, as workload standards promote global system efficiencies, and to identify and recruit new champions for public defense in the legislature. Public defenders suggest restructuring contracts to ensure office stability during fluctuating caseloads, as when payments are reduced by 10 cases, there is no correlating cost savings in the office. The public defender group also indicated that they need equal access to eCourt data, assistance in preparing for eCourt implementation, help developing mobile computing capability in jails, courts, and DHS settings, and assistance with improved collection and retention of data. Public defender offices also need digital storage of files in a searchable format, optimized case management systems, and mandatory technology training for attorneys and staff. Quality assurance practices require mentoring and co-counseling programs for all young attorneys, recommended ratios of attorneys to investigators and support staff, and a flexible workload cap. Finally, public defender directors felt that it would be very helpful to establish regular Oregon public defender meetings, with support from the Commission and OCDLA, to attempt to address management training issues unique to public defenders, including performance appraisals with meaningful data for objective measurements, systemized regular reviews, and use of a client satisfaction survey system.

Chair Ellis welcomed Jim Arneson, who spoke on behalf of private law firms. Mr. Arneson began by explaining that this group covered only three topics because they had too few people to cover all five, and that because private law firms are small, the types of support needed are extensive. In order to improve client centered representation, law firms would like assistance with recruitment or advancement of lawyers in smaller communities and smaller firms, including financial incentives for attorneys in smaller or rural areas, with a bonus if they stay long enough to become an experienced resource in that community. He suggested that it would help to have OPDS pay for PLF dues, continuing legal education courses, etc. Mr. Arneson also said some new small firm attorneys have difficulty gaining the experience necessary to meet OPDS minimum qualification standards, and suggested development of an exchange program or buddy firms to help small firm lawyers get the experience they need. Some also suggested the possibility of relaxing the qualification standards so attorneys can get qualified through alternative experiences, or providing incentives (perhaps CLE credit) for experienced attorneys who volunteer to mentor newer attorneys. Law firms would also like to see expanded provider lists in border counties. Mr. Arneson went on to explain that lawyers providing public defense services would appreciate it if OPDS could negotiate a more

uniform method of accessing jails and correctional facilities, as each firm spends significant time getting approval to visit the various state and local institutions. Small firms would like more training on managing problem clients, clients with or without mental health problems, and crisis management. They would also like easy access to the appellate division's outlines and case briefs in order to familiarize themselves with recent case law. Finally, they would like OPDS to explore the possibility of bargaining for bulk IT functions, such as Westlaw and LexusNexus, Microsoft or other software, case management software, especially eCourt data if that could be pushed into a case management system. Mr. Arneson ended by requesting that OPDS issue an RFP to secure a regional or county dedicated training program to provide standardized training to all providers and staff.

Chair Ellis asked Jennifer Nash to share the thoughts of the consortia group. Ms. Nash explained that their ideas were more unique to consortia. First, they would like to form a workgroup to share information and gather and analyze data to improve performance and quality of representation statewide. Second, they would like OPDS assistance with the efficient gathering and analysis of data in this effort. Consortia members also want to ensure that the Commission consistently hears from consortia administrators, noting that many among their group do not often attend Commission meetings. Consortia groups would like to engage in outreach to educate the bench, the bar, and the legislature about the advantages of the consortia model, especially in juvenile dependency cases, as consortia attorneys have experience in other areas of the law that can be helpful in the juvenile practice area, there are reduced conflicts with the consortium model, and it offers a decentralized delivery system. Consortia would like to see a formal mentorship program and experienced-based compensation, and financial assistance with PLF, bar dues, CLEs, etc. Finally, consortia groups wish to improve recruitment and retention of qualified attorneys by advocating for funding of loan forgiveness programs for private attorneys who provide public defense as a portion of their workload. She went on to explain that attorneys who are interested in joining consortia practices are declining because they can get loan assistance if they stay with a district attorney office. Mr. Arneson indicated that the law firm group also identified this as a significant issue. Mr. Crabtree added that loan forgiveness programs are providing only minimal relief to public defender lawyers, that one of his lawyers received assistance for only one year, and that under the federal program, people have to wait 10 years for relief, so while it might be helpful in the future, it remains somewhat difficult for public defenders to access right now.

Chair Ellis asked Ms. Nash whether their group identified relevant, collectable, and meaningful data points. Ms. Nash explained that consortia groups wish to demonstrate their work and compensation comparisons in a manner similar to what public defender groups were able to demonstrate to the legislature during the last session. She acknowledged that providers must track the same data points in order to make meaningful comparisons.

Commissioner Potter noted that both Mr. Arneson and Ms. Nash mentioned needing assistance with PLF and Bar dues, and CLE expenses, and asked whether that should be a line item in the contract, or something else. Ms. Nash indicated that it could be in any form, and that for very new lawyers, acquiring CLE credit can be very expensive, and that realistically, it has to be funded by other members of the consortium unless there is external funding available, and that this is a barrier to getting new lawyers into the practice.

Chair Ellis commented on the fact that though the three groups were identified as PD, private, and consortia, 90% of the needs were common among all three groups; a good sign for these groups working together. He encouraged providers to think about information sharing and communication rather than subsidies as a way of drawing attorneys to rural areas. Mr. Arneson indicated that while the recession helped get lawyers to rural areas, many lawyers have ties to Eugene and Portland, and are reluctant to move without more incentive. Mr. Crabtree added that public defender groups around the state could help others by providing

experienced attorneys to co-counsel a case in order to get private and consortia lawyers qualified, and that he was certain other public defenders would feel similarly.

Chair Ellis supported the notion of collective purchasing for public defense providers. Mr. Crabtree noted that as a 501(c)(3) non-profit organization, they qualify for TechSoup, which has a good rate for non-profits, and that in the past, the Commission suggested that if the governing agency of a consortia is a non-profit, they could qualify for those savings. Chair Ellis commented on the fact that over the last several years, the Commission has been hearing that consortium providers more frequently have a 90-100% public defense practice, and asked Ms. Nash whether the notion that consortium groups bring a more diverse practice experience is somewhat outdated. Ms. Nash answered that in her group, a “full share” is .5 FTE, though the workload is sometimes 100% depending on the week, but she understands that many consortia are mostly public defense work. Commissioner Lazenby noted the benefit of the consortia model in terms of managing conflicts, but asked that the consortia workgroup spend some time explaining to the Commission other benefits of consortia representation, as that is necessary in order to get additional funding for consortia compensation. Ms. Nash said she understood that more information would be needed in the future, but expressed frustration over the partial funding of a policy option package for public defender groups, and not consortia groups. Commissioner Lazenby explained that it was a rare opportunity, and one that has not been seen before. Mr. Arneson explained that the private firm groups talked about the difficulty of trying to gather and prepare compensation information because private law firm books aren’t open, and it is very difficult to create the same type of compelling argument, with a wonderful piece of persuasive material in one page. They are always mindful of avoiding possible perceived antitrust violations by working too hard to coordinate the amounts paid or sharing too much information.

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

#### **Staff Recommendation to Approve Statewide Contracts**

Commissioner Lazenby announced his actual conflict of interest regarding the Multnomah Defenders contract, and noted that he would not deliberate or vote on that contract. Caroline Meyer, OPDS Contracts Manager, directed Commission members to statewide contract information in attachment 2 of the materials. She noted that Paul Levy and Billy Strehlow would be addressing capital contracts after discussion of statewide contracts. Ms. Meyer reminded Commission members of earlier executive sessions at which they reviewed contract proposals, explained the rate increase offered to most providers. She noted that the process was very collaborative, and analysts negotiated their contracts in a timely fashion. Ms. Cozine added that Steve Bender, PDSC’s assigned Legislative Fiscal Office analyst, was in the room and is aware of the impact of the 2% holdback on contract amounts. She also noted that the contracts as currently structured eliminate the two-third, one-third payment. Chair Ellis offered his appreciation for the amount of information provided to the Commission during the contracting process. Commissioner Potter asked whether the total contract amount could be compared to the total requested from contract providers. Ms. Meyer explained that the information is not collected in this way, and that it would be difficult based on the way contract proposals are structured, but such an approach could be examined in future years. Ms. Cozine added that she would be working with Mr. Bender to determine whether the budget building methodology could be structured to better represent provider needs in the next biennium.

Mr. Levy provided a summary of the process used for review of death penalty contract proposals, explaining that the RFP for death penalty contracts required attorneys to use a new certificate of attorney qualification form, and that it yielded very meaningful information. He noted that as a consequence, there is a high degree of confidence in the quality of the recommended group. Mr. Strehlow reviewed the recommended plan for capital contract providers.

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

#### **Public Comment on Staff Recommended Statewide Contracts**

Chair Ellis invited contract providers to comment upon the recommended statewide contracting plan. Mark McKechnie, Executive Director for Youths, Rights & Justice, shared with the Commission that his contract proposal included a 24% increase over their current contract, which he calculated as necessary for providing representation as required by the ABA Standards, including sufficient funding for reasonable investigation and paralegal support, and necessary upgrades of their IT systems. Mr. McKechnie explained that, with the policy option package funding, the contract proposed for YRJ included only a 5.8% increase.

Chair Ellis invited Bruce Liebowitz and Jon Martz forward. Mr. Liebowitz began by explaining that recruitment has become very difficult, and that many Portland Defense Consortium lawyers are in fact providing 95 to 100% public defense work. Mr. Martz explained that during the OCDLA Management Conference, he developed an understanding of what happened during the last legislative session, and that he wants to help provide information to improve funding for consortia groups during the next contracting cycle. He expressed an appreciation for PDSC staff and their responsiveness to contractor business needs, but also encouraged the Commission to consider what contract providers need as a starting point for funding. He declared his commitment to having a presence at Commission meetings, and to providing the information necessary to ensure that their needs are well understood by Commission members and the Legislature.

**Agenda Item No. 5      Approval of Contracts**

**MOTION:** Commissioner Potter moved to approve the contracts; Commissioner Ramfjord seconded the motion.

Chair Ellis requested a vote on all contracts other than Multnomah Defenders, Inc.; hearing no objection, the motion carried: **VOTE 5-0.**

Chair Ellis requested a vote on the Multnomah Defenders, Inc. contract. Commissioner Lazenby did not participate. Hearing no objection, the motion carried: **VOTE 4-0.**

**Agenda Item No. 6      Approval of OPDS Organizational Structure**

Nancy Cozine provided background information about the new OPDS organizational structure and answered Commission member questions about how this version compared to the version that was circulated in September. Ms. Cozine explained that the September version included position titles, and that this version includes work unit titles.

**MOTION:** Commissioner Potter moved to approve the revised structure of OPDS; Commissioner Lazenby seconded the motion. Commissioner Ramfjord requested amendment of the motion to allow the executive director discretion to modify as she and staff deem appropriate. Commissioner Potter offered a second to the motion to amend; hearing no objection, the motion carried: **VOTE 5-0.** Commissioner Ellis asked for a vote on the amended motion; hearing no objection, the motion carried: **VOTE 5-0.**

**Agenda Item No. 7      Approval of PDSC Biennial Report to the Legislature**

Chair Ellis requested that the concluding paragraph of the biennial report include the new OPDS organizational structure, and that footnotes 1-3 be deleted. Ms. Cozine indicated that those changes would be made, and that she would also correct a few typographical errors, and make some additions to the Appellate Division section. Commissioner Potter also requested correction of one additional typographical error.

**MOTION:** Commissioner Lazenby moved to approve the biennial report; Commissioner Potter seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

## **Agenda Item No. 8**

### **PDSC Schedule for 2014**

Chair Ellis requested that the 2014 schedule include an update on the *Padilla* project, and that the 2014 Commission meeting schedule include more opportunity to discuss the agency request budget and policy option packages than in past years. Ms. Cozine reviewed the budget development plan as currently drafted:

- December – March: OPDS will host regional meetings as a follow-up to the provider breakout sessions at OCDLA Management Conference, and will use the information collected to start development of a “Regional Stabilization” policy option package.
- April: Present the Regional Stabilization policy option package to the Commission.
- May: Present full agency request budget to the Commission.
- June: Request final PDSC approval of agency request budget.

Ms. Cozine explained that by including Commission approval in June, there will be an opportunity to get provider feedback on the complete budget package, and time to make changes if necessary before the budget is due to the Legislature.

Commissioner Lazenby expressed support for the regional stabilization approach, and also commented on concerns he was hearing from providers about excessive discovery fees. Ms. Cozine explained that discovery rates are generally set by County Commissions, and that providers bill OPDS rather than paying those costs themselves. Commissioner Lazenby suggested that this area should be explored further to ensure that the Commission is doing whatever it can to avoid unnecessary costs for the state.

Commissioner Potter suggested moving the October date to coincide with the OCDLA Management Conference and that the December 2014 date be changed to December 11. Ms. Cozine indicated that those changes would be made. Commissioner Potter also indicated that he would be away on January 16<sup>th</sup>, which Ms. Cozine had identified as a possible retreat day. Ms. Cozine said that she would circulate other possible retreat dates by email.

## **Agenda Item No. 9**

### **OPDS Monthly Report**

Ms. Cozine provided an update regarding recruitment and hiring at OPDS, informed the Commission that non-attorney managers attended a free two-day management training, and mentioned plans for a similar training for all OPDS managers. She expressed appreciation for the work of Cynthia Gregory, the agency’s new human resources manager, and all OPDS staff. Ms. Cozine also shared information about the October meeting of the NLADA Research and Data Advisory Committee.

Ms. Cozine noted that agency email lists are being updated to include all providers in circulated copies of Commission meeting materials, and that she is increasing email communication with contract providers. Commissioner Potter asked that Commission members receive copies of emails sent to providers.

Mr. Gartlan started his Appellate Division update with the news that Susan Drake, a senior deputy defender, is leaving at the end of November. He noted that she is a very good attorney and an even better person, and that she will be missed. Mr. Gartlan emphasized that senior deputies, who serve as team leaders, are a critical component of the AD structure. Team leaders were sent to the Brian Garner CLE in Portland last week, and will use the skills they learned to help develop attorneys in the office. Mr. Gartlan also shared that Erin Synder, who had been with the Appellate Division for a year, had been Chief Judge Haselton’s clerk before that, and spent the last year serving in the career services office at Lewis & Clark, will be

returning to OPDS. Mr. Gartlan also provided a summary of his research on the length of time to filing opening briefs in other jurisdictions, and indicated that while it is clear that Oregon is not an outlier, he will continue to explore other states and options for OPDS.

Ms. Meyer shared that Contract Services and Financial Services have both had employees on leave, which has created a high work load for staff, but that everyone handled it well, and contractors were very understanding and patient. Chair Ellis expressed confidence in the work of OPDS staff.

Chair Ellis invited Mr. Bender to provide an update. He touched on the February session and upcoming meetings with the Ways & Means Committee co-chairs regarding the 2% hold back that was applied across the board to all state agencies. He noted that while there is no specific direction yet, the state is facing a \$40 million dollar bill to pay for fire suppression costs from the current fire system, which is more than had been anticipated, which will likely have an effect on the state's ability to restore the 2% reduction.

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

**Meeting adjourned**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Friday, October 25, 2013  
1:00 p.m. – 4:00 p.m.  
Salishan Lodge  
7760 Highway 101 North  
Glenden Beach, Oregon 97388

MEMBERS PRESENT: Barnes Ellis  
Chip Lazenby  
John Potter  
Per Ramfjord (by phone)  
Hon. Elizabeth Welch (by phone)

STAFF PRESENT: Nancy Cozine  
Peter Gartlan  
Paul Levy  
Amy Jackson  
Caroline Meyer  
Billy Strehlow

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

**Agenda Item No. 1 Approval of minutes – PDSC meeting held on September 24, 2013**

0:11 Chair Ellis So, Nancy, okay?

0:25 N. Cozine Chair Ellis, maybe it would be appropriate for me to give a quick summary on agenda item no. 2, of what has happened the last two days.

0:43 Chair Ellis Okay. I will call the meeting to order. Thank you all for coming. We have two commissioners on the phone. That is Per Ramfjord and Judge Welch. Three commissioners are here so we have a quorum. The first item is approval of the minutes for September 24, 2013. I did find a few typos. On page two, the second full paragraph, about six lines from the bottom the word “of” seems to be unnecessary. On the last line before agenda item no. 3, it should be “national” standards not “nation” standards. Then on page 3, I believe the name of that case is “adoptive couple” not “adopted couple.” Other than those I had no others. Is there anyone else with additions or corrections? Is there a motion to approve?

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

2:11 Chair Ellis Before we get to our agenda, I do want these minutes and this meeting to reflect that we have lost a great friend to public defense and that is Ross Shepard. Ross, as I think most of you know, was vice chair of the Study Commission that created this Commission. He was more than just a vice chair, he was a moving force behind the whole concept of creation of this Commission. He had a passion for defense that to my experience I have never encountered the equal. It was just short verse. It was a very sustained, profound, personal commitment. Even in the more recent years when he wasn't serving on the Commission, he gave great service to the Commission. I can think of several instances where we would call upon Ross as a senior statesman in the field to help us get through difficult issues. So there is a great sense of personal loss, but there is a great sense of institutional loss and I just want the minutes to reflect that Ross was a wonderful person and a really important person in the work that we are doing. Nancy, do you want to make some comments about the management conference.

**Agenda Item No. 2 Contractor Reports on Management Conference Sessions and Budget Building for 2015-17**

4:01 N. Cozine I do. Thank you, Chair Ellis. Item No. 2 on your agenda is titled "Contractor Reports on Management Conference Sessions and Budget Building for 2015-17." I wanted to provide the background that at this year's management conference, the conference ended with three separate facilitated sessions: One for consortia, one for public defender groups, and one for law firm groups. Each of those groups worked with a facilitator, and as they worked through their discussion of what their goals were, to help refine our knowledge about where we have gaps in our system, there was a scribe for each group, and each of those scribes is a representative for their group. They are prepared to report to this Commission so that you have an idea of what the needs are in these three different provider types. What we would like to do with this information as we continue to roll forward is actually convene in regional groups to further define what the needs are within each region. For today we would like you to hear some information about what OCDLA put together for us within these provider groups. Commissioner Potter might have further comments.

