

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

Friday, December 12, 2014
10:00 a.m. – 1:15 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEETING AGENDA

- | | |
|--|--|
| 1. Action Item: Approval of minutes - PDSC meeting held on October 10, 2014 (<i>Attachment 1</i>) | Chair Ellis |
| 2. Prioritization of Policy Option Packages (<i>Attachment 2</i>) | Commission
Nancy Cozine
Contract Providers |
| 3. Action Item: Approval of Case Manager Contracts (<i>Attachment 3</i>) | Commission |
| 4. House Bill 3363 Task Force Report (<i>Attachment 4</i>) | Nancy Cozine |
| 5. Hurrell-Harring v. New York Update (<i>Attachment 5</i>) | Paul Levy |
| 6. Proposed 2016-17 Contract Revisions (<i>Attachment 6</i>) | Paul Levy
Caroline Meyer |
| 7. Action Item: Approval of Proposed Compensation Plan changes (<i>Attachment 7</i>) | Commission |
| 8. OPDS Monthly Report | OPDS Staff |
| 9. Executive Director Annual Review - Schedule | Commission |
| 10. Executive Session* | Commission |

***Executive Session:** *The Public Defense Services Commission will meet in executive session at approximately 1:00 p.m. The executive session is being held pursuant to ORS 192.660(2)(d) and (f).*

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

Next meeting: January 22, 2014, at the Office of Public Defense Services in Salem. 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 10, 2014
1:00 p.m. – 4:00 p.m.
Salishan Resort
7760 Highway 101 North
Gleneden Beach, Oregon 97388

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
John Potter
Per Ramfjord
Janet Stevens (by phone)
Chip Lazenby

STAFF PRESENT: Nancy Cozine
Peter Gartlan
Paul Levy
Amy Miller
Caroline Meyer
Cynthia Gregory
Amy Jackson
Cecily Warren

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

Agenda Item No. 1 Approval of minutes – PDSC meeting held on September 18, 2014

Commissioner Stevens requested that "KMP target," on page two, be corrected to read "KPM target." **MOTION:** Commissioner Potter moved to approve the minute as amended; Commissioner Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 2 Oregon Budget Update

Steve Bender, Legislative Fiscal Office (LFO) budget analyst, presented information about the 2015-17 biennium budget environment. He began by providing an overview of LFO, a permanent, non-partisan legislative service agency charged with providing state budget research analysis and recommendations to the legislature, as well as staffing for the joint committee on Ways & Means, the Emergency Board, and other budget committees.

Mr. Bender indicated that current projections, which can change, show insufficient 2015-17 biennium general fund resources to continue existing programs. He explained that the first step in examining the next biennium budget is to determine what the Legislature has already approved before considering adjustments, like eliminating old programs or establishing new programs. He also explained that revenue projections, rendered quarterly by the state's office of economic analysis, will become a fixed number at some point to enable the Legislature to budget to a specific number for the next biennium. Mr. Bender noted that while there will be an updated forecast in December, the last budget forecast estimates 10.7% growth. He compared the 10.7% increase with an 11.7% growth rate in the current biennium. Mr. Bender said projections for 2017-19 are also low, around 8%, noting that while 2019 is five years away and the projections will change many times, the expected slow growth will require cautious investment in 2015-17. Mr. Bender returned to the 10.7% projected growth for 2015-17, explaining that once technical adjustments are made to accommodate things like tax credits, the actual increase is closer to 8.5%. He shared that, on average, agency request budgets are up 19.9%; about \$1.7 billion dollars more than what is projected to be available. Mr. Bender continued by providing a detailed explanation of what is called "current service level," or CSL, which is funding required to continue current programs or previously approved programs. He said CLS alone is calculated to increase by approximately 14.9% , well above the 8.5% growth in revenues, creating a little bit over a billion dollar gap.

Mr. Bender continued by noting a few things that could impact the overall budget environment. First, he mentioned that the revenue forecast is only \$27 million dollars below the trigger level for the 2% kicker, which, if triggered, would increase the gap by a minimum of \$263 million dollars. He also noted that the potential extension of a hospital assessment, which funds part of the Oregon Health Plan, could generate \$364 million dollars to help close that gap. Mr. Bender noted the uncertainty around the outcome of challenges to the 2013 PERS legislation and, in response to a question, the potential of \$16 million in the next biennium in taxation from marijuana sales.

Mr. Bender concluded by emphasizing the importance of prioritization of requests, given the remarkably limited funds available for the 2015-17 biennium. Commissioner Potter asked whether there would be any possibility of the Legislature appropriating a specific amount with instruction to the Commission to divide appropriately. Mr. Bender indicated his belief that the Legislature would not provide an additional appropriation without any understanding of where it would go. Chair Ellis asked whether the priorities could include portions of separate packages, and Mr. Bender indicated that it could.

Agenda Item No. 3

Parent Child Representation Program – Update

Amy Miller, OPDS Deputy General Counsel and Attorney Manager for the Parent Child Representation Program, provided a brief update regarding the PCRCP and introduced lawyers involved in the Program: Rachel Negra and Paula Lawrence from Yamhill County, and Melissa Riddell from Linn County. Each lawyer provided a quick summary of changes implemented since the start of the Program, some anecdotal information about improvements in the quality of representation, and positive system reforms adopted since the start of the Program.

Agenda Item No. 7

Oregon Justice Resource Center

Bobbin Singh, Executive Director of the Oregon Justice Resource Center (OJRC), introduced Ali Vander Zanden, OJRC Senior Policy Strategist, and Steve Wax, OJRC Legal Director. Each guest provided information about the work of the OJRC. Founded in 2011 and entirely grant-funded, the OJRC is a 501(c)(3) non-profit based out of Lewis & Clark Law School. While its original mission was to create opportunities for law school students to work on criminal justice issues, it has grown considerably since its founding. Mr. Singh described

some of their projects, including work with MPD, the Capital Resource Center, the Innocence Project, and an amicus committee that submits briefs on cases in the Oregon Supreme Court. Mr. Singh said that over the past three and a half years they have worked with about 60 law students, committed over 10,000 hours of work, authored five amicus briefs, and provided representation in one second look hearing where the individual was released from Coffee Creek. OJRC also worked on a clemency petition out of Washington, which was approved and is now before the Governor, and is currently working on two more clemency petitions. They have had 20 students complete the Indigent Defense Project at MPD, which includes recruitment of 1L students, research and writing projects by 2L students, and misdemeanor caseloads for third year certified law students. Mr. Singh indicated that his goal is to have these students graduate with jobs in public defense.

Ali Vander Zanden talked about her role at the OJRC, which has focused on an assessment of ending the death penalty in Oregon. They completed the initial report and will start to do some polling and message research. Chair Ellis noted that the PDSC budget includes approximately one million dollars a month for death penalty work. Steve Wax added that he is enjoying his start at OJRC and Mr. Singh's vision and energy. His work will focus on the Innocence Project.

Agenda Item No. 4 PDSC – Conceptual contract language changes for contracts beginning January 2016

Paul Levy explained that OPDS is currently examining existing contract language with the intent of getting feedback on the proposed changes at future Commission meetings. These changes will specifically target provisions addressing attorney performance, CLE requirements, and quality assurance expectations of contract administrators. He indicated that the changes would first be presented to the Public Defense Advisory Group, and that the changes would also be vetted through the Commission meeting process before issuing the RFP in April 2015.

Agenda Item No. 6 Hurrell-Harring v. State of New York; DOJ Statement of Interest

Paul Levy shared information about ongoing developments at the national level regarding what he terms a lack of “constitutional lawyering,” or the systematic deprivation of the right to counsel in criminal cases. He explained that *Hurrell-Harring v. State of New York* is similar to *Wilbur v. Mt. Vernon*, in Washington, where the United States Department of Justice also filed a statement of interest. Mr. Levy explained that in both cases, the US DOJ did not take a position on the merits of the case, but defined “constitutional lawyering,” and suggested a remedy for jurisdictions where lawyering is inadequate. In *Mt. Vernon*, the court adopted the US DOJ's recommended remedy, and appointed a monitor. *Hurrell-Harring*, filed in 2007, bounced up, down, and around the New York appellate courts, and is now back in the trial court. Mr. Levy summarized the US DOJ's position as opposed to the constructive denial of the right to counsel, where the system is providing a lawyer in name only, as a result of either the absence of certain structural elements necessary to a constitutional public defense system, or certain performance deficits that yield a constructive denial of the right to counsel. The structural elements draw heavily on the ABA Ten principles for a public defense system: independence, early appointment of counsel, access to funding, caseload limits, performance standards, access to resources for experts, investigators, etc. The performance elements include the absence of opportunity for a meaningful attorney/client contact, lack of investigation or motions; no meaningful adversarial testing of the government's case. He explained that these cases veer from United States Supreme Court holdings requiring an examination of the validity of a conviction through post-conviction petition litigation, with both inadequate lawyering and prejudice in a particular case, before an examination of quality of counsel issues. Here, they argue there is no need to demonstrate prejudice because the structural impediments and conditions simply didn't allow for constitutional lawyering.

Chair Ellis asked whether the US DOJ has initiated any cases on its own, and whether there is any indication that they are looking at Oregon. Mr. Levy said he is not aware of any instances in which DOJ initiated litigation and distinguished Oregon's state system from the county-based systems in New York and Washington, where there are "incoherent" or "non-existent" standards for eligibility for counsel, counsel is denied in many cases where it seemed clear there should have been a lawyer, there are no performance standards, no caseload expectations or limitations. Mr. Levy noted that these cases are good reminders that Oregon must continue to be vigilant. Chair Ellis asked whether the PDSC should file supportive briefs, and Commissioner Lazenby also expressed interest in the idea. Mr. Levy promised to keep the Commission apprised of the developments in this case. Commissioner Potter asked whether there is any effort to examine Oregon's municipal courts, noting that anecdotal stories about the caseloads and processes there are somewhat shocking and could attract attention. Mr. Levy said that while there are troubling anecdotal some stories, because the PDSC doesn't provide those lawyer or operate in those courts, this has not been a focus area.

Agenda Item No. 5 PDSC – Proposed Meeting Dates for 2015

Commission members reviewed Attachment 3, the proposed meeting schedule for 2015, adopted the dates as recommended with the following adjustments: January 15, 2015 was moved to January 22, 2015. The Marion County Service Delivery Review will be held on this date.

The Commission also changed the December 2014 meeting date from December 11th to December 12th. Prioritization of PDSC Policy Option Packages will be on this agenda.

Agenda Item No. 8 Recruitment for Chief Defender

Ms. Cozine explained the process for recruiting the next Chief Defender. The agency began by soliciting input from staff through a survey launched on October 6th and hopes to have the posting completed by October 27th. Mr. Cozine described various locations where the position will be posted, both in Oregon and nationally. She explained that she would also solicit input from individuals outside of the office during the hiring process, and that the final interviews would be with internal staff. Ms. Cozine asked Commission members to share with her, either during the meeting or after, anything they would like considered during the hiring process. Commissioner Potter suggested that Ms. Cozine also consider consulting Ingrid Swenson and Peter Ozanne. Commissioner Lazenby indicated he would like to hear about efforts made to get a more diverse pool of candidates, as well as diversity among the panel that evaluates the candidates. Chair Ellis complimented Mr. Gartlan's ability to be a great manager and advocate, and expressed his view that the next Chief Defender should have an equally unselfish approach to managing the appellate division – giving freely of time, and also sharing opportunities to argue before both the Oregon and United States Supreme Court and to develop professionally.

Agenda Item No. 9 OPDS Monthly Report

Peter Gartlan offered an update on the appellate division, including promotions and new hires, and arguments. Two lawyers, David Sherbo-Huggins and Kali Montague, were promoted from Deputy I to Deputy II, and the agency is in the final stages of hiring at the Deputy I level. He also shared information about three Supreme Court arguments in eastern Oregon this week - one in Bend and two in La Grande. He also mentioned that the Appellate Division management team is completing their annual manual revision process. Finally, he shared his excitement about an office-wide attorney training session with Bryan Garner, the leading instructor for appellate writing.

Cynthia Gregory provided a preliminary report regarding the 2014 contractor diversity survey. She noted that there would be a more complete report provided once all responses are collected. At this point, 84% of contract administrators have responded, a fairly significant increase over 2010, where just 52% of our contractors responded. She noted that in 2010, responding to the survey was not a contract requirement, as it is now. Mr. Levy said that the survey has been improved, and Ms. Gregory noted that this year, it was sent to capital providers in addition to non-capital, and expanded the response from 749 people in 2010, to 1,102 in 2014. Ms. Gregory also noted the information relevant to conversations about the “graying of the bar,” noting that in 2010, 37% of providers were over age 50, compared with 44.21% in 2014, with 25% of attorneys in the 30 to 40 range, and another 24% are in the 40 to 50 range. Ms. Gregory said she would provide more information about the diversity among contract providers at a later meeting.

Agenda Item No. 10

Executive Session

Chair Ellis announced the commencement of an executive session:

The Public Defense Services Commission will now meet in executive session for the purpose of conducting deliberations with persons designated by the governing body to carry on labor negotiations and to consider information or records that are exempt by law from public inspection. The executive session is being held pursuant to ORS 192.660(2)(d), which permits the Commission to meet in executive session for the purposes just stated. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room.

Chair Ellis

Meeting Reconvened at 3:22:00

MOTION: Commissioner Potter moved to adjourn the meeting; Commissioner Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting adjourned at 3:22:20

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Friday, October 10, 2014
1:00 p.m. – 4:00 p.m.
Salishan Resort
7760 Highway 101 North
Gleneden Beach, Oregon 97388

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
John Potter
Per Ramfjord
Janet Stevens (by phone)
Chip Lazenby

STAFF PRESENT: Nancy Cozine
Peter Gartlan
Paul Levy
Amy Miller
Cynthia Gregory
Amy Jackson
Cecily Warren

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

Agenda Item No. 1 Approval of minutes – PDSC meeting held on September 18, 2014

0:11 Chair Ellis I am going to call the meeting to order. Commissioner Stevens is on the phone. The first item is the minutes from the meeting of September 18, 2014. Are there any additions or corrections? I had one. I am sure it is a typo. On page two the motion in the middle of the page refers to a "KMP target." It should be a "KPM target." Other than that are there any other corrections? Is there a motion to approve?
MOTION: John Potter moved to approve the minutes; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 2 Oregon Budget Update

0:052 Chair Ellis Steve Bender. I think we may want to move aside so you don't blind us.

1:45 C. Lazenby Go ahead. Act like we are still up there.

Thank you, Mr. Chair, and members for inviting me. I am Steve Bender with the Legislative Fiscal Office, which everyone pretty much calls LFO. I have been asked to talk about the basic budget environment that the state is facing as we go into the budgeting for the 2015-17 biennium. Just a bit about the legislative fiscal office, because I don't know if you know much about us. We are a permanent, non-partisan legislative service agency. We are charged with providing research analysis and recommendations to the legislature on the state budget. We also are involved with staff work, so we work both on providing the information that legislators need to make decisions, and also serve on the professional staff to help with the process. We staff the joint committee on Ways & Means, the Emergency Board, and other committees as we are assigned to do so. I was asked, as I mentioned, to talk about the state budget situation. This is not a topic that I normally speak to legislators about. One of my assignments is the Public Defense Services Commission, so I am your LFO budget analyst. I have gotten together some information the overall budget situation and would like to start off by eliminating any suspense and tell you what the bottom line is. There is always danger in doing that, but the bottom line is that we believe at this point, with very good certainty, that the general fund resources that will be available to the state for the 2015-17 biennium will be below what is needed to continue to programs that we are currently funding this biennium. It is not a great situation to be in. As it sounds, it is a problem. So I want to talk a little bit about why that is the case, or not so much why that is the case, but to put it into context. What level of shortfall we are talking about and that type of thing, but please note that all of the numbers that I am going to give you here are projections at this point in time and they change. The budget situation is fluid and we will be revising these numbers as additional information becomes available. But given that, let's look at where the state stands as we go prepare to go into the 15-17 biennium. In general, at the highest level, the general fund budget environment can be understood simply by comparing the forecasted revenue to a projection of the cost to continue the existing programs. That is where we start. We look at what the legislature has already approved and see if we can afford that before we then look at any adjustments that we might want to make to eliminate old programs or establish new programs. I would first like to talk about the revenue side a little bit and then the cost side. They are not perfectly symmetric in terms of the type of information that we have. On the revenue side, the state's office of economic analysis prepares and updates the current law revenue forecast each quarter. So every three months the numbers change. During the legislative session the legislative revenue office, which is another legislative service agency, not ours, but another one forecasts the impact of law changes on general fund revenues. So we have one group that looks at the law that is already in place, another group that looks at proposed laws, and after the session they work together to get the proposed laws to then become the existing laws. But the interesting thing here is that we have a number for revenues and at any given point in time there will not be dispute about the revenue side. It will change each quarter but at a given point in time, everyone is going to agree on what the revenues are. What you are going to see on the costs side there won't necessarily be agreement to that level because the process is not perfectly symmetrical on both revenue and cost sides. But if we focus a bit on the revenue side to start off to see where we are, the most recent revenue forecast, and this will not be revised again until December, but the most recent revenue forecast projects that next biennium general fund revenues will be 10.7% more than they are during the current biennium. So we are going to have a 10.7% growth. Now in context what does that mean? Is that good, bad, or indifferent? One way we can start to approach that question is see how the 10.7% compares to what we have seen at other points in time. I am just looking here at the time since we have gotten out of the recession, or coming out of the last recession, you can see that the 10.7% compares to a 13.1% growth rate in 2011-13, and an 11.7% growth rate in the current biennium. So what we are forecasting, or what is being forecast, is moderate growth slightly below what we have been seeing but not a huge slowdown. So we don't have any - there are no revenue bonanza coming forward. There isn't all this additional money coming forward. We are basically growing at almost the rates we have been, slightly slower. The revenue forecast goes out for several biennia beyond 15-17. There is more uncertainty the farther out you go, but just looking at the next biennium for 17-

19, for that biennium forecast is expected to slow down significantly from almost 12% to 8%. The reason this is important is you have to understand that as the legislature is working on the biennium for 15-17, knowing that there is going to be, or was expected to be, a slowdown in growth in 17-19 will have an effect on the decisions that are made in the 2015-17 session. People are going to be caution looking at this. There is a long time between now and the end of the 2017-19 biennium. That is about five years away. That 8% number will be revised many times between now and then, but these are the numbers that people will be looking at now because as I mentioned on the revenue side, people don't dispute the numbers. There is a number out there and that is what needs to be used. If you have any questions please interrupt me. Let's go back to this 10.7% figure. I am sorry there is a typo in this bullet here. It is supposed to be 15-17 not 13-15, but although the revenues are forecast to grow by 10.7% in the 15-17 biennium, it turns out that the total amount of money that the state is going to have available to appropriate to spend is not increasing at this level. It is increasing by less. The reason for that is we need to look at a broader measure to determine how the availability of funds is really changing. Because if we look at a broader measure of the amount available, we have to consider the beginning balances, that is to say how much is banked and available from prior biennia that haven't been spent yet. These other factors are a little more technical. I won't go into them unless you have specific questions, but they are tax credits that expiring that will probably be extended and other technical factors, but we take all of that into account and really the number to look at is 8.5%. We really are going to have a forecast of 8.5% more money to spend next money next biennium then we have to spend this biennium. The major reason why this is more than two percentage points lower than the 10.7 is we have a smaller beginning balance. We don't have as much money in the bank as we start 15-17 as we did two years earlier. So that is offsetting some of the revenue growth. We are starting to look at the expenditure side in this third bullet, but not really. I just wanted to compare the 8.5% figure with some other things. At this point in the budget process, all state agencies have submitted requests. Your state agency has also done one. If we look at all of the general fund requests from all of these agencies and compare the two and how much we appropriated during the current biennium, it is up 19.9%. Obviously we can't afford that. We only have 8.5% more money. The requests are up 19.9%. For your agency, Public Defense Services Commission, your request is up 27.4% from the prior biennium. You have a very ambitious request.

11:42 Chair Ellis

Does that include the packages?

11:42 S. Bender

Yes. That is what we mean by requests. This is what everyone is asking for in all of their packages. We know there will be more requests that aren't in at this point. There are always opportunities for additional requests to come in say from the Governor's Office that were not placed specifically in state agencies and from other sources, but at this point people are asking for 20% more in expenditures. If we looked at that we are essentially \$1.7 billion dollars short of being able to pay for what everyone is asking for. So we are not going to be able to do that. Let's go a little bit more specific here and instead of talking about what people are asking for, because people can ask for whatever they wish to ask for. Let's talk about the existing programs and how costs are changing for what the state is funding now. We use the term "the current service level" to describe this. A current service level number is calculated for each state agency budget to estimate the cost of continuing the programs that are currently funded in the 2013-15 biennium budget. In this case to estimate how much it would cost to continue those programs in 2015-17. This is not as clear from the description as it could be. When you start thinking about what this means, quickly there are several nuances that have to be addressed. This current service level concept does allow for some changes. It doesn't mean that people have to do exactly what they are doing right now, but if there are already approved or already forecast changes in programs that have been established but haven't become into effect, the current service level does make adjustments for that. So we do adjust for things such as programs that are being phased out or programs that are being phased in. We do adjust for the fact that perhaps in 2013, a program was only funded for the last three months. It took 18 months to get it set up and it was only established for the last six months

and it is expected to continue for the full time for 15-17. We have rollups like that. We even have situations, there aren't that many of them, where a program was approved in the 2013 session and wasn't even approved to be started until 15-17. So here is something that isn't being done, but it was currently or previously approved and now needs to be phased in. That is what we use as a concept. The way that calculate these numbers there are standard adjustments that we applied to all budgets to make sure that we are using the same basic economic understandings of what is going on in terms of costs. Then we have modifications specific to a budget to reflect unique circumstances. For example, there is a very specific method for calculating a CSL for the Professional Services Account. That is to say the funds that you provide, not to operate the office of Public Defense Services, but that is provided to your contractors. There is a specific CSL calculation for that which we won't be going into here. This is an example of what we do. Now an agency CSL can also be subject to interpretation because it incorporates all kinds of understandings in it. Most important, though, it incorporates understandings of whether funded programs were expected to be continued or just funded for a brief period of time. It may sound like that should be very clear in all instances whether funding was provided on an ongoing basis or on a one time basis, but as a matter of fact and as a practical matter, there are people who disagree in some cases as to whether a program funded was intended to be ongoing or not. Because of this unlike in the case for revenues even at a specific point in time there may be more than one number that people are talking about as the CSL. There may be disagreements. Of course this number will change over time as well, but even at a specific point in time there could be some discrepancies or disagreements. What LFO is looking at is when we look at this we estimate that the cost to continue the currently approved programs, such as the CSL, is calculated to increase by approximately 14.9% over the current biennium level. It is the 14.9% figure that needs to be compared to the 8.5% growth in revenues, or revenue availability. That is why we have a budget gap. We don't have 14.9% more money coming in even though that is what it cost.