5:31 J. Potter I think she has touched on exactly what took place.

5:37 Chair Ellis Alright. I am not sure who the scribes are.

5:38 J. Potter We have Tom Crabtree, Jim Arneson and Jennifer Nash.

5:52 Chair Ellis Alright. Tom, Jim, and Jennifer come on up.

6:05 J. Potter So Tom is representing the public defender work group.

6:12 Chair Ellis I think I can figure out who is representing whom. I would you like to organize yourselves? Do you have a batting order in mind?

6:20 T. Crabtree I don't. Jim has the nice penmanship on the large charts. I have mine reduced to one page, as well as not so well written large charts if you wanted to see them.

6:36 Chair Ellis And Jennifer has the Power Point.

6:48 T. Crabtree It would be rather petty, Mr. Arneson, and I know you are above that. Each of us had five different categories in which we were to give our thoughts as to how we would like to order things for the next decade where we like to see improvements. The first of these areas was providing zealous and effective client centered representation. The second was effective quality assurance practices including recruitment, training, mentoring, supervision, performance reviews, and procedures for corrective actions. The third area was case assignment protocols that match seriousness of case types. The fourth was information

systems that support effective management and provider work and to assist with documenting and evaluating case outcomes. The last was system and community engagement that furthers understanding and appreciation of public defense providers and assists policy makers with substantive and budgetary decisions that support public defense providers and the work that they/we do. So with each of these I don't know if it would be more effective to break down by these headings and hear from each of the three groups under those, or just hear from one of us as to all 20 or 25 things that we have on our lists.

- 8:33 J. Nash Well it wouldn't work to break them down by category because as is our reputation the consortium group kind of did their own thing. So we understood that these were suggestions of how we could frame our discussion, but we actually framed our discussions differently and have five goals or needs that our not necessarily right straight in line with the suggestions.
- 9:03 Chair Ellis How do you want to do it?
- 9:03 J. Arneson Well we followed directions.
- 9:11 J. Nash Suggestions.
- 9:11 Chair Ellis Tom, why don't you go ahead and summarize from the PD point of view, but maybe not 30 minutes worth.
- 9:20 T. Crabtree Sure. In starting with the last area first. We developed standards and we thought the most important goals for the next five years would be develop a normalized set of workload standards that would apply across the board. Not just us, but we have even included private law firms and consortia in that. We have demonstrated how these workload standards promote global system efficiencies. That is something that can carry the day in the legislature a bit. We wanted to identify and recruit new champions for public defense in the legislature. We would like to see the contracts restructured to ensure office stability in order to withstand fluctuating caseloads. An understand that reducing your quota by 10 cases doesn't mean a decrease in dollars spent, basically. Finally, in that area, getting an equal access to data as we move towards eCourts across the state. As far the information systems, people felt that the most important areas to concentrate on were mobile computing and the challenges that that presents in various arenas, jails, courts, in DHS settings. Getting ready for the transition to eCourt. Problems with the digital storage of files going forward and backward in a searchable format. Optimizing case management systems and mandatory technology training for attorneys and staff. As far the case quality assurance practices, the concerns were establishing a mentoring and co-counseling program for all young attorneys. Increasing the effectiveness of supervisory staff. Supporting staff. Retaining and collecting data. Training and keeping in mind the differences between rural and urban offices. Establishing what resource minimums there should be for a number of investigators and number of support staff and having a flexible workload cap for offices. Finally, the one assigned to case management protocols thought it would be effective to establish an organization, informal or meeting, of the public defender directors in Oregon and getting support from this Commission and OCDLA to attempt to address unique PD issues on management training. Interestingly that is something that we had 32 years ago when I started when Jim Hennings and Bob Larson and Bruce Towers, Dave Lillig, and other names from the past that we had such a thing until Bill Linden decided that wasn't a good idea and instituted procedures in the contracting negotiating process to make sure that that didn't occur. We also thought as a group that we needed to work on performance appraisals. Get meaningful data for objective measurements of attorney performance and promote and systemize regular reviews. One thing which will provide a great transition to Mr. Arneson is one of his pet projects is institute and use a client satisfaction survey system.
- 14:30 Chair Ellis That has been your mantra for quite awhile.

14:30 J. Arneson I don't even have to say it anymore.

14:30 Chair Ellis That is it. Shall we get the other two and then open it up?

14:39 J. Arneson Chair Ellis and members of the Commission. I am Jim Arneson from Roseburg. Private law firms were the groups that I was working with. I think the focus of all of the topics, we covered only three topics because we don't have enough people for all five, I think was dealing with the fact that most of the private law firms are pretty small so the types of support that the small firms require are extensive. For example, in the client centered representation category. One of the goals or issues is the recruitment or advancement of lawyers in smaller communities and smaller firms. One suggestion is financial incentives for attorneys that are going to smaller or rural areas and then perhaps giving a bonus if they actually stay there for a period time long enough to get experience and to be a resource in that community. Possibly OPDS paying for PLF dues, CLE, those sorts of things, to make it easier for folks in smaller communities or more rural communities.

16:18 J. Potter I missed the first.

16:19 J. Arneson PLF dues and CLEs. Then to deal with one of the issues Tom was talking about the difficulty of getting attorneys qualified. When you are from a small law firm it is pretty challenging. So developing an exchange program or buddy firms to get attorneys qualified and budded up with somebody else in another law firm to get qualified for the particular positions that they need to get qualified for, major felonies, and that sort of thing. A list of firms and their qualified attorneys could be provided by OPDS to all of the law firms so that they could see if they were close to a law firm that had those folks with whom they could co-counsel to get qualified. There was also discussion about relaxing the qualification standards in some cases so attorneys can get qualified in different ways than the ways that are now specified. I wasn't in that particular work group so I don't have any examples of ways in which they could be. They tend to be reasonably flexible now and allow for alternative ways of getting qualified. Also an incentive for older attorneys to take younger attorneys as mentees with perhaps CLE credit or something to encourage greater cross training. Expand the service provider list in the border counties. I am guessing at a little bit of this because I wasn't in, but I am assuming it deals with mainly Ontario and counties on the border with Idaho. I don't know if they were talking also about Washington and California. To have OPDS to work with the courts and determine whether the barriers to sending clients to Boise, for example, for client services, whether there is some way of making those services available to the folks on the ...

18:52 Chair Ellis Is this the expert witness issue?

18:58 J. Arneson It is a service provider list.

19:01 Chair Ellis It sounds like the expert or maybe mitigation?

19:08 J. Arneson Either that or I am guessing the diversion resources or alcohol treatment resources. I am guessing a bit.

19:29 Chair Ellis I am sorry about the interruption. It doesn't sound like that is a law firm versus PD versus consortium question.

19:38 J. Arneson No. In fact a number of these issues are similar to some that Tom has already identified. Another one that comes into a category of applying to everybody is using OPDS to talk to the various Department of Corrections, OYA, and the county sheriffs for the jails, to determine if there can be a more uniform method of qualifying to get into the jails or to get into the correctional facilities. So much time is spent by each firm getting the okay to visit. Finding out what particular requirements have to be met before you can get into visit. It would be an assistance to smaller firms to have OPDS centralizing that function. Then in this same

category dealing with problem clients and conducting more frequent trainings on how to deal with difficult clients with or without mental health problems and crisis management. I thought there might be a place to put these charts so that you could look at them. Truly when they said "scribe" I thought they meant back to the middle ages. In the category of IT systems a method of having ready access to the appellate division's outlines and case charts. We have seminars frequently where the brilliant lawyers from the appellate division will come and share with us their incredible outlines that they keep. It would be very helpful to have those readily available maybe through the library of the defense or some other method. To have these folks who are keeping up to date on cases doing what all of us try to do in our various small practices. It would be a great resource to just have it available online. They are certainly being updated on a weekly or bi-weekly basis. The bulk bargaining for a variety of functions in the IT area. We are assuming that it would be cost effective for OPDS to bargain with providers, for example West Law and LexusNexus, to try to get discount prices for law firms.

22:50 Chair Ellis

I know there was a big push to try to do that in health care insurance a few years ago and the concept, I think, is really a good one and probably has application far beyond just the health care issue. Any of these that is a common purchasing situation, if we can pool and get more clout, I see a lot of benefit to that.

23:10 J. Arneson

Well a lot of the firms use fastcase, which is the bar program and it is certainly good. The function that you get with either West Law or Nexus to be able to annotate the statutes and instantly go and see all the cases that have been decided under a particular statute, or being able to shepardize the cases to show you whether it is still good law or seeing how the case has been modified. It is benefit and it is always a cost benefit analysis as to whether a private firm can afford to have that for the next go around. Case management software which was next on the list. If there could be some method of maybe focusing on one, two, or three of the case management software out there so that most of us if we chose, most of us would be working with the same case management software to make it easier to integrate reporting functions, for example with OPDS, and possibly if it ever does happen that the data from eCourt can be synced into a case management software, it would be of great assistance, especially to very small firms, to have case management software that the law firm knew was widely in use, was familiar to the folks at OPDS and could provide some technical support in doing it, and could hopefully get a price break because of large quantities. The public defender reports developed to sync with practice software. I think that is it under the IT systems. Then the last thing was the quality assurance practices and there was only one recommendation for that. It was an RFP for a regional or county dedicated training program to provide standardized training to all providers and staff. Again, this was not one that I participated in. An RFP that would focus exclusively on training for a particular region, either the county or a region, to deal with quality assurance issues.

26:49 Chair Ellis

Okay. Jennifer?

26:50 J. Nash

Thank you. So our group broke up into smaller subgroups as the other entities did and then we came back together and from those subgroups a couple of things happened. It turned out that we had a great number of things in common from the different groups that came back together. From that we really developed - some of these are needs but they are really five goals that consortia plan to work on and implement in the next several years. The first one is to form a workgroup of the consortia to pose ideas, share information, and to gather and analyze data to improve our performance on the quality of representation statewide. Then our second goal is to ask OPDS to assist consortia with the efficient gathering and analyzing of data so that we can improve our performance and quality of representation. We really do understand that it is difficult to figure out and to really rely what we are doing without common data points. To be able to compare those and to give an idea what it is we are doing and how well we are doing it if we don't gather the data and if we don't personally identify what that data should be. It might be a bit more challenging than the gathering of the data.

The third goal is to ensure - and this is really - we own this - to ensure that the Commission consistently hears from consortia members on topics of concern to ensure that clients that are represented by consortia members are heard by the Commission. We know that we have been underrepresented. We know that we are responsible for that. We plan to change that and be a consistent presence at Commission meetings so that you can hear from us. Then our fourth goal is to engage in outreach to educate the bench, the bar, and the legislature about the advantages of the consortia model especially in juvenile dependency cases. Specifically, many consortium attorneys have experience in other areas of the law that can be helpful in criminal or dependency - I should say juvenile practice generally. There are reduced conflicts with the consortium model. There is a decentralized system of delivery for cases. Then lastly, we want to improve recruitment and retention of qualified attorneys by investigating the creation of and the funding for loan forgiveness programs for private attorneys who provide public defense as a portion of their workload. We have that for full-time public defenders but there is really nothing in place for those attorneys who have part-time public defense practice. A formal mentorship program for less experienced attorneys. Experienced based compensation and assistance with PLF, bar dues, CLEs, etc. Those are the goals that our group came up with.

- 30:35 J. Arneson Mr. Chair is I could add one thing that was prompted by that comment.
- 30:35 Chair Ellis Yep.
- 30:36 J. Arneson We also talked about the tremendous disadvantage that it puts private firm in competing with public defenders and district attorney offices. The loan forgiveness is just a huge, huge benefit that public defenders and district attorneys have in recruiting qualified staff because of the ....
- 31:10 Chair Ellis I can understand exactly what you are saying, but maybe the hidden good news is if that has become a meaningful differentiator that must mean there is some real loan forgiveness going on the PD side.
- 31:21 J. Nash If I may. We just added two consortia members to our group and during that process I had a number of inquiries from persons who were currently district attorneys who were interested in the possibility of coming to our community and applied for a position. Both of those people did not do that because there was no ability to have any kind of loan forgiveness.
- 31:51 Chair Ellis You see my point. If it really is beginning to happen, because this was a lot of talk and very little substance.
- 32:03 J. Arneson It is happening.
- 32:04 T. Crabtree It is the potential for it. It is in the statute that you can get loan forgiveness after 10 years. They haven't funded it yet.
- 32:19 Chair Ellis That is what I had heard.
- 32:19 T. Crabtree There is the potential. I think for people starting out now that they see well, okay, it is not funded now but in 10 years it could be and that could be helpful. For my people there are programs and the bar has some. We had one person get loan forgiveness for one year under the bar program and that is it. Potentially those that are going to be around in 10 years might see some, but we have got to get Congress to fund that and that has happened yet.
- 33:08 Chair Ellis Are we done with kind of the opening? I am sure there are probably a bunch of questions here. I had one. To start with you, Jennifer, your first couple of points focused on analyzing data and that is all very positive. I am interested did you get down to the level of what data would be relevant and collectable and meaningful?

- 33:38 J. Nash We did have some discussion about that and there were some ideas. The difficulty is - well let me take a step back. So what we have heard is the POP that got passed in the legislature was successful in large part because there was data to back that up. The chart that we all saw at the management meeting that showed the difference between district attorney's pay and public defender pay really made a huge difference. The reason that it was framed in the way it was is because it was easy to gather ...
- 34:19 Chair Ellis And it was easy to get relevant comparisons.
- 34:24 J. Nash Correct. So we know if we want to be included in those discussions we need to have that data. We need to be able to show that. We need to be able to show what we are doing and why we need to be compensated in the same manner. We need to make that same case to the legislature. The same case to you, frankly, and we can't do that without providing that data. So in terms of what that data is that is the question. We had some ideas of comparing different case rates and things like that but we are lawyers. Our idea is get someone who knows those things and to get help with getting someone who knows how to do those things to be able to tell us what data we need to be collecting, how we need to be doing it to make sure that it is in a common format. It is not going to do anybody any good to have 26 different formats in submitting this data. In an hour and fifteen minutes we didn't come up with exactly what data we were going to collect, but we know we need to do that which is why our first goal is to form a work group to talk about those things. The second goal is to ask OPDS to help us do that. They have done this. They know what data is important and they know how to collect it.
- 35:38 Chair Ellis Okay. That is helpful. How about you guys?
- 35:41 J. Potter I heard Jim and Jennifer you both mentioned in your presentations the need for OPDS to assist you with PLF dues, bar dues, CLEs. I think most of you said those things. When you say that do you mean in your contract or outside the contract? Should it be built in as a line item that you don't already have.
- 36:09 J. Nash Any of the above would work. Having just gone through the process of trying to add two new consortia members, we had applicants that were very experienced and applicants that were very green. We have a goal of bringing on less experienced applicants knowing that that was going to be difficult and they would be projects. One of the considerations was how are we going to get these people up to speed with the CLE credit that they need knowing that they don't have the funds to do that. Really, ultimately, we are going to do that. It is going to come out of the other member's pockets to do that. It doesn't really seem very equitable or appropriate, but on the other hand that is what needs to happen. We have heard in other Commission meetings about the graying of the bar and the concern about that and in bringing in younger members. We need to have a mechanism in place to do that so that we can get those people trained especially in the dependency cases is really where we had our biggest concern. That is a very complicated area of the law and CLEs that are put on by the Juvenile Court Improvement Project and OCDLA are really helpful for those. If it is off season then getting the recording so that they could do. Any way that could happen. On a line item. On a specific case by case basis. As part of the contract. I think all of those would be very helpful. Any of them.
- 37:45 J. Arneson I was not in that work group and I don't have specific information on what was provided on the chart.
- 37:55 C. Lazenby Jim you were suggesting that as an incentive for getting people to move to rural areas. Those are things that would be attracting people if they stayed longer. You are asking more for a direct business subsidy for you in hiring and supporting employees of your business, which is

a little different from what Jim was saying and a little different from what gets embedded in the PD contracts.

- 38:24 J. Nash Yes and no. I think part of what I heard Jim say was that would also offer CLE credit for mentoring, which would also be part of that as well, and a line item in one form or another for actual payment of those items as well.
- 38:43 Chair Ellis I don't mean to always ask you. Your third point related to a sense that you are underrepresented. Can you explain what you meant by that?
- 38:54 J. Nash What I mean is that we haven't been here to tell you what we think about what we need. There is a difficulty because we are private business owners and we have some retained cases. To travel to the Commission meetings means we are not working. If you are a public defender and you travel to a Commission meeting you still have your salary. You are still getting paid. One of the things we talked about in our group is we have it on our calendar but then a trial gets set and we can't come to the meeting because there is a trial that we have to do that instead. There are those difficulties but we know that if you don't hear from us you don't know what we need.
- 39:46 Chair Ellis I would give some comfort that there are some consortia that have had very consistent representation here. I see Judge Lipscomb is here. That would be a very good example. But to the extent that you feel that we are not getting as much information about the consortia situation as we should, we would certainly encourage.
- 40:06 J. Nash You may remember me from June where I raised my hand and said, "Hey, I want to say something here." That really made me realize that if I really do want to say then I need to be getting on the agenda and I need to be addressing the Commission. The other consortium also feels that way as well. We know that we need to be here more consistently and we are going to try to do that. That is part of forming the work group because we know that we may not all be able to go. In fact we know that we won't all be able to go, but if we have some people who can come consistently and represent the concerns of the group, then we have you knowing what those concerns are.
- 40:48 Chair Ellis One thing that struck me in listening to the three and you identified yourself as PD, private, and consortia, is I felt like 90% of what each of you had to say wasn't focused on your particular form of practice but it was in common. I think that is a good thing. I felt encouraged by it. Jim you were talking as much about rural versus urban issues, which, of course, that is unrelated to the form of practice. I think that was true of all three. I took some encouragement from that. I was a little fearful ....
- 41:40 T. Crabtree To add onto that when I heard each of them talking about needing to have mentoring or assistance to get people qualified. Our office, and I am sure other PD offices around the state, have used our ability and our experienced attorneys to have people from the consortia or the private bar co-counsel a case so they could get qualified. That is something that we can share. We have that ability. I am more than willing to do it. There is a number of other head public defenders in this room now and I am sure they are all willing to do that as well.
- 42:24 Chair Ellis One of the points you made, Tom, that we talked about briefly but I would certainly encourage this is collective purchasing. Paul, I have a memory that you helped on this in the malpractice insurance area and I am pretty sure we did it in the health insurance area. It does seem to me something that ought not to just be left as a thought expressed here, but followed up. You have focused on IT and that sort of thing. I am not really qualified to comment on that. Any of those areas where we can get the benefit of collective purchasing power, there is enough cohesiveness in the area that we should try to do that. I would encourage pushing that idea.

- 43:28 J. Nash Just to speak to that sometimes I know for Microsoft or other, the big software, if you are a government entity you get a government rate. Well private law firms and consortia aren't government entities even though we receive government funds to do government work. We are not a government entity so we don't have the benefit of that.
- 43:46 Chair Ellis But you are funded by a government entity, so there may well be a way to slide in under that cover.
- 43:54 J. Nash That seems to me to be a very easy thing to have happen. Bulk negotiations is the second thing that could happen. But certainly if we could somehow be designated by rule or policy as having the ability to do that would help a lot.
- 44:14 T. Crabtree And if your governing agency has a 501(c)(3) non-profit organization on top of things you qualify for Techsoup, which has a bargain basement rate for non-profits. They get software donated to them. We just got a big Microsoft purchase and I think it was \$8.00 a copy for Word 2010. That is something to look at. I know the Commission has had consortium go and look at the model to at least have the governing agency of a consortia be a non-profit. I think that would enable them to get in on some of those savings.
- 45:08 Chair Ellis Jim you commented on again on this rural urban issue about sometimes the difficulty to finding qualified people to go to the less populated areas. I have always felt that the first thing to do there is not to start talking about subsidies because that has a lot of complexity, but to talk about information sharing and communication. I have always thought that you take an area like where Jack's firm is. I know they regularly try to get people from MPD to be aware if they have openings. There have got to be a lot of younger lawyers in the largest communities in the PDs or consortia or whatever that are qualified, competent, and might enjoy the independence of being in a practice in the less populated areas. I don't know if that is enough to solve some of the problem, but it is certainly a much easier step to take than to get into cross subsidy.
- 46:28 J. Arneson I would think there would be lots of folks like that, but there are a lot of young lawyers who have ties to Eugene and Portland.
- 46:38 Chair Ellis And they are hard to pull out. But there has got to be some of them that are thinking about it. When they do think about it Curry County looks like a fun place to be.
- 46:53 J. Arneson All of the recession helped a lot to persuade people that Curry County wasn't so bad.
- 46:59 Chair Ellis Other thoughts or comments from the Commission?
- 47:08 J. Potter Jennifer, if you could just expand a little bit on your comment about the outreach to the bar, bench, and especially in dependency cases, I think you said, educating them. What were you trying to get at there? I missed that.
- 47:18 J. Nash Just that the consortia model is a good model for those types of cases. That is really it. I think the other part is what we heard from our group was especially in counties where there are public defender offices and then there are conflict consortia. The bench doesn't have a really good idea and the other players sometimes don't have a really good idea of the difference. The expectations are really the same for consortia and public defender offices. That is really an unworkable situation in a lot of cases. I didn't hear a whole lot about why that was in particular because we split up into our work groups after that. But taking some time to educate the various players, the judges, the service providers, the other attorneys about the differences and why cases are handled differently. Especially for the assignment of cases in conflict cases the consortia is really a good model. For example if there is a drug bust and there are 10 co-defendants. One of them is going to the PD office and nine of them are going

to consortia. For the contract administration piece you have really dealt with one contract administration issue but got 10 lawyers.

- 48:50 Chair Ellis      Isn't that somewhat misleading to refer to the consortium model. I do understand the conflict piece and that would be constant, but at least my observation is that consortia, as they existed 10 years ago, many of them have made significant change and they have become not exactly law firms and not exactly PDs, but they have picked up a lot of the best elements of both of those. The consortia that have a meaningful administrator, a meaningful board, and a meaningful set of quality standards, mentoring and the like, that is a very different practice model than existed, pretty widespread, 10 years ago.
- 49:45 J. Nash      Sure. I am talking about the practice model that exists now and the practice model that is the requirement of OPDS and the contracts that we had. We wanted to educate them about that model and how they operate now and the advantages to having them.
- 50:08 Chair Ellis      They have changed. Ten years ago you would have a lot of consortia members in which 20% of their practice would be defense and the rest would be other activity. I think that is pretty rare now. I think today most of the consortia that the Commission contracts are, if not 100%, the members are 90% of their practice is defense work.
- 50:40 J. Nash      I think that is true. Our particular group has eight lawyers. The idea is that a full – what we call a full share – is a .5 FTE, but the reality is that is not really the case. Sometimes it is 100% depending on the week. The idea is it is supposed to be about half-time. There are some members that we have that take very few retained cases. They all take some. I am on the other end. I have a heavily retained practice. I honestly have started to think about that model and whether or not that really makes sense for me. That is more of a career issue than a workability issue. I think you are right. From what I have heard from different folks across the state that many consortia are mostly public defense work.
- 51:35 C. Lazenby      One of the things that I think I would like to see out of the workgroup that you guys put together is because what I am hearing, and I don't want to say that I have concluded this, but what I am hearing is that but for the conflict issue there may be a distinction without any merit between the consortia and the public defender organizations in terms of the way they functionally operate. If you are 100% doing criminal work and 90% of that is coming out of our pocket which is aimed at indigent folks and Lane has a shop where he has 100% of people doing 100% of indigent work and not doing any private. I understand the conflict issue but I would like the workgroup to talk about other ways in which the consortia model is beneficial and/or superior to the PD piece, because that is the argument that you are going to have to make to the legislature to get increased compensation under the consortia model.
- 52:33 J. Nash      I would turn that back and say that if in fact that is true then why isn't the compensation the same but we don't have to answer that question, at least right now. I don't think your analysis is entirely accurate.
- 52:48 C. Lazenby      That is why I said I want the workgroup to focus on that and provide information to us on the Commission about that. I don't really want to argue that today.
- 52:57 J. Nash      No, no, no. I can do some of that now because we specifically talked about that. So oftentimes, well almost always, in consortia you have attorneys who have varying other areas of practice. Those areas of practice can be very helpful to clients in court appointed cases. In our group we have attorneys who practice bankruptcy law, trusts and estates, domestic relations, pre-business law formation, land use law, pretty much any type of law that you would, except for insurance defense, any type of law that our clients may need or that other people in a particular case might need. There is experience in our group who can provide that. Sometimes, unfortunately, we are providing that at no cost. I do some domestic relation work, expungement work, those types of things for clients who really need that work and

can't have that done. Public defenders can't do that. We have varying levels of expertise and I think that is particularly true in cross over cases with dependency. That really is a difference. I actually really reject the idea that we are all almost doing just criminal law. in my experience that is just not the case.

54:21 C. Lazenby I think that needs to be flushed out. What I heard yesterday, not purposely put there, but there are political obstacles that are going to have to be dealt with to attack this idea of compensation for the consortia. I was saying to somebody earlier that the fact that legislature actually dedicated money to raise the salaries of people providing public defense rocked every foundation of reality I have ever dealt with in the legislature.

54:59 J. Nash That was what was asked for. I said this in June when I came and testified and specifically to Chair Ellis. I said if you wanted the legislature to fund all public defense providers equally, then you needed to ask for that but you didn't. The pot that was put forward in front of the legislature only asked for public defender compensation and not for the other groups. It seems very unjust at this time to say that well now that that has already been put in place, you are going to have to explain why you should do the same work for less money. Why we should have more money. That is really what it comes down to. My opinion – it is not just mine, this is our group's opinion. You are asking us to do the same work and we are doing the same work. We are the same up here and the quality of representation that we provided to our clients, there is no difference. We are all good lawyers who provide good quality of representation. To have one set of defenders that is being paid differently is very difficult for the rest of us. This is really hard work. We don't feel respected and appreciated. We are really glad that the public defenders got a raise. That has needed to happen for a long, long time, but the question that we have is why didn't you ask for money for us too. If what we need to do is we need to provide you with the data or whatever information you need to be able to go the legislature to justify that, we want to be part of that process and make that happen because we should have all received that money.

56:33 C. Lazenby I am reminded of the Holmes quote. "You are mistaken. You think you are in a court of justice. You are actually in a court of law." You are more than welcome to retain the belief that you were omitted from that request. What I am saying is that my belief and experience in that system is that it was a rare opportunity to provide any money for anybody in the system and people grabbed it. If you were omitted it was not my intention. It was because of the nature of the beast and the opportunity as it was presented.

57:05 Chair Ellis I think your points are well taken. We do hear them.

57:12 C. Lazenby The purpose is to get to the next step.

57:15 J. Nash That is what I am saying. We want to be part of this process. We want to know what we need to do. We are going to do that so that we can get there.

57:22 T. Crabtree And some of us that are PDs would like to have more than 2%.

57:30 J. Nash We would take the 2% if you want to give it away.

57:31 T. Crabtree As Commissioner Lazenby said it was a rare opportunity where we got something. I am gratified that Juvenile Rights & Justice finally is going to have a working wage for their people. They were horribly underpaid.

57:52 Chair Ellis It was a better circumstance in 2005, when we got incremental money that we had never seen before and really have not seen since, and were able as a Commission to allocate to that. I am sure not everybody was happy but we tried really hard to make that equitable. That is a better funding method than the legislature ended up allocating. Other thoughts that came out of the meetings? These are valuable and helpful.

58:41 J. Arneson Chair Ellis and members of the Commission. We just talked about the difficulty of trying to gather and prepare the kind of information that Jennifer is talking about. From a private law firm standpoint it is just so very difficult to do. Number one our books aren't open. You don't know what we are paying our particular lawyers.

59:12 Chair Ellis We think of you as a black box.

59:18 J. Arneson And we are. So it is just very difficult to make the same kind of compelling argument that the wonderful graph – it is a wonderful piece of persuasive material in one page. The frustration of trying to figure out how we make a compelling case for private law firms is very, very challenging. It is very difficult to do and then we are always walking on tiptoe about the issue of possible antitrust violations by working too hard to coordinate the amount we are getting paid or sharing the information that we have.

1:00:12 Chair Ellis I think you are pretty safe on the antitrust issues. You are dealing with a state agency. I think you will be alright.

1:00:26 C. Lazenby But to be fair about it, and I am trying to be as speculative about this as possible without saying I am locked into anything, but it may be that in order to determine what is fair we may need to look at the whole overall financial data to understand whether it is fair or not. That is some of the things that as we approach this problem that everybody is extremely animated about. We need to sort of walk around all angles of it and figure out ways in which we can make that determination of what is fair. Until you do that we are going to have a very difficult time going back and creating a second lightning in the bottle of the legislature to provide more public monies for these activities.

1:01:13 Chair Ellis Judge Welch and Commissioner Ramfjord are your hands up? Is there anything you want to ask our panelists?

1:01:24 P. Ramfjord It has been a very interesting discussion, very interesting. I don't have anything to add. It has been very informative.

1:01:33 Hon. Elizabeth Likewise.

1:01:33 Chair Ellis He is from a private law firm. He is one of you. Anything else? This was very helpful. Thank you all three.

**Agenda Item No. 3 Staff Recommendation to Approve Statewide Contracts**

1:01:53 Chair Ellis The next item is staff recommendation to approve statewide contracts. Nothing that will get anybody's attention here.

1:02:06 C. Lazenby Mr. Chair, I just want to point out before they begin on this portion of our agenda and kind of alert counsel to the fact that I have an actual conflict of interest regarding the Multnomah Defenders contract. So to the extent that you can talk about all these things without talking about MDI, so that I can not participate in that and maybe even leave the room when they take a vote on MDI contract, I would appreciate it. My reading of all of the statutes is that I can't even participate in deliberations around that contract.

1:02:38 Chair Ellis Your disclosure is noted.

1:02:40 C. Lazenby For those of you who don't know my wife is an investigator for Multnomah Defenders. So it is an organization that I can have direct ....

1:02:46 P. Levy I think you can participate in a vote if it is needed.

1:02:53 C. Lazenby To break a tie.

1:02:53 Chair Ellis Does he continue to count for a quorum?

1:02:58 P. Levy We have a quorum without him.

1:03:06 C. Lazenby As I will prove right now by going and taking a break.

1:03:11 C. Meyer Good afternoon commissioners and Chair Ellis. For the record, Caroline Meyer with OPDS. Can you hear okay? I realize this is actually my first official duty as contract manager to be here today to present the statewide contracts. I am encouraged by how many representatives we have from I believe it is 69 total statewide contracts. I think we are going to be okay with Commissioner Lazenby's concern because I don't intend to go into any detail regarding specific contracts. I believe with have that with you in executive session. We have had no substantive changes to the plan that was presented to you both in July and then again in August to complete that process. Then Billy and Paul will be addressing the capital contracts after I am done. But I really just wanted to summarize briefly what was included in all of the contracts in terms of what we were given. Obviously there has already been some discussion and I know you have heard this, but I just sort of wanted to summarize it for the record. It is attachment 2 in your materials. I believe the capital contracts are included first, but if you just turn the page. There should be two pages. So the second page should be the statewide contracts.

1:04:58 Chair Ellis The second and third page.

1:04:59 C. Meyer Yes. It is two pages. You may recall from executive session that Nancy did a good job of summarizing. But essentially after the reductions we had about 3.25% to put into rate increases and that was simply across the board with slight variations for some areas where rates were considerably below or considerably above the standard in those areas. With that there is the potential for a 2% reduction for the legislative hold back. My understanding is that will be decided at the February session. Then there was the PD parity piece which you have heard about. That applied to public defenders. There was also money for hourly attorneys and for investigators that is not part of this process. So with that unless you have specific questions about any of the contracts that are listed – I wanted to point out that this was really a team effort even though I am presenting them as our representative. This was a team effort from Nancy, Paul, and all of the analysts were intimately involved. After the executive session we went forward and negotiated these, made phone calls, and most of these were done probably by mid-September. So contractors are anxious to hear the final word at this point. That is what this step is. Unless Nancy has something to add.

1:06:39 N. Cozine I just wanted to follow up on Caroline's comment that we do have Steve Bender in the room. He is our legislative fiscal officer and we have been working closely with him on our conversations about the 2% and I think we are in good communication now.

1:06:53 Chair Ellis This is the hold back?

1:06:56 N. Cozine Yes. We are in very good communication about the needs of our providers and I think we have made some good progress on that conversation. I also wanted to just mention that in the contract as currently provided it eliminates the two-third/one-third payment. I just wanted to note those two things for the Commission's information.

1:07:18 Chair Ellis I wanted to make a comment that, and I am going to be off on my dates here, but about four years ago there was a lot of unhappiness expressed by some commissioners that they didn't feel that they had much information about the contracts until the day came they were asked to approve them and then there was very little time beyond that. At least some commissioners

felt it a trust me attitude on the part of staff. That led to a restructuring of our calendar and a commitment to get information about the contracts and the contract providers much sooner in the process and in a context in which commissioners could really feel like, yes, I think I do understand what is happening here it is not just a rubber stamp of what may well have been a perfectly valid process. I know there was a feeling on the part of at least some commissioners that they felt uncomfortable in their responsibility. I feel like we have now had a system where we have a lot of information about these contracts and we have had a lot of information, particularly the three of you and the staff that have presented it to us, about the thinking that has gone into it district by district. I want the record to reflect that at least this commissioner feels very positive about the process that has been followed.