17:10 P. Ramfjord

Is the majority (inaudible) they have been planned for or haven't implemented. (inaudible) that is comes from the majority of that increase?

17:27 S. Bender

I am afraid I can't answer your question specifically. You are asking a specific question. A majority. A factor. I don't have the information that really can break down the reasons for this so much, though I do know that that is a factor. In many cases when new programs are approved, in some cases there isn't enough money to fund them for the full 24 months. They are established partly in a biennium. But there are a number of factors. We estimate that the general fund shortfall, just to fund the current service level, is approximately, I wrote here approximately \$9,400,000 gap. After I did this I found out I missed a few things and now if I were to do this I would say it would be a little bit over a billion. So basically we are talking about a billion dollar gap. What this means then is the legislature has to find a billion dollars in cuts in existing programs in order to balance unless more revenues are raised. If we want to fund any policy option packages at all, say across the whole state we want to fund \$100 million dollars in policy option packages, that means we have to find \$1.1 billion dollars in cuts in order to free up the \$100 million that go for a policy option package. So we have a tough situation ahead of us. We being the State of Oregon and not just budget people. I want to indicate that, again, I say this about three times, these figures are all going to change over time and be revised. There are some additional issues. There are many uncertainties or issues that involved here, but here are a few of the major items that may affect that \$1 billion dollar number. The revenue forecast currently is only \$27 million dollars below the trigger level for the 2% kicker. If the kicker is triggered that will end up reducing the 15-17 biennium revenues and thereby increasing the gap by a minimum of \$263 million dollars depending upon the size of the kicker. But it would be increased over the numbers that I have been presenting to you today. That is one uncertainty that is sort of on the downsize on the revenue side. Something that is on the upside is an option is always for the legislature to approve additional revenues. That isn't generally an easy thing, but here is something that may be easier than most. There is a hospital assessment that funds part of the Oregon Health Plan.

That is scheduled to sunset. If that were to be extended that could generate \$364 million dollars to close that gap. There is no certainty. I am not intending to imply what the legislature is going to do, but given that that is an existing assessment if there isn't a lot of opposition to it, they would probably go ahead and do that and close the gap. Another unknown item that is out there is PERS litigation. If the challenges to the 2013 PERS legislation are successful, this will increase current service level costs and increase the gap in that manner. That is really all I have. If the question is how this will affect Public Defense Services?

21:17 Chair Ellis

Well the marijuana tax is going to fund everything.

21:17 S. Bender

I think that was \$16 million in the next biennium. It really isn't going to be able to make a very big dent into this particular hole. What you can take out of this, I think, is that we don't know how the Public Defense Services Commission will emerge after the 2015-17 session. But you can expect, given the types of environment that we are facing that we, our office, will be asking for a lot of information to help best deal with this situation. One of the things we will be asking is all agencies, including yours, we need to hear what types of priorities you have for your requests. The ability to fund all of your requests is pretty low. I believe you have like \$52 million dollars in policy option package requests. If somehow people are able to cobble together and say we have \$5 million dollars, \$10 million dollars, what would be your highest priority requests? If would really be helpful, I think, if you have thought through these types of potential questions and come up with types of prioritizations that you feel comfortable with.

22:54 Chair Ellis

You want us to make Sophia's choice?

22:54 S. Bender

Or it will be made for you.

23:03 C. Lazenby

So, Steve, the hospital assessment piece, I am assuming that if they extend that it doesn't help the overall picture because that is slotted to go into something, so it really isn't additional money. As a general matter, are there a number of revenue source items that are so slotted that they don't really don't provide. That is already built in.

23:34 S. Bender

In this particular case your assumption, though very reasonable, actually doesn't best describe the situation. If the hospital assessment monies are realized, they can be substituted for general fund and the general fund then really would be available and reduce the gap. In other cases there is such a bright line between funding that we couldn't use that for general fund. One of the principle examples of that would be the transportation taxes. If the legislature raised the gas tax, for example, that money could not help address the general fund budget shortfall, but in this particular case it would. It would address the shortfall.

24:20 J. Potter

I heard your comments, Steve, about our organization and the Chair's comments. But is it imperative that we prioritize and then the legislature receives this prioritized list and then can they reprioritize the list?

24:44 S. Bender

Certainly. The legislature makes the final decision and does approve the final budgets. That would be a very important piece of information. I think that if the response from the Commission is we really need all of this or nothing, it is more likely to get the nothing. That is why it is helpful for you to be able to explain what would be the most important funding sources. So to the extent that you as a Commission would want to address that, it would probably be of use to the legislature.

25:21 J. Potter

I certainly didn't mean to imply that the question was all or nothing. But could it be we certainly need more money and we are asking (inaudible). They say we are going to give us \$5 million dollars. Now you as a Commission figure out how you are going to spend it. Or in

your experience does the legislature really want to see what the Commission's hand looks like prior to (inaudible).

- 26:04 S. Bender In this particular case, I believe that the legislature would not provide \$5 million without any understanding of where it would go. Specifically, you have a number of separate policy option package requests that are designed to different needs of the public defense system. So given any type of appropriation, at least at that policy option package level, they would want to know.
- 26:38 J. Potter So are you stating this in a public forum, is this an official request coming from your office at this time?
- 26:46 S. Bender No. But I would expect a request to come forward.
- 26:49 J. Potter And if that request comes, when it does come, what is the time frame that you are sort of looking at that we would want to have something in front of you and the legislature.
- 26:57 S. Bender Again, I feel like I can't really answer that. We probably really won't be able to answer that until the co-chairs have been formally assigned for the next legislative session and have their work planned together. But typically we probably won't be asking this type of information until early in the session as a final deadline.
- 27:29 Chair Ellis Could our response be something other than maybe a five policy option package, 1, 4, and 5, something like that. Could we then say if we were to be allocated \$5 million more this is what we would do? If it was \$15 million more, this is what we would do and it would be a portion.
- 27:52 S. Bender Oh, certainly.
- 27:58 Chair Ellis So it doesn't just have to be a numerical sequences?
- 28:03 S. Bender No it does not. Again, we will be asking for prioritization and to the extent that we feel that it is not possible to prioritize one thing over another that would just be the information that we would get back from you. Again, I think this would make it more likely that we look to you as the experts on this program. We are very interested in input that the Commission would provide.
- 28:40 Chair Ellis That helps.
- 28:48 S. Bender That is it.
- 29:33 Chair Ellis The record should show that Vice-Chair McCrea is now with us.
- Agenda Item No. 3 Parent Child Representation Program – Update**
- 29:40 Chair Ellis The next item is the Parent Child Representation Program.
- 29:56 A. Miller Good afternoon, Chair Ellis, Vice-Chair McCrea, and members of the Commission. Thank you so much for giving us a few moments today to talk to you in a little more detail about the Parent Child Representation Program. For the record I am Amy Miller. We can have these folks introduce themselves as well.
- 30:11 R. Negra I am Rachel Negra.
- 30:17 P. Lawrence I am Paula Lawrence. We are from Yamhill County and part of the pilot project.

30:16 M. Riddel

Melissa Riddell from Linn County.

30:21 A. Miller

So briefly, I wanted to bring back before you some information regarding case managers. We had a conversation at the last meeting about that. I had asked for your approval of contracts and at that point we hadn't identified folks who would be named in the contracts. You were nice enough to give me some encouragement, but also ask for more information. So here I am today with additional details for you. On October 6, earlier this week, the RFP for that contract closed. We did a substantial recruiting effort. We had information sessions in both counties. I spoke on the phone to a number of candidates and we received a very positive response. We have eight interviews scheduled for Tuesday of this week. These folks who have applied to be independent case managers have amazing credentials. The majority have over 10 years experience in the field. Many of them are locals to either Linn County or Yamhill County. So we are very excited about continuing to move forward. I wanted to share that information with you. I wanted to just also share a very small preliminary update about the program. It has been up for eight weeks. These folks here who are on the ground doing the work can talk in more details, but a couple of initial conclusions, and that is all they are with eight weeks of information, but for one attorneys are providing meaningful shelter hearing representation in both counties and I think we are going to talk a little bit about what that looks like, but each county now attorneys are assigned to be present for all shelter hearings. In each county we now have an agreement with DHS regarding timely discovery which allows for more effective representation. The number of petitions filed in Linn County has fallen dramatically. Judge Murphy, who is the presiding judge in Linn County, reports that the shelter hearings under the new system run well. For the most part attorneys are meeting their clients before court and conferring with them. The hearings are moving along more expeditiously than they have in the past. So initial information but good news there.

32:29 J. Potter

Could you define dramatically?

32:29 A. Miller

I don't have the numbers in front of me. Maybe Melissa could speak to that a little bit more.

32:32 M. Riddel

For a dramatic decline?

32:39 A. Miller

Yeah.

32:39 M. Riddel

So I think it is more anecdotal but we had a significant lull. The month of August I think we may have had one shelter hearing, which was our first month rolling out. At the end of September we had a little bit of an increase. We had some very busy days. So we are kind of waiting to see how that balances out. I would say overall that DHS and their counsel are reviewing cases more carefully before they actually file or make placement decisions.

33:14 A. Miller

I could bring back some actual numbers for you next month. I was also going to say that attorneys are increasing their use of investigators and experts and you will hear a little bit more about that as well. My assumption is that is partially due to having more time available to work cases. As you know there is a caseload cap in this program. So folks have more time to do research, to investigate, and to meet with clients, so I think that is positive. Then we received the first attorney - attorneys are keeping their time and we received the first report back from them regarding their time and their activities and outcomes. I am pleased to report that the amount of time that they are spending in client contact is consistent with our expectations. As you know we had a conversation about that regarding key performance measures last Commission meeting. It is about right in the third of their time. I am pleased to report that measure is positive. Why are these results encouraging? An article that is posted on the ABA Center website indicates that repeated studies indicate that when parents are represented by attorneys with reasonable caseloads, the attorneys spend more time with parents, and as a result both parents and children have better experiences with the child welfare system. A recent article in the Child and Youth Family Services review indicates that the presence of parents and parent's attorneys, particularly for mothers early in the court

process, increases the likelihood of and reduces the time to reunification when a child has been placed in foster care. So, again, these are preliminary results but I wanted to share this information with you and hope to come back at the next meeting with more information.

34:56 Chair Ellis

It would be helpful if each of you would tell us a little bit about yourself.

35:01 R. Negra

Yes. I am Rachel Negra. I will start. I am from Yamhill County. I do juvenile work and bankruptcy work. I have been doing juvenile dependencies since late 2003-04, with a gap of a couple of years. I have my own private practice. Just myself and my staff. I just want to start by telling you that our group of eight juvenile attorneys are honored to be a part of this pilot program. We feel blessed. We started ramping up our juvenile representation about two and a half years ago after a report from OPDS that was less than favorable. We kicked out a lot of attorneys that were not doing good juvenile work. We recruited good juvenile attorneys from other counties. We set the standard high for ourselves and we have been working really hard. I feel like we got a little bit of a running start with this pilot program and the resources, oh my gosh, I feel like it is already making a huge difference. Elephant in the room, the money, obviously, right. My bankruptcy practice in the last year brought in about 65% of my revenues and 35% juvenile dependency, but the reverse was true for my time. I spent about 65% of my time on juvenile and about 35% on bankruptcy. So my heart and my bottom line have been in a struggle in the last year. I am passionate about this work but economically it didn't really make sense. Be that as it may, I was still moving forward but there was always that struggle. What am I really doing? This is tough work. With this pilot program I have been able to scale back the bankruptcies. I have been able to focus more time on the juvenile dependencies. I want to share a shelter hearing story of this week. I had my first shelter hearing where we got the petition and the affidavit in the morning of the shelter hearing. Normally, prior to the pilot program, we most likely would not have been informed of the appointment until after the shelter hearing took place. So with Amy's and Paula's help they were able to pull things together and were really encouraged to be there at all costs. It really paid off because we were able to meet with the clients. We met with DHS. The kids had been removed and put in foster care. We made a proposal to have them move back with the parents and DHS said, "No." We went in front of the judge and we got it ordered otherwise. We were able to order the kids back in the home with the parents. That historically just doesn't happen in our county. Using my first investigator ever in a juvenile dependency case after being encouraged to use investigators. Amy came and talked to us for an hour about here is what investigators can do for you. It is working. I have got a trial coming up in two weeks and I got this investigator bringing me great evidence. I think we are going to beat it if they don't dismiss the petition prior to the trial. That has just been huge. In terms of client contact that is so important. I wear many hats. I am attorney. I am a coach. I am a cheerleader for my kids.

38:47 Chair Ellis

We would never know that from the way you speak.

38:50 R. Negra

It is really important to meet with your clients constantly. To lift them up. To encourage them. They come to us broken. They all have serious deficits. One or more deficits in the area of drugs or mental health. A lot of time you have to help pull them up by the boot straps and say you can do this. Sometimes you are the only person telling them that. You are the only person encouraging them.

39:19 Chair Ellis

So one of the things that is very difficult, but it is also very important in a pilot program of this kind, is to give us a baseline against which you can measure impact. I would be interested as each of you presents, if you can give us your thoughts on that, because the whole concept of a pilot is does this work? To know whether it works it is a lot better to get something that is more measurably than anecdotal. So see what your thoughts are on that.

39:59 R. Negra

The last point I wanted to make, and hopefully my colleague can help me with that, but just with the increased time that I have, Paula and I both had a contested jurisdictional hearing last

week. We wrote memorandums and they were very helpful for the judge in being able to understand the law and we were able to beat jurisdiction in that case. Those are the kind of things that we are being encouraged to do and share amongst each other. I am already seeing a difference. Thank you.

40:39 P. Lawrence

I am Paula Lawrence. I am an attorney in private practice. It is generally focused on criminal law and appeals. Like many criminal defense attorneys, I was formally a deputy district attorney and also an assistant attorney general. One of the things that I have noticed with this pilot project is that I know what it is like to be a prosecutor where you are getting paid, you have staff, you have an office, and you have office supplies. Those things are just there and that is not the way it is when you are a criminal defense counsel. So I think what we are doing here with trying to aspire to someday, parity with the prosecutors in terms of we are on two sides of the same issue. One just gets those resources and the others have to kind of ask for those resources and justify those resources. In this particular instance with the pilot project and when you look at Rachel and how enthusiastic she is, we have eight attorneys practicing juvenile law in Yamhill County, and I think that it is just the fact of having these additional resources has kind of uplifted the spirit of the attorneys, so even though we also have some changes that are in place never underestimate the power of attitude and how that is making a difference with the attorneys that are on the juvenile team. Also, again, when you feel like you are being encouraged to use experts and encouraged to use investigators. I am seeing that again with team members that persons that maybe always knew those resources were available, but it is another thing to be actually encouraged and say this is what we want you to do. We want to see if using experts and investigators make a difference in the bottom line. In the case of a dependency case how quickly a child gets to permanency. I think we are going to see a difference, because in the first two months we are already seeing a difference. I wanted to address a little bit in Yamhill County, we also have included in the contract delinquency caseloads, so one of the big differences I am seeing right now with the delinquency caseload is that we now have the opportunity, because we have kind of a set amount of money that everyone is earning each month that when we have attorneys that are younger attorneys, or at least newer attorneys, I don't know if it is necessarily in age that they need to be lifted up to be able to do the more serious felonies. Previously we couldn't get people appointed as co-counsel for that purpose so persons, in a way, had to donate their time in order to work with another more experienced attorney so that they would be able to do these higher level felonies. So one of the things that has come from this pilot project is I was able to talk to the presiding judge and now we are able to actually add these attorneys on to a case so they can work with a more experienced attorney, and then benefit from that experienced attorney in terms of someday when that younger and newer attorney is being given higher level felonies they have that experience. With newer attorneys they may think they know everything, but they don't know what they don't know kind of a thing. So working with a more experienced attorney gives them that opportunity, and when they are actually being included as co-counsel in Odyssey the court is supposed to take into account that attorneys calendar as well as the lead counsel attorney and everybody else's calendars when we are setting the cases. That is another opportunity to make sure that the newer attorney is able to be there through the whole process. The other thing that I have noticed with our attorneys is that we have funds to hire an assistant. Some of our eight previously didn't have an assistant working with them. Now because everyone has someone working with them that cuts down – cases just get dragged out because of phone tag. I make a phone call, try to find a client, leave a message, then I am in court the rest of the day. The next day I leave another message. Now we have assistants that can be doing that phone tag throughout the day to try to get ahold of these clients. That way you don't get things dragged out just because you weren't able to have that client contact. As I said my office has always had staff but a lot of attorneys are sole practitioners. They were the ones that answered the phones and the phone messages. I think it has made a big difference with that. I also think that a big difference in the project is I think Amy has been a really good resource. I don't know who picked you and who hired you, but Amy has just done a really great job. She has a good wealth of knowledge. If she doesn't know she looks for it and comes back with emails very

quickly. Most of the time I can actually even get her on the phone and ask whatever my question is. I think just having a project manager for us, in this instance, has been very helpful as well. Those are basically my thoughts. I do think it is going to be something that is going to measurably, at least in Yamhill County and what I have seen so far, I think we are going to be able measure that we are knocking things out at shelter sooner because we actually have the information ahead of time, as opposed to just meeting the client two minutes before and all of sudden you are standing up in the front of the judge. The same thing with jurisdiction has just been dragged out in Yamhill County even past the statutory 60 days. I think we are going to be able to get on it and put the pressure on that we want our time on the docket and we are going to be fighting these. I think you are going to see a measurably difference.

46:54 Chair Ellis

Thank you.

46:55 M. Riddel

Thank you. I am Melissa Riddel and I am the administrator for Linn County. We have seven attorneys. We recently added the seventh attorney. Just recently, within the last couple of weeks, she meets qualification standards for both dependency and delinquency. We have six attorneys that will be handling full-time, 1.0 FTE caseloads. Then one person who is doing a 0.9. Then I will have a reduced caseload as administrator of our consortium. In response to your question about how to measure the success, I think it is a bit early to be able to see all of that. I think that there will be measurably outcomes, but I think it is going to take some time to see those. I know that during the month of August that I alluded to earlier, we had hardly any dependency filings, which was very unusual for Linn County. So we were jokingly saying, "Oh, we are so effective already." But I think to some extent, just the fact that our mere presence was going to be there that caused DHS, particularly newer DHS protective service workers, to really stop and think before they made that removal decision. This is the first time that we have had attorneys present for every shelter hearing. We had quite a bit of resistance to that in Linn County, but we have three people at a minimum assigned to be there each day if there is a shelter, and for initial detention review hearings and initial appearances in delinquency cases. We have seen that having that initial contact with the client at the shelter, or prior to the shelter hearing, is increasing the frequency at which clients keep their future appointments with us because we are able to schedule on the spot. We are able to get them connected with services more quickly and attorneys are even sometimes walking to Linn County Adult and Drug to schedule that assessment. That has been extremely beneficial at least so far. As Amy said there has been quite a bit of court buy in this process which we weren't really expecting, but has been a nice change. We are getting positive response from our presiding judge that we are actually shortening the amount of time of these shelter hearings. There have been a few things where we have requested second shelter or shelter care review and there has been some concern expressed by the judges that they thought that would become routine. I assured them that we were assessing it on a case by case basis, but when we felt it was appropriate we would request it. The process for obtaining investigators has also been streamlined by OPDS and that has been very helpful. You wouldn't think that it takes much time to write a justification for an investigator, but when you have a really high caseload just having the ability to send in one form instead of a justification letter and get some hours approved gets the person working. Then you can send in your justification for additional hours if necessary. That has been very helpful. When we had our site review back in December of 2012, I know the Commission was very concerned about waiver of attorneys in delinquency cases. Our group now with the funding structure that we have is counseling every youth at initial appearance before they even go into the courtroom. We are discussing with them whether they want an attorney. What an attorney can do for them. The judge who is now handling juvenile delinquency, if a youth indicates that he or she wants to waive counsel, she is actually having an exchange with the youth that goes something like this: "Are you legally trained? You aren't legally trained are you? Are you an attorney?" They are saying, "No." "Well see that DA over there. They are. Don't you want one of those people that are legally trained to help you?" It has made a huge difference. I know I have met with her on several occasions. There are still those occasional

youth that say, "No, no, no, I don't want an attorney." But overall we are having great success there.

- 51:13 J. Potter In those occasions what kinds of crimes or charges were involved that the youth is saying no to?
- 51:20 M. Riddel There has been a range. Sometimes it is a theft in the third degree. Sometimes it is a Class C felony. There has been a broad variation. We tend to see youth that have been on probation before, or are currently on probation, more likely to waive. I think they are familiar with who will be their probation officer and they have already met with that person and they think they know what the outcome is going to be. Sometimes that is just not the case.
- 51:50 P. Lawrence That is what happens in Yamhill County. If the juvenile counselors, also known as probation officers, get a hold of the kids ahead of time particularly on PVs, they kind of represent to the youth what they think is going to happen to them. Those are the ones that tend to waive counsel.
- 52:11 M. Riddel The other piece that our group has made is the decision that we are going to stay with youth during the term of probation if at all possible. So far that has had good results just in the short time we have been doing it. We are getting phone calls from the juvenile department about some things that are youth may be engaging in that they don't really want to file a probation violation on, but they are letting us know so that we can have a conversation with our client. So far at least one of my youth has managed to keep himself out of detention in that manner. I think that there is a lot of improvement going on and systematically CASA has been calling me asking to assist them with their trainings. That is going to be more of an ongoing thing about once a meet. Meeting with the CASA program to help their advocates understand our role within the system and why we may or may not be taking the same position.
- 53:09 Chair Ellis So what kind of reaction are you getting from DHS?
- 53:18 M. Riddel For us they are still not filing correct petitions, or petitions they can prove, so I think it is going to take some time.
- 53:26 P. Lawrence I think in terms of the pilot project, though, for example when Amy and I went over to DHS to speak to their program manager and she was very receptive to what we were asking. What we were asking for was quite simply can we get the petitions ahead of time? Can we get whatever materials you have? If there was a police report involved and the affidavits supporting the petitions.
- 53:51 Chair Ellis You are not sensing push back?
- 54:00 A. Miller I can speak to that from the system level. So we have quarterly partner meetings. So Lois Day, who is the director at DHS and child welfare, is one of our system partners. So we share information with her as well as other system partners in advance and she disseminates that to the local offices. I think that helps pave the way. I have developed a working relationship with the branch managers as well. Both have been interested, supportive as far as I can tell. I think that, of course, we working from different angles but sometimes we are working to achieve the same goals.
- 54:37 Chair Ellis How about the judges? There are some judges around the state that grew up under the paternal juvenile mode. I don't know your two counties.
- 54:46 P. Lawrence Our presiding judge has always been a juvenile advocate. He was the one who pulled me aside 10 years and said, "I would like you to start taking juvenile cases."
- 54:56 Chair Ellis So not the paternal model?