- 1:09:30 J. Potter      The total statewide contract number here is \$165 million dollars. I probably should have asked you this before and I am not trying to blind side you. Do you by chance have the number of the requested amount of these contracts?
- 1:09:50 C. Meyer      I certainly do not have that with me and it is not even a number that we would. We could put it together but it is not a number ...
- 1:09:59 J. Potter      I am thinking out loud and that is dangerous. That might be an interesting number to have. The contractors that you are asking us to approve here, if you were to add the number up of the amount that they totally asked for, how it would compare to the number that is available to us to spend.
- 1:10:23 C. Meyer      One of the difficulties is traditionally years ago we essentially required contractors to complete a caseload matrix. They would indicate to us here is how many misdemeanors. Here is how many C felonies and here is the rate we request for each of these. That allowed you to very easily say this is the total amount of their proposal. We have gone away from that over the last six or seven years, or two or three contract cycles at least, to where we basically said tell us what you need. Tell us what you need for new computers. Do you need it for salary increases? It would be more difficult to arrive at that number. It would not be impossible. We still could go back and say this is the total amount. It is just not as easy if that makes sense.
- 1:11:18 J. Potter      It does. Maybe the question that I should ask you is there any value in even trying to do that. Is there any value saying after we ferret all this out, it really meant that \$180 million dollars was asked for and we are going to provide \$165 million for what should have been \$180 million dollars of work if we had accepted the bids as they came to us. Any value in it?
- 1:11:55 C. Meyer      I don't know if Nancy wants to respond at all. I guess my initial response would be it is obviously not a comparison that we are doing, otherwise we would likely know that number. I don't say that to say it is not important that they tell us. What is more important to us is for them to tell us individually what they need for these different items. Unfortunately we have never been able to fund fully what they need. That is part of the difficulty.
- 1:12:26 C. Lazenby      You sort of operate on CSL basis. You start with the last contract level current services and say do you need more than that? Less than that? What do need it for and then you make adjustments around that. But it is based really around a current service level model almost rather than people coming in with a new bid and saying I want \$50 million dollars more. That is what I would ask for.
- 1:12:49 C. Meyer      I think that is correct.
- 1:12:49 N. Cozine      Chair Ellis, members of the Commission, I just wanted to note that one of the very productive conversations that we were able to have with Mr. Bender in the last week was whether or not there was room to talk about how we calculate CSL so that we could have more conversation with our providers about what they need in advance of building our budget, so that we can

have a CSL structure that better represents what those needs will be rolling forward. That is an exercise that we will go through in the next several months both in terms of communicating with our providers and communicating with LFO, so that we can least explore a mechanism for trying to capture that. As we move through legislative session we can actually track where we would be with the amount the legislature is inclined to give or what the Governor recommends as we move through the process. I think that will allow us to communicate with our providers throughout the session and with LFO about what the needs are, as caseload increases or declines across the state, and I think we will be a little more nimble with our budget requests. We haven't explored it yet but we intend to.

- 1:14:03 Chair Ellis Billy or Paul anything you want to add?
- 1:14:06 B. Strehlow I do.
- 1:14:06 P. Levy I am going to go first. We are speaking to the death penalty contracts. I am only here to repeat what I told the Commission at the last meeting right before you went into executive session for us to share with you our thinking about those contracts. There were no providers in the room at that time. With this round of contracts for responses to the RFP for death penalty contracts we asked the attorneys to use a new certificate of attorney qualification form. I won't go into again the history of how that form was developed and where it came from. There was not universal embracing of the much longer, complicated form. But what we had in response was it was completed meaningfully and fully and very helpfully as well. We got good information. We learned a lot about the contractors. We have a high degree of confidence that the group that we are asking you to approve contracts for is a well qualified group. We are going to use this same form for all attorneys wanting to provide death penalty representation whether they would be under contract or not. We will be unrolling that soon. I just wanted to say again where there are more providers here that we really appreciated the information and the effort they put into completing this. I think we got really good information.
- 1:16:12 B. Strehlow I would just like to note two things on the first page of that tab. You will notice the hourly rate is the same for both sets of providers. The capital attorneys are all \$98 an hour. For capital mitigation investigation it is \$62 an hour. Two other things you will notice too that there is one less number of attorneys under contract based on this proposal. That is based on projected workload. The number of capital cases has been declining and until we can project otherwise we are contracting for those are doing the work right now. We have had some retirements and other things that have allowed us to continue to do that. Also for 2014-15, there are four additional mitigators also based on projected workload. This really is a strategy as a result of us contracting with mitigators four years ago. That has been really successful and I believe this round here finally captures all of that good work that those mitigators have been doing. That has been a really good strategy and keeping them in Oregon doing that work for us instead of for the feds or other states.
- 1:17:45 Chair Ellis Any other particular issues you wanted to bring to our attention?
- 1:17:49 J. Potter May I ask a question, Mr. Chair? Billy, you are going to ask me don't you own a calculator. I meant to add up these numbers. Do you have the totals in the death penalty contracts?
- 1:18:09 B. Strehlow Just bear with me one second. I do have that. This is for the attorney contracts only. I have both. For the capital attorney contracts is \$8,980.932. And the mitigation as well?
- 1:19:11 J. Potter Yes.
- 1:19:12 B. Strehlow It is \$2,057.254. I have the total too if that is helpful.
- 1:19:29 J. Potter Thank you. That is helpful.

1:19:39 Chair Ellis Any other input before we get provider comment?

1:19:43 C. Meyer I don't think so.

**Agenda Item No. 4 Public Comment on Staff Recommended Statewide Contracts**

1:19:46 Chair Ellis Alright. Why don't you stand by. At this time we would welcome public comment on staff recommended statewide contracts. Mark? I figured this can't be true.

1:20:19 M. McKechnie Commissioner Potter and members of the Commission, I am Mark McKechnie from Youths, Rights & Justice. I actually hadn't planned to say anything but I thought that Commissioner Potter's question was a very good one in terms of asking what the request for contract revenue was versus the awarded amount. I can't tell you off the top of my head exactly what we asked for in our contract. I can tell you that it was a 24% increase over our current contract. I arrived at that figure by doing what has been asked of us in these RFPs, which is to say what we need to do the work. What I felt the most responsible way to finish that question was to look at things like the ABA Standards versus our staffing and to add staff so that we could better approach those standards and reasonable caseloads. Then to have reasonable investigation and paralegal support for those attorneys, so that we could actually upgrade our IT systems according to the schedule when they should be upgraded versus when we have been able to upgrade them. I can tell you from one provider's perspective that was the difference between where we are in the current contract just ending and what I proposed to meet our needs in the next correct. Obviously we didn't receive a 24% increase.

1:21:54 Chair Ellis I was going to ask. Where did you end up on this?

1:21:59 M. McKechnie It is a little bit complicated because there was a change caseload because the juvenile caseload in Multnomah County is declining, but essentially what I understand all contractors received was a 4% across the board increase in the case rates. Then those of us who you heard about quite a bit who are the non-profit public defenders received additional line items specifically for attorney's salaries. I believe that put us about 5.8% increase total. So we are talking about an estimated need of a 24% increase versus receiving about 5.8% increase with the policy option package money.

1:22:48 Chair Ellis Okay. That is helpful. Did Bruce Liebowitz or Jon Martz want to come forward.

1:23:03 N. Cozine Chair Ellis I forgot to mention. There should be an "I" in that agenda item.

1:23:03 B. Liebowitz I do have handouts for the commissioners. I have data. Hopefully after reading our statements about consortia you will still approve our contracts.

1:23:37 Chair Ellis It is not like being a White House tweeter.

1:23:40 B. Liebowitz It is not that bad. If I may, Chair Ellis, just a brief paraphrase. Thank you for the opportunity to speak here. I think Ms. Nash pointed out a lot of concerns and the fact that we do take responsibility for being remiss in being here. At times there was the feeling whether right or not if we were the nail that was standing up then we would get hammered down.

1:25:57 Chair Ellis Your opening paragraph you use words like trepidation and retribution. I sure hope that is not how anybody feels about the process.

1:26:09 B. Liebowitz I think there has been some remedying of that at this particular conference, but communications between the consortia and OPDS have room for improvement. We have had discussions that I think are addressing that in a positive manner. Some people got emails on one Commission meetings and others didn't. But to just talk about where we are coming from

we are a group that prided ourselves on diversity as a value. We are just about the only consortia that were able to fulfill that. Two of our judges, Judges Lopez and Walker, they...

- 1:26:54 Chair Ellis We know them both and they are first class.
- 1:26:56 B. Liebowitz Well they are gone and we can't replace them. That is the problem. We cannot draw the young applicants. Our only hire recently was due to a death in our consortium, James Britt, and that has really been the only younger lawyer that has been added. The point we want to make is that in real dollars given the Metro, Portland, Salem, CPI, we are where 10 years ago. It is very hard for a young attorney if they say, "What kind of a future do I have here?" I have a young attorney renting an office from me with the idea that come the new contract he would have significant overflow and we could try to work the person in. He was there for four weeks and was hired off by a large firm. It makes it very difficult to recruit.
- 1:27:53 Chair Ellis I am hearing from you some disappointment in the sense that you have lost three really good people. I would just encourage you by saying that has got to be a tribute to what you are doing. That you are attracting quality people and when they move to judgeships and good positions.
- 1:28:19 B. Liebowitz That is a testament to where we began, but it is getting very difficult to maintain that. I would like to address something that Commissioner Potter asked about. Two cycles ago we wanted to give OPDS exact numbers by category. We were told that the RFP process had changed and that wasn't necessary. What we want to know is what can we do to get you the information to go to the legislature to get us what we need to continue? It is becoming very tenuous. Many people are in the room now from other consortia and have similar feelings. We can generate data for you on where we are at. At the break out meetings we had it was how do we get IT systems? How do we do all these things, but all these things were contingent on having the adequate funding to it. The reality of the 3% increase given inflation is actually a 1% to 2% decrease.
- 1:29:38 Chair Ellis You are assuming a 5% increase?
- 1:29:40 B. Liebowitz No. I am saying the 3% increase we got over two years putting in the CPI rate actually isn't an increase.
- 1:29:49 Chair Ellis Okay. I see where you are at.
- 1:29:50 B. Liebowitz That is what we wanted to convey. We would like to continue this mission. Many of our lawyers, as the RPFs have pointed out since the beginning are in fact 95 to 100% public defense work. I have my own contract and that is a specialty contract for probation hearings and expedited drug pleas. We formed that, I believe Ms. Cozine has some history, but we formed that when they said it couldn't do and now Judge Lopez and I have said if you have experienced attorneys plugged in there it can be done. We have no post convictions ever and the fact is we saved the system millions of dollars. We have always heard over the years value added. I can say that my associate is the co-author of the next Bar section on probation violation defense. We all do have a story to tell and we would like to have the opportunity to give you more information in the future. That is why we are here today.
- 1:31:03 Chair Ellis Alright.
- 1:31:03 J. Martz Chair Ellis, members of the Commission. I don't have too much to add to what Bruce said. Quite frankly I came down here originally with kind of a different mindset and my mind has been pleasantly impacted by this experience. Looking back I know that the chairman in the Commission meetings expressed the concern about what about consortiums that over time do more and more indigent work until that is basically what they do. As Bruce just mentioned that is what we do. If you talk to judges and prosecutors in our jurisdiction they think we are

basically public defenders. Doing this kind of work tends to make you introspective when you face adversity. You don't blame others. You don't point fingers. We ask how we can make things better. So when we first received the RFP there was some bitter disappointment, but then you begin to calm down and look at the situation. For the last several years we realize the economy is in bad shape. There is not much we can expect. We are just going to gut it out. We thought things were getting better and when we hear the term public defender tossed around we got complacent and said, "Well that is us." We don't have the administrative setup that public defenders have. I am not knocking them. I think there is room at the table for everybody. We are all working attorneys, board members right down the line. So we had a board meeting and we began to discuss we have this large state contract that impacts everybody. What are we doing about it? When was the last time we went to a Commission meeting? When was the last time we had our voice heard? We realize that we don't have a presence. That is on us. That is our responsibility and we are moving to remedy that. At our board meeting we decided that we are always going to have somebody there. If you can't make it then you go. It is very important because we maybe assumed too much. That everybody knows what we do. Everybody knows us. It is going to be good. We realize now that we have some ground work to do. That we can't take things for granted. The more I spent time these last couple of days, the more I realize that people talk about public defenders, private firms, consortia. We actually have more in common than we have differences. We can put the differences aside. We will always have those differences, but we can use the common ground. Part of our disappointment with the POP was basically in our minds we saw a golden opportunity to lift all the boats and kind of slide by. The reaction was that this POP was like a piece of unexploded ordinance. It was lying around for years and it suddenly went off and everybody is surprised.

1:34:33 Chair Ellis

I bet you are good at what you do.

1:34:37 J. Martz

So, again, I share the concern that – my brothers and sisters in the public defender offices I congratulate them. They are not only colleagues, I see them every day. I consider a lot of them my friends. I remember when Nancy Cozine was a public defender and then worked in the court administration in Multnomah County. I have the utmost admiration and I wouldn't want her job for love or money. Paul Levy I have known just as long. I remember when he was a public defender. He has always been committed to raising the bar. Raising the standards to give – I know their interest is justice and giving the public confidence that when the indigent accused are being represented they are getting the best that we can give. I applaud them for that. Commissioner Potter mentioned something that Bruce just talked about. Why not find out what every needs and use that as jumping point for addressing the legislature with funding. Well we are moving away from that model. I think there is value in that because the value in it is you listen to the facilitators this weekend and they talk about the communication and there needs to be more communication and we bear part of the responsibility for that. We want to open those lines of communication. Anytime anybody has a concern our lines of communication are open. If a commissioner wants to talk to us we are more than willing to talk. If a member of PDSC wants to talk to us our lines are open. That is what we want. We have found the staff at PDSC to be – I remember some of the old models. It was kind of us against them. I remember dealing with judges having to get indigent defense and it was like you were robbing them. I can't say enough about the staff at PDSC. When we have a problem we know that we can get somebody and get a quick response and work our way through it. I like doing the legal stuff but some of the day to day process stuff, I like knowing that I can call the analysts and get an answer and a helpful answer, even one that I can understand and act on. So I really appreciate the work that they do. But I do think that as a starting point if you come to us or we come to you and say, "This is what we need." It is not only an expression of what we need but it is education for the legislature. We are not pulling these numbers out of thin air. We welcome the scrutiny. If we say we need this much to function in an orderly manner then we don't mind having our feet held to the fire. Why do you need this money? We will tell you. We want to be an open book. There has been testimony in the past about maybe the consortia aren't really transparent. We want to be as

transparent as possible. If you need information then that is our job to provide it. We are talking taxpayer money here. People have a right to know where their money is going. We don't have any problem telling them where their money is going. So I think what is done is done. We can't change. Moving forward there is no sense in rehashing it. We are going to move forward. I think again moving forward and listening to the facilitators. Thinking outside the box a little bit. Opening lines of communication. It is really important. I think there is room for all that. What I am saying is on our behalf we are willing to do that work. We are willing to make that commitment. What we are asking for is the assistance of the Commission and from PDSC. I think if we all pull together and present kind of a united front that we have more in common than we have difference. I think it will be easier for all of us to achieve our goals. I think it makes it easier for your average legislator to digest instead of being hit from three different directions by people who think they are all doing the same work. Why am I getting lobbied by all these different groups when I think they are all doing the same thing? That is a good question. I think whenever we can find common ground we should find it. I listened to all these people. I watch these people work. We all have the same goal. Maybe we disagree on the means of getting there, but I think we can overcome those differences and present a more united front. It would be more effective for the taxpayers. It is more effective for us. So I really thank you for the chance to address you and I can assure you that you will be seeing more of us in the future.

- 1:39:27 Chair Ellis We would welcome that. Frankly both of you very articulate and I don't find myself disagreeing with anything.
- 1:39:36 B. Liebowitz I have only one last question. Is our final question to the Commission a reasonable one?
- 1:39:43 Chair Ellis I will have to find it first.
- 1:39:42 B. Liebowitz The very bottom of the page.
- 1:39:45 Chair Ellis Just for the record it states, "Our question to OPDSC is whether you are truly committed to a mixed consortium/public defender system, in which all stakeholders are treated equitably?" I know I could answer that, "Yes."
- 1:40:08 B. Liebowitz Thank you, Chair.
- 1:40:11 Chair Ellis Any other questions.
- 1:40:14 J. Potter No questions. Thank you both.
- 1:40:14 Chair Ellis Per or Judge Welch did you have any questions?
- 1:40:17 Hon. Elizabeth Welch No. They were very, very good presentation.
- 1:40:28 P. Ramfjord I would agree with that. Very articulate.

**Agenda Item No. 5 Approval of Contracts**

- 1:40:31 Chair Ellis Any other public comment on staff recommended statewide contracts? That brings us to the action item, approval of contracts. Is there any discussion or comment? This is where you and your conflict are noted for the record, Commissioner Lazenby. Is there a motion to approve the contracts?
- MOTION:** John Potter moved to approve the contracts, P. Ramfjord second the motion. I am going to call it in two parts. One is all contracts other than MDI. I am going to call the question all the contracts other than Multnomah Defenders Inc. All those favor say aye.
- VOTE 5-0.** Let the record show that Commissioner Lazenby is recusing himself from the

second part which is the Multnomah Defenders Inc. contract. All those in favor say aye.  
**VOTE 4-0.** Record a majority and unanimity of a quorum approving the contracts.

**Agenda Item No. 6                      Approval of OPDS Organizational Structure**

1:42:29 Chair Ellis                      Approval of OPDS organization structure.

1:42:32 C. Lazenby                      I am going to call for the McCrea proxy here for there to be a break.

1:42:44 Chair Ellis                      Nancy, I got kicked in the shin here.

1:42:50 N. Cozine                      Thank you.

(Break)

1:43:47 Chair Ellis                      Okay. We will call the meeting back to order. We are on item 6, approval of OPDS organization structure.

1:44:00 N. Cozine                      Thank you, Chair Ellis, members of the Commission. You may recall that at our last meeting, I indicated to the Commission that I had shared with staff an organizational structure, and that we were going to move through the process of putting people into positions so that we could start incrementally adopting a new structure, but that we would come back to the Commission at this meeting, after having collected comments from our own staff, and after giving you time to think about the proposed structure, so that you could either approve or not approve the structure. We have had only positive comments internally about the structural changes. We, I think, have been able to start working in some of our smaller work units to talk about the improvements that we could make and, if this Commission approves the restructure, our next step will be to further refine rolls and responsibilities that fall into the different categories. There are a few functions that are currently residing in a gray area. That, of course, is a product of all change, but we will get them nailed down and continue to do the good work that we have been doing. I am available for any questions.

1:45:24 Chair Ellis                      So help me out here because the chart we had last time is different than what we are looking at here.

1:45:29 N. Cozine                      Yes. I stepped it back just a little further to give you a real overview of what it would be. The last chart provided gave you more of a position type overview. This one is further developed, in that we have given names to our different organizational work units. So instead of, taking what is now the contract services box, when we met last month I showed you a draft that said contract manager, and then it had senior analysts, and analysts. So it had the positions described but not an overall work unit title. We continued to work with our employees to actually define the work unit.