55:00 P. Lawrence No.

55:05 M. Riddel I would share that. Our court wants to be forward thinking in the area of juvenile law and makes a lot of effort to make a positive experience as much as it can be for the parties to make sure their rights are being protected. However, also I think the docket considerations are a big driving force for our court. This pilot so far has been helpful in trying to move past some of that resistance. Our hope is that with Amy's help we can continue to move that direction. I know that Paula mentioned the 60-day deadline not meeting that statutory time frame. We are at about 60% of the time meeting that deadline. That is just not acceptable and we are trying to really push to get sooner trial dates.

56:01 P. Lawrence We were working on that before just because it use to be all the attorneys in the case would stand around with their calendar and then they would say, "Not this day. Not this day. Not this day." Docketing was saying that it wasn't available. We were saying that these kinds of cases are supposed to be having priority. Whether you something scheduled on that day or not we get that day. So once we started pushing that we had statutory priority then we did start getting jurisdiction settings before the 60-day mark.

56:43 A. Miller I just want to chime in with my experiences with the court in both counties. The judges have been extremely receptive and extremely helpful in sharing concerns and working to address issues. They have been nothing but partners.

56:53 Chair Ellis So this is all very encouraging. Do try to keep track of things in a way that we can hope to have some sense of measurable impact. Antidotes are helpful but that is all they are.

57:11 P. Lawrence That is what we are doing. We know what we do in the next two and a half years could pave the way for better juvenile representation across the state. That is huge. We all take that very seriously. I think you will see us putting forth our best effort. We know that all eyes are on us. If we can't produce the measurably results then this could negatively impact the state. I think we are very mindful of that.

57:42 A. Miller I see that as my role as well to provide that information to you.

57:50 P. Ramfjord I just echo that. I just think in terms of numbers and outcomes. I just think creatively now about ways that you would want to measure it and then start placing some simple method of doing that.

58:06 Chair Ellis Thank you.

58:11 Chair Ellis The next item is Paul on the conceptual contract language changes.

58:17 N. Cozine Barnes, we might want to take things out of order because we do have the Oregon Justice Resource Center folks here.

58:28 Chair Ellis We can flip.

Agenda Item No. 7 Oregon Justice Resource Center

58:24 Chair Ellis So OJRC. This is Bobbin Sing and Ali Vander Zanden. I think there is a typo on our agenda.

58:39 N. Cozine There is. I always want to make it ORJC instead of OJRC.

58:50 Chair Ellis Go ahead. Tell us a little bit about yourself and what is going on.

58:50 B. Singh Nancy invited us to come and speak about the Oregon Justice Resource Center to the Commission. We want to thank her for that and thank you all for giving us the opportunity to talk about what we are doing. My name is Bobbin Singh. This is Ali Vander Zanden. She is the senior policy strategist for the OJRC. Our third colleague, the esteemed Steve Wax, is our legal director.

59:18 Chair Ellis Some of us know the gentleman.

59:20 B. Singh I think everyone knows the gentleman. He is well known in these parts. I am the Executive Director of the Oregon Justice Resource Center. It is 501(c)(3) non-profit based out of Lewis & Clark Law School. It was founded in 2011, by myself and a colleague of mine as we were graduating law school. The intent was really to create opportunities for law school students to work on criminal justice issues. It has grown considerably since then. What we have found is that there is a significant gap in providing opportunities to law school students and pipeline for a law student to get jobs in these fields, whether it is criminal justice advocacy or public defense work. We have been able to create a tremendous amount of opportunities - from police accountability, we are working with Lane and Alex Bassos at MPD on indigent defense, Jeff Ellis with the Capital Resource Center on Eight Amendment issues from clemency to death penalty work. We recently launched the Innocence Project which Steve is the legal director of and we will be working with law students through that. We recently also launched an amicus committee where we

1:00:26 Chair Ellis Sounds like you have gotten some decent funding to do all that?

1:00:27 B. Singh We have. We have been grant supported. The OJRC has been grant supported for the past three years, which has been good. For the past year and a half we have been doing individual donor cultivations for the Oregon Innocence Project specifically. We have been able to raise well over \$100,000 for that. So between the general OJRC budget and the budget for the innocence project, we have pretty good support both from individual donors and grants.

1:00:53 Chair Ellis So is the Innocence Project a separate entity and you fund the entity, or it is a component of OJRC?

1:01:05 B. Singh It is a component. We have five projects and the Oregon Innocence Project is one of our projects. We are the 501(c)(3) umbrella for the Innocence Project. So I administer it and then we were fortunate enough to have Steve join us.

1:01:18 Chair Ellis So who does Steve report to?

1:01:19 B. Singh Technically on paper me, but I don't that is how it plays out, to be honest. We have already gotten him set up and we are trying to make things work. He is a good employee. It has been fun so far. That is what the Oregon Justice Resource Center does. The amicus committee that we recently launched, as I was mentioning, has six relatively newer attorneys about five years out. They clerked at the Supreme Court or came through the Federal Public Defender's Office, private practice or working at OPDS. We started tracking cases going up to the Oregon State Supreme Court providing amicus briefs on that. So we recently submitted two amicus briefs. We are looking at a number of other cases out in the future. We are trying to become more active as a public interest law firm.

1:02:19 Chair Ellis But based at the law school?

1:02:22 B. Singh Yes. The OJRC is based at the law school. So one of our initial funders or supporters was the law school. So they provided us with multi-year funding for the first three years that allowed us to get our legs up. Part of that is that we are exclusive to Lewis & Clark Law School. Right now we are Lewis & Clark students. Our hope is to expand at some point and to become a statewide program for other law schools, but I think until we do what we are doing

now really well we don't want to expand our capacities to something that will allow us to fail. Just some numbers, over the past three and a half years we have worked with about 60 law students. They have committed over 10,000 hours of work. In that time we have worked on five amicus briefs through our organization. Two through the Oregon Innocence Project and three through the Oregon Justice Resource Center which law students have been actively involved in. We have worked on two clemency petitions. One second look hearing where one of the students was able to work the second look hearing and also go see the individual released from Coffee Creek. That was really tremendous opportunity. Our most recent clemency petition was a third strike out of Washington where clemency was approved and we are just waiting for the Governor and we are currently working on two more. These are really great experiences for law students, I think, while they are there. We have had almost 20 students go through our Indigent Defense Project at MPD. We try to recruit them as 1L. Get them experiences at 2L doing research and writing for motions or library defense. Then as third year certifies have them carry a misdemeanor caseload through MPD's program. My intention is to have these law students graduate with jobs. This year in order to build that out and make that effort stronger, I am working with Alex at MPD. We are piloting a criminal justice public defense curriculum. So each week students come for two hours to MPD, all our students. The idea is to have 2L go through this program. It is a yearlong program. We walk them through the basics of what it means to be a PD with everyday type trial stuff, but also overlay that with broader criminal justice work. Themes and theories of like mass incarceration, over incarceration, Eighth Amendment issues, and systematic litigation type issues.

1:04:46 Chair Ellis

Sounds like you may be a solution to an issue we hear a lot about the graying of the defense bar.

1:04:56 B. Singh

Yeah. A lot of this came out of my own desires as a law school student wanting to do this work. You couldn't find a clear path to be able to do this work. I am more interested in impact litigation or the big system stuff. I could just never get my hands on anything. As I mentioned yesterday when we were talking about the Innocence Project, I really do believe that once students are exposed to the criminal justice system, sort of the brutality and indignity of the mass incarceration, and look at what is happening and they understand that individuals that are intersecting with the criminal justice system, accused of crimes, those wrongfully convicted, those coming out after incarceration. I mean this these are all civil rights issues of our time. I think once students see that they can't turn away from it. Part of our job is to get them involved early on to get them thinking about the law expansively and progressively from the moment they enter law school and protective of rights and liberties and to push back. Steve was mentioning at our presentation yesterday that there is something powerful about the Sixth Amendment. It is something remarkable and it is a calling to do this work. I think when students – they may not know it but I think that once they see this they actually want to do this work and we want to create opportunities for them to do this work. We look at everything from police accountability to post conviction work, Eighth Amendment issues, innocence work; it is all the same thing. The saddling of the criminal justice and the work is, in my mind, it is disruptive. It is counterproductive and stringing all these things together and having students working on all of these issues, coming together each week in a class and talking about the different issues together, actually allows people to see the big picture whether they go off to public defender offices or work at an impact litigation shop, I don't think it matters.

1:06:48 Chair Ellis

Two of your professors come out of the indigent defense system, Susan Mandiberg and Steve Kantor.

1:06:56 B. Singh

We work with them very closely. Steve was a mentor and also helped us get this up and running. Then out of this yearlong curriculum, our goal is to actually work with public defender offices around the state and around the country. Start placing students in those offices and hopefully get them hired by those offices. The idea is to create a pipeline and to

let public defender offices know that once they go through our curriculum, the 2L, that they are trained out and they are ready to carry a misdemeanor caseload and are certified law students. It is almost like a vocational certification that we are trying to provide, but make it easier for public defender offices to take on students without having that responsibility or training them up straight from scratch. That is in a nutshell of what we are doing. They we also do some policy work behind the scenes and Ali can talk to you a little bit about that.

1:07:49 A. Vander Zanden

Well in brief, my role at the OJRC over the last year has been to lead an assessment of how to end the death penalty in Oregon. A very deep dive, a 360° look at everything to do with the death penalty historically, legally, politically, and that assessment over the course of six months from February to July, produced a report. It was guided by seven organizations of which OCDLA is one. The Oregon Capital Resource Center is one. OJRC is one. Those organizations have now committed to implementing the results of the assessment. I will just say my background is in ballot and legislative campaigns. The ability to do this kind of in depth analysis of an issue before actually diving into the work is a gift. I think it will mean that our work and organizationally as a group of organizations is pretty informed, much more strategic, and much more effective because we have taken the time to really look at all of the issues and answer a lot of the questions that we have about how to proceed.

1:08:51 Chair Ellis

I am curious are you doing any polling?

1:08:54 A. Vander Zanden

That is the very next step. We weren't able to conduct polling in that sixth month window, but we have just picked a firm and we will be starting to do some polling and message research soon. There is no winning message on the death penalty nationally. Some people have come close, but we have a lot of work to do before we figure out the best way to talk to voters about why the death penalty is wrong.

1:09:16 Chair Ellis

Well there is a correlation between the Innocence Project and death penalty.

1:09:20 B. Singh

A lot of stuff that we do wears multiple hats. So for the past three and a half years we have been doing a lot of research on the death penalty, on the administration of the death penalty, both to support Jeff's litigation effort and also a repeal and replace campaign. So we have been looking at future dangerousness, reversal rates, and geographic disparity. We want to get more information about proportionality. So we have all this information. We don't know what to do with it yet. Some of it may come out in the form of law review articles. Some of it may come out as policy papers. Some may come out to support the Innocence Project. We will also do that as part of our placement in the law schools and academic research. We are kind of all over the place but we are very focused.

1:10:05 Chair Ellis

Well keep in mind that out of this Commission's resources, a million dollars a month goes to death penalty work. That is a very steep economic cost that people are paying.

1:10:23 B. Singh

Yes, and we actually want better numbers on our costs here in Oregon around the death penalty. So to the extent that those are available, we would be very happy to take them.

1:10:34 Chair Ellis

So, Steve, how are you finding retirement?

1:10:35 S. Wax

I love Bobbin's vision and energy. It is great to be reinvigorated. It is terrific. It is a whole new system and a whole new group of people.

1:10:51 Chair Ellis

He did it at the front end.

1:10:55 S. Wax

It is all good.

- 1:10:55 Chair Ellis Questions?
- 1:10:59 C. Lazenby Do you have any involvement at all in state legislative issues, or are you just staying away from that for the most part?
- 1:11:01 B. Singh For the most part OJRC doesn't just because OCDLA exists and they do a fantastic job around criminal justice issues. We work with the ACLU as well. Between those two, I don't think there is a need for us to have that voice. I would say with the Innocence Project, there is its own mission within that, that we plan to do some legislative work but very small amount of legislative work, but specifically around causes of wrongful conviction and the ability for individuals to be able to provide their innocence. The project will have not only a direct representation component once we are able to identify people, but we want to try affect some institutional reforms taking a look at independence of the crime lab. Take a look at the DNA PCR statute. I do anticipate that we will be having some presence at the legislature.
- 1:12:00 Chair Ellis Well, great. Thank you all.
- Agenda Item No. 4 PDSC – Conceptual contract language changes for contracts beginning January 2016**
- 1:12:11 Chair Ellis So now, Paul, I like this idea of conceptual contract language. We are not going to dicker over the words.
- 1:12:20 P. Levy Right. That is a very good point to start with. That is exactly, precisely my point. We are not talking about language changes today, but we have begun a process and I hope I am talking a loud enough for the folks back here to hear this. We have begun a process in our office that we will shortly be involving the greater contract community with, of looking at the current general terms of your contract for some targeted revisions. This is not going to be a wholesale rewrite of the contract, but specifically provisions that are addressed in this outline that better express what our expectations are in terms of attorney performance and those proceedings in which we expect attorneys to be present and participate, as well as some things that the Commission talked about at your last meeting, our expectations as far as CLE requirements. One of the areas in which we really need better articulation in the contract is what we expect of contract administrators, as far as the performance of their own quality assurance duties with respect to their entities. We want to have some articulation of caseload controls. Better articulation in the contract than what we have now and then some more articulation of administrative duty and data collection. These are the general areas and there are specific contract terms right now that touch on these. Some of them are spread throughout the contract. We are going to try, as best of we can, to bring a little more coherence and sense the contract. This contract has evolved over the course of decades.
- 1:14:53 Chair Ellis I am assuming there is something like the Oregon Administrative Procedures Act that would require us to ...
- 1:15:05 P. Levy No. As the Chair I am sure knows, we are not subject to that act. The legislature has given the Commission the authority to act through creating policies and procedures. That is what they have called on me to do in Chapter 151. We don't go through the administrative procedures act.
- 1:15:38 Chair Ellis But the problems are aspects of the APA that are good policy that we probably should do and hopefully will do.
- 1:15:46 P. Levy The aspects of the APA that are good are really ones that we are required to adhere to in any case, because they articular basic due process expectations. We think we have that in our complaint policies and procedures. In our procedures for certification of attorney, so we are mindful of our obligation to provide notice and the opportunity to be heard and fairness and transparency. That is why today we are sharing with you and the contractors who are present

and those we follow the minutes and our agenda that we are initiating the process to take a look at general terms that will be set out and adopted by the Commission when you issue the RFP, which will happen at the end of April, 2015. We will be meeting through our Public Defense Advisory Group and in other forums to flesh out ...

- 1:17:06 Chair Ellis When you flesh out the language on these, do you plan to put that on the website and let people make comments?
- 1:17:13 P. Levy We can certainly do it that way. It certainly would be on the website because it comes before the Commission and in all likelihood not at a meeting where we say, "Here they are. Approve it because we have to issue this in two weeks." We want you to see it and the community to see it in order to tell us it needs more work if that is what you think. But, again, I am not expecting that there will be a great deal of shock at what we are proposing, because it really is aligning the contract with what we are telling and have been telling contractors for some time what we expect them to be doing. There isn't anything that I think will strike anybody as revolutionary or terribly upsetting.
- 1:18:14 Chair Ellis What is your timeframe to get these concepts into contract language?
- 1:18:21 P. Levy I think we actually need to be moving fairly expeditiously.
- 1:18:27 Chair Ellis Now that you have a deputy this can go really fast.
- 1:18:28 P. Levy The deputy is off doing her own thing. I have no control over her. I did, by the way, want to say thank you for the credit you gave me for hiring her. Only because I get so much underserved blame that I thought I would take some underserved credit. I expect at our next PD day, Public Defense Advisory Group, we want to have language fleshed out where we can talk with them about it. I am not sure what meeting we will be back to you with proposed language but it will be fairly soon.
- 1:19:23 Chair Ellis I didn't see anything here that struck me as oh my God, this is radical.
- 1:19:37 P. Levy There is not. If you looked again at the language in our current contract you might scratch your head and say, "What exactly does that mean?" That is what we are trying to address is kind of the archaic document.
- 1:19:55 P. Ramfjord Is this a problem that other similar defense organizations are facing or that they have dealt with. What resources have you looked at that you can kind of bring that language up to speed. These are all very audible in my mind. They all strike me as the kinds of things that perhaps have been dealt with effectively.
- 1:20:16 P. Levy The answer really is no. Oregon's model is so different. Certainly when we went through the process of updating performance standards we could look at other states and see what they have done because there is a certain commonality there.
- 1:20:46 P Ramfjord There wasn't much alignment between performance standards and the contracts, though?
- 1:20:48 P. Levy Well the performance standards are incorporated in the contract. We certainly want the contract to be simply repeat performance standards, but right now under the language in the current contract under what we are expecting from contractors as far as the work they do, why this is in here or why this is worded this way, I don't know. It probably arose from some particular instance. That is why a lot of these terms are in here, but as far as the specific services to provide it, filing all necessary motions including pre and post judgment motions. Well, yes, of course we would expect that, but why is that in here and why is it worded that way. That is not helpful.

1:21:42 Chair Ellis Blame Ann Christian.

1:21:44 P. Levy I think it probably goes before Ann. I refuse to blame anyone right now.

1:21:52 Chair Ellis Alright. Well we will look forward to that and it sound like the right thing to do.

1:22:03 P. Levy Thank you.

Agenda Item No. 6 Hurrell-Harring v. State of New York; DOJ Statement of Interest

1:22:07 Chair Ellis Stay up there. While you are there why don't we get you to talk about Hurrell-Harring.

1:22:15 P. Levy Okay. You wanted you to see this and know about this just because this is part of the ongoing development at the national level of the concern with what I am starting to call, "Constitutional lawyering." I learned recently that there is a term that is applied to police departments that have had trouble following the law and where the U.S. Attorney's office has gotten involved and got consent degrees. There they think they are achieving constitutional policing. Nationwide there is an issue with constitutional lawyering. You are quite familiar with the litigation in Washington, *Wilbur v. Mt. Vernon*, and in that case, of course, the United States Department of Justice, and this is as a result of the attorney general, Eric Holder's involvement from when he began office and commitment to improving public defense. They filed a statement of interest in that case.

1:23:34 Chair Ellis That was August of 13.

1:23:37 P. Levy You know the dates.

1:23:37 Chair Ellis Well this one didn't have a date.

1:23:40 P. Levy Well I will tell you about the dates in this one in just a moment, but what they filed in the *Mt. Vernon* case was a statement of interest just as they have done in this case. In both of these cases they have said we are not taking a position on the merits of this case, as far as whether you find for one side or the other, but this is what constitutional lawyering looks like. If you don't see it here then this is what you can do about it. In the *Mt. Vernon* case they recommended that the court, if it were to find a violation, appoint a monitor and the court did do something along those lines there. In this case the cover of it has a case number followed by 07. This is class action that was filed in 2007, and bounced up and down and around in the New York appellate courts and is finally back in the trial court. So the United States Department of Justice is filing a statement of interest in a state trial court where the issue of the systematic deprivation of the right to counsel in criminal cases is at issue. This is as a result, just as a side, in part because of a number of assessments were done of how public defense was provided in New York. Ross Shepherd was a part of that effort for some time. I know he spent a lot of time in New York and was quite shocked by what he saw there.

1:25:38 Chair Ellis So to your knowledge, are these the only two where they have done that?

1:25:43 P. Levy Yes. It is interested what they are doing in. I just want to talk about it real quickly. They are saying that it is possible for the court to find that there is a constructive denial of the right to counsel, or in other words as they say that the system is providing a lawyer in name only. They say that you can find this as a result of either the absence of certain structural elements that need to be present in order to have a constitutional public defense system. Or certain performance elements that are common to the system that will tell you that there is a constructive denial of the right to counsel. The structural elements are ones that are familiar. They draw heavily on the ABA 10 principles for a public defense system. Independence, early appointment of counsel, access to funding...

1:27:03 Chair Ellis Reasonable caseload.

1:27:06 P. Levy Caseload limits, performance standards, and access to resources for experts, investigators, and the like. Then the performance elements are absence of opportunity for a meaningful attorney/client contact. No investigation. No motions. No meaningful adversarial testing of the government's case.

1:27:34 Chair Ellis It didn't ask for a monitor in both or propose it.

1:27: P. Levy In the *Wilbur* case you had two municipalities, which is kind of a small, discrete problem. Here they are looking at five upstate counties, but really the problems here are throughout most of New York State. Interestingly, what they are saying is, and this was actually an issue in the appellate courts in New York, where one appellate court says you can't do this. You have got to address the quality of lawyering through post conviction litigation and not through a class action. The Court of Appeals eventually reversed that and sent this back to trial. The United States Supreme Court law says ordinarily you do address the validity of a conviction through a post conviction petition litigation where you need to show both inadequate lawyering and prejudice. That was from *Strickland v. Washington*. Strickland had a companion case in 1984 called *United States v. Cronin*. It was a federal mail fraud prosecution that had been under investigation for three years. A month before trial the lawyer withdraws and the court appoints a young lawyer who has never handled a criminal case and said you have a month to ready for trial, good luck, and the case was tried. They said you don't need to show prejudice because you effectively didn't have a lawyer. The structural impediments and the conditions in which counsel was provided simply didn't allow for constitutional lawyering. That is what they were saying here is that we don't need to show prejudice and they didn't either in the Mt. Vernon case. In a specific case the performance of the lawyer was inadequate. If the conditions under which counsel are provided are such that you are fairly assured that the lawyers won't be able to do their job, then you can find there is a systematic denial.

1:30:12 Chair Ellis Am I correct in assuming you have heard nothing to suggest DOJ is looking at Oregon.

1:30:20 P. Levy Yeah. I am not aware of anything and I would be surprised if they were because certainly the elements of what was happening in Washington where the lawyers were being given these huge caseloads and they were virtually never meeting with their clients. There were no standards for expectations. They were never contesting their cases. That just doesn't describe our system. It does point to some areas in our system where we need to pay attention and be concerned, but that is not Oregon. Nor is the New York system anything like our system.

1:31:11 Chair Ellis DOJ hasn't initiated any of these cases on its own?

1:31:13 P. Levy No. ACLU has been the entity that has initiated both of them. In New York it is a county funded system. As they say, "incoherent" or "non-existent" standards as far as eligibility for counsel, and counsel is actually being denied in many cases where it seemed clear there should have been a lawyer. There are no performance standards. No caseload expectations or limitations. It is a very different situation than we have here but both of these cases are good reminders for us that we need to be vigilant.

1:32:06 Chair Ellis Do you think we ought to file supportive briefs?

1:32:11 P. Levy I think that the Department of Justice is filing briefs.

1:32:13 Chair Ellis Oregon filed two in the *Gideon* case.

1:32:19 P. Levy I am sure we have got great minds here and can do fascinate level work, but somebody else is already doing it.

1:32:28 C. Lazenby It would be interesting to see what a request from a commission to the state's lawyer to do so since we are a state agency and we are concerned with these issues. I think it might be a legitimate request.

1:32:45 Chair Ellis Well I am interested how this plays out, so if you see a sequel this...

1:32:53 P. Levy We will definitely report more on this. As I said we need to make sure that we are designing, operating, implementing, and monitoring are suspects and our work to ensure that we are providing constitutional lawyering.

1:33:19 Chair Ellis Steve was listening.

1:33:19 J. Potter Paul are you talking about this all at the state court level. We don't really know, nor do we have the authority to know, what is happening at the municipal court levels and caseloads that are being carried there. Some of the stories, anecdotal stories nevertheless, are somewhat shocking and could attract attention.

1:33:40 P. Levy Yeah. I don't mean to divert attention but you are absolutely right. Both anecdotal, and I have heard some stories too, that the caseloads and the conditions on which lawyers operate in municipal courts come close to what is being described in these cases, but also we don't pay attention to it. We don't provide those lawyers. We don't operate in those courts.

1:34:11 Chair Ellis Okay. Other questions on this? Thanks.

Agenda Item No. 5 PDSC – Proposed Meeting Dates for 2015

1:34:17 Chair Ellis Nancy, do you want to do the meeting dates?

1:34:17 N. Cozine Certainly. I would like to follow up on the previous discussion, just to say that we do get media requests for information. Because these issues are so intensely covered in the national media right now, in the public defense world, our office gets requests for information about what caseloads look like. We generally always provide the contracts and we ask the reporters, or tell the reporters, that really, in our structure, it is the contract administrators who are responsible for working with the lawyers in their group to make sure that no one has an excessive caseload. I think Paul is correct. We do not have the issues that exist in New York or in Washington, but it is very important that we are mindful that this conversation is happening, and that we have systems in place that allow us to be confident that our contract administrators are also aware of the issues and that they are managing their contracts in a way that is consistent with this Commission's expectations.

1:35:19 Chair Ellis Okay.

1:35:20 P. Ramfjord Hence, the discussion we were just having about contract administrator responsibilities.

1:35:29 N. Cozine So you have before you as Attachment 3, a draft schedule for 2015. I included meeting dates and topics that either needs to happen on the listed date or sometime in the proximity. On the bottom I listed some additional potential agenda items. These are things that have come up during the course of the year as items of interest to the Commission. I can add to that list and try to find a month to slide it in if there are particular areas that you would like us to consider. And, I did want to make sure that the dates listed work for everyone.

1:36:14 Chair Ellis Under October, it is probably a typo, your fourth or third says, "PDSC Schedule for 2015," and you probably meant "2016."

1:36:26 N. Cozine I did.

1:36:33 Chair Ellis As I read this the only service delivery review would be Washington County?

1:36:39 N. Cozine At this point in time that is what we have scheduled, because we are now starting with a peer review and then following up with a service delivery. We have done the Washington County peer review.

1:36:58 Chair Ellis I think it is a good county to do. We did it about seven or eight years ago. It has been a long time.

1:37:05 N. Cozine And it is complex.

1:37:06 Chair Ellis It is. They have got the big Hispanic population.

1:37:17 N. Cozine They do. We are going to be doing a service delivery review. I currently have it scheduled for December of this year in Marion County. It turns out that December is actually there eCourt roll up, so I may recommend that we push that service delivery review to January. We do already have our meetings with stakeholders scheduled for the end of October. We will proceed with those. As we move through those interviews we will decide whether we want to have that service delivery review in January or December. It is easy because it is in Salem.

1:37:51 Chair Ellis I happen to remember we did a major undertaking in Marion County in 2005. That is also a good check back in.

1:38:01 N. Cozine Right. We wanted to make sure we followed up after adding a public defender in that county.

1:38:07 J. Potter I was going to talk about the January, February, and March. January 15, I am out the country. I could do the 22nd, but I don't need to be here. When I look at those three months, January, February, and March, I want to go back to Steve Bender's comments about when prioritization might be required. He was a suggestion that it could be early in the legislative process. I don't know if we would be asked by January, but maybe we would be asked in February.

1:38:49 Chair Ellis Which means we might want to do it in January.

1:38:51 J. Potter It means we might want to do it in January.

1:38:52 Chair Ellis With that topic in particular, I think that Commissioner Potter is crucial to participate.

1:38:58 N. Cozine I would agree. I would suggest that we – I think the prioritization discussion is likely to be lengthy and especially if we want to try to carve out pieces of POPs as priorities. So I would suggest that the prioritization happen in either December or January depending on which month is used a service delivery review. I think it would be difficult to tackle both of those in the same meeting.

1:39:31 Chair Ellis And you have already said December is scheduled for the Marion County.

1:39:37 N. Cozine We know the presiding judge will not be available in December.

1:39:40 Chair Ellis I would be fine doing the prioritization in December and Marion County delivery review in January, and I would move the January to the 22nd if that works for others.

1:39:56 S. McCrea Mr. Chair, I will just note that our meeting in December is set for December 11, and I have a federal sentencing in Portland. I will not be available unless that sentencing gets changed.

1:40:10 Chair Ellis Is that date tied to anything else?

1:40:5 N. Cozine No. I was wondering if it was moved. Usually when I do a draft schedule I make them the third week, the third Thursday of the month, so I don't know how we ended up with the 11th.

1:40:42 Chair Ellis Can you work with Shaun to find a date that she doesn't have the conflict and let us know.

1:40:54 P. Ramfjord Would you be available the third Thursday?

1:40:54 S. McCrea No.

1:40:59 N. Cozine Perhaps it was because that was too close to the Christmas holiday.

1:41:04 S. McCrea What about the 4th before the Benson conference?

1:41:09 N. Cozine Is there a Friday the 5th or the 12th?

1:41:13 P. Ramfjord The 12th is good.

1:41:15 Chair Ellis Does that work?

1:41:15 S. McCrea The 12th will work so long as the hearing doesn't go over into the 12th. We are only scheduled with Judge Mossman for the 10th and 11th.

1:41:26 N. Cozine I see.

1:41:30 S. McCrea As long as my sentencing hearing doesn't go on to the 12th.

1:41:32 N. Cozine So the suggestion is move the December 11, 2014, to December 12. On that date we will tackle the difficult discussion of prioritization of policy option packages?

1:41:50 Chair Ellis Correct.

1:41:50 S. McCrea Thank you, Nancy and Mr. Chair.

1:41:57 N. Cozine Then January 15, do we want to consider moving that?

1:42:06 Chair Ellis He said he could do it the 22nd.

1:42:12 N. Cozine Does that work for everyone?

1:42:12 S. McCrea Yes.

1:42:16 Chair Ellis Does for John.

1:42:17 J. Potter That is not the prioritization meeting, right?

1:42:20 N. Cozine The 22nd will end up being the service delivery review in Marion County.

1:43:17 J. Potter Where is December 12th? Is that at OPDS?

1:43:23 N. Cozine Yes. Then we might find a different location for the 22nd but still in Salem.

1:43:40 Chair Ellis Why don't we take about a five minute break and we will come back and do Items 8, 9, and 10.

Agenda Item No. 8

Recruitment for Chief Defender

1:53:30 Chair Ellis Okay. We are ready to resume. If we can come back to order, John and Chip. Janet are you still there?

1:53:50 J. Stevens I am.

1:53:54 Chair Ellis Good. Alright. The next item is recruitment for Chief Defender. Nancy.

1:54:05 N. Cozine So as we shared with the Commission last month in executive session, we are going to have a personnel change at OPDS. Mr. Gartlan made the announcement to staff on Wednesday, October 1, so the information is now out there. On October 6th or 7th we launched the staff survey so that we could gather employee input on what they are looking for in a new chief defender. Those survey responses have started to pour in. We have created for ourselves an ambitious schedule and we will do our best to adhere to it. We would actually like to have the posting completed and posted on October 20, so that we open up the recruitment for at least three weeks, potentially up to five.

1:54:58 Chair Ellis Do you promulgate beyond posting it on the website?

1:55:02 N. Cozine We will post it beyond the website. We have identified multiple potential posting locations. OPDS website; there is now something called "Neogov," where we actually post all of our agency positions. It is essential the state hiring system. You can post positions and anyone can apply through the state's electronic system - any qualified applicants that is. We will also reach out to law schools. We will post at the schools that we have posted at in the past which are Willamette, University of Oregon, Lewis & Clark, Harvard, Yale, Columbia, and Stanford.

1:55:40 Chair Ellis Does the NLADA have a website?

1:55:42 N. Cozine Professional Associations where we can post are OCDLA, NACDL, American Bar Association, and the NLADA. We will also post to the Governor's Office of Diversity and Inclusion. So those are the entities we have identified thus far in terms of posting locations.

1:56:05 J. Potter My guess is that a google search of websites that are lawyer-job websites, we had a couple jobs at OCDLA where we used that. There are a lot of websites that people are using to find jobs.

1:56:22 N. Cozine Right. We can look for those. So ideally we would actually like to close that job announcement no later than the 31st, well it will probably be a little later than the 31st of October to get in the full three week posting. We would like to then go ahead and review candidates mid-November.

1:56:46 Chair Ellis When you say, "we," you have the authority to make the appointment, but I am guessing you are going to involve some other people?

1:56:59 N. Cozine I am. I would actually have a screening committee that includes members outside of our agency, so law school professors. Someone who has the expertise in appellate writing to review those candidates who have already met the qualification standards and who appear to be high quality candidates.

1:57:19 Chair Ellis Both inside and outside?

1:57:23 N. Cozine Correct. To do the initial review and make recommendations and then have a hiring committee that is primarily internal staff, once we have determined that the candidates are qualified.

1:57:34 Chair Ellis How can we be of help to you?

1:57:43 N. Cozine I think if members of the Commission have information that would like me to consider, it would be helpful to have that input. It also occurred to me that a Commission member might want to sit on one of the committees, whether it is the internal – probably the screening committee would be the most appropriate. I can also understand if the Commission members would prefer not to have that level of involvement. But I think general thoughts on what we are looking for in a chief defender. You have been on this Commission for a long time and I certainly welcome your input, and your input regarding process too. That is why it is on the agenda. If there are things that you would like me to consider then this is a good time to have that discussion.

1:58:30 Chair Ellis It is always a balancing situation. I don't think we want to micromanage your decision making, but we obviously very interested in this and it one of the key positions in the agency. I would urge you to not be shy asking for such involvement that you think would be helpful.

1:58:54 N. Cozine Okay.

1:58:54 J. Potter It strikes me too that you would – I am sure it is on your list already, is to talk to your two predecessors. Track down Ingrid Swenson and Peter Ozanne. They need not be on a committee but ask the question you just asked us. What kinds of qualities they think because they have had this job before.

1:59:16 C. Lazenby I will be looking as you get back to us on the process and probably the product as well, the follow up on what we discussed last time. What efforts were made to get a more diverse pool of candidates to consider as well as diverse participants and evaluate candidates?

1:59:42 J. Potter You will probably have to hire two just to replace him.

1:59:46 C. Lazenby My question is, is Pete taking the cake with him, or does the cake go with the job? Pete said he is taking the cake.

1:59:58 Chair Ellis Would it be helpful if Commissioners talked a little bit about their hopes as to what we would see here?

2:00:05 N. Cozine I am happy to take input now. I am happy to take it later on an individual basis, either way.

2:00:16 Chair Ellis There is at least two components to this job. One is managerial and one is advocacy. My own bias is managerial and without which we can't function. I would keep that piece very much in mind. One of Pete's great strengths is he has been a terrific manager of young professionals with the annual performance review. He has been very generous in having other lawyers in the group make U.S. Supreme presentations and Oregon Supreme Court presentations. I think there may well be those who are quite good advocates and want to do because it is very visible, but I am much more interested in a balance of both management and encouraging other lawyers to feel like it is not a manager centric, public defender centric agency. Any other thoughts people have on the job?

2:01:47 J. Potter Ask Pete.

2:01:50 Chair Ellis I am sure you will do that.

2:01:52 N. Cozine I will do that.

2:01:56 P. Gartlan I am having an out-of-body experience right now, by the way.

2:02:04 S. McCrea Just put on the cap.

2:02:05 C. Lazenby Wasn't it Mark Twain who attended his own funeral in one of his stories. Are you going to participate in the selection process, Pete?

2:02:15 P. Gartlan That is going to be up to Nancy. I assume she is going to ask me for input.

2:02:32 Chair Ellis Okay. We are available for an informal sounding board.

Agenda Item No. 9 OPDS Monthly Report

2:02:41 Chair Ellis Okay. The OPDS monthly report.

2:02:47 P. Gartlan Thank you. I have a couple of personnel items. In addition to out with the dead wood and in with the new, we had a couple of promotions to Deputy II. We are really proud of these two people. David Sherbo-Huggins and Kali Montague were promoted. They have been promoted from Deputy I to Deputy II. I have even urged her to change the pronunciation of her name but she is resistant. We are in the final stages of hiring at the Deputy I level, which is the entry level. If this were a week from now, I think I could be reporting on the applicants and the people who have accepted offers, but if you don't mind I am going to hold off for a while. We had three Supreme Court arguments in eastern Oregon this week. One in Bend and two La Grande, including the beloved judicial crack case that was argued. I haven't gotten a full report yet. I will get a full report.

2:04:08 Chair Ellis Was there a big crowd?

2:04:11 P. Gartlan I don't know. I wasn't able to be there. I had a medical issue. I think it was hunting season so the crowd was a little slow. We are currently briefing three other cases in the Supreme Court right now. One has to do with unlawful possession of a firearm. There is a defense for possessing the firearm in your residence. The question is going to be whether or not having the gun in your car while your car is in your garage or carport, if that qualifies under the defense. Another case is going to be very, very important. It has to do with police asking someone during a traffic stop if they possess any weapons. This is an issue that the Supreme Court has not directly addressed, the Oregon Supreme Court, and it presents really interesting questions. Our future interest and our theme has been for the last several years that traffic stops are crime scenes. Traffic stops are police enforcing civil administrative rules, non-criminal statutes, and they shouldn't be treated like a crime. We will see what happens there. The appellate division management is completing the manual. We revise the manual every October. We are coming into the final stages of that and hope to have it published at the end of October. Finally, we are really please, we are having Bryan Garner is going to be at the office on Monday, October 27. We are having an office wide, and what I mean by that is, attorney wide training session with Bryan Garner. He is probably the leader for advocate or leading instructor for appellate writing. That wraps it up for my presentation.

2:06:29 Chair Ellis That is great.

2:06:42 N. Cozine Cynthia is going to give an overview of the diversity survey that we sent out to providers.

2:06:49 C. Gregory Good afternoon.

2:06:49 Chair Ellis Hi Cynthia. How are you?

2:06:54 C. Gregory I am well, thank you. So we had a comparator survey sent out in the 2010, was the last survey. I think we completed the contractor diversity survey. For 2014, we sent out an email to 112 contractors soliciting their response regarding the diversity in their workforce. We had 84% of our contractors respond to the request for information, which is a fairly significant increase over 2010, where we had just 52% of our contractors responding.

2:07:28 Chair Ellis Let me ask. On the non-responders do those tend to be the single lawyer office people?

2:07:36 C. Gregory No. That is not what the information is showing. It is somewhat across the board. I am still pulling additional information, because we were still pulling data as of last night. I am sure that Caroline and the contract analysts will have a little more time to dig into.

2:07:54 Chair Ellis If any of the larger offices are not responding, I would push them.

2:07:56 C. Gregory It is a requirement of their contract to respond, so we did do a little additional outreach encouraging response.

2:08:08 C. Meyer I think we identified 13 contractors that were non-death penalty contractors that had not responded. We sent a reminder out them. I believe we had all but two or three respond. So I do think the remaining are possibly death penalty contractors who were not asked to respond last time.

2:08:31 J. Potter And in 2010, it wasn't a contract requirement?

2:08:34 C. Meyer That is correct.

2:08:36 N. Cozine And in 2010, we did not ask death penalty providers to respond. We did this time because we think it is important to include them in our picture of diversity.

2:08:50 P. Levy Could I add something else? This survey was better designed and easier to respond to then the 2010.

2:08:59 C. Meyer We are really pleased with the response.

2:09:00 C. Gregory I think it is interesting. In this survey we asked respondents to tell us how many full-time equivalent personnel that they had working for them. We are talking about 1,102 persons, compared to 749 in 2010. So we have had a significant increase in attorneys and support staff. It gives us a little bit of additional information on how much work is being done. One of the significant factors that I would like to share is probably something that we have brought up here today about the graying of the bar. In 2010, the responses the indicated that 37% of our respondents were over the age of 50. This survey indicates that 44.21% are over the age of 50.

2:09:50 Chair Ellis What was the first data point?

2:05:50 C. Gregory The first data point was 37%. So it has gone up. Roughly 18.5% of those above age 50 are actually above age 60. It does tell you that we are reaching a higher number towards the higher age, but we have 25% of the attorneys are in the 30 to 40 range. Another 24% are in the 40 to 50 range, so there are some good, younger attorneys coming in there as well.

2:10:33 N. Cozine Those are preliminary results. We will be pulling together the full report, but it was encouraging.

2:10:39 Chair Ellis You mentioned that diversity was one of the things you were looking for.

2:10:39 C. Gregory Diversity was one of the things that we were talking about it. I am still pulling the rest of the information on this, but it looks, from the preliminary information, that we are doing as well in 2014, in the contractor's worlds in employing a diverse workgroup as we were in 2010.

2:11:03 P. Ramfjord It that potentially attributable to the larger pool you have now including death penalty?

- 2:11:05 C. Gregory It certainly could. I haven't had time to dig completely into the survey results from 2010, as a comparator, so I do need some additional time to pull that.
- 2:11:19 N. Cozine We have had two contractors point out to us that one of the things the survey did not ask about was, it did not ask for information about sexual orientation. Some providers already indicated that had that question been asked, they would appear to be more diverse than what their response would indicate. That wasn't in the survey in 2010. We have gotten the message. We need to include that the next time we send this out, because that is another portion of our defender population that we do need to be mindful of.
- 2:11:53 C. Meyer We will extrapolate responses from death providers. We will break those out and I think we will have some interesting results for each group.
- 2:12:03 C. Gregory We do have that data. We just need to put it together.
- 2:12:07 Chair Ellis Okay.
- 2:12:12 C. Meyer I think I mentioned a few months ago that we had brought on a temporary staff person to help with case counting. She has been great. We just increased her time. We have given her the option to work full-time. It is still a temporary position. That has been great. The analysts are really appreciative of the extra support. She is doing great work.
- 2:12:32 Chair Ellis Seeing Caroline and going back to our calendar piece, we will get again this year the analyst by analyst, region by region, report that began last year.
- 2:12:50 C. Meyer Certainly. I think that is the plan.
- 2:12:52 Chair Ellis That was terrific last year.
- 2:12:54 N. Cozine It is our plan to do that again. I think that is written into the schedule. We may need to adjust it slightly. Last time we presented information about non-capital contractors at a different time than capital contracts. I think this time I have included them both at the same time. We will probably need to split those out. I wasn't sure how you would want to split those out. Much of that depends upon analyst's schedules. We will adjust that as needed.
- 2:13:22 Chair Ellis I thought that was the single biggest improvement last cycle over previous cycles.
- 2:13:34 C. Meyer They appreciate doing it too.
- 2:13:36 N. Cozine The only other remarks that I had was that we just finished up our management conference. The conversations that I have had have been very positive. People seem to appreciate the conference. I don't know if John has any more detailed information that he would want to share. We have the Juvenile Law Training Conference coming up on the 20th and 21st. I think there is overall, in the brief conversations that I had, just an overall sense of excitement about the work that people are doing in both the criminal and juvenile arena.
- 2:14:08 J. Potter When you have a varied program like we had with this management conference, you are going to get a varied response. There was something for everyone but not everything for everyone.
- 2:14:26 Chair Ellis We are about to go into executive session, but I think it is very inconvenient for the general audience to be kicked out and then have to figure out when we are finished and come back. I would invite if there is anything that any of you wishes to share with us, this would be a good time. If not, I will do my little ritual and you are de-friended and disinvited.

Agenda Item No. 10

Executive Session

2:14:46 Chair Ellis Alright. The Public Defense Services Commission will now meet in executive session for the purpose of conducting deliberations with persons designated by the governing body to carry on labor negotiations and to consider information or records that are exempt by law from public inspection. The executive session is being held pursuant to ORS 192.660(2)(d), which permits the Commission to meet in executive session for the purposes just stated. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room. Nancy, do you want to identify designated staff?

2:16:17 N. Cozine I think everyone in the room is designed to stay.

2:16:18 Chair Ellis They all look good to me.

Chair Ellis **Meeting Reconvened at 3:22:00**
MOTION: John Potter moved to adjourn the meeting; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting adjourned at 3:22:20

Attachment 2

Public Defense Services Commission 2015-17 POLICY OPTION PACKAGE PRIORITIZATIONS

POP#100 - Consistent Rates & Mileage for Public Defense Contractors	Amount	Priority #	
Consistent Case Rates in Each County ¹	\$7,386,495		
Mileage ²	\$161,700		
Package Total	\$7,548,195		

POP#101 - Public Defense Contractor Parity	Amount	Priority #	
Increased Case Rates and Reduced Caseloads ³	\$21,574,168		

POP#102 - Contractor Quality Assurance	Amount	Priority #	
Compensation for Contract Administration/Quality Assurance	\$3,727,040		
Case Management System	\$898,900		
Package Total	\$4,625,940		

¹ This funding will give public defense providers consistent rates within each county. All contractors were compared to the public defender in their county. For counties without a public defender, rates were compared to a similarly situated county's public defender rates. The following contract entities did not need rate adjustments: Baker, Gilliam, Grant, Harney, Hood River, Lincoln, Malheur, Sherman, and Wasco.