1:46:17 Chair Ellis                      This was says Office of Public Defense Services. Last time I thought it said Executive Director.

1:46:23 N. Cozine                      It did. It reflected positions instead of work unit titles. We contemplated providing to you something that said Office of Public Defense Services and then Executive Director and under Appellate Division, Chief Defender and under Contract Services, and manager, but it really made the boxes a lot less clean. The positions included in the handout last month remain the same.

1:46:54 Chair Ellis                      I thought it was helpful to contrast that with page seven of your draft report to the legislature, which has the old structure. When we get to that report I was wondering if we ought not to change that.

1:47:17 N. Cozine I thought about that. The report is really the report for 2011-13, and we moved through 2011-13 with our old structure. We could add it into the conclusion paragraph where we talk about 2013-15.

1:47:38 Chair Ellis Right. So other than having names or position descriptions you have got function. Any other changes on this from what you showed us last time?

1:47:54 N. Cozine None.

1:47:57 Chair Ellis I expressed my positive views last time. Anybody else have anything they want to say on this?

1:48:05 J. Potter I think we all expressed positive views, but also noted Nancy will have under her direct supervision six divisions or six individuals, making her workload more than before. Is that safe to say that?

1:48:23 N. Cozine It is still safe to say that. It is a good thing that I like work.

1:48:35 J. Potter We are not going into this blind.

1:48:43 Chair Ellis This is something that we need to approve?

1:48:48 N. Cozine By statute you don't have to approve. By statute I have the authority.

1:48:51 Chair Ellis But you would just as soon we approve? It is shown as an action item.

1:48:55 N. Cozine I put it on as an action item because I think it doesn't hurt to have your approval.

1:48:59 Chair Ellis Alright.

1:48:59 J. Potter I would so move to approve the revised structure of OPDS; Chip Lazenby seconded the motion.

1:49:11 P. Ramfjord I just want comment before we actually move to approve it. I think it might be worth including in that motion a statement along the lines of move to approval the general structure and allowing the executive director to refine it as they deem appropriate after further discussions. We are approving the general structure but something along those lines. Just don't want to lock this in too tight given that it isn't completely finalized. I don't know, Nancy, if you have a strong feeling about that or not.

1:49:53 N. Cozine What you pose is interesting to think about. As I said statutorily, I think the executive director has the authority to change structure without Commission approval. However, I think having a motion to approve this structure and any further developments necessary as we continue to move through the process of change is not a bad suggestion.

1:50:19 C. Lazenby I think Per's suggestion is a good one.

1:50:22 P. Ramfjord With John's permission I would move to modify the motion to move to approve the structure as generally outlined here and allow the executive director additional discretion to modify as she and staff deem appropriate.

1:50:37 J. Potter Whether that is a friendly amendment or a separate motion, I am okay.

1:50:44 Chair Ellis I am a Roberts kind of guy. So I think we need a vote on the motion to amend. I am going to construe your last remarks, Commissioner Potter, as a second to the motion to amend.

1:50:58 J. Potter Yes.

1:50:58 Chair Ellis Okay. All those in favor of the motion to amend say aye. **VOTE 5-0.** Now we need a motion to adopt the amended motion and that has been made and seconded. All those in favor of adopting the amended motion say aye. **VOTE 5-0.**

**Agenda Item No. 7 Approval of PDSC Biennial Report to the Legislature**

1:51:29 Chair Ellis Now the biennial report to the legislature.

1:51:33 N. Cozine Chair Ellis, members of the Commission, you will see as attachment 4, a 2011-13 report to the legislature. Chair Ellis you have made one potential suggestion for change which would be to add the new structure into the last portion.

1:51:54 Chair Ellis Right.

1:51:54 N. Cozine I would be happy to do that. Also, as sometimes happens after things get put into Commission materials, we noted a few edits that we need to make in the appellate division section. We just included Oregon State Bar twice in one section. We have one additional typo that we would like to correct.

1:52:20 Chair Ellis On the whole I thought it was fine, What I thought was not fine were three footnotes. They read like they were left over from earlier reports of this kind and you kind of left them in. I wondered if we really should. So the ones I questioned, footnote 2, which is all interesting material but it is really old history. So my suggestion would be to drop it. I thought the same on footnote 3. I don't think we need to tell them what the prior history pre-PDSC was. I think in 2001 that might have been helpful, but it is 12 years later. I thought the same thing with footnote 4. I don't think there is anybody out there that still thinks of the old State Public Defender's Office at all. Those were my suggestions. Anybody else have any thoughts?

1:53:47 J. Potter Those are good suggestions and very insightful. Mine our woefully inadequate in comparison. I have a space that needs to be added between the District of Columbia Superior Court. There seems to be a space missing between Columbia and Superior, on page 1, in your shaded area, fourth paragraph.

1:54:10 N. Cozine Thank you.

1:54:10 Chair Ellis Now we are at a level of detail that I really feel good about.

1:54:17 C. Lazenby I had comments about the font.

1:54:20 N. Cozine With that I have one other request. We realized when we were talking about the appellate division section that we had not included information about the committee work that our lawyers in that section have been actively participating in. We would like to add that with the Commission's permission. If you would approve it with those amendments then I will finalize and circulate the report.

1:54:53 J. Potter Run that by me again. I missed it.

1:54:55 N. Cozine We realized in the appellate division summary that we had neglected to include a paragraph detailing the committee work that our appellate division lawyers have been engaged in for the last two years. We participate, for example, in Crime and Victim's Rights Task Force. We participate in the Oregon State Bar's Criminal Law Section and Oregon Rules of Appellate Procedure. We would like to detail some of that.

1:55:27 Chair Ellis I have no problem with that. I think it is good. Per or Judge Welch did you have any comments to add?

1:55:38 Hon. Elizabeth Welch No.

1:55:38 P. Ramfjord No.

1:55:42 Chair Ellis Do you need a motion on this?

1:55:42 N. Cozine I do.

1:55:43 Chair Ellis Is there is a motion to approve biennial report subject to the changes the executive director said she would include?

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

**Agenda Item No. 8 PDSC Schedule for 2014**

1:56:18 Chair Ellis The last item before we get to the monthly report is the schedule. Any thoughts on the proposed schedule? There was one topic that I didn't see included that I suggest we have an update on. That is topic of undocumented defendants and how we are handling that. I know that good work has been done in that. I remember we had a fairly formal set of issues about two years ago when that U.S. Supreme Court case came out. I believe the news is going to be positive and supportive, but I want to make sure of that.

1:57:22 N. Cozine So the *Padilla* project?

1:57:24 Chair Ellis Right.

1:57:25 N. Cozine We would be happy to. One of the things I would like to do, I had talked to you about potentially using our December meeting time as a time to have a retreat. It has come to my attention that there are some commission members who can't attend on that date. I will circulate an email. I would like in January to try to have a retreat so that we can talk about further development of the agendas for 2014. I think there are lots of things that we might want to include and I left plenty of room for those items. I think that it would be helpful to have some more discussion about what fits well into our strategic plan? What fits well into our thoughts for how we want to move forward in 2014-15?

1:58:12 Chair Ellis And I am reminded by today's session that we need to think more in advance than we did this last biennium on what our legislative packages are going to be.

1:58:29 N. Cozine Yes. Let me share with you what I shared with our providers who were at the management conference. I agree. In preparation for the management conference, I actually went through the exercise of detailing what our calendar should look like. It is built into the schedule, but I looked back at 2012 and how we had presented the budget package to the PDSC, to all of you, and we had given you policy option packages in June of 2012. Then you approved the final budget in October, I believe, of 2012. I think we actually need to have our final budget submitted in August in 2014. The schedule for 15-17 would be that following the break out sessions that we had with our consortia, PD, and law firm providers earlier today, we will actually hold the regional meetings from now through March, so that we can take the list of what the providers identified as goals and needs and really refine it. So we have these three different groups and what we need to do now is look for those areas of overlap and start developing what we would like to call, "Regional Stabilization Plan," so that we are trying to find ways to strengthen each region of the state in one policy option package. That is what we articulated as a way to try to pull all this information together. I would propose that we

present that policy option package, along with the others, to the Commission in April of 2014. That is not too far off. In May of 2014, we will present you with the full agency request budget. In June we would proceed to final approval. At the June meeting, of course, it is the annual conference so we have all of our providers there in the room to offer comments. I put it in June partially because if the Commission has a desire to see change we will need that additional time to make those changes before we submit it.

- 2:01:22 Chair Ellis My memory is it kind of ....
- 2:01:22 N. Cozine Swooshed right by.
- 2:01:24 Chair Ellis Right. Thank you.
- 2:01:26 N. Cozine So I think this plan has the advantage of building in plenty of discussion time and development time. At the same time I will note that I am continuing to push OPDS employees to develop things in fairly short order. So we are working hard to make these things happen.
- 2:01:52 Chair Ellis I would circulate it to the provider community and if the POPs they want us to be thinking about then now would be a good time to let us know.
- 2:02:03 N. Cozine Right. We really do want to hold regional meetings because as you saw the three provider groups had so much overlap. When I pulled out the map and started looking at what the issues in public defense are, I think that if we can pull together regional groups, we will find there is a lot of overlap in regions too. Things that didn't necessarily come out in the provider groups because while they are similarities between providers, there are also similarities in regions, so we will go through that exercise. I think that exercise will further refine what the highest levels of need really are.
- 2:02:35 C. Lazenby I like the regional idea when you were laying it out yesterday. I think it also enhances the ability to provide kind of a statewide view to build legislative coalitions to move (inaudible) to. I have another issue. I don't know whether it should be dealt with in the context of the budget. I had several conversations with providers yesterday who were complaining about the excessive charges that they are being levied by the district attorney's office for discovery. For instance \$35 for discovery in a disk. There seems to be such a variance between the actual cost of the electronic thing and it sort of echoed in the eCourt conversation this morning that we heard. It just seems to me that if we are stewards of this public pot of money for indigent defense and our providers are paying prices that aren't indexed for cost for discovery, something that they have a right to and they need, it really amounts to sort of two public agencies sort of stealing money from each other. That doesn't seem to be a prudent use of public dollars to do it that way that. My sense is that money is finding its way operationally into the district attorney's office not without a legislative approval to do that. I don't know if there is a way to look at that whole issue of actual costs. The thing that scared me this morning as well was hearing the presenters say, "Well, OJD is thinking about eCourts as being a profit center." Our department may be getting into the same business. I think with some savings we could have more money for people that are providing the services if we could end this sort of shuffling of funds from our pot to another pot.
- 2:04:37 N. Cozine Commissioner Lazenby, members of the Commission, one of the challenges – well we have looked at the issue, the DA discovery issue, and when we go and do our service delivery reviews and our peer reviews it often comes up as an issue. The challenge is that those discovery rates are often set by the county commissioners and so it is not an easy negotiation for us in every single separate county. So while we can very easily have conversations with OJD about what charges they levy on a statewide platform, the discovery costs have been a lot harder to wrangle.

2:05:24 P. Levy I just wanted to make sure you all understood and Nancy hit it right on with county commissioners having set these rates. The DA offices bill us directly for those costs and we pay them directly to the DA offices. Providers are not paying them and then seeking reimbursement.

2:05:47 C. Lazenby It just strikes me as the only well in the desert pricing. At a time when we are wrangling within our industry about not having enough money to adequately compensate people that are providing services, for our funds to be getting siphoned off not related to cost but to subsidize other activities that has nothing to do with what we are doing. It seems like we ought to figure out some way to raise a ruckus about that. Go forth and ruckus.

2:06:37 Chair Ellis Okay. Are we up to...

2:06:39 J. Potter Can I talk about this draft schedule just a wee bit?

2:06:41 Chair Ellis Yes you may.

2:06:47 N. Cozine I don't know what happened to October and November. They were in there once. I swear.

2:06:57 N. Cozine It shows October 1<sup>st</sup> location to be decided. We haven't set the management meeting date yet. One possibility though is 9/10. October 1 is a Wednesday. I think it is a good idea to hold these meetings in conjunction with when we do the management meeting. I would encourage us to work on a date for the management meeting before we lock in a date.

2:07:25 N. Cozine Yes.

2:07:26 J. Potter Then the December 18, that is exactly one week before Christmas. I am concerned a bit that attendance would be low. You may want to take a look at the 11<sup>th</sup>.

2:07:41 N. Cozine Alright. Any objections? I can just change it there.

2:07:46 J. Potter And not that it matters, but the 16<sup>th</sup> I am on an airplane.

2:07:55 N. Cozine The 16<sup>th</sup> of?

2:07:55 J. Potter January. Sorry.

2:07:59 N. Cozine Well maybe what we want to do is have the January meeting be the retreat. I could actually cross off that date and send out an email and get good dates.

2:08:12 Chair Ellis Check John's schedule so you find a date he is not in an airplane or fishing boat.

2:08:21 N. Cozine Okay. I will start there.

2:08:21 Chair Ellis We know your habits.

2:08:27 J. Potter That is unfortunate.

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

2:08:29 Chair Ellis Okay. Monthly report.

2:08:32 N. Cozine Since I am sitting here I will start with a few things. I wanted to note that our human resources manager, Cynthia Gregory, has been doing a great job. She has already been helping with the development of a research and IT director position. She has been updating our files, our policies and procedures, and she is helping us create a safety plan for our office.

She has just jumped right in. She is fitting in wonderfully well. Employees are already going to her with questions. She is helping us with open enrollment. So far I think it has been a very good experience. I wanted to touch on my visit to Washington, D.C. last week. It was a meeting of the NLADA's Research and Data Advisory Committee. It was a very productive meeting. It was very interesting. The four pilot sites that are testing out the North Carolina data and analysis model do not yet have a final product, but we should have that in June of this year which is fairly exciting. Through that work we should be able to identify indicators and data points that will help us learn more about what data points are meaningful in this conversation about quality and workload. You heard from consortia members a concern about not receiving PDSC agenda materials. I want to touch on that because another thing that I said during my remarks at the management conference was that one thing I want OPDS to work on is improved communication. So I said this at the management conference to everyone. I had assumed, actually, that all of our providers received as a cc the Commission meeting materials. It came to my attention that actually only some of our providers are on that cc list. So I told our providers at the management conference that I would be adding all of them to the cc list and that they were welcome to get deleted if they wanted to. I think it is our best interest that they are getting those. I also have increased the email updates that I am sending directly to providers. I have just been sending them updates about our structure, updates about what is happening and I am going to continue to do that. We had been relying quite heavily on the OCDLA newsletter and e-updates. We will continue to do that but I think independent emails to our contract providers is an important step in making sure that they know the work that you are doing and improving that communication. So those are some additional pieces we will be working on.

2:11:24 J. Potter

Might it make sense to add the Commission members to that copy list. So when you are sending to the contractors an update that Commission members get that update as well?

2:11:36 N. Cozine

I have forwarding them to you after the fact, but I can cc or bcc you. Yes. On staff development we had a two day, non-lawyer management training. I think it went remarkably well. The people who are now in management positions that weren't before, Caroline and Angelique and Paul as our legal counsel, Cynthia and I really got a lot of the two day training. We will be following up with training for lawyer managers and it is really helping set the office culture and expectations and it is a very worthwhile way to spend time. Lastly, I will just note that my feeling is that everyone in the office is doing an exceptional job. I mean really continuing to work hard and moving the agency to the next level of service. I am very excited about the way things are going. We have people here so you can ask them questions too. That is my OPDS update.

2:12:49 Chair Ellis

Okay.

2:12:56 P. Gartlan

I am the presenter you have been waiting for. Most of my comments are going to be about personnel. Susan Drake, who is a senior deputy defender in our office and she has been with us since the mid to late 90s, she is a senior deputy and she is a team leader and she announced that she is leaving us, she is retiring at the end of November. We are losing her. She is a really, really good attorney and a better person. Her demeanor and presence in the office has been terrific. We are going to miss her a lot. I just want to give you a little bit of background. I don't know if you remember what team leaders do. Team leaders lead group discussions. Our office is broken up into teams. The teams meet once a week. The team leader leads and discussions and the team leader also edits briefs, merit briefs, the briefs that attorneys think have a good shot of being orally argued to the Court of Appeals. So the team leaders are the back bone of the office. They really have the hands on product of the briefs that go out and hands on preparing speakers for the Court of Appeals. We do moot courts at the team meetings, so along those lines we sent the team leaders, team leaders who wanted to go, Brian Garner last week in Portland. So we sent to the team leaders who do editing in the Court of Appeals to hear Brian Garner give a presentation on drafting briefs and editing briefs. Another personnel matter, Erin Synder who had been with us for year, she had been Chief

Judge Haselton's clerk and after Chief Judge Haselton she came to our office. Then she had an opportunity up at Lewis & Clark to be in the career placement division. She took that position and she is returning to us after a little over a year up there. She is returning to us. We think that she is going to be a real good asset to the office. Based on our discussion last meeting you had asked me about the time for filing briefs and how we compare with other states filing the initial brief.

- 2:15:32 Chair Ellis Right.
- 2:15:33 P. Gartlan We were at 223 days. I started the research on that. It is hard sometimes to dig down and get the real data. That kind of takes more legwork. I have been calling around to other offices. I can tell you is we are not an outlier.
- 2:15:52 Chair Ellis Either way.
- 2:15:54 P. Gartlan Either way. So far Washington seems to be fairly expeditious. They file their briefs on average at 102 days in criminal case.
- 2:16:09 Chair Ellis They have a state FTE office that does appellate?
- 2:16:13 P. Gartlan I don't think they do. I am not sure of that. I think they have a contract. A lot of things are involved here. It is not just the time but the structure. They said 36 cases per year, direct appeals – per year – per attorney. They are independent contractors and they give every attorney the same compensation for that. I think it like \$106,000 a year. They give the attorney Westlaw access and access to court documents. So that is on kind of a contract basis and they set case limits of 36 cases a year. They are filing their first brief, according to the latest data, 102 days after the record settles up in Washington. At the other end of the spectrum so far is Colorado. That is a state agency.
- 2:17:29 Chair Ellis That is FTE at the trial level as well as appellate.
- 2:17:31 P. Gartlan They are over a year in filing the brief.
- 2:17:39 Chair Ellis That is amazing. I remember 10 years ago we had them come out and their lead guy shared with us. They were all enthusiastic about their system and how good it was and how efficient they were. Something has happened.
- 2:17:58 P. Gartlan I think I will have a more full report at the next meeting. Again, it is not just how much time they are taking. It is what kind of staff do they have? Do they have a case weighting system? Do they weight cases differently? What are their expectations? That varies. As I said Washington is 36 direct appeal cases. They try to peg it at kind of a media complexity kind of a case. Other states like Illinois use a point system. There are a lot of different values for the type of case. So Illinois is going to be a point system and then Washington says we assume this is going to be a media kind of case and it is 36 cases per year, per attorney. So caseload expectations play into this. From what I can see our expectations are higher than most other states and higher than what the guidelines kind of describe. That is about it. Thank you.
- 2:19:30 Chair Ellis So Caroline do you get to make a report?
- 2:19:35 C. Meyer I think my report was contracting. I don't have anything else.
- 2:19:44 Chair Ellis We haven't had occasion to congratulate you. Congratulations.
- 2:19:51 C. Meyer I will say I am looking forward to my new role, as I am sure Billy is looking forward to his expanded role as well. As Nancy mentioned we have been so busy. We are down two full-time individuals right now. One of them is coming back next week. That will help lighten

the load a little bit. Our contractors have been very understanding and patient with us. We are getting there. I think we will be back up shortly to where we need to be. The management training was very good. As a new manager I definitely appreciated that training.

- 2:20:24 Chair Ellis I think your whole group should feel pretty darn good the way the process worked this year. There wasn't a lot of huge tension in the room. That is real tribute not just to the competence of the evaluation and so on, but there is a trust factor that goes into that. Both of you should feel very good about that.
- 2:20:53 C. Meyer And Shelley is out on leave. She is not able to be here. She also managed to get her contracts negotiated before she went on leave. We have been monitoring those while she is gone.
- 2:21:07 C. Lazenby She is coming back next week?
- 2:21:07 C. Meyer Kelly Ashton was also out. She is scheduled to come back next week. Shelley is scheduled to come back in December.
- 2:21:34 Chair Ellis Great. Steve, while we have got you here is there anything you want to share with us.
- 2:21:33 S. Bender I don't actually have anything prepared to share with you.
- 2:21:39 Chair Ellis Come on up. Sometimes we get our best input when they are not prepared.
- 2:21:43 S. Bender For the record, I am Steve Bender from the legislative fiscal office. Just wanted to indicate that February session will be coming up as planned. Obviously the short session is coming up and we will be starting to work with Ways & Means Committee co-chairs to identify issues that are important to them in terms of rebalancing the budget. One of the major issues that I know that you are facing in your budget is the 2% hold back that was applied across the board to all state agencies. We haven't been given any specific direction yet as to what extent funds will be available to restore those. Just to make you aware that it has turned out that fire costs have been much higher than projected. The state is facing basically a \$40 million dollar bill to pay for fire suppression costs from the current fire system, which is more than had been anticipated. That will have an effect, not specifically or necessarily on your budget, but on the ability, I believe, to restore the 2% reduction.
- 2:23:15 Chair Ellis And it is money already spent. I won't be the one to say we have burned through that.
- 2:23:26 S. Bender Otherwise I would like to thank you and the agency for inviting me to attend the management conference. It was very helpful for me to understand the issues.
- 2:23:38 Chair Ellis Good. Thank you for coming. Anything else?
- 2:23:44 N. Cozine No.
- 2:23:44 Chair Ellis Per, Betsy, anything either of you want to add to the comments.
- 2:23:54 Hon. Elizabeth Welch No. Thank you.
- 2:23:56 P. Ramfjord It has been helpful.
- 2:23:58 Chair Ellis If there are no issues than I would entertain a motion to adjourn.  
**MOTION:** John Potter moved to adjourn the meeting; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

**Meeting adjourned**

# Attachment 2

PUBLIC DEFENSE SERVICES COMMISSION  
Provider Comments Regarding Needs for 2015-17

Chair Ellis invited Tom Crabtree (public defender scribe), Jim Arneson (law firm scribe), and Jennifer Nash (consortia scribe) to present information about the work of each group.

Each group was asked to consider five challenges for public defense providers as a starting point for the process:

- Providing zealous and effective client centered representation
- Effective quality assurance practices including recruitment, training, mentoring, supervision, performance reviews, and procedures for corrective actions
- Case assignment protocols that match seriousness of case types
- Information systems that support effective management and provider work and to assist with documenting and evaluating case outcomes
- System and community engagement that furthers understanding and appreciation of public defense providers and assists policy makers with substantive and budgetary decisions that support public defense providers and the work that they do

Public Defender Group - Tom Crabtree

- Develop a normalized set of workload standards for all provider types to promote global system efficiencies
- Identify and recruit new champions for public defense in the Legislature
- Restructure contracts to ensure office stability during fluctuating caseloads, as when payments are reduced by 10 cases, there is no correlating cost savings in the office
- Ensure equal access to eCourt data, and provide assistance in preparing for eCourt implementation
- Develop mobile computing capability in jails, courts, and DHS settings
- Improve data collection and retention
- Digital storage of files in a searchable format
- Optimized case management systems
- Mandatory technology training for attorneys and staff
- Mentoring and co-counseling programs for all young attorneys
- Recommended ratios of attorneys to investigators and support staff
- A flexible workload cap
- Regular meetings with other Oregon public defender administrators
- Management training on issues unique to public defenders, including performance appraisals with meaningful data for objective measurements, systemized regular reviews, and use of a client satisfaction survey system

Private Law Firms - Jim Arneson

- Assistance with recruitment or advancement of lawyers in smaller communities and smaller firms, including financial incentives for attorneys in smaller or rural areas, with a bonus for staying long enough to become an experienced resource in that community.
- OPDS assistance with PLF dues, continuing legal education courses, etc.
- Assistance in developing lawyer talent:
  - An exchange program or buddy firms to help small firm lawyers get the experience necessary to meet OPDS minimum qualification standards or relaxing the qualification standards
  - Allow attorneys to become qualified through alternative experiences
  - Provide incentives (perhaps CLE credit) for experienced attorneys who volunteer to mentor newer attorneys
- Expanded provider lists in border counties
- OPDS assistance negotiating a more uniform method of accessing jails and correctional facilities, as each firm spends significant time getting approval to visit the various state and local institutions
- More training on managing problem clients, clients with or without mental health problems, and crisis management
- Ready access to the appellate division's outlines and case briefs in order to familiarize themselves with recent case law

- OPDS bargaining for bulk IT functions, such as West Law and LexusNexus, Microsoft or other software, case management software, especially eCourt data if that could be pushed into a case management system
- Creation of an RFP to secure regional or county dedicated training programs to provide standardized training to all providers and staff.

Consortia group - Jennifer Nash

- Consortia workgroup to share information, gather and analyze data, and improve performance and quality of representation statewide
- OPDS assistance with the efficient gathering and analysis of data
- Consortia education outreach to the bench, the bar, and the legislature about the advantages of the consortia model, especially in juvenile dependency cases where consortia attorneys bring experience in other areas of the law that can be helpful, there are reduced conflicts, and a decentralized delivery system
- Formal mentorship program and experienced-based compensation
- Financial assistance with PLF, bar dues, CLEs, etc.
- Loan forgiveness programs for private attorneys who provide public defense as a portion of their workload.

**Commission Meeting Notes  
October 25, 2013**

**IT SYSTEMS**

- Mobile Computing
- Transitioning to eCourt
- Digital storage of files going forward and backward in a searchable format - ethical issues
- Optimize case management systems so that PDSC reports sync with case management software and eCourt
- Technology training for attorneys and staff
- Ready access to Appellate Division Outlines and Cascards
- Bulk-bargaining for all software including Westlaw/Lexis, case management software

**ENGAGEMENT POLICY MAKERS AND COMMUNITY**

- Develop normalized workload standards
- Demonstrate how workload standards promote global system efficiencies
- Identify and recruit new champions for public defense in Salem
- Restructure contracts to assure office stability to withstand fluctuating caseloads
- Equal access to eCourt data
- Support from PDSC/OCDLA to address unique structural issues
- Management/leadership training for contract administrators
- Training for performance appraisals
- Mine data meaningfully for objective measures
- Promote and systemize regular reviews
- Institute and use a client satisfaction survey system

**CLIENT-CENTERED REPRESENTATION**

- Recruitment/Advancement => Better Advocacy
- Financial incentives for attorneys going to smaller (rural) areas and increases for staying
- OPDS pay for portion of PLF dues, CLE's, etc.
- Other professional benefits for staying in smaller/rural counties
- Exchange program/buddy firms to get attorneys qualified
- Relax the qualification standards so attorneys can upgrade qualifications easier
- Expand service provider lists (in border counties)
- Re-evaluate standing lists
- OPDS - work with courts and determine barriers to sending clients to Boise
- OPDS - talk to DOC/OYA/Sheriff offices to determine what attorney's need to do/say to get service providers and attorney's into facilities; make regulations uniform across facilities
- Conduct more frequent trainings on how to deal with difficult clients (with or without mental health problems) and crisis management

## **QUALITY ASSURANCE PRACTICES**

- Mentoring/Co-counseling (CLE Credit?)
- Supervision/training - increasing effectiveness
- Support staff - retaining and keeping good staff, collecting data, training, rural v. urban
- Resource Minimums - specifically investigators and office staff
- Workload cap - flexible
- RFP for region/county dedicated program to provide standardized training to all providers and staff

# Attachment 3

NOV - 1 RECEIVED

October 22, 2004

Dear Indigent Defense Provider:

The National Legal Aid & Defender Association has long been committed to keeping our membership abreast of recent developments in the law. As you may be aware, in June the Federal Trade Commission ("FTC") charged that a group of attorneys for criminal indigent clients in Clark County, Vancouver, Washington, violated the FTC Act by forming a "consortium" through which they collectively demanded higher fees from the county for providing indigent defense services.<sup>1</sup> The attorneys created the "Indigent Defense Bar Consortium Contract." The four attorneys named in the FTC's complaint presented the Contract to the county during biennial contract negotiations on behalf of 43 other attorney signatories making up the Consortium. The contract demanded increased fees for the most time-consuming cases (homicide, attempted homicide, persistent offender and death penalty) and authorized the Consortium to take legal action against any Consortium attorney providing legal services inconsistent with the Contract. Lawyers in the group refused to accept certain new cases until their demands for increased fees were met. The highest fee the Consortium demanded was \$75.00 per hour for death penalty cases.

The county ultimately increased its per hour fees, but the FTC alleged that the attorneys "acted to restrain competition by, among other things, organizing and acting as the exclusive representatives of the Consortium Contract and thereby facilitating, negotiating, entering into, and implementing agreements among competing criminal indigent defense attorneys on price and other competitively significant items." According to the FTC, "this conduct was in all essential respects identical to the boycott by criminal defense attorneys that was found to be per se price-fixing by the U.S. Supreme Court in a 1990 case, *Federal Trade Commission v Superior Court Trial Lawyers Association*, 493 U.S. 411." The FTC alleged that the attorneys' collective efforts to increase per case and per hour fees for representation of indigent defendants amounted to an illegal threat to "refuse to deal," in violation of Section 5 of the FTC Act. In its press release, the FTC stated: "Clark County and its taxpayers were deprived of the benefits of competition among criminal indigent defense attorneys." The Commission obtained a consent decree with the charged attorneys enjoining them from organizing or engaging in similar conduct for the next twenty years.

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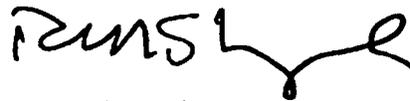
<sup>1</sup> Visit the Federal Trade Commission's website for the additional information, including the Complaint, Decision and Cease & Desist Agreement, at: <http://www.ftc.gov/opa/2004/06/clarkcounty.htm>.

October 22, 2004

As always, The National Legal Aid & Defender Association ("NLADA") is concerned with the ability of indigent defense providers to deliver high-quality services in accordance with their legal and ethical responsibilities. Many jurisdictions, as you know, under-compensate their public defenders and assigned counsel. While collective action to refuse to accept cases is currently unlawful under the antitrust laws, individual attorneys may have an ethical obligation to refuse additional cases for which resources are inadequate.<sup>2</sup> We feel it is appropriate to provide you with information about this case as NLADA considers approaching Congress and other legislative bodies regarding our desire to ensure defenders can legally and effectively advocate for fair compensation.

In this legislative effort, we would find it useful to get more information from our members about the extent of the FTC's efforts in this area. If you have been contacted by the FTC, or know of an office or attorney that has been contacted, please contact NLADA at your earliest convenience. You can reach Defender Legal Services' Associate Attorney Maureen James via email at [m.james@nlada.org](mailto:m.james@nlada.org) or by phone at # 202/452-0620. With your help, we will continue to broaden awareness within the membership regarding the application of the antitrust laws to collective action by counsel, as we continue our efforts to petition our government for redress anytime indigent defense services are compromised.

Sincerely yours,

A handwritten signature in black ink, appearing to read "ROSS SHEPARD", with a stylized flourish at the end.

Ross Shepard, Director  
Defender Legal Services

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<sup>2</sup> See the NLADA website for the full text of The American Council of Chief Defenders ethics opinion stating: "When confronted with a prospective overloading of cases or reductions in funding... the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases."



# Oregon

Office of Public Defense Services

1175 Court Street NE  
Salem, Oregon 97301-4030  
Telephone (503) 378-3349  
Fax (503) 378-4462

[www.oregon.gov/opds](http://www.oregon.gov/opds)

## Memorandum

From: Paul E. Levy, General Counsel  
To: OPDS Executive Director, Analysts  
Re: Contractor Lobbyist Expenses  
Date: November 19, 2013

You asked for information regarding allowable uses of contract funds. While OPDS encourages providers to engage in the political process, concerns have arisen regarding the use of contract funds for the purpose of funding lobbying efforts. The Public Defense Services Commission (PDSC) model contract contains provisions related to this issue. You may wish to share this information with contractors.

First, the instructions in our long-form Request For Proposals (RFP) have stated for years that **“Under no circumstances will the PDSC fund any lobbying or other political activities for a public defense contractor”** [emphasis in the original]. The language appears in the section of the RFP that concerns allocation of contract funds. Although the quoted language does not appear in the contract, it is effectuated through several related contract provisions. Contract provision 7.5.2, entitled “Financial Records,” provides, in part: “Contractor’s records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.” Similarly, provision 7.7.1, concerning “Costs and Expenses,” limits contractor payments to matters directly related to providing legal services. Taken together, these provisions reflect the statutory mandate that costs paid from the PDSC Account are for expenses in connection with the legal representation of persons for which the commission is responsible by law. ORS 151.225.

Consortia and other contractors are not prohibited from employing the services of a lobbyist with their earnings from contractor funds. However, the contract terms set forth above, especially in conjunction with the language quoted from the RFP, makes clear that PDSC funds may not be directly used to employ a lobbyist.

Please let me know if you have any questions concerning this matter.

# Attachment 4

**OFFICE OF PUBLIC DEFENSE SERVICES  
2013-15 BIENNIUM**

**POP102 - Hourly Paid Attorneys and Investigators**

	<u>Attorneys</u>	<u>Investigators</u>
Total Requested POP at ARB	1,799,868	732,814
Total Funding Received at LAB	218,141	452,130
% of Request	12%	62%
 Estimated total hours per biennium	 227,831	 356,265

	<u>OLD RATE</u> (thru 12/31/13)	<u>REQUEST</u> <u>AT ARB</u>	<u>NEW RATE</u> (effective 1/1/14)
<b>ATTORNEY FEES - Trial and Appellate Level</b>			
Non-capital Case	\$45 per hour	\$53 per hour	\$46 per hour
Capital Case, Lead Counsel	\$60 per hour	\$72 per hour	\$61 per hour
Capital Case, Co-counsel	\$45 per hour		\$46 per hour
Out-of-State	\$45 per hour		\$46 per hour

**NON-ATTORNEY FEES**

Investigator	\$28 per hour	\$30 per hour	\$29 per hour
Fact Investigator - Capital Case	\$39 per hour	\$41 per hour	\$40 per hour
Mitigation Investigator	\$44 per hour		\$45 per hour

# Attachment 5

**PUBLIC DEFENSE SERVICES COMMISSION**

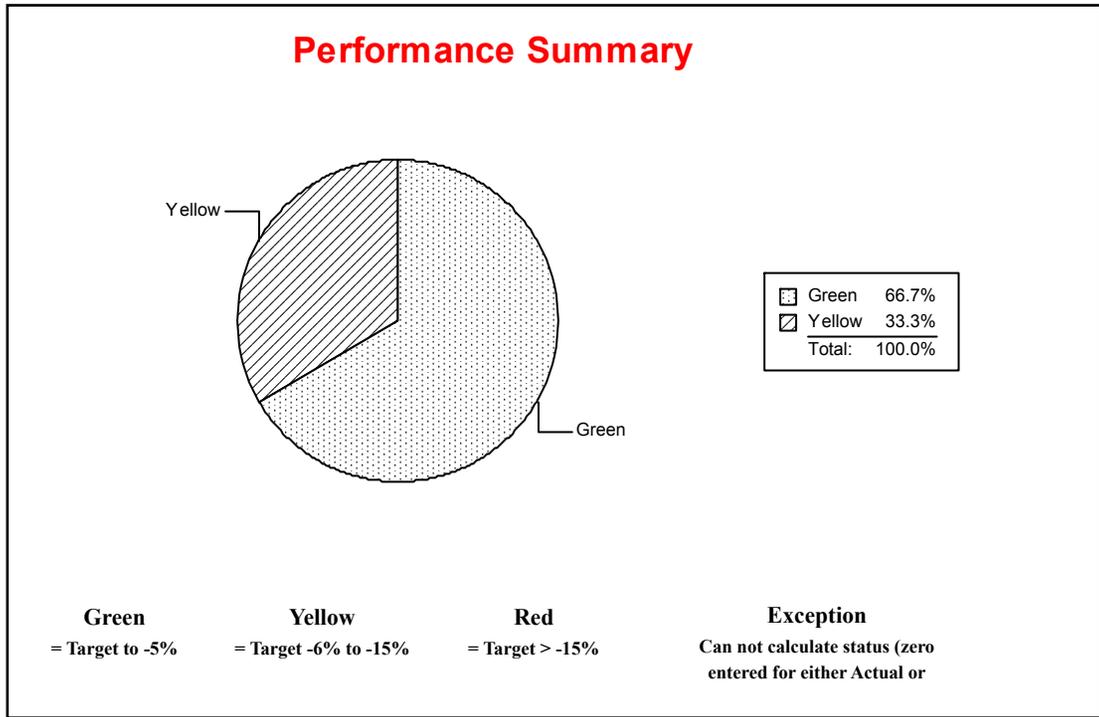
**Annual Performance Progress Report (APPR) for Fiscal Year (2012-2013)**

Original Submission Date: 2013

Finalize Date:

<b>2012-2013 KPM #</b>	<b>2012-2013 Approved Key Performance Measures (KPMs)</b>
1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.
2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.
3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.