² Funding for mileage was included for the following regions: Eastern, North Coast, Central, Southern Oregon, and the Willamette Valley.

³ This funding will reduce disparity between public defense provider and district attorney salaries and reduce caseloads that are above Oregon and National standards. Contract entities in the following counties may not have met criteria demonstrating significant need: Baker, Crook, Gilliam, Grant, Harney, Hood River, Lincoln, Malheur, Sherman, Union, Wallowa, and Wasco

POP#103 - Provider Hourly Rate Increase

	Amount	Priority #	
Increased hourly rates ⁴			
a. Capital Contract Attorneys; \$98 to \$125 per hour	\$2,586,240		
b. Capital Contract Mitigators; \$62 to \$70	\$325,056		
c. Hourly Attorneys, Capital Lead Counsel; \$61 to \$95 Capital Co-Counsel; \$46 to \$70	\$1,172,021		
d. Capital Hourly Investigators; \$40 to \$45	\$445,768		
e. Non-Capital Hourly Attorneys; \$46 to \$70	\$3,675,134		
f. Non-Capital Hourly Investigators; \$29 to \$35	\$1,357,463		
Package Total	\$9,561,682		

POP#104 – Juvenile Dependency Improvement – Request funding for implementation of the dependency pilot program in the following counties:

	Amount	Priority #	
Clackamas	\$1,992,406		
Multnomah	\$3,654,141		
OPDS Program Administration & Quality Assurance	\$313,870		
Package Total	\$5,960,417		

⁴ Hourly public defense providers were not included in POP#100 or POP#101; these are only trial providers under contractual agreement.

POP#105 - Employee Compensation ORS 151.216(1)(e)**Amount****Priority #**

Compensation plan changes to bring agency into compliance with ORS 151.216(1)(e)	\$1,544,492		
--	-------------	--	--

POP#106 - Office Space**Amount****Priority #**

Additional space to eliminate office-sharing and use of file rooms and client conference rooms as offices	\$448,117		
---	-----------	--	--

Total 2015-17 Current Service Level	
Professional Services Account:	\$251,082,024
Office of Public Defense Services:	\$19,546,871

Total Policy Option Packages	
Professional Services Account:	\$48,956,532
Office of Public Defense Services:	\$2,306,479

Attachment 3

Parent Child Representation Program – Case Manager Bios

Nicole Thomas – serving Linn and Yamhill

- Mental health and social services professional with over 17 years of experience assisting diverse populations
- Experience in residential psychiatric treatment for youth, legal field work with public defenders in representation of dependency cases, facilitation of team and family decision meetings, child abuse prevention based services for families as well as community treatment services for delinquent youth
- Extensive experience with home visitation and advocacy based services, researching and accessing resources, fostering community collaboration and partnerships, safety and case planning, assessing client strengths and needs
- Utilizes a combination of solution-focused, strengths and empowerment-based approaches
- Graduated Linfield College in McMinnville with a Bachelor of Arts degree in Psychology

Micki Steele-Blair – serving Linn and Yamhill

- 9 years as a juvenile deputy probation officer
- Department of Human Services experience, Long-term Placement Bureau, working for four years with youth in group homes, level 5 through 18
- Protective Services Case Worker for two years in Marion County
- Eight years with the Court Appointed Special Advocates program, helping volunteers to advocate for children in the dependency system
- Victim Services experience both in a District Attorney's office and as a volunteer
- Experience conducting pre-sentence, social history and child custody investigations
- Recognizes the importance of not judging others and to develop a trusting, working relationship with clients

Dana Brandon – serving Linn and Yamhill

- Master of Social Work degree from Portland State University
- 16 years of experience working as a juvenile investigator for attorneys handling dependency and termination of parental rights cases
- Extensive client advocacy experience in attending DHS meetings, treatment reviews, IEP meetings and home visits
- Social Work Intern for the National Indian Child Welfare Association; specialized ICWA training
- Ability to work at the direction of attorneys to gather information, assess client situation and eligibility for services, and develop recommendations for appropriate service plans

Bethany Ball – serving Yamhill

- Licensed professional counselor and certified alcohol and drug counselor

- Wide range of experience including working with families, youths, developmental disabilities and clients on the Autism spectrum; with specialized training in these areas
- Master's Degree in Counseling Psychology
- Working part time with the Parent Child Representation Program in Yamhill county only

Chiho Sakamoto-Gunton – serving Linn

- Previous experience as a DHS Child Welfare Case Worker in Benton county
- Licensed, Clinical Social Worker
- Utilizes a strength-based approach and motivational interviewing technique when working with clients
- Served as life skills trainer and case manager for at-risk children and youth
- 11 years of social service experience serving at-risk youth, children and families

Public Defense Contracts (Parent Child Representation Program Case Manager) Recommended
for Approval by the Public Defense Services Commission at its
December 12, 2014 Meeting

COUNTY	PROPOSED CONTRACTOR	CASE TYPE	SERVICE PROVIDED	VALUE (up to)	EXPIRATION DATE
Linn & Yamhill	Nicole Thomas	juvenile	case management	\$240,960.00	12.31.2017
Yamhill	Bethany Ball	juvenile	case management	\$90,360.00	12.31.2017
Linn	Chiho Sakamoto-Gunton	juvenile	case management	\$240,960.00	12.31.2017
Linn & Yamhill	Micki Steele-Blair	juvenile	case management	\$240,960.00	12.31.2017
TOTAL				\$813,240.00	

Attachment 4



FINAL REPORT
of the
JOINT INTERIM TASK FORCE ON
JUVENILE COURT DEPENDENCY PROCEEDINGS
December 3, 2014

Staff:

Bill Taylor, Judiciary Counsel
Channa Newell, Judiciary Counsel
Mike Reiley, Judiciary Office Coordinator

Members:

Non-Legislative Members:
Hon. Patricia A. Sullivan, Chair
Hon. Valeri L. Love
Hon. Elizabeth Welch
Nancy Cozine
Lois Day
Lori Fellows
Lene Garrett
Leola McKenzie
Angela Sherbo
Megan Shultz
Joanne Southey

TABLE OF CONTENTS

OVERVIEW & PROCESS	3
IMPEDIMENTS TO TIMELY PERMANENCY.....	5
CURRENT INITIATIVES TO ADDRESS IMPEDIMENTS	9
STAKEHOLDER COMMITMENTS FOR IMPROVING THE JUVENILE DEPENDENCY SYSTEM	11
LEGISLATIVE CONCEPT.....	12
CONCLUSION.....	13
Appendix 1-Stakeholder Commitments for Improving the Juvenile Dependency System.....	14
Appendix 2- LC 2058, Foster Care Reduction Through Effective Representation in Juvenile Court Proceedings.....	17

OVERVIEW & PROCESS

The 2013 Oregon Legislative Assembly passed House Bill 3363 (Chapter 439, (2013 Laws)) establishing the 11-member Work Group on Juvenile Court Dependency Proceedings (Work Group). Modeled after similar county level multidisciplinary groups, the Work Group included:

- Two judges representing the Oregon Judicial Department (OJD)
- The Director of the OJD's Juvenile Court Programs representing the Citizen Review Board (CRB)
- Two CASA Directors representing CASA Volunteer Programs
- One Senior Judge representing the Public Defense Services Commission
- The Director of Oregon's Child Welfare Program, and
- Four attorneys with expertise in juvenile court dependency proceedings:
 - One representing the Department of Justice
 - One representing the Oregon District Attorneys Association
 - Two with expertise representing parents and children in juvenile court dependency proceedings.

The Legislative Assembly charged the Work Group with reviewing the juvenile dependency system. The Work Group was directed to report to the House and Senate Judiciary Committees no later than January 15, 2015.

The Work Group was charged with undertaking an analysis of current conditions and making recommendations for improvement. Specifically, the group was to identify impediments to:

- A. The timely resolution of jurisdictional petitions in juvenile court dependency proceedings.
- B. The assessment of the bases for dependency jurisdiction.
- C. The development and implementation of case plans for the reunification of families that include services and other assistance that are appropriate and accessible to parents.
- D. The assessment of the adequacy of case plans.
- E. The identification and implementation of specific, understandable and realistic conditions for the return of a child placed in substitute care to the physical custody of the child's parent.

- F. The timely development and implementation of permanent plans, including reunification of the family, that take into account the policies of the State of Oregon expressed in ORS 419B.090 and the concept of “reasonable time” as defined in ORS 419A.004.

Once the impediments were identified the Work Group was asked to:

1. Identify the specific actions each entity represented by the work group members can take under existing law and within current budgetary restraints to remove or mitigate the identified impediments, and develop a plan to put those actions into practice and to measure the effectiveness of those actions.
2. Identify changes to existing law that could be made to assist in removing or mitigating one or more of the identified impediments that would not require the investment and support of additional state funds.
3. Identify changes to existing law that would be essential to remove or mitigate one or more of the identified impediments that would require the investment and support of additional state funds.

At the national, state, and local level it is widely recognized that juvenile court, child welfare and community stakeholder systems are inter-related and that changes in one entity will affect the effectiveness of all related systems. There are a number of county level multidisciplinary groups that regularly convene to engage in a process that strives to improve permanency outcomes for children and families involved in dependency proceedings. For example:

1. Juvenile Court Improvement or Model Court Teams
2. Safe and Equitable Foster Care Reduction Teams
3. Zero to Three Teams
4. Child Welfare Advisory Committees
5. Family Law Advisory Committees
6. Citizen Review Panels

Although counties come together in unique ways, these groups are similar in that they meet regularly to identify changes they can make to improve court and systemic performance and outcomes for children and families and to evaluate their progress through the use of data. Participants enter into these processes knowing

that changes will affect the way each agency interacts with the rest of the juvenile court community.

The charge of the Work Group, and the inclusion of stakeholder representatives from all entities in the child welfare system, allowed the Work Group to identify and examine issues that are common across jurisdictions. The Work Group met seven times, heard from twenty-two witnesses, conducted research, and analyzed information. Because of time constraints and the broad charge to the group, the group focused on two of the three charges, charge number 1 and charge number 3.

First, consistent with charge number 1, the Work Group addressed changes each of the represented groups could commit to making within the current statutory scheme and within current budgetary restraints. That document, entitled “Stakeholder Commitments for Improving the Juvenile Dependency System”, is included as [Appendix 1](#).

Second, consistent with charge number 3, the group addressed improvements that would require additional resources. General agreement was reached in that improvement for children and families involved in the juvenile system would come largely from improved representation of all parties (necessitating lower caseloads, greater oversight and additional training for attorneys and CASAs) and a judiciary with sufficient time and resources to give these cases the attention and priority they deserve. The Work Group’s proposal is memorialized in a legislative counsel draft of a bill requiring funding for the implementation of a pilot program to reduce the length of time children spend in foster care through effective representation. In addition to appropriating funds to improve representation of the parties, the bill appropriates funds to the judicial department to add judicial and staff resources. The draft, LC 2058, is included as [Appendix 2](#).

IMPEDIMENTS TO TIMELY PERMANENCY

Temporary, short-term foster care is an essential element of a comprehensive child welfare program. There will always be a need for a temporary means of ensuring children's safety when working with families to address issues that are compromising their children's safety.

The effectiveness of foster care diminishes over time. The longer children remain in foster care, the less effective foster care is in meeting children's needs. In order to maximize children's success in safely navigating childhood, we must identify the

strategies with the greatest promise of reducing the length of time children spend in a foster care setting and supporting safe environments that promote safety and permanency.

An initial task of the Work Group was to identify obstacles to timely permanency for children within the juvenile dependency system. Work Group members pinpointed many challenges to achieving permanency. Some of these challenges are broad systemic issues which may be beyond the ability of a single state to rectify and are beyond the charge of this group. For example, significant permanency delays occur due to delays in obtaining home studies when an out of state placement is sought.¹

But other obstacles are less expansive and more easily addressed through process changes, additional resources, or both. These impediments fall into three broad categories: lack or delay of services for parents and children, lack of system resources, and lack of adequate education and training.

Lack or Delay of Services for Parents and Children

A consistent barrier to permanency is the unavailability (or delayed availability) of services which serve as a predicate to permanency. Work Group members noted that service quality and availability varies greatly by geographical location and that the lack of adequate services is pervasive in rural areas of our state. Mothers and fathers are often required to engage in mental health and/or drug and alcohol treatment programs. In the past several years, where austerity has severely limited treatment resources, parents have endured lengthy wait times and limited availability of services. Limited availability of services for children also contributes to delays.

When children are in foster care, visitation with parents is essential to promoting timely reunification and, in addition, regular visitation is

¹ The Interstate Compact on the Placement of Children (ICPC), originally drafted in 1960 and enacted by all States, established procedures for ensuring the safety and stability of placements across State lines for children in foster care or adoption. The home study process, a preplacement assessment of the safety and stability of a prospective foster or adoptive family, is often seen as a major barrier to timely placement. Sankaran, *Foster Kids in Limbo: The Effects of the Interstate Compact on the Placement of Children on the Permanency of Children in Foster Care, A Report to the Annie E. Casey Foundation*, University of Michigan Law School (2012).

correlated with an increased likelihood of lasting reunification.² However, in many cases, both the quality and quantity of visits between parents and children is less than ideal. Parents and children consistently receive limited visitation time in an environment akin to a child welfare office. In addition, transportation challenges, particularly in rural areas of the state, contribute significantly to limited visitation.

Lack of System Resources

A consensus among Work Group members was that a lack of resources within the systems represented by the group's members has a substantial impact on timely permanency. Group members identified many barriers which result from underfunded public defense, judicial, and child welfare systems.

Public defenders strain to meet the demands of challenging clients under an often oppressive caseload.³ As a result, attorneys for parents and children struggle to engage their clients during the critical front end of dependency cases. In some counties, lawyers for parents and children are not present at the initial shelter care hearing which creates missed opportunities for advocacy and problem solving. High caseloads also contribute to scheduling delays. When lawyers have too many clients, they have limited time for client meetings and court appearances. Cases are often delayed by months when a contested hearing or trial needs to be set and the parent's or child's lawyer does not have available time.

Limited judicial officer availability also causes delay in timely case resolution. The number of judicial officers available varies significantly from county to county. In addition, due to docketing limitations, cases awaiting trial can be delayed for months. In many counties, one judge is assigned to the family's case. The effectiveness of a consistent judicial officer is well-established and the one-judge-one-family model is a best practice. Additional judicial officers available to hear juvenile dependency matters would ease the scheduling challenges which lead to delays.

² Weintraub, *Information Packet Parent-Child Visiting*, National Resource Center for Family-Centered Practice and Permanency Planning at the Hunter College School of Social Work (April 2008).

³ According to Work Group members, in most counties, lawyers representing children and parents have well over 100 cases at any given time. Because there can be multiple children in each case, for lawyers representing children, there can be many more clients than cases.

Overstretched child welfare staff has a direct impact on permanency timeliness. There are a number of activities which must occur for a child to move into permanency including supporting effective visitation, evaluation of relatives for establishing relationships, and supporting the child in the placement. Due to staffing levels which are at about two-thirds of need⁴, these tasks are not completed as rapidly as they could be, thus resulting in delayed permanency.

The lack of consistent legal representation of DHS Child Welfare in court is another contributing factor to permanency delays. DHS caseworkers often appear in court without legal counsel. There is inconsistency among the counties on the role of the district attorney's office in these cases and in terms of the type and frequency of appearances by an assistant attorney general. Issues occur when cases are delayed due to DHS caseworkers being unable to adequately address their legal position or present their case.

Lack of Adequate Education and Training

As a result of insufficient education and training, the professionals working to serve parents and children within the juvenile dependency system inadvertently cause harmful delays. For example, the workgroup identified educational and procedural deficits which cause delays at the beginning of a case: attorneys for parents, children and the state have an inconsistent understanding of the bases for juvenile court jurisdiction and, at times child welfare staff struggle to provide timely discovery to the parties in the case. In addition, there are varying practices within DHS child welfare regarding developing service plans and action agreements for parents.

Another contributing factor is philosophical differences regarding the role of foster care and the value of permanency. Some judges, CASAs, attorneys, and DHS staff believe remaining in foster care to take advantage of program access is of higher importance than moving to a higher legal level of permanency. Others disagree. Further education and discussion among system participants is needed in the hopes of reaching a greater consensus on this and other philosophical issues.

⁴ Kelley-Siel and Waybrant, *DHS Child Welfare Programs Phase 1 Budget Presentation*, Oregon Department of Human Services, <http://www.oregon.gov/dhs/aboutdhs/dhsbudget/budget20132015/cw-phase1presentation.pdf> (March 18 and 19, 2013).

CURRENT INITIATIVES TO ADDRESS IMPEDIMENTS

Several projects and programs are already underway to address barriers to timely permanency. But most are agency or organization-specific and targeted toward a particular outcome. A comprehensive, multi-system initiative, driven and managed in a collaborative fashion, has yet to be implemented.

Parent Child Representation Program (Office of Public Defense Services)

PCRCP is a pilot program modeled on the highly successful Washington State Parent Representation Program which, over the past 14 years, has been shown to dramatically increase the speed at which children achieve permanency. According to a 2011 study, the PRP resulted in an 11 percent higher reunification rate and an over 80 percent increase in the adoption or guardianship rate.⁵ The focus of the PCRCP is on providing high quality representation, including caseload limits, additional oversight and training requirements, and multidisciplinary collaboration, which in turn promotes positive outcomes for parents and children. Repeated studies indicate that when parents are represented by attorneys with reasonable caseloads, the attorneys spend more time with parents and, as a result, both parents and children have better experiences with the child welfare system.⁶

Child Welfare Program (Department of Human Services Child Welfare)

There are several efforts underway in child welfare that will positively impact permanency for children:

1. Comprehensive retraining of line supervisors in the elements and application of the Oregon Safety Model, increasing the consistency of the practice of the Model including Conditions for Return.
2. Hiring of additional casework staff allocated by the 2013-15 legislature bringing staffing to approximately 85% of need as identified by the child welfare workload model.

⁵ Courtney, Hook & Orme, "Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes," *Partners for Our Children* (Discussion Paper Vol. 1(1)) (2011).

⁶ Laver, "Improving Representation for Parents in the Child-Welfare System," *American Bar Association Children's Rights Litigation* (October 2013).

3. Implementation of Permanency Roundtables, a comprehensive staffing designed to support workers efforts to identify and achieve a more timely permanent plan for children in foster care two years or longer.
4. Continued collaboration with Casey Family Programs focused on the equitable reduction of the number of children experiencing foster care with an emphasis on the use of metrics to drive interventions to specific outcomes.
5. Implementation of Strengthening, Preserving and Reunifying Families Programs (SPRF): Statewide implementation of SPRF programs, strengthening the service array in every county in Oregon to be more responsive to the challenges facing families in keeping their children safe at home.

Juvenile Court Workload Study (Oregon Judicial Department)

The Oregon Judicial Department is contracting with the National Center for State Courts (NCSC) to conduct workload assessments of juvenile court judges and staff. Juvenile court practice has grown increasingly more complex over time. Since the Child Abuse Prevention and Treatment Act (CAPTA) was passed in 1974, there have been over 30 pieces of federal legislation impacting juvenile court work. This workload study is an important first step to ensuring that our trial courts have adequate time on the docket and sufficient staff resources so judges can do the work well.

This workload study, which will be the first judicial workload study in Oregon since 2000, will measure the work that juvenile courts are able to do with the resources they currently have available. Additionally the study will include discussion and review of best practices and an assessment of the time and resources necessary to reach a baseline level of quality for juvenile dependency hearings. The study will be completed by the end of July, 2015.

Statewide Survey of Visitation Practices for Children in Foster Care (Citizen Review Board (CRB))

The Lane County CRB CAPTA Panel completed a comprehensive DHS visitation policy review and a survey of over 200 Lane County cases. They found that the policy is very sound yet its implementation is uneven. Cases were assessed based on the initial safety threat and very few had updated safety assessments and step downs in visitation. As we all know, adequate, quality visitation is one of the indicators of successful reunification. The

CRB has taken on the task of exploring the effectiveness of visitation policy implementation across the state as the CRB believe this can really go a long way to speed reunification, a goal we all seek. CRB staff will compile the results and provide DHS with a written briefing detailing the outcomes of the inquiry.

STAKEHOLDER COMMITMENTS FOR IMPROVING THE JUVENILE DEPENDENCY SYSTEM

After reviewing the substantial number of obstacles to timely permanency for children, the Work Group reached consensus that, although many contributing factors are broad systemic issues, substantial gains could be made by focusing on improving legal representation for the parties and refining the court process.

Consistent with the Work Group's first charge, to address changes which could be made within the current statutory scheme and within current budgetary restraints, each represented Work Group entity developed commitments to improve the juvenile dependency system. These commitments range in scope and scale; however, each obligation addresses and attempts to reduce or remove an obstacle to timely permanency for children.

The stakeholder commitments, as documented in [Appendix 1](#), fit into three categories: process improvement, education and training, and oversight and standards. Within each category, the represented entity's commitment(s) to avoiding unnecessary delays are listed individually. Process improvements are primarily focused on collaboration and efficiency initiatives which will alleviate system bottlenecks. Education and training commitments will ensure practitioners have the tools needed to navigate the complex juvenile dependency system with an eye toward ensuring children obtain the permanency and stability that is desperately needed. Oversight and standards serve to ensure consistency of practice.

The Work Group members expressed a continued ongoing commitment to the county level collaborative efforts discussed earlier. Work Group members will provide encouragement and support for their county level representatives to implement the Stakeholder Commitments for Improving the Juvenile Dependency

System at the local level. The OJD and DHS are committed to the ongoing sharing of county level data related to timeliness of court proceedings, timeliness of permanency, reduction of APPLAs, and exits from foster care, and to ensuring that discussions of this data and current improvement efforts occur in a setting that includes all stakeholders. This commitment reflects the group's conclusion that continued improvement requires collaborative local level efforts. The practice changes contemplated within the Stakeholder Commitments for Improving the Juvenile Dependency System, combined with the current initiatives to address impediments to permanency, will help Oregon achieve goals of timely permanency, safety, and well-being for our foster children.

DHS recently launched their public child welfare data reporting website. (https://rom.socwel.ku.edu/oregon_Public/MyHome.aspx) This website has a list of reports that provides the trends and county comparisons on various child welfare outcome reports. This on-line reporting tool provides local multidisciplinary teams with data to assess their progress along with a better understanding of local level successes and challenges.