<b>PUBLIC DEFENSE SERVICES COMMISSION</b>		<b>I. EXECUTIVE SUMMARY</b>	
<b>Agency Mission:</b> Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.			
<b>Contact:</b> Billy Strehlow		<b>Contact Phone:</b> 503-378-2512	
<b>Alternate:</b> Peter Gartlan		<b>Alternate Phone:</b> 503-378-2371	



**1. SCOPE OF REPORT**

Key performance measures address all agency programs.

**2. THE OREGON CONTEXT**

The Public Defense Services Commission is responsible for the provision of legal representation in Oregon state courts to financially eligible individuals who

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

### **3. PERFORMANCE SUMMARY**

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

### **4. CHALLENGES**

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

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

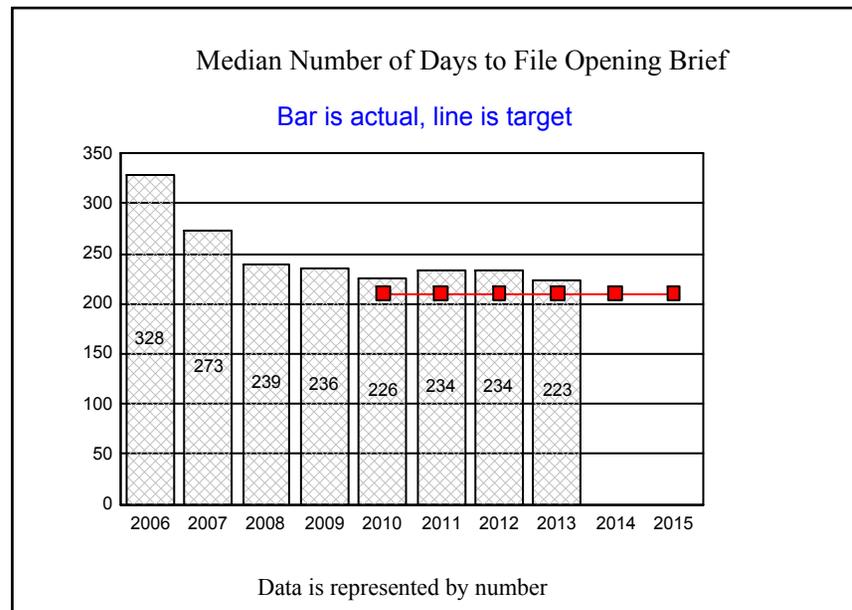
### **5. RESOURCES AND EFFICIENCY**

The agency's 2011-13 Legislatively Adopted Budget was \$223,717,479.

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

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

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



**1. OUR STRATEGY**

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

## 2. ABOUT THE TARGETS

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

## 3. HOW WE ARE DOING

The agency has made significant progress. In 2006, the median number of days to file the opening brief was 328; in 2013 it was 223. Assuming adequate resources, the agency anticipates reaching or approaching the goal of 210 days in 2014.

## 4. HOW WE COMPARE

Appellate Division attorneys significantly exceed national caseload standards. Nationally, the appellate public defender workload ranges from 25 to 40 cases annually. For example, Georgia, Indiana, and Washington set the maximum annual appellate caseload at 25 cases per attorney; Nebraska sets the maximum annual appellate caseload at 40 cases per year. US Department of Justice, Compendium of Standards for Indigent Defense Systems, vol. IV, C 1-5 (2000). On average, an Appellate Division criminal defense attorney was assigned 48 cases in the fiscal year ending in 2013, which exceeds the maximum recommended standards and practices.

## 5. FACTORS AFFECTING RESULTS

The ability to meet and exceed the target correlates positively to the number of attorneys and negatively to the number of cases. The agency does not control the number of referred cases. Attracting and retaining competent attorneys affects progress toward the goal.

## 6. WHAT NEEDS TO BE DONE

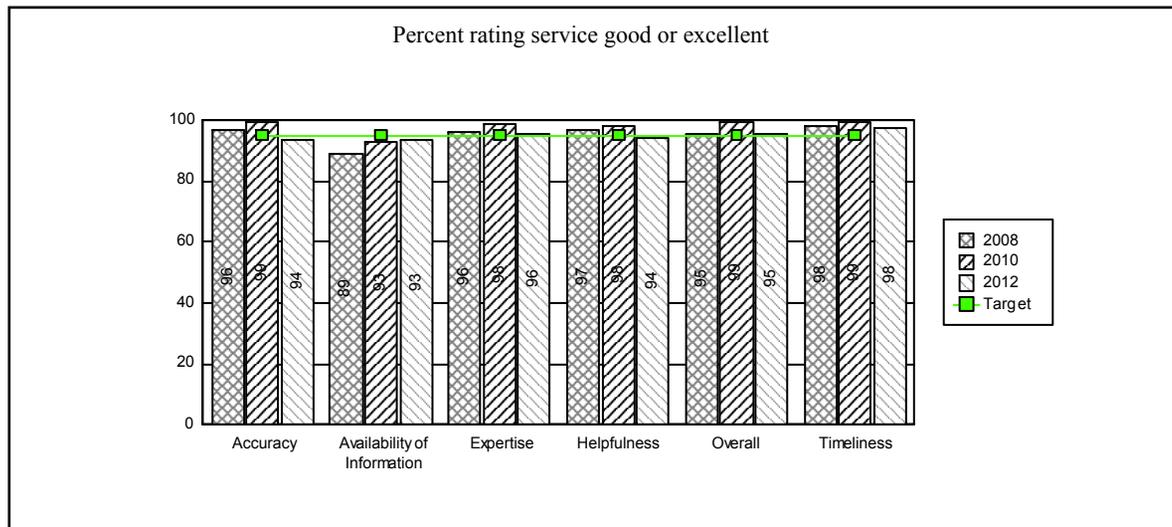
The agency continues to meet regularly and work cooperatively with the appellate courts and the Attorney General's Office to promote system efficiencies. The agency has made steady progress over the past several years to reduce the median brief filing date for its criminal cases (from 328 days in 2006, to 223

days in 2013). Barring significant caseload increases, milestone Supreme Court decisions that affect hundreds of open cases, or an atypical loss of talented and trained attorneys, the agency expects to approach its target of 210 days in criminal cases in fiscal year 2014

**7. ABOUT THE DATA**

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

<b>KPM #2</b>	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	2007
<b>Goal</b>	To provide greater accountability and results from government by delivering services that satisfy customers.	
<b>Oregon Context</b>	To maintain and improve the following category ratings of agency service: overall quality of services, timeliness, accuracy, helpfulness, expertise and availability of information.	
<b>Data Source</b>	Customer Service Surveys (survey and results stored on SurveyMonkey).	
<b>Owner</b>	Contract and Business Services Division, Billy Strehlow, (503) 378-2512.	



**1. OUR STRATEGY**

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

## 2. ABOUT THE TARGETS

Targets for 2011-13 have been set at 95% of respondents rating the agency as good or excellent.

## 3. HOW WE ARE DOING

The survey results indicate a high level of customer satisfaction with the agency. Service was rated as good or excellent by more than 93% of the respondents in all categories. Although the standard reporting measure for state agencies groups both "good" and "excellent" into one category, the more telling aspect of the agency's results is the percentage of respondents who rated the service as excellent. In the categories of Timeliness and Helpfulness, over 70% of respondents rated the agency's service as excellent.

## 4. HOW WE COMPARE

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

## 5. FACTORS AFFECTING RESULTS

The ratings are somewhat lower this year than in prior surveys. The agency believes that the lower ratings are a reflection of cost-cutting measures the agency implemented. For example, in order to reduce the costs associated with processing payments, the agency grouped some categories of vendors so that payments were processed for that group one day per week rather than being processed throughout the week as submitted. Although this added an average of three days to the time in which payments were processed, the agency still processes payments within 10 days and did realize a savings as a result of this procedural change.

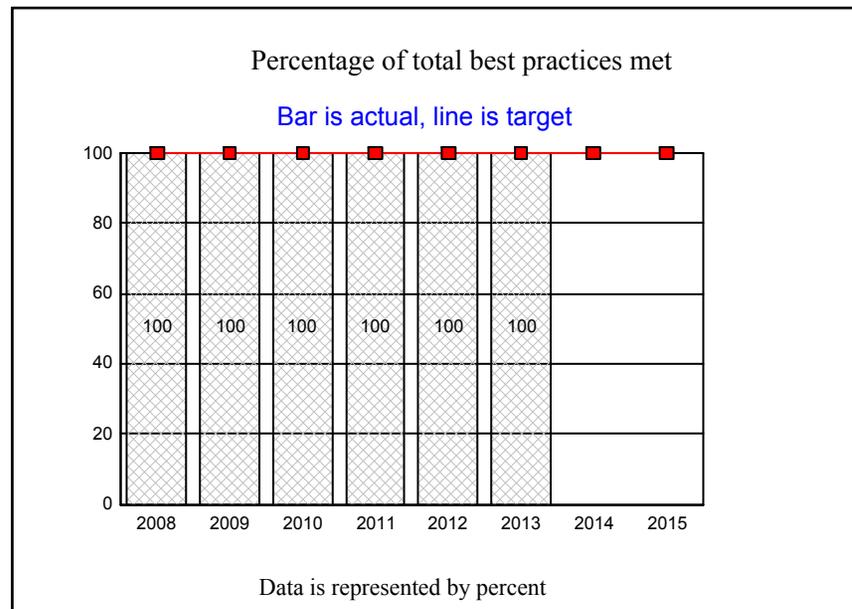
## 6. WHAT NEEDS TO BE DONE

In the 2008 survey, the agency's lowest satisfaction rating (89%) was in the category of Availability of Information. In order to improve this rating, the agency restructured its website so that information is better organized and easier to locate. The agency is pleased that the 2012 survey results show that 93% of the respondents now rate the Availability of Information as good or excellent. The agency will continue to make improvements in this area.

**7. ABOUT THE DATA**

A total of 886 contract attorneys, private bar attorneys, and service providers were invited to complete the agency's Customer Service Survey. The survey was administered in June 2012 as a snapshot for fiscal year 2012. There was a 29% response rate (255 responses) to the survey. The agency administers the customer service survey every two years to coincide with its two-year contract cycle. The next survey will be conducted in June 2014.

<b>KPM #3</b>	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.	2007
<b>Goal</b>	Best practices as a pathway to improved performance and accountability.	
<b>Oregon Context</b>	Required KPM for all Oregon boards and commissions.	
<b>Data Source</b>	Commission agendas and minutes.	
<b>Owner</b>	Contract and Business Services Division, Nancy Cozine, (503) 378-2515.	



**1. OUR STRATEGY**

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

## **2. ABOUT THE TARGETS**

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

## **3. HOW WE ARE DOING**

The Commission's minutes provided in the materials for its July 31, 2013 meeting included the discussion of the self assessment confirming that the agency met all of the best practices for boards and commissions.

## **4. HOW WE COMPARE**

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

## **5. FACTORS AFFECTING RESULTS**

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

## **6. WHAT NEEDS TO BE DONE**

No change is needed.

## **7. ABOUT THE DATA**

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

<b>PUBLIC DEFENSE SERVICES COMMISSION</b>	<b>III. USING PERFORMANCE DATA</b>
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**Agency Mission:** Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

<b>Contact:</b> Billy Strehlow	<b>Contact Phone:</b> 503-378-2512
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<b>Alternate:</b> Peter Gartlan	<b>Alternate Phone:</b> 503-378-2371
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**The following questions indicate how performance measures and data are used for management and accountability purposes.**

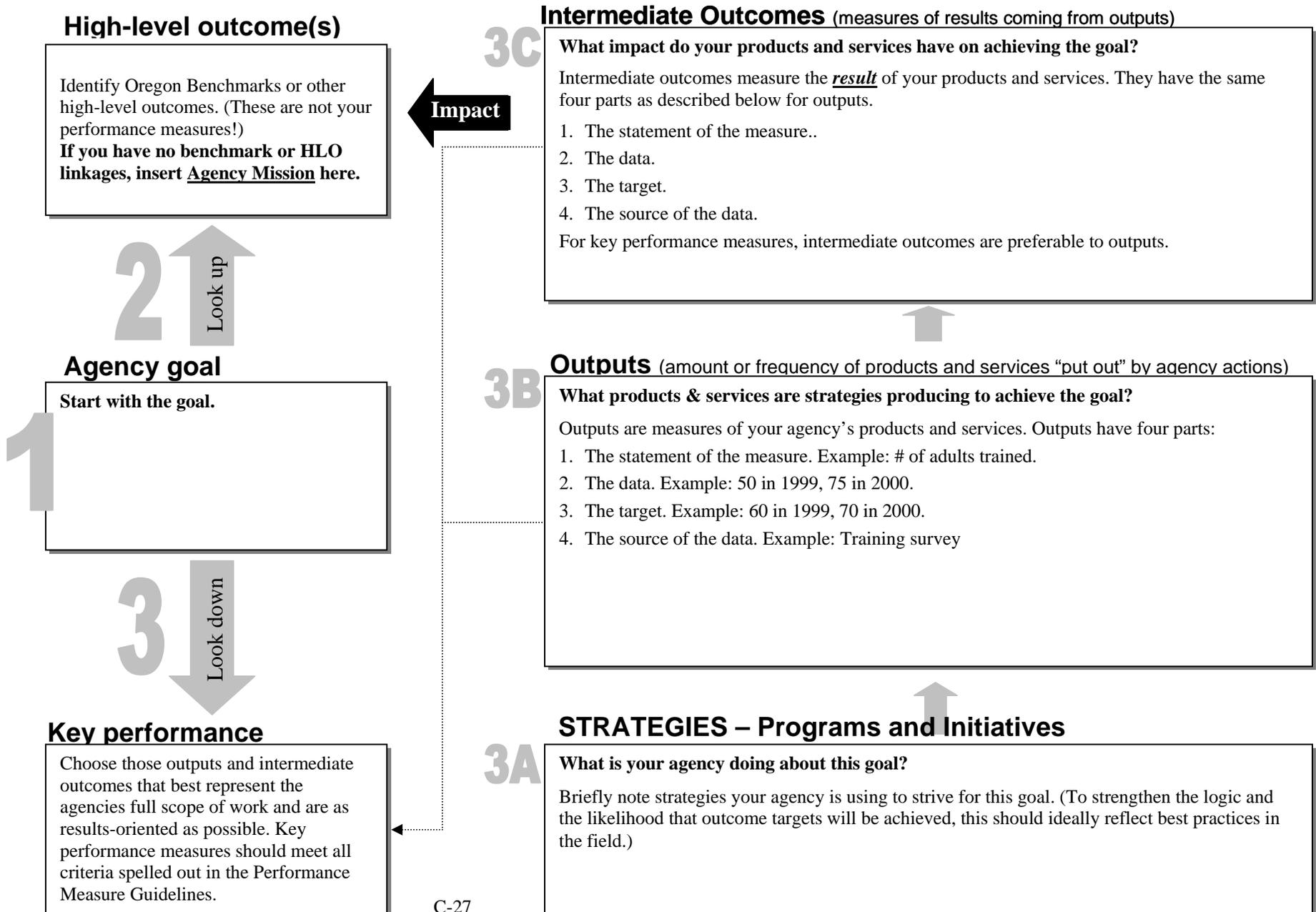
<b>1. INCLUSIVITY</b>	<p>* <b>Staff:</b> The agency's Management Team drafted initial performance measures.</p> <p>* <b>Elected Officials:</b> The Joint Legislative Audit Committee and the interim Judiciary Committee assisted the agency in refining and finalizing its performance measures. After five years of data collection, it was apparent that some performance measures were not providing useful information and were eliminated by the Legislature during the 2009 session.</p> <p>* <b>Stakeholders:</b> Input was received from the agency's Contractor Advisory Group comprised of public defense service providers.</p> <p>* <b>Citizens:</b> The agency developed, discussed and revised its performance measures during two public meetings.</p>
<b>2 MANAGING FOR RESULTS</b>	<p>The agency's lowest customer service rating in 2008 (89% good or excellent) regarding availability of information caused us to restructure our website so that more information is available and is easier to locate. As a result, the rating for 2012 improved to 93%.</p>
<b>3 STAFF TRAINING</b>	<p>The agency has advised staff of the goals outlined in the performance measures and staff is directly involved in the data collection and/or direct daily implementation of the measures. The performance measures serve as important tools for the agency's managers as they identify and develop necessary staff skills as well as determine the best use of overall resources in order to attain the goals enumerated in the measures.</p>
<b>4 COMMUNICATING RESULTS</b>	<p>* <b>Staff:</b> The Annual Performance Progress Reports are available to staff online. The results and future plans are discussed at staff meetings.</p> <p>* <b>Elected Officials:</b> The agency communicates results to the Legislature through the Executive Director's biennial report to the Legislature, and by the inclusion of the APPR in the Agency Request Budget binder.</p>