LEGISLATIVE CONCEPT

The third Work Group charge required the group to identify changes to existing law which would reduce impediments to timely permanency and require the investment and support of additional state funds. Because the Work Group uniformly agrees that improving outcomes for children and families in the dependency system is inexorably linked with high-quality legal representation and an adequately-resourced judiciary, the group proposes a pilot program to create an environment wherein the court and attorneys are able to function optimally to ensure children do not spend additional time in foster care due to systemic barriers to permanency.

The pilot program proposal, memorialized in LC 2058 and included as [Appendix 2](#), would provide for comprehensive, multi-system reform and collaboration which, as a result, would reduce the amount of time children spend in foster care and accelerate permanency for children.

CONCLUSION

Over the past year, the Work Group on Juvenile Court Dependency Proceedings struggled with the enormous challenge of identifying barriers to permanency and determining which barriers could be alleviated through practice improvement. However, upon further examination, it became clear that each participating Work Group entity could make some progress simply by committing to enhance and improve their role within the dependency system. And, in order to effect more substantial improvement for children and families involved in the juvenile system, improved legal representation for all parties and a judiciary with sufficient time and resources is needed to give parents and children the attention and priority that they deserve.

Appendix 1-Stakeholder Commitments for Improving the Juvenile Dependency System

PROCESS IMPROVEMENT

Courts

- Schedule shelter hearings at a time that allows attorneys to be appointed and appear at the shelter hearing.
- Review adequacy of visitation plan - for parent & child and child & sibling(s) if not placed together.
- Address DHS referral of parents to pre-adjudication services with attorney approval.
- In counties where multiple judges handle juvenile cases, establish guidelines for judges to retain cases once they hear them.
- Coordinate and set hearings so there is a review every 90 days by either the court or CRB.

Citizen Review Board

- Review adequacy of visitation plan - for parent & child and child & sibling(s) if not placed together.
- Emphasize concurrent planning.
- Recommend expedited permanency hearings only when appropriate.

Attorneys for Children and Parents

- Practice in accordance with the Oregon State Bar standards of representation for parents and children in dependency proceedings.
- Work with local courts and juvenile justice stakeholders to create specialized juvenile dockets and implement systems that eliminate delays.

State's Attorneys

- Develop and be familiar with standards for proper legal service on parents.
- Ensure effective legal service in each case.
- Work with local courts and juvenile justice stakeholders to create specialized juvenile dockets and implement systems that eliminate delays.

Department of Human Services

- Clearly state the Conditions for Return (the department's expectations for changes in behavior that parent(s) need make to resolve the safety issues challenging the family).
- Monitor and periodically update the visitation plan for parents as well as siblings.
- Provide timely notification to the court of a requested change in case plan and a requested hearing if required.
- Provide discovery to parties as soon as practicable following the filing of a petition and continue to provide discovery on a predictable and functional schedule with consideration of the import of the documents to the case.

Court Appointed Special Advocates (CASA)

- Monitor status of relative search, CANS assessment, CRB recommendations and Protective Capacity Assessment to insure timely resolution of case.
- Ensure youth 14+ have been referred to ILP services, participated in permanency roundtables or family finding processes.
- Document home visits, school visits, client contact and observations of parent and/or sibling visits.
- Ensure DHS case plan/permanency plan has been identified and is being implemented.
- Emphasize appropriate visitation for family preservation.

OVERSIGHT AND STANDARDS

Courts & CRB

- Courts and CRB to be trained on effecting compliance by all attorneys with standards and expectations.

Attorneys for Children and Parents

- Work with attorneys to ensure they are aware of updated standards of representation in juvenile dependency cases for attorneys representing parents and children, which were adopted by the Board of Governors in June 2014.
- Adoption of maximum caseload standards.
- OPDS oversight on performance by practitioners through contracting, complaint resolution and reviews of non-routine expense requests.

State's Attorneys

- DOJ provides oversight of AAGs representing DHS in dependency cases through caseload reviews, complaint resolution and manager follow-up with model court leaders. DA offices to provide oversight of DDA handling juvenile work with regular meetings, complaint resolution and discussions with model court leaders.
- Development and adoption of performance and practice standards for attorneys representing the state and DHS.
- Adoption of maximum caseload standards for DDAs and AAGs.

EDUCATION AND TRAINING

Courts & CRB

- Ensure all new judges get Basic Juvenile Court 101 training at OJD New Judge School.
- JCIP continue to sponsor and support judicial officer and multidisciplinary educational programs.

Attorneys for Children and Parents

- Continue to develop multi-disciplinary collaborative training and education including all parties and system participants such as the Juvenile Law Training Academy.
- Ensure the availability of regular and ongoing training related to juvenile law practice.
- Develop webinars and other remote-access training for practitioners in rural or remote areas.
- Regularly disseminate information to practitioners regarding available training related to juvenile law practice.

State's Attorneys

- Ensure regular and on-going training specific to juvenile law practice.
- DA offices to provide in-house training for attorneys handling juvenile dependency work. Regional exchanges should be considered for smaller communities.
- ODAA and DOJ attorney training on legal sufficiency for dependency petitions and need for rational relationship between allegations of parental conduct and services ordered.
- Attendance (in person or by webcast) at CLEs relevant to juvenile law practice including the annual Juvenile Law Training Academy CLE.

Department of Human Services

- Training in court processes and how to present as a witness
- Diligent relative search and absent parent search.

Court Appointed Special Advocates (CASA)

- Consistent availability of relevant quality statewide training.
- Collaborative training offered with multi-party participation.
- Additional training focus on:
 - Effective use of party status
 - Conditions of return
 - Jurisdictional basis vs. required services
 - Reasonable time for the child.

Appendix 2- LC 2058, Foster Care Reduction Through Effective Representation in Juvenile Court Proceedings

LC 2058
2015 Regular Session
11/18/14 (BLS/ps)

D R A F T

SUMMARY

Directs Judicial Department, Public Defense Services Commission, Department of Human Services and Department of Justice to collaborate to establish pilot programs in four to six Oregon counties to reduce foster care use through effective representation in juvenile dependency proceedings.

Appropriates moneys to Judicial Department, Public Defense Services Commission, Department of Human Services and Housing and Community Services Department for purpose of implementing pilot programs.

Sunsets pilot programs on June 30, 2021.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

Relating to pilot programs to improve juvenile dependency system; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. The Legislative Assembly finds that:

(1) Every child has the right to be raised in a permanent, safe and stable home.

(2) Foster care is a temporary service that can be both necessary and effective. However, the effectiveness of foster care declines substantially as the length of stay in foster care increases.

(3) Evidence-based research shows that high-quality legal representation improves outcomes for children and families, in that children are more likely to remain safely in the home, spend less time in foster care and achieve permanency more quickly.

(4) Safely reducing the use of foster care is both cost-effective and in the best interests of Oregon's children.

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

1 (5) The Department of Human Services requires additional legal
2 resources to fully comply with Oregon's juvenile dependency laws.

3 (6) The Judicial Department requires additional judicial resources
4 and staff to be trained for and dedicated to juvenile court.

5 (7) The Public Defense Services Commission requires additional re-
6 sources in order to reduce attorney caseloads and provide adequate
7 high-quality legal representation to parents and children.

8 (8) The implementation of pilot programs as set forth in section 2
9 of this 2015 Act will inform the Legislative Assembly and stakeholders
10 of the prospect for success of implementation of similar programs
11 throughout this state.

12 SECTION 2. (1) The Judicial Department, the Public Defense Ser-
13 vices Commission, the Department of Human Services and the De-
14 partment of Justice shall collaborate to create and implement pilot
15 programs to reduce foster care through effective representation in ju-
16 venile dependency proceedings in a minimum of four and a maximum
17 of six counties in this state, including Linn and Yamhill Counties.

18 (2) The purposes of the pilot programs implemented under sub-
19 section (1) of this section include, but are not limited to:

20 (a) Improving the quality of legal representation for parents and
21 children by reducing attorney caseloads, providing adequate compen-
22 sation, ensuring additional oversight and providing multidisciplinary
23 support and training;

24 (b) Increasing resources to enable the State of Oregon and the De-
25 partment of Human Services to be adequately represented in juvenile
26 dependency proceedings;

27 (c) Increasing judicial resources and staff in the Judicial Depart-
28 ment in order to adjudicate dependency cases more expeditiously;

29 (d) Increasing resources to CASA Volunteer Programs as defined in
30 ORS 458.580 to provide court appointed special advocates an opportu-
31 nity for legal consultation when needed; and

[2]

1 (e) Measuring outcomes to determine if the use of foster care has
2 declined as a result of implementation of the pilot programs.

3 (3) The pilot programs shall be implemented as follows:

4 (a) The Public Defense Services Commission shall contract with
5 attorneys to represent children and parents in the counties where the
6 pilot programs are implemented and shall adopt standards and train-
7 ing for the attorneys.

8 (b) The Department of Justice shall employ attorneys to represent
9 the Department of Human Services in juvenile dependency proceedings
10 and shall establish standards and training for attorneys that provide
11 the representation.

12 (c) The Public Defense Services Commission, in consultation with
13 and with the support of the Judicial Department, the Department of
14 Human Services and the Department of Justice, shall select and con-
15 tract with an independent evaluator to evaluate each pilot program.

16 (4) The Judicial Department, the Public Defense Services Commis-
17 sion, the Department of Human Services and the Department of Jus-
18 tice shall collaborate to submit a report on the status of the pilot
19 programs to the interim or regular committees of the Legislative As-
20 sembly with subject matter jurisdiction over the judiciary on or before
21 the date of the convening of each odd-numbered year regular session
22 of the Legislative Assembly as specified in ORS 171.010.

23 (5) The Judicial Department, the Public Defense Services Commis-
24 sion, the Department of Human Services and the Department of Jus-
25 tice shall collaborate to adopt rules to carry out the provisions of this
26 section.

27 SECTION 3. In addition to and not in lieu of any other appropri-
28 ation, there is appropriated to the Judicial Department, for the
29 biennium beginning July 1, 2015, out of the General Fund, the amount
30 of \$_____ for the purposes of carrying out the provisions of section 2
31 of this 2015 Act.

1 **SECTION 4.** In addition to and not in lieu of any other appropri-
2 ation, there is appropriated to the Public Defense Services Commis-
3 sion, for the biennium beginning July 1, 2015, out of the General Fund,
4 the amount of \$_____ for the purposes of carrying out the provisions
5 of section 2 of this 2015 Act.

6 **SECTION 5.** In addition to and not in lieu of any other appropri-
7 ation, there is appropriated to the Department of Human Services, for
8 the biennium beginning July 1, 2015, out of the General Fund, the
9 amount of \$_____ for the purposes of carrying out the provisions of
10 section 2 of this 2015 Act.

11 **SECTION 6.** In addition to and not in lieu of any other appropri-
12 ation, there is appropriated to the Housing and Community Services
13 Department, for the biennium beginning July 1, 2015, out of the Gen-
14 eral Fund, the amount of \$_____ to be deposited into the Court Ap-
15 pointed Special Advocate Fund created in ORS 458.584 for the purposes
16 of carrying out the provisions of section 2 (2)(d) of this 2015 Act.

17 **SECTION 7.** Sections 1 and 2 of this 2015 Act are repealed on June
18 30, 2021.

19 **SECTION 8.** This 2015 Act being necessary for the immediate pres-
20 ervation of the public peace, health and safety, an emergency is de-
21 clared to exist, and this 2015 Act takes effect on its passage.

22

Attachment 5

the litigation as a class action in accordance with Article 9 of the New York State Civil Procedure Law and Rules (“CPLR”), *Hurrell-Harring v. State of New York*, 81 AD3d 69 (3d Dept. 2011); and

WHEREAS, in 2010, the State established the Office of Indigent Legal Services (“ILS”) and the Indigent Legal Services Board (“ILSB”) (Executive Law Section 832 and Section 833, respectively) to, among other things, improve the quality of the delivery of legal services throughout the State for indigent criminal defendants; and

WHEREAS, the parties have conducted extensive fact and expert discovery, and have engaged in motion practice before the Court, and the Court has set the matter down for trial; and

WHEREAS, the parties have negotiated in good faith and have agreed to settle this Action on the terms and conditions set forth herein; and

WHEREAS, the parties agree that the terms of this settlement are in the public interest and the interests of the Plaintiff Class and that this settlement upon the order of the Court is the most appropriate means of resolving this action; and

WHEREAS, the parties understand that, prior to such Court order, the Court shall conduct a fairness hearing in accordance with CPLR Article 9 to determine whether the settlement contained herein should be approved as in the best interests of the Plaintiff Class; and

WHEREAS, ILS and the ILSB have the legal authority to monitor and study indigent legal services in the state, to recommend measures to improve those services, to award grant monies to counties to support their indigent representation capability, and to establish criteria for the distribution of such funds; and

WHEREAS, the parties agree that ILS is best suited to implementing, on behalf of the State, certain obligations arising under this Agreement; and

WHEREAS, the ILSB has reviewed those obligations contemplated under this Agreement for implementation by ILS and has directed ILS to implement such obligations in accordance with
DOC ID - 22028239.1

the terms of this Agreement, and this direction is reflected in the *Authorization of the Indigent Legal Services Board and the New York State Office of Indigent Legal Services Concerning Settlement of the Hurrell-Harring Lawsuit*, appended hereto as Exhibit A and incorporated by reference herein; and

WHEREAS, ILS is legally required to execute this direction from the ILSB; and

WHEREAS, the Plaintiff Class entered into a settlement agreement with Ontario County dated June 20, 2014, and the Court approved the settlement and dismissed the Plaintiff Class's claims against Ontario County on September 2, 2014; and

WHEREAS, the Plaintiff Class entered into a settlement agreement with Schuyler County on September 29, 2014, which is currently scheduled for a fairness hearing on November 3, 2014; and

WHEREAS, Plaintiffs and the State intend that the terms and measures set forth in this Settlement Agreement will ensure counsel at arraignment for indigent defendants in the Five Counties, provide caseload relief for attorneys providing Mandated Representation in the Five Counties, improve the quality of Mandated Representation in the Five Counties, and lead to improved eligibility determinations;

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED as follows:

I. PARTIES TO THIS AGREEMENT

The parties to this Settlement Agreement are the parties named in the Second Amended Complaint in the Action, which are the Plaintiff Class, the State of New York, Governor Andrew Cuomo, Onondaga County, Ontario County, Schuyler County, Suffolk County, and Washington County. If a County fails to execute the Agreement, it shall not be considered a party to this Agreement.

II. DEFINITIONS

As used in this Agreement:

Action means *Hurrell-Harring v. State of New York*, Case No. 8866-07 (Supreme Court, Albany County), filed on November 8, 2007.

Agreement and **Settlement Agreement** mean this Stipulation and Order of Settlement dated as of October 21, 2014 between and among Plaintiffs, the State Defendants, and the Five Counties.

Arraignment means the first appearance by a person charged with a crime before a judge or magistrate, with the exception of an appearance where no prosecutor appears and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged (in which event Arraignment shall mean the person's next appearance before a judge or magistrate).

Effective Date means the date of entry of the order of Supreme Court, Albany County approving this Settlement Agreement.

Executive means the Office of the Governor.

Five Counties means Ontario, Onondaga, Schuyler, Suffolk, and Washington Counties, each of which was named as a defendant in the Second Amended Complaint filed on August 26, 2008 in *Hurrell-Harring v. State of New York*. Each of the Five Counties may also be referred to as a **County** in this Agreement.

Mandated Representation means constitutionally mandated publicly funded representation in criminal cases for people who are unable to afford counsel.

Plaintiffs or **Plaintiff Class** means the class of individuals certified by the Appellate Division on January 6, 2011 in *Hurrell-Harring v. State of New York*.

III. COUNSEL AT ARRAIGNMENT

(A) (1) The State of New York (the “State”) shall ensure, within 20 months of the Effective Date and continuing thereafter, that each criminal defendant within the Five Counties who is eligible for publicly funded legal representation (“Indigent Defendant”) is represented by counsel in person at his or her Arraignment. A timely Arraignment with counsel shall not be delayed pending a determination of a defendant’s eligibility.

(2) Within 6 months of the Effective Date, the New York State Office of Indigent Legal Services (“ILS”), in consultation with the Executive, the Five Counties, and any other persons or entities it deems appropriate, shall develop a written plan to implement the obligations specified above in paragraph III(A)(1), which plan shall include interim steps for achieving compliance with those obligations. That plan shall be provided to the parties, who shall have 30 days to submit comments. Within 30 days of the end of such comment period (which will be no later than 8 months after the Effective Date), ILS shall finalize its plan and provide it to the parties. Starting within 6 months of finalization of the plan, the State shall undertake good faith efforts to begin implementing the plan, subject to legislative appropriations.

(3) The parties acknowledge that the State may seek to satisfy the obligations set forth in paragraph III(A)(1) by ensuring the existence and maintenance within each of the Five Counties of an effective system for providing each Indigent Defendant with representation by counsel in person at his or her Arraignment. Nothing in this provision alters the State’s obligations set forth in paragraph III(A)(1).

(4) Incidental or sporadic failures of counsel to appear at Arraignments within a County shall not constitute a breach of the State’s obligations under paragraph III(A)(1).

- (B) The Executive shall coordinate and work in good faith with the Office of Court Administration (“OCA”) to ensure, on an ongoing basis, that each judge and magistrate within the Five Counties, including newly appointed judges and magistrates, is aware of the responsibility to provide counsel to Indigent Defendants at Arraignments, and, subject to constitutional and statutory limits regarding prompt arraignments, to consider adjustments to court calendars and Arraignment schedules to facilitate the presence of counsel at Arraignments. If, notwithstanding the Executive’s satisfaction of the terms of this paragraph III(B), lack of cooperation from OCA prevents the provision of counsel at some Arraignments, the State shall not be deemed in breach of the settlement for such absence of counsel at those Arraignments.
- (C) In accordance with paragraph IX(B), the State shall use \$1 million in state fiscal year 2015/2016 for the purposes of paying any costs associated with the interim steps described in paragraph III(A)(2). The State shall use these funds in the first instance to pay the Five Counties for the costs, if any, incurred by them in connection with the interim steps described in paragraph III(A)(2), and thereafter any remaining amounts shall be used to pay costs incurred by ILS.
- (D) ILS, in consultation with the Executive, OCA, the Five Counties, and any other individual or entity it deems appropriate, shall, on an ongoing basis, monitor the progress toward achieving the purposes set forth in paragraph III(A)(1) above. Such monitoring shall include regular, periodic reports regarding: (1) the sufficiency of any funding committed to those purposes; (2) the effectiveness of any system implemented in accordance with paragraph III(A)(3) in ensuring that all Indigent Defendants are represented by counsel at Arraignment; and (3) any remaining barriers to ensuring the representation of all Indigent Defendants at Arraignment. Such reports shall be made available to counsel for the Plaintiff Class and the public.

- (E) In no event shall the Five Counties be obligated to undertake any steps to implement the State's obligations under Section III until funds have been appropriated by the State for paragraph III(A)(1) or paragraph III(A)(2). Nothing in this paragraph shall alter the Five Counties' obligations under Section VII.

IV. CASELOAD RELIEF

- (A) Within 6 months of the Effective Date, ILS shall ensure that the caseload/workload of each attorney providing Mandated Representation in the Five Counties can be accurately tracked and reported on at least a quarterly basis, including private practice caseloads/workloads. In accordance with paragraph IX(B), the State shall provide \$500,000 in state fiscal year 2015/2016 to ILS for the purposes of paying any costs associated with the obligations contained in this paragraph IV(A), and ILS shall use those funds for such purposes. To the extent practicable, and subject to the specific funding commitments in this Agreement, the tracking system developed by ILS should be readily deployable across the state.
- (B) (1) Within 9 months of the Effective Date, ILS, in consultation with the Executive, OCA, the Five Counties, and any other persons or entities ILS deems appropriate, shall determine:
- (i) the appropriate numerical caseload/workload standards for each provider of mandated representation, whether public defender, legal aid society, assigned counsel program, or conflict defender, in each County, for representation in both trial- and appellate-level cases;
 - (ii) the means by which those standards will be implemented, monitored, and enforced on an ongoing basis; and
 - (iii) to the extent necessary to comply with the caseload/workload standards, the number of additional attorneys (including supervisory attorneys), investigators, or other non-attorney staff, or the amount of other in-kind resources necessary for each provider

of Mandated Representation in the Five Counties.

(2) In reaching these determinations, ILS shall take into account, among other things, the types of cases attorneys handle, including the extent to which attorneys handle non-criminal cases; the private practice caseloads/workloads of attorneys; the qualifications and experiences of the attorneys; the distance between courts and attorney offices; the time needed to interview clients and witnesses, taking into account travel time and location of confidential interview facilities; whether attorneys work on a part-time basis; whether attorneys exercise supervisory responsibilities; whether attorneys are supervised; and whether attorneys have access to adequate staff investigators, other non-attorney staff, and in-kind resources.

(3) In no event shall numerical caseload/workload standards established under paragraph IV(B)(1) or paragraph IV(E) be deemed appropriate if they permit caseloads in excess of those permitted under standards established for criminal cases by the National Advisory Commission on Criminal Justice Standards and Goals (Task Force on Courts, 1973) Standard 13.12.

- (C) Starting within 6 months of ILS having made the caseload/workload determinations specified above in paragraph IV(B), the State shall take tangible steps to enable providers of Mandated Representation to start adding any staff and resources determined to be necessary to come into compliance with the standards.
- (D) (1) Within 21 months of ILS having made the caseload/workload determinations specified above in paragraph IV(B) (which shall be no later than 30 months from the Effective Date) (the "Implementation Date") and continuing thereafter, the State shall ensure that the caseload/workload standards are implemented and adhered to by all providers of Mandated Representation in the Five Counties.

(2) The parties acknowledge that the State may delegate to ILS the primary responsibility for overseeing the implementation, monitoring, and enforcement of the caseload/workload standards required hereunder, provided, however, that nothing in this provision alters the State's obligations set forth in this Section IV.

(3) The parties acknowledge that the State may seek to satisfy the obligation in paragraph IV(D)(1) by ensuring the existence and maintenance within each of the Five Counties of an effective system for implementing and enforcing any caseload/workload standards adopted under this Section IV. Nothing in this provision alters the State's obligations set forth in this Section IV.

(E) Beginning approximately 18 months after the Implementation Date, and no less frequently than annually thereafter, ILS shall review the appropriateness of any such standards in light of any change in relevant circumstances in each of the Five Counties. Immediately following any such review, ILS shall recommend to the Executive whether and to what extent the established caseload/workload standards should be amended on the basis of changed circumstances. Any proposed change to a caseload/workload standard implemented hereunder by ILS shall be submitted by ILS for approval by the Executive, provided, however, that such approval shall not be unreasonably withheld. Nothing in this provision shall limit the authority of ILS or the ILSB pursuant to Executive Law Article 30, Sections 832 and 833.

(F) Incidental or sporadic noncompliance with the caseload/workload standards by individual attorneys providing Mandated Representation shall not constitute a breach of the State's obligations under this Section IV.

V. INITIATIVES TO IMPROVE THE QUALITY OF INDIGENT DEFENSE

- (A) No later than 6 months following the Effective Date, ILS, in consultation with the Five Counties, the providers of Mandated Representation in the Five Counties, and any other individual or entity ILS deems appropriate, shall establish written plans to ensure that attorneys providing Mandated Representation in criminal cases in each of the Five Counties: (1) receive effective supervision and training in criminal defense law and procedure and professional practice standards; (2) have access to and appropriately utilize investigators, interpreters, and expert witnesses on behalf of clients; (3) communicate effectively with their clients (including by conducting in-person interviews of their clients promptly after being assigned) and have access to confidential meeting spaces; (4) have the qualifications and experience necessary to handle the criminal cases assigned to them; and (5) in the case of assigned counsel attorneys, are assigned to cases in accordance with County Law Article 18-B and in a manner that accounts for the attorney's level of experience and caseload/workload. At a minimum, such plans shall provide for specific, targeted progress toward each of the objectives listed in this paragraph V(A), within defined timeframes, and shall also provide for such monitoring and enforcement procedures as are deemed necessary by ILS.
- (B) ILS shall thereafter implement the plans developed in accordance with paragraph V(A). To address costs associated with implementing these plans, ILS shall provide funding within each County through its existing program for quality improvement distributions, provided, however, that ILS shall take all necessary and appropriate steps to ensure that any distributions intended for use in accomplishing the objectives listed in paragraph V(A) are used exclusively for that purpose.
- (C) In accordance with paragraphs IX(B) and IX(E), respectively, the State shall provide to ILS \$2 million in each of state fiscal year 2015/2016 and state fiscal year 2016/2017 for the purposes of accomplishing the objectives set forth in

paragraph V(A), and ILS shall use such funds for those purposes. No portion of such funds shall be attributable to ILS's operating budget but shall instead be distributed by ILS to the Five Counties.

- (D) The Five Counties may, but shall not be obligated to, pay all or a portion of the funds identified in paragraph V(C) to ILS to provide services designed to effectuate the objectives set forth in paragraph V(A), provided such services are rendered in state fiscal years 2015/2016 and 2016/2017 and pursuant to a written agreement between ILS and the relevant County.

VI. ELIGIBILITY STANDARDS FOR REPRESENTATION

- (A) ILS shall, no later than 6 months following the Effective Date, issue criteria and procedures to guide courts in counties outside of New York City in determining whether a person is eligible for Mandated Representation. ILS may consult with OCA to develop and distribute such criteria and procedures. ILS shall be responsible for ensuring the distribution of such criteria and procedures to, at a minimum, every court in counties outside of New York City that makes determinations of eligibility (and may request OCA's assistance in doing so) and every provider of mandated representation in the Five Counties. The Five Counties shall undertake best efforts to implement such criteria and procedures as developed by ILS. Nothing in this paragraph otherwise obligates the Five Counties to develop such criteria and procedures.
- (B) At a minimum, the criteria and procedures shall provide that: (1) eligibility determinations shall be made pursuant to written criteria; (2) confidentiality shall be maintained for all information submitted for purposes of assessing eligibility; (3) ability to post bond shall not be considering sufficient, standing alone, to deny eligibility; (4) eligibility determinations shall take into account the actual cost of retaining a private attorney in the relevant jurisdiction for the category of crime charged; (5) income needed to meet the reasonable living expenses of the

applicant and any dependent minors within his or her immediate family, or dependent parent or spouse, should not be considered available for purposes of determining eligibility; and (6) ownership of an automobile should not be considered sufficient, standing alone, to deny eligibility where the automobile is necessary for the applicant to maintain his or her employment. In addition, ILS shall set forth additional criteria or procedures as needed to address: (7) whether screening for eligibility should be performed by the primary provider of Mandated Representation in the county; (8) whether persons who receive public benefits, cannot post bond, reside in correctional or mental health facilities, or have incomes below a fixed multiple of federal poverty guidelines should be deemed presumed eligible and be represented by public defense counsel until that representation is waived or a determination is made that they are able to afford private counsel; (9) whether (a) non-liquid assets and (b) income and assets of family members should be considered available for purposes of determining eligibility; (10) whether debts and other financial obligations should be considered in determining eligibility; (11) whether ownership of a home and ownership of an automobile, other than an automobile necessary for the applicant to maintain his or her employment, should be considered sufficient, standing alone, to deny eligibility; and (12) whether there should be a process for appealing any denial of eligibility and notice of that process should be provided to any person denied counsel.

- (C) ILS shall issue an annual report regarding the criteria and procedures used to determine whether a person is eligible to receive Mandated Representation in each of the Five Counties. Such report shall, at a minimum, analyze: (1) the criteria used to determine whether a person is eligible; (2) who makes such determinations; (3) what procedures are used to come to such determinations; (4) whether and to what extent decisions are reconsidered and/or appealed; and (5) whether and to what extent those criteria and procedures comply with the criteria and procedures referenced in paragraph VI(A). The first such report shall

be issued no later than 12 months following the establishment of the criteria and procedures discussed in paragraph VI(A).

VII. COUNTY COOPERATION

The Five Counties shall use best efforts to cooperate with the State and ILS to the extent necessary to facilitate the implementation of the terms of this Agreement. This obligation is in no way subject to or conditioned upon any obligations undertaken by Ontario and Schuyler Counties by virtue of their separate agreements to settle this Action. Such cooperation shall include, without limitation: (1) the timely provision of information requested by the State or ILS; (2) compliance with the terms of the plans implemented pursuant to paragraphs III(A)(2), IV(B)(1), and V(A); (3) assisting in the distribution of the eligibility standards referenced in part VI(A); (4) assisting in the monitoring, tracking, and reporting responsibilities set forth in parts III(D), IV(A), and VI(C); (5) ensuring that the providers of Mandated Representation and individual attorneys providing Mandated Representation in the Five Counties provide any necessary information, compliance, and assistance; (6) undertaking best efforts to ensure the passage of any legislation and/or legislative appropriations contemplated by this Agreement; and (7) any other measures necessary to ensure the implementation of the terms of this Agreement. County failure to cooperate does not relieve the State of any of its obligations under this Settlement Agreement.

VIII. MONITORING AND REPORTING

In order to permit Plaintiffs to assess compliance with all provisions of this Agreement, the State shall:

- (A) Promptly provide to Plaintiffs copies of the following documents upon their finalization and subsequent to any amendment thereto:
 - (1) The plan(s) concerning counsel at arraignment referenced in paragraph III(A)(2);

- (2) The reports concerning counsel at arraignment referenced in paragraph III(D);
 - (3) The determinations regarding caseload/workload referenced in paragraph IV(B)(1) and any changes proposed or made pursuant to paragraph IV(E);
 - (4) The plan(s) for quality improvement referenced in paragraph V(A);
 - (5) The eligibility criteria referenced in paragraph VI(A);
 - (6) The reports regarding eligibility determinations referenced in paragraph VI(C);
 - (7) The relevant portions of each Executive Budget submitted during the term of this Agreement.
- (B) Provide written reports to Plaintiffs concerning the State's efforts to carry out its obligations under this Agreement and the results thereof, including, without limitation:
- (8) Ensuring counsel at arraignment pursuant to paragraph III(A)(1);
 - (9) Coordinating with OCA pursuant to paragraph III(B);
 - (10) Implementing the tracking system referenced in paragraph IV(A);
 - (11) Implementing the caseload/workload standards referenced in paragraph IV(B) or paragraph IV(E) and ensuring that those caseload/workload standards are adhered to;
 - (12) Implementing the plans referenced in paragraph V(A).

Within 90 days of the Effective Date, the State and Plaintiffs shall meet and confer in good faith to identify the content and frequency of the specific reports

identified above that will be provided to Plaintiffs pursuant to this Section VIII.

IX. BEST EFFORTS AND APPROPRIATIONS

- (A) The parties shall use their best efforts to obtain the enactment of all legislative measures necessary and appropriate to implement the terms of the Settlement Agreement.
- (B) The Executive shall include in an Executive budget appropriation bill submitted to the Legislature for state fiscal year 2015/2016 sufficient appropriation authority to fund \$3.5 million for purposes of implementing paragraphs III(C), IV(A), and V(C) of this Agreement.
- (C) In order to prevent the obligation to provide counsel at Arraignment as set forth in Section III from imposing any additional financial burden on any County, the Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017, and for each state fiscal year thereafter, sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity the Executive deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section III.
- (D) In order to prevent the caseload/workload standards implemented under Section IV from imposing an additional financial burden on any County, the Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017, and for each state fiscal year thereafter, sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity it deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section IV. In the absence of such funds, the Five Counties shall not be required to implement the caseload/workload standards referenced in

Section IV; provided, however, that nothing in this provision alters the State's obligation to ensure that caseload/workload standards are implemented and adhered to.

- (E) The Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017 sufficient appropriation authority to fund \$2 million to ILS for the purposes of implementing paragraph V(C).
- (F) The Executive shall use best efforts to seek and secure the funding described in paragraphs IX(B), IX(C), IX(D), and IX(E), as well as any other funding or resources necessary, as determined in the sole discretion of the Executive, to implement the terms of this Agreement including, without limitation, funding and resources sufficient for ILS to carry out its responsibilities under the Agreement. Consistent with the State Constitution and the State Finance Law, this Agreement is subject to legislative appropriation of such funding. The State shall perform its obligations under this Agreement in each fiscal year for the term of the Agreement to the extent of the enacted appropriation therefor.
- (G) Except as provided in paragraph XIII(A), nothing herein shall be construed to obligate the Five Counties to provide funding to implement any of the obligations under this Agreement.

X. LEGISLATIVE PROCESS AND OUTCOMES

- (A) Upon the Effective Date, this Action shall be conditionally discontinued only as to the parties that execute this Agreement, pending the enactment of the budget for the state fiscal year 2015/2016 and, if required, the completion of the meet-and-confer process described in paragraph X(B) below.

(1) No later than 21 days after the enactment of the 2015/2016 budget, the State shall provide Plaintiffs with written notice stating whether or not the

State believes that it can fully implement its obligations under this Agreement in light of the amount of funding appropriated by the Legislature.

(2) If the written notice provided under X(A)(1) sets forth the State's determination that the State can fully implement all of its obligations under this Agreement, then this Action shall be discontinued with prejudice only as to the parties that execute this Agreement. Such discontinuance shall not preclude Plaintiffs from commencing any new action pursuant to paragraph X(C)(2) below.

- (B) If at any time the State believes it cannot fully implement one or more of its obligations under this Agreement in light of the Legislature's action, the State shall notify Plaintiffs in writing of that fact and the parties shall meet and confer to determine whether they can mutually resolve the issue(s). If the parties are unable to resolve the matter within 45 days of the written notice provided by the State, the State within 10 days shall notify Plaintiffs in writing which obligation(s) the State is unable to fully implement. If the State notifies Plaintiffs that it cannot fully implement one or more of its obligations in Section III, Plaintiffs may pursue, as specified in paragraph X(C)(1) or X(C)(2), as appropriate, judicial remedies on their claims for actual denial of counsel. If the State notifies Plaintiffs that it cannot fully implement one or more of its obligations in Section IV or V of this Agreement, Plaintiffs may pursue, as specified in paragraph X(C)(1) or X(C)(2), as appropriate, judicial remedies on their claims for constructive denial of counsel. The State shall remain obligated to comply with the relevant affected provision(s) of the Agreement to the extent it has funding to do so and shall remain obligated to implement all provisions not affected by legislative action unless the State notifies Plaintiffs within 90 days of enactment of the 2015/2016 budget that it can implement no provision of Sections III, IV, and V of the Agreement, in which case the entire Agreement

shall be deemed null and void, and the relevant parties shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014.

(C) (1) State Fiscal Year 2015/2016. If the State, pursuant to paragraph X(B), notifies Plaintiffs within 90 days of enactment of the 2015/2016 budget that it cannot fully implement one or more of its obligations under the Agreement, Plaintiffs may pursue judicial remedies as allowed under paragraph X(B) by restoring this Action to the trial calendar by serving written notice upon the Court and the relevant parties that have signed the Agreement within 30 days after receiving such notice from the State, in which case the relevant parties shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014, with respect to the restored claim(s).

(2) State Fiscal Year 2016/2017 to the Expiration of this Agreement. In accordance with any notice pursuant to paragraph X(B) with respect to the 2016/2017 state fiscal year or any later state fiscal year through the expiration of this Agreement, Plaintiffs may pursue judicial remedies as allowed under paragraph X(B) only by filing a new action for declaratory and prospective injunctive relief. Nothing in the Stipulation of Discontinuance filed in this Action is intended to bar or shall have the effect of barring, by virtue of the doctrine of res judicata or other principles of preclusion, any new action as allowed under paragraph X(B) or any claims within such action. Neither the State nor any other defendant shall assert or argue that any such action or claim asserted therein is barred by virtue of the prior discontinuance of this Action.

(3) Nothing in this paragraph shall be construed to alter the parties' rights under paragraph XIII(S).

XI. DISPUTE RESOLUTION

- (A) If Plaintiffs believe that the State is not in compliance with a provision of this Settlement Agreement, Plaintiffs shall give notice to all parties in writing, and shall state with specificity the alleged non-compliance. Upon receipt of such notice by the State, Plaintiffs and the State will promptly engage in good-faith negotiations concerning the alleged non-compliance and appropriate measures to cure any non-compliance. Any party may request the participation of ILS in such negotiations. If Plaintiffs and the State have not reached an agreement on the existence of the alleged non-compliance and curative measures within forty-five (45) days after receipt of such notice of alleged non-compliance, Plaintiffs may seek all appropriate judicial relief with respect to such alleged non-compliance, upon ten (10) days' prior notice in accordance with the Escalation Notice terms set forth in paragraph XI(B). The State and Plaintiffs may extend these time periods by written agreement. Nothing said by either party or counsel for either party during those meetings may be used by the other party in any subsequent litigation, including, without limitation, litigation in connection with this Agreement, for any purpose whatsoever.
- (B) Plaintiffs shall provide notice ("Escalation Notice") to the individuals identified in paragraph XIII(G)(2) at least ten (10) business days before seeking judicial relief as described in paragraph XI(A), which notice shall inform such individuals that Plaintiffs intend to seek judicial relief and shall attach the notice provided under paragraph XI(A).
- (C) Notwithstanding the dispute resolution procedures set forth above, if exigent circumstances arise, Plaintiffs shall be able to seek expedited judicial relief against the State based upon an alleged breach of this Agreement, upon five (5) business days' prior notice to the individuals identified in paragraphs XIII(G)(1) and XIII(G)(2).

- (D) Plaintiffs shall not seek to enforce any provision of this Agreement against any County. No provision of this Agreement shall form the basis of any cause of action by Plaintiffs against any County. In no event shall County action or inaction relieve the State of any of its obligations under this Agreement.
- (E) If the State believes that a County is not meeting its obligations under this Agreement, it may seek relief following the same procedures as set out above in paragraphs XI(A), XI(B), and XI(C).
- (F) Venue over any disputes concerning enforcement of this Agreement (1) between Plaintiffs and the State, (2) involving all the parties to this Agreement, or (3) between the State and more than one County shall be in a court of competent jurisdiction in Albany County. Venue over any disputes concerning enforcement of this Agreement between the State and a single County shall be in a court of competent jurisdiction in that County.

XII. ATTORNEYS' FEES AND COSTS

- (A) The State agrees to make a payment to Plaintiffs' counsel, the New York Civil Liberties Union Foundation and Schulte Roth & Zabel LLP, in the aggregate amount of \$5.5 million, as follows:
 - (1) The sum of \$2.5 million (Two Million Five Hundred Thousand Dollars) for which an I.R.S. Form 1099 shall be issued to the New York Civil Liberties Foundation, and the sum of \$3.0 million (Three Million Dollars) for which an I.R.S. Form 1099 shall be issued to Schulte Roth & Zabel LLP in full and complete satisfaction of any claims against the State and the Five Counties for attorneys' fees, costs, and expenditures incurred by Plaintiffs for any and all counsel who have at any time represented Plaintiffs in the Action through the Effective Date.

- (2) The payment of \$2.5 million referred to in this paragraph shall be made payable and delivered to “New York Civil Liberties Union Foundation,” 125 Broad Street, 19th Floor, New York, New York 10004. The payment of \$3.0 million referred to in this paragraph shall be made payable and delivered to “Schulte Roth & Zabel LLP,” 919 Third Avenue, New York, New York 10022.
- (B) Any taxes on payments and/or interest or penalties on taxes on the payments referred to in paragraph XII(A) of this Agreement shall be the sole responsibility of the New York Civil Liberties Union Foundation and Schulte Roth & Zabel LLP, respectively, and Plaintiffs’ attorneys shall have no claim, right, or cause of action against the State of New York or any of its agencies, departments, or subdivisions on account of such taxes, interests, or penalties.
- (C) Payment of the amounts recited in paragraph XII(A) above will be made (1) after the filing of a stipulation of discontinuance as set forth in paragraph XIV(A), upon complete discontinuance of this Action, or paragraph XIV(B), in the case of a partial restoration of this Action, and (2) subject to the approval of all appropriate New York State officials in accordance with Section 17 of the New York State Public Officers Law. Plaintiffs’ counsel agree to execute and deliver promptly to counsel for the State all payment vouchers and other documents necessary to process such payments, including, without limitation, a statement of the total attorney hours expended on this matter and the value thereof and all expenditures. Counsel for the State shall deliver promptly to the Comptroller such documents and any other papers required by the Comptroller with respect to such payments. Pursuant to CPLR 5003a(c), payment shall be made within ninety (90) days of the Comptroller’s determination that all papers required to effectuate the settlement have been received by him. In the event that payment in full is not made within said ninety-day period, interest shall accrue on the outstanding balance at the rate set forth in CPLR 5004, beginning on the ninety-first day after

the Comptroller's determination.

- (D) Upon receipt of and in consideration of the payment of the sums set forth in paragraph XII(A), Plaintiffs shall (1) in the case of a complete discontinuance of this Action pursuant to paragraph XIV(A), waive, release, and forever discharge the State Defendants, including the State of New York, and the Five Counties and each of their respective current and former employees in their individual capacities, and their heirs, executors, administrators, and assigns from any and all claims for attorneys' fees, costs, and expenditures incurred in connection with this Action through the Effective Date; or (2) in the case of a partial discontinuance of this Action pursuant to paragraph XIV(B), waive, release, and forever discharge the State Defendants, including the State of New York, and the Five Counties and each of their respective current and former employees in their individual capacities, and their heirs, executors, administrators, and assigns from any and all claims for attorneys' fees, costs, and expenditures incurred in connection with this Action through the Effective Date, it being specifically understood that, upon such restoration, Plaintiffs shall also be free to seek reimbursement for their attorneys' fees, costs, and expenditures incurred after the Effective Date.
- (E) Plaintiffs' counsel agree to maintain their billing records and documents evidencing payment of expenses relating to this Action for the term of this Agreement.
- (F) In the event that this Agreement becomes null and void pursuant to paragraph X(B) or Section XVI, then (1) the State shall be under no obligation to make the payments referred to in paragraph XII(A); and (2) Plaintiffs shall be free to seek reimbursement of their full attorneys' fees, costs, and expenditures incurred in connection with this Action (including those incurred both before and after the date of this Agreement).

XIII. GENERAL PROVISIONS

- (A) Supplementation of Funds. State funds received by a County pursuant to this settlement shall be used to supplement and not supplant any local funds that such County currently spends for the provision of counsel and expert, investigative, and other services pursuant to County Law Article 18-B. All such state funds received by a County shall be used to improve the quality of Mandated Representation services provided pursuant to County Law Article 18-B.
- (B) Modification. This Agreement may not be modified without the written consent of the parties and the approval of the Court. However, the parties agree that non-material modifications of this Settlement Agreement can be made, with the written consent of the parties, without approval of the Court. For purposes of this paragraph, written consent from a County shall be deemed to exist with respect to a modification of any provision of this Agreement other than Section VII if such County (1) has been notified in writing that Plaintiffs and the State have agreed upon such modification; and (2) does not, within ten (10) business days of receipt of such notice, object in writing to such modification.
- (C) Expiration of Agreement. This Agreement shall expire 7.5 years after the Effective Date.
- (D) Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties with regard to the settlement contemplated herein, and supersedes all prior agreements, representations, statements, negotiations, and undertakings (whether oral or written) with regard to settlement, provided, however, that nothing herein shall be deemed to abrogate or modify the separate settlement agreements entered into between Plaintiffs and Ontario County, dated June 20, 2014, and between Plaintiffs and Schuyler County, dated September 29, 2014.

(E) Interpretation. The parties acknowledge that each party has participated in the drafting and preparation of this Agreement; consequently, any ambiguity shall not be construed for or against any party.

(F) Time Periods. If any of the dates or periods of time described in this Agreement fall or end on a public holiday or on a weekend, the date or period of time shall be extended to the next business day. A “day” shall mean a calendar day unless otherwise specifically noted.

(G) Notice.