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

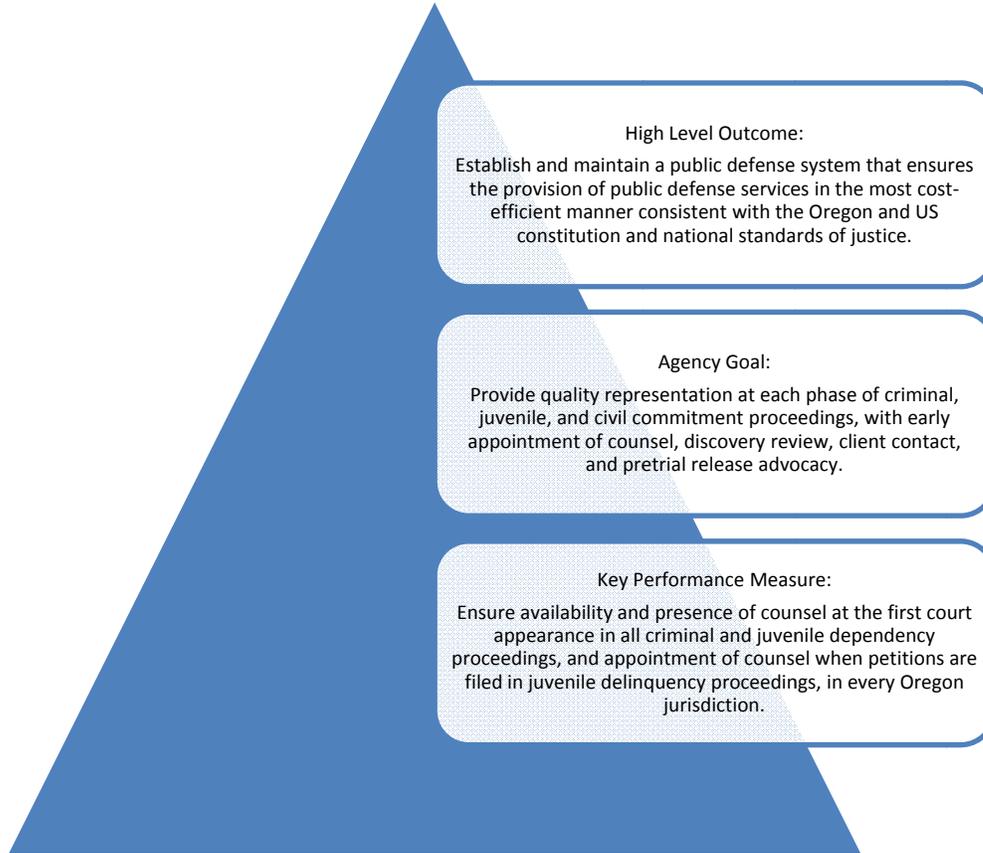
\* **Citizens:** Performance results are communicated through the agency's website and DAS's website as well as being provided in the materials distributed at public meetings.

# PERFORMANCE MEASURE GUIDELINES

## One Logic Model for the Development of Performance Measures



New Trial Level KPM Proposal:



- Add three new KPM targets:
  1. Lawyers present and appointed to represent each qualified individual at or before arraignment in criminal cases in all 36 Oregon counties.
  2. Lawyers present and appointed to represent each qualified individual at or before the filing of a petition in juvenile delinquency cases in all 36 Oregon counties.
  3. Lawyers present and appointed to represent each qualified individual at or before the first shelter care hearing in juvenile dependency cases in all 36 Oregon counties.

Proposal Regarding Existing KPMs:

- Modify existing Appellate Division KPM by removing balfour briefs from the calculation and reducing the target to 180 days.
- Continue Customer Service and Commission Best Practices KPMs, but modify the assessment procedures for Commission Best Practices.

# Attachment 6

*17<sup>th</sup> Annual*  
**JUVENILE DEFENDER LEADERSHIP SUMMIT**  
**November 1-3, 2013**  
**Scottsdale, Arizona**

**CLE CREDIT PROVIDED**

*Promoting Justice for all Children by Ensuring Excellence in Juvenile Defense*

*We sincerely appreciate the generous support of our donors, the Open Society Foundations; the John D. & Catherine T. MacArthur Foundation; the Annie E. Casey Foundation; of our sponsors, Lowenstein Sandler LLP; Husch Blackwell LLP; Orrick, Herrington & Sutcliffe LLP; Polsinelli PC; Anonymous Donors; and of all the faculty and volunteers who have donated their time, talent, and resources to making this Summit possible.*  
*Thank you.*

**THURSDAY, OCTOBER 31**

2:00 – 6:00                      EARLY REGISTRATION – **Lobby Courtyard**

**FRIDAY, NOVEMBER 1**

7:30 – 8:30                      REGISTRATION & CONTINENTAL BREAKFAST – **West Foyer**

8:30 – 10:00                    OPENING SESSION – **Chaparral Ballroom**

WELCOME  
*Patricia Puritz*  
Executive Director  
National Juvenile Defender Center

*Christina Phillis*  
Public Advocate  
Arizona Office of the Public Advocate

KEYNOTE SPEAKER  
**Expanding the Role & Reach of the Juvenile Defender**  
*Francis “Frankie” Guzman*  
Soros Justice Fellow  
National Center for Youth Law

10:00 – 10:15                    Break – **West Foyer**

10:15 – 11:45                    BREAKOUT SESSIONS

- 1. Using Suspension & Expulsion Hearings to Win Your Case in Court**  
*Kaitlin Banner, Lisa Geis, Franchesca Gonzalez*  
Paloma 1
  
- 2. Getting the Facts: Mastering the Art of Discovery**  
*Randy Hertz*  
Cactus

3. **Balancing Ethical Obligations with Mandatory Reporting Laws**  
*Laura Cohen, Ellen Marrus*  
Fiesta 2
4. **Clearing the Record: Navigating the Expungement & Sealing Terrain**  
*Patti Lee, Kim Thomas*  
Paloma 2
5. **What Defenders Need to Know About Psychiatric Medications**  
*Marty Beyer*  
Granada
6. **Structural Issues in Juvenile Defense: Accountability & Program Evaluation**  
*Jackie Deane, Josh Dohan, Kris Henning, Marie Osborne, Josh Perry*  
Desert
7. **Using Social Media to Gain Defender Advantage**  
*Elizabeth Calvin, Angela Chang, Kaarin Lueck*  
Paloma 3
8. **Providing Due Process Where None is Required: Defending Tribal Youth**  
*Brad Peterson, Nadia Seeratan, Ron Whitener*  
Fiesta 1
9. **International Law Bolstering Access to Counsel**  
*Jackie Bullard, Betsy Clarke, Tim Curry*  
Encanto 2

11:45 – 12:45

Lunch – **West Foyer**

12:45 – 2:15 pm

GENERAL SESSION – **Chaparral Ballroom**

VIDEO UPDATE

**2012-2013 United States Supreme Court Review**

*Angela Vigil*

Director of Pro Bono & Community Service

Baker & McKenzie

PLENARY

**The Intersection of Immigration & Juvenile Defense**

*Christina Kleiser, Moderator*

Staff Attorney

Knox County Public Defender's Community Law Office

*Susan Kelly*

Staff Attorney

Juvenile Division, Pima County Public Defender's Office

*Gladis Molina*

Managing Attorney

Florence Immigrant & Refugee Rights Project

*José Padilla*

Executive Director

California Rural Legal Assistance

*Alessandra Soler*  
Executive Director  
ACLU of Arizona

2:15 – 2:30 Break – **West Foyer**

2:30 – 4:00 BREAKOUT SESSIONS

1. **Beyond *Padilla*: the Ethical Mandate to Protect Non-Citizen Clients**  
*Susan Kelly, Chris Kleiser, Gladis Molina*  
Fiesta 2
2. **Challenging False Confessions & Police Intimidation**  
*Simmie Baer, Andy Block, Josh Tepfer*  
Paloma 2
3. **JTIP – Disposition Advocacy**  
*Amy Halbrook, Jeff Liston*  
Paloma 1
4. **Litigating a Bench Trial**  
*Randy Hertz*  
Cactus
5. **Dismantling the Pipeline**  
*Kaitlin Banner, Franchesca Gonzalez, Anne Lee*  
Paloma 3
6. **JLWOP: Resentencing & Policy Update**  
*Elizabeth Calvin, Marsha Levick, Wendy Wolf*  
Granada
7. **Checks & Balances: Protecting the Client’s Right to Appeal**  
*Jackie Bullard, Marie Osborne, Amanda Powell*  
Encanto 2
8. **Strengthening the Attorney-Client Relationship: SOGIE Communications**  
*Marty Beyer, Jackie Deane, Christina Gilbert*  
Fiesta 1
9. **Accessing Counsel in Remote & Underserved Regions**  
*José Padilla, Susan Roske, Mary Ann Scali*  
Desert

4:00 – 4:15 Break – **West Foyer**

4:15 – 5:45 GENERAL SESSION – **Chaparral Ballroom**

ROBERT E. SHEPHERD JR. AWARDS  
*Wallace Mlyniec, Presenter*  
Board of Directors, National Juvenile Defender Center  
Lupo-Ricci Professor of Clinical Legal Studies & Director, Juvenile Justice Clinic  
Georgetown University Law Center

UPDATE

**Raised on the Registry**

*Nicole Pittman*

Consultant

Advocating for Youth Affected by Sex Offender Laws

PLENARY

**A Defense Perspective on the Sexual Exploitation of Minors**

*Cait Mullen, Moderator*

Staff Attorney

Juvenile Rights Practice, Legal Aid Society, New York

*Withelma "T" Ortiz Walker Pettigrew*

Board of Directors

Rights4Girls

*Diane Rondini-Harness*

Staff Attorney

Wisconsin State Public Defender

*Malika Saada Saar*

Executive Director

Rights4Girls

5:45 – 7:00

**JUVENILE DEFENDER LEADERSHIP RECEPTION – West Patio**

*In partnership with the Office of the Public Advocate-Maricopa County, the Pima County Public Defender's Office, the Arizona Public Defender Association, and the Children's Action Alliance*

**SATURDAY, NOVEMBER 2**

7:30 – 8:30

**CONTINENTAL BREAKFAST – West Foyer**

8:30 – 10:00

**GENERAL SESSION – Chaparral Ballroom**

SHOWCASE

**Establishing a Juvenile Defense Specialization**

*Eric Zogry*

State Juvenile Defender

North Carolina Office of Indigent Defense Services

SHOWCASE

**School to Nowhere Project**

*Franchesca Gonzalez*

Staff Attorney

California Rural Legal Assistance

UPDATE

**Resource Center Partnerships**

*Rey Banks*

Senior Policy and Communications Associate

National Juvenile Defender Center

PLENARY

**Renewing our Commitment: Litigating Status Offender Cases**

*Amy Halbrook, Moderator*

Director

Northern Kentucky University, Chase Children's Law Center Clinic

*Dean Rivkin*

Distinguished Professor of Law

University of Tennessee College of Law

*Marie Williams*

Interim Executive Director

Coalition for Juvenile Justice

*Karen Yazmajian*

Assistant Attorney-in-Charge, Brooklyn Office

Juvenile Rights Practice, Legal Aid Society, New York

10:00 – 10:15

Break – **West Foyer**

10:15 – 11:45

BREAKOUT SESSIONS

**1. Civil/Criminal Collaboration to Enhance the Defense of Youth**

*Juan Cartagena, Laura Cohen, Shannon Kennedy*

Paloma 2

**2. The Rigorous Representation of Status Offenders**

*Brenda McGee, Dean Rivkin, Karen Yazmajian*

Granada

**3. Improving Post-Disposition Representation: Strategies for Re-entry**

*Patti Lee, Josh Perry, Sarabeth Zemel*

Paloma 1

**4. Red Flags & Resources: Defense Strategies to Combat Trafficking**

*Cait Mullen, Withelma "T" Ortiz Walker Pettigrew, Diane Rondini-Harness,*

*Malika Saada Saar*

Paloma 3

**5. Guaranteeing Due Process Protections for Dual Jurisdiction Youth**

*Kris Henning, Bob Schwartz*

Fiesta 1

**6. Case Law Roundup**

*Randy Hertz*

Cactus

**7. Friend or Foe: Navigating the Complexities of Working with Parents**

*Tim Curry, Christina Phillis*

Fiesta 2

**8. Protecting Youth During Sex Offender Treatment**

*Judith Becker, Jenny Lutz, Nicole Pittman*

Desert

**9. Remediation of Competence: Working with a Flawed Concept**

*Marty Beyer, Arthur Bowie, Sue Burrell*

Encanto 2

11:45 – 12:30

Lunch – **West Foyer**

12:30 – 2:15

GENERAL SESSION – **Chaparral Ballroom**

SHORT DOCUMENTARY FILM

**Mighty Times: The Children’s March**

PLENARY

**Toward Racial Democracy: History & Tactics**

*Lisa Wayne, Moderator*

Law Office of Lisa M. Wayne

*Juan Cartagena*

President & General Counsel

LatinoJustice PRLDEF

*Geoff Ward*

Associate Professor

School of Social Ecology, University of California, Irvine

2:15 – 2:30

Break – **West Foyer**

2:30 – 4:00

BREAKOUT SESSIONS

**1. JTIP – Guilty Pleas**

*Arthur Bowie, Jackie Deane*

Fiesta 1

**2. Policing SROs & Prosecutors: Creative Civil Actions**

*Shannon Kennedy, Victoria Lopez, Lisa Thurau*

Paloma 2

**3. Aggressively Challenging Transfer**

*Simmie Baer, Marty Beyer, Gar Blume, Frankie Guzman*

Fiesta 2

**4. Structural Issues in Juvenile Defense: Multisystemic Advocacy**

*Chris Kleiser, Anne Lee, Josh Perry, Karen Yazmajian*

Desert

**5. Tools & Tactics to Combat Racial & Ethnic Bias**

*Juan Cartagena, Kris Henning, Lisa Wayne*

Paloma 3

**6. Coping with Caseloads, Managing Pressure, & Meeting Ethical Duties**

*Randy Hertz*

Cactus

**7. Incorporating Education & Disability Law into Your Defense**

*Lisa Geis, Jamie Argento Rodriguez*  
Granada

**8. The Use & Abuse of Sex Offense Statutes**

*Sarah Bergen, Nicole Pittman, Shannan Wilber*  
Paloma 1

4:00 – 4:30

Pick up Hors d'Oeuvres & Drinks and Proceed to Caucus Meeting Rooms

4:30 – 5:30

REGIONAL CAUCUS MEETINGS

1. **Central** – Angela Chang, Jeff Liston  
*Arkansas, Indiana, Kansas, Kentucky, Missouri, Ohio, Tennessee*  
Cactus
2. **Mid-Atlantic** – Kris Henning  
*District of Columbia, Maryland, Puerto Rico, Virginia, West Virginia*  
Paloma 1
3. **Midwest** – Betsy Clarke, Eileen Hirsch  
*Illinois, Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin*  
Encanto 2
4. **New England** – Chris Northrop, Wendy Wolf  
*Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont*  
Fiesta 1
5. **Northeast** – Laura Cohen, Sandra Simkins  
*Delaware, New Jersey, New York, Pennsylvania*  
Paloma 2
6. **Pacific** – Jonathan Laba, Patti Lee  
*California*  
Fiesta 2
7. **Southern** –Eric Zogry  
*Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina*  
Granada
8. **Southwest** – Ellen Marrus, Christina Phillis  
*Arizona, Colorado, New Mexico, Oklahoma, Texas, Utah*  
Paloma 3
9. **Western** – Susan Roske, George Yeannakis  
*Alaska, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Wyoming*  
Desert

6:00 – 7:30

Regional Center Directors & NJDC Board of Directors' Dinner Meeting – **Barcelona**

**SUNDAY, NOVEMBER 3**

6:00 – 8:00 MORNING HIKE/RUN – **Meet in Hotel Lobby**

8:00 – 9:00 CONTINENTAL BREAKFAST – **Chaparral Ballroom**

9:00 – 10:30 GENERAL SESSION — **Chaparral Ballroom**

SHOWCASE

**What Defenders Need to Know about the Affordable Care Act**

*Sarabeth Zemel*

Program Manager

National Academy for State Health Policy

PLENARY

**Innovative Use of Law & Policy to Protect the Rights of Youth in Custody**

*Jamie Argento Rodriguez, Moderator*

Juvenile Services Program Coordinator

Community Defender Division, Public Defender Service for the District of Columbia

*Carmen Daugherty*

Policy Director

Campaign for Youth Justice

*Patti Lee*

Deputy Public Defender

San Francisco Public Defender's Office

*Shannon Minter*

Legal Director

National Center for Lesbian Rights

*Brenda Smith*

Professor of Law

Washington College of Law, American University

Summit Adjourns