(1) All notices required under or contemplated by this Agreement shall be sent by U.S. mail and electronic mail as follows (or to such other address as the recipient named below shall specify by notice in writing hereunder):

If to the State Defendants:

Adrienne Kerwin Assistant Attorney General The Capitol Albany, New York 12224 Adrienne.Kerwin@ag.ny.gov	Seth H. Agata Acting Counsel to the Governor New York State Capitol Building Albany, New York 12224 Seth.Agata@exec.ny.gov
---	--

If to Plaintiffs:

Corey Stoughton New York Civil Liberties Union Foundation 125 Broad Street New York, New York 10004 cstoughton@nyclu.org	Kristie M. Blase Schulte Roth & Zabel LLP 919 Third Avenue New York, New York 10022 kristie.blase@srz.com
--	---

If to Onondaga County:

Gordon Cuffy
Onondaga County Attorney
Department of Law
John H. Mulroy Civic Center
421 Montgomery Street, 10th Floor
Syracuse, New York 13202
GordonCuffy@ongov.net

If to Ontario County:

Michael Reinhardt
Ontario County Courthouse
27 North Main Street
Canandaigua, New York 14424
Michael.Reinhardt@co.ontario.ny.us

If to Schuyler County:

Geoffrey Rossi
Schuyler County Attorney
105 9th Street
Unit 5
Watkins Glen, New York 14891
grossi@schuyler.co.ny

If to Suffolk County:

Dennis Brown
Suffolk County Attorney
H. Lee Dennison Building
100 Veterans Memorial Highway
P.O. Box 6100, 6th Floor
Hauppauge, New York 11788
dennis.brown@suffolkcountyny.gov

If to Washington County:

William A. Scott
Fitzgerald Morris Baker Firth P.C.
16 Pearl Street
Glens Falls, New York 12801
WAS@fmbf-law.com

If to ILS:

Joseph Wierschem
Counsel
Office of Indigent Legal Services
Alfred E. Smith Building, 29th Floor
80 South Swan Street
Albany, New York 12224
Joseph.Wierschem@ils.ny.gov

(2) Any Escalation Notice shall be sent as follows:

If to the State Defendants:

<p>Meg Levine Deputy Attorney General Division of State Counsel Office of the Attorney General The Capitol Albany, New York 12224 Meg.Levine@ag.ny.gov</p>	<p>Seth H. Agata Acting Counsel to the Governor New York State Capitol Building Albany, New York 12224 Seth.Agata@exec.ny.gov</p>
--	---

(3) Each party shall provide notice to the other parties of any change in the individuals or addresses listed above within thirty (30) days of such change, and the new information so provided will replace the notice listed herein for such party.

(H) No Admission. Nothing in this Agreement shall be construed as an admission of law or fact or acknowledgement of liability, wrongdoing, or violation of law by the State or any Ratifying County regarding any of the allegations contained in the Second Amended Complaint in this Action, or as an admission or

acknowledgment by the State or any other defendant concerning whether Plaintiffs are the prevailing party in the Action by virtue of this settlement.

- (I) Precedential Value. This Agreement and any Order entered thereon shall have no precedential value or effect whatsoever, and shall not be admissible, in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Agreement.
- (J) No Waiver for Failure to Enforce. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or other provision herein shall not be construed as a waiver of its right to enforce deadlines or provisions of this Agreement.
- (K) Unforeseen Delay. If an unforeseen circumstance occurs that causes the State or ILS to fail to timely fulfill any requirement of this Agreement, the State shall notify the Plaintiff in writing within twenty (20) days after the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform and the measures taken to prevent or minimize the failure. The State shall take all reasonable measures to avoid or minimize any such failure. Nothing in this paragraph shall alter any of the State's obligations under this Agreement or Plaintiffs' remedies for a breach of this Agreement.
- (L) No Third-Party Beneficiaries. No person or entity other than the parties hereto (a "third party") is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no such third party may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the rights of any third party to seek relief against the State, any County, or their officials, employees, or agents for their conduct; accordingly, this Agreement does not alter legal standards governing any such claims, including those under New York law.

- (M) Ineffectiveness Claims Unimpaired. Nothing in this Agreement is intended to, or shall be construed to, impair, curtail, or operate as a waiver of the rights of any current or former member of the Plaintiff Class with respect to such member's individual criminal case, including, without limitation, any claim based on ineffective assistance of counsel.
- (N) Confidential Information Relating to Plaintiff Class Members. The parties acknowledge that privileged and confidential information of Plaintiff Class members, including documents and deposition testimony designated as confidential, information protected by the attorney-client privilege and/or work product doctrine, and documents revealing individuals' social security numbers, private telephone numbers, financial information, and other private and sensitive personal information, was disclosed and obtained during the pendency of this Action. None of the State Defendants or the Five Counties shall use or disclose to any person such documents or information except as required by law. If any of the State Defendants or the Five Counties receives a subpoena, investigative demand, formal or informal request, or other judicial, administrative, or legal process (a "Subpoena") requesting such confidential information, that party shall (1) give notice and provide a copy of the request to Plaintiffs as soon as practicable after receipt and in any case prior to any disclosure; (2) reasonably cooperate in any effort by Plaintiffs to move to quash, move for protective order, narrow the scope of, or otherwise obtain relief with respect to the Subpoena; and (3) refrain from disclosing any privileged or confidential information before Plaintiffs' efforts to obtain relief have been exhausted.
- (O) Binding Effect on Successors. The terms and conditions of this Agreement, and the commitments and obligations of the parties, shall inure to the benefit of, and be binding upon, the successors and assigns of each party.

- (P) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions thereof.
- (Q) Signatories. The undersigned representative of each party to this Agreement certifies that each is authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such party to this document.
- (R) Counterparts. This Stipulation may be executed in counterparts, and each counterpart, when executed, shall have the full efficacy of a signed original. Photocopies and PDFs of such signed counterparts may be used in lieu of the originals for any purpose.
- (S) Covenant Not to Sue. Plaintiffs agree not to sue the State Defendants during the duration of this Agreement on any cause of action based upon any statutory or constitutional claim set forth in the Second Amended Complaint, except that Plaintiffs retain their rights to (1) restore this Action pursuant to paragraph X(C)(1); (2) commence a new action pursuant to paragraph X(C)(2); and (3) enforce the terms of this Agreement.
- (T) Authority of ILS. The parties acknowledge that the New York Office of Indigent Legal Services and the Board of Indigent Legal Services have the authority to monitor and study indigent legal services in the state, award grant money to counties to support their indigent representation capability, and establish criteria for the distribution of such funds.
- (U) ILS as Signatory to this Agreement. ILS is a signatory to this Agreement for the limited purpose of acknowledging and accepting its responsibilities under this Agreement.

XIV. DISCONTINUANCE WITH PREJUDICE

- (A) Without delay after the State provides the notice specified by paragraph X(A)(2), a Stipulation and Order of Discontinuance substantially in the form attached hereto as Exhibit B, shall be executed by counsel for Plaintiffs, the State Defendants, and the relevant Ratifying Counties, and filed with the Court. Nothing in the Stipulation and Order of Discontinuance so filed is intended to bar or shall have the effect of barring, including by virtue of the doctrine of res judicata or other principles of preclusion, a new action, as permitted by paragraph X(C)(2), or any claims within that action. Nor shall anything in the Stipulation and Order of Discontinuance prevent any party from enforcing this Agreement.
- (B) In the event that the Action is partially restored pursuant to paragraph X(C)(1), without delay after Plaintiffs provide notice as required by paragraph X(C)(1), the relevant parties shall confer and draft a stipulation of discontinuance that discontinues with prejudice all claims that are not restored pursuant to paragraph X(C)(1). Such stipulation shall be executed by counsel for Plaintiffs, the State Defendants, and the relevant Ratifying Counties, as appropriate, and filed with the Court. Nothing in such stipulation is intended to bar or shall have the effect of barring, including by virtue of the doctrine of res judicata or other principles of preclusion, a new action, as permitted by paragraph X(C)(2), or any claims within that action. Nor shall anything in such stipulation prevent any party from enforcing this Agreement.

XV. COUNTY APPROVAL

This Agreement shall not be binding on any County unless and until the required legislative approval in that County has been obtained and the Agreement has been signed on behalf of the County (in which case, a County may be referred to as a “Ratifying County”). In the event that any County’s legislature does not approve this Agreement (a “Non-Ratifying County”) and, as a result, one or more of the Counties does not become a party to this Agreement, the Agreement

shall nonetheless remain in effect and binding upon all the parties that have signed it, each of which shall perform all obligations hereunder owed to the other parties that have signed the Agreement. In the event a Non-Ratifying County fails to become a party to this Agreement, (1) this Action shall not be discontinued as against any Non-Ratifying County and Plaintiffs shall be free to pursue any claims they may have against such Non-Ratifying County and seek any and all relief to which Plaintiffs may be entitled, except insofar as such claims have been or may be dismissed pursuant to Plaintiffs' separate settlement agreements with Ontario County and Schuyler County; (2) any stipulation of discontinuance filed hereunder (including the Stipulation and Order of Discontinuance attached as Exhibit B) shall be modified to exclude any Non-Ratifying County and make clear that Plaintiffs' claims against such Non-Ratifying County are not discontinued; (3) each Non-Ratifying County shall be considered a third party pursuant to paragraph XIII(L) for purposes of this Agreement; and (4) the releases in paragraph XII(D) shall be ineffective as to such Non-Ratifying County. For the avoidance of doubt, as between Plaintiffs and the State: (a) the benefits of this Agreement, including, without limitation, the releases referred to in Section XII and the covenant not to sue referred to in paragraph XIII(S), shall accrue to the State and Plaintiffs, and (b) the State's and ILS's obligations relating to Sections III, IV, V, and VI shall remain in effect as to all Five Counties independent of County ratification of this Agreement.

XVI. COURT REVIEW AND APPROVAL

This Settlement Agreement is subject to approval by the Court pursuant to CPLR 908. In the event that the Court does not approve the Settlement Agreement, then the parties shall meet and confer for a period of 30 days to determine whether to enter into a modified agreement prior to the resumption of litigation. If the parties have not entered into a modified agreement within such 30-day period, then this Agreement shall become null and void, and the relevant parties shall request the case be restored to the trial calendar and shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014.

EXECUTION COPY

Attorneys for Plaintiffs

Attorneys for Plaintiffs

SCHULTE ROTH & ZABEL LLP

By: 
COREY STOUGHTON
CHRISTOPHER DUNN
MARIKO HIROSE
ERIN HARRIST
PHILIP DESGRANGES
DANA WOLFE

By: 
GARY STEIN
DANIEL GREENBERG
KRISTIE BLASE
MATTHEW SCHMIDT
DANIEL COHEN
AMANDA JAWAD
NOAH GILLESPIE
PETER SHADZIK

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

Dated: 10/21/2014

Dated: 10/21/2014

*Attorneys for Defendant New York State and
Governor Andrew M. Cuomo*

For Defendant Governor Andrew M. Cuomo

ERIC T. SCHNEIDERMAN,
Attorney General for the State of New York

ANDREW M. CUOMO,
Governor of the State of New York

By: 
ADRIENNE J. KERWIN, *Assistant
Attorney General*

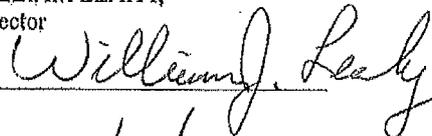
By: 
SETH H. AGATA, *Acting Counsel to
the Governor*

Dated: 10/21/2014

Dated: 10/21/2014

New York State Office of Indigent Legal Services

WILLIAM LEAHY,
Director



Dated: 10/21/2014

EXECUTION COPY

Attorneys for Defendant Onondaga County

GORDON J. CUFFY, County Attorney

Dated: _____

For Defendant Washington County

JAMES T. LINDSAY,
Chairman of the Board of Supervisors

Dated: _____

Attorneys for Defendant Suffolk County

DENNIS M. BROWN, County Attorney

Dated: _____

Attorneys for Ontario County

JOHN PARK, County Attorney

By: _____

MICHAEL REINHARDT

Dated: _____

Attorneys for Schuyler County

GEOFFREY ROSSI, County Attorney

Dated: _____

So Ordered.

Dated: _____

HON. GERALD W. CONNOLLY

STIPULATION AND ORDER OF SETTLEMENT
EXHIBIT A

AUTHORIZATION OF THE INDIGENT LEGAL SERVICES BOARD
AND THE NEW YORK STATE OFFICE OF INDIGENT LEGAL
SERVICES CONCERNING SETTLEMENT OF THE
HURRELL-HARRING V. STATE OF NEW YORK LAWSUIT

Pursuant to New York State Executive Law §832, the Office of Indigent Legal Services (“ILS”) has the authority to act in pursuit of its statutory responsibility to make efforts to improve the quality of mandated legal representation in the state of New York. See §832 (1) and (3) (a) through (k). ILS has the further responsibility under §832 (3) (l) “to make recommendations for consideration by the indigent legal services board.” (“the Board”). The Board has the authority “to accept, reject or modify recommendations made by the office[.]” §833 (7) (c); and once it has done so, the Office has a duty under §832 (3) (m) to execute its decisions. The Board and ILS have reviewed the agreement settling the action of Hurrell-Harring, et al. v. State of New York, et al., Index No. 8866-07 (“the Agreement”), and the State’s obligations contained therein that are expressly intended for implementation by ILS. The Board and ILS acknowledge that those obligations constitute measures that, once implemented, will improve the quality of indigent legal services. Consequently, the Board accepts the recommendation of ILS that ILS implement the obligations under the Agreement and hereby authorizes and directs ILS to implement those obligations in accordance with the terms of the Agreement. The Board represents and warrants that it is authorized to take this action. Moreover, ILS represents and warrants that it has reviewed the obligations contained in the Agreement, and agrees to implement the obligations identified in the Agreement. The Board hereby authorizes ILS to sign the Agreement.

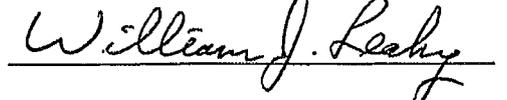
Dated: October 21, 2014

Dated: October 21, 2014

INDIGENT LEGAL SERVICES BOARD

OFFICE OF INDIGENT LEGAL SERVICES

By: 

By: 

JOHN DUNNE, Board Member

WILLIAM LEAHY, Director

Attachment 6

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
GENERAL TERMS**

JANUARY 1, 2016 TO DECEMBER 31, 2017

Table of Contents

GENERAL TERMS	4
1 DEFINITIONS AND CASE CREDIT RULES	4
1.1 Interpretation of Terms.....	4
1.2 Construction and Jurisdiction.....	4
1.3 Severability.....	4
1.4 Definitions.....	4
1.5 Rules for Counting Appointments.....	4
1.6 Appointments That Do Not Qualify for Credit	6
2 MUTUAL RIGHTS.....	6
2.1 Waiver.....	6
2.2 Attorney Fees	6
2.3 Termination	6
3 RIGHTS OF PDSC.....	7
3.1 Subcontracts	7
3.2 Assignment of Contract.....	7
3.3 PDSC Powers for Failure to Obtain Workers Compensation	7
3.4 De Minimis Changes in Contractor Reports/Documents	7
3.5 Termination by PDSC for Cause.....	7
3.6 Funding Modification, Suspension, or Termination	7
3.7 Increasing Workload: Renegotiation at PDSC Option.....	7
3.8 Review, Verification and Inspection of Records.....	87
3.9 Use of Equipment Purchased with Contract Funds.....	8
3.10 Return of Equipment Purchased with Contract Funds	8
3.11 Limit on Return of Equipment to PDSC.....	8
4 RIGHTS OF CONTRACTOR.....	8
4.1 Termination By Contractor For Cause	8
4.2 Court Appointments Outside Contract	8
4.3 Request for Additional Credit	8
4.4 Client Records	98
4.5 Personnel Records	9
5 MUTUAL OBLIGATIONS	9
5.1 Successors in Interest	9
5.2 Compliance with Applicable Law	9
5.3 Notice of Contract Modification, Suspension, or Termination	9
5.4 Modification or Termination Due to Legislative Action or Court Interpretation	9
5.5 Modification or Termination Due to Decreased Caseload.....	9
5.6 Renegotiation Shall Minimize Reductions in Staff.....	9
5.7 Periodic Review	99
5.8 Other Contractors and Vendors.....	10
5.9 Management Conference.....	10
6 OBLIGATIONS OF PDSC	10
6.1 De Minimis Changes in Contractor Reports/Documents	10
6.2 State Funding Shortfall.....	10
6.3 Contract Payment	10
6.4 Payments in Addition to Contract Price	10
7 OBLIGATIONS OF CONTRACTOR	11
7.1 Obligations To Appointed Clients	11
7.2 Withdrawal From Case Only on Court Approval	1411
7.3 Special Obligations To State of Oregon	1412

7.4	Staff and Equipment.....	1543
7.5	Record Keeping.....	1543
7.6	Reports to PDSC.....	1643
7.7	Costs, Expenses and Client Clothing.....	1644
7.8	Special Notices.....	1644
7.9	No Dual Payments for Contract Work.....	1745
7.10	Independent Audit Required.....	1745
7.11	Limits on Full Time Public Defender Attorneys.....	1745
7.12	Limits on Pro Bono Work.....	1745
8	MUTUAL RISKS.....	1745
8.1	Impossibility of Performance.....	1745
8.2	Tort Liability.....	1745
9	RISKS OF CONTRACTOR.....	1745
9.1	Refund for Shortage.....	1745
9.2	Wind-Down Procedures.....	1745
10	APPOINTMENT TYPE DEFINITIONS.....	1845
10.1	CRIMINAL CASES.....	1845
10.2	PROBATION VIOLATIONS.....	1946
10.3	CONTEMPT CASES.....	1947
10.4	CIVIL COMMITMENT CASES.....	1947
10.5	JUVENILE CASES.....	1947
10.6	OTHER CIVIL CASES.....	2048
10.7	OTHER CASES (OTHR).....	2048
	SPECIFIC TERMS.....	2149
1	PARTIES TO CONTRACT.....	2149
2	TERM OF CONTRACT.....	2149
3	NOTICE.....	2149
4	TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE.....	2149
5	CASE TYPES.....	2149
6	WORKLOAD.....	2149
6.1	Estimated Number of Cases.....	2149
6.2	Caps, Limitations, or Parameters on Number of Certain Cases.....	2149
7	ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT.....	2149
8	MERGER CLAUSE.....	2149
	CONTRACT BETWEEN PDSC AND CONTRACTOR PAYMENT SCHEDULE.....	2220
	CONTRACT BETWEEN PDSC AND CONTRACTOR CASELOAD AND CASE VALUE MATRIX.....	2321

GENERAL TERMS

1 DEFINITIONS AND CASE CREDIT RULES

1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

1.4 Definitions

1.4.1 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

1.4.2 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

1.4.3 Public Defender

A "public defender" is a nonprofit organization employing attorneys and other staff established solely to provide contract services to persons qualifying for court-appointed legal representation.

1.4.4 Law Firm

A "law firm" is a sole practitioner, partnership, or professional corporation which provides contract services to persons qualifying for court-appointed legal representation and which may also engage in non-court-appointed legal representation.

1.4.5 Consortium

A "consortium" is a group of attorneys or law firms that is formed for the sole purpose of providing contract services to persons qualifying for court-appointed legal representation. In addition to participating jointly to provide contract services, Consortium members retain their separate identities and may engage in non-court-appointed legal representation.

1.4.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.7 Appointment

An "appointment" is the assignment of a contractor to represent or advise an eligible person on any matter under the terms of this contract.

1.4.8 Case

A "case" is any action in this state in which Contractor has been appointed to represent a client under the terms of this contract in a matter to which there is a right to appointed counsel at state expense. Specific definitions of case types are listed in Section 10.

1.4.9 Credit

A "credit" is an event or circumstance which counts toward Contractor's satisfaction of this contract.

1.4.10 Value

The "value" of a credit is the negotiated rate by type of credit as set forth in the Caseload and Case Value Matrix.

1.4.11 Complex Case

A "complex case" is an appointment on a case type valued at \$~~2,600~~00 or more. Withdrawal or substitution for any reason from a complex case changes the credit type to "Other" (OTHR).

1.5 Rules for Counting Appointments

An appointment is credited, according to the following rules/provisions:

1.5.1 Criminal Complex Case Credit

An appointment to a client indicted on a complex case is one credit. No extra credit may be taken for multiple incident dates or charges.

1.5.2 Criminal Appointment Case Credit (Non-Complex Case Credit)

(a) An appointment on criminal charges alleged to have occurred on specific calendar days is one credit for each count charged in the charging instrument alleged to have occurred on different specific calendar days, regardless of the number of victims involved, up to a maximum of

Formatted: Font: Not Bold

five credits per case.

(b) An appointment on criminal charges alleged to have occurred on indeterminate dates (e.g., "on or between January 1, 1996, and July 1, 1996") is a credit for each count charged in the charging instrument which can be determined to allege different calendar days, up to a maximum of five credits per case.

(c) Separate counts in a charging instrument that allege alternative theories of criminal liability on the same date are only one credit.

(d) One additional OTHR credit may be claimed when Contractor is appointed on a criminal matter that includes one or more counts of criminal forfeiture.

(e) No additional credit may be taken due to the following circumstances:

- (i) more than one charging instrument (including Uniform Traffic Citation) is filed; or
- (ii) more than one case number is assigned.

1.5.3 Case Type Credit

Unless Section 1.4.11 applies, the case type credited is for the most serious offense alleged to have occurred on a specific calendar day, even if the charge is later changed to a different case type. For cases in which the most serious charge is a Class C felony, the most serious offense is assault IV domestic violence, DUII felony, or Class C felony, in this order.

1.5.4 Credit for Recommended Representation

Except for complex cases, if a contract case proceeding has been interrupted for the following reasons and time intervals, Contractor receives a new credit if:

(a) 365 Days After Aid and Assist Delay
~~more~~ More than 365 days have passed since the client was originally found unable to aid and assist and the client is brought before the court for a rehearing on the issue or trial; or

(b) 180 Days After Bench Warrant
~~more~~ More than 180 days have passed since a bench warrant was issued; or

(c) 18 Months with Repeated Bench Warrants
~~more~~ More than 18 months have passed since Contractor was originally appointed and the case is recommenced and no additional credit has been received because of Section 1.5.4(b); or

(d) 180 Days After ~~Pre-Indictment~~ Dismissal
~~on a felony case,~~ More than 180 days have passed since a dismissal of a case ~~pre-indictment~~; or

(e) After Appeal or Post-Conviction Relief
~~a~~ A new trial or sentencing follows an appeal or post-conviction relief; or

(f) After Interlocutory Appeal
~~a~~ A case resumes at the trial level, following an interlocutory appeal by the state; or

(g) After Mistrial or Hung Jury
~~a~~ A new trial is scheduled after a mistrial or hung jury; ~~or~~

~~(h) After Prosecutorial Misconduct~~
~~a case is refiled after dismissal without prejudice and 180 days have passed since the dismissal.~~

Formatted: Font: Not Bold

1.5.5 Probation Violation Credit

An appointment on a probation violation proceeding arising out of a criminal or civil contempt sentencing(s) is one probation violation credit for each court case number to which Contractor is appointed. Provided, however, that if Contractor is appointed to more than one case number, additional credit is received ONLY-only for those case numbers in which the convictions involve different incident dates. Contractor receives no additional credit for appointments on new alleged probation violations if the original probation violation matter on which Contractor was appointed has not been adjudicated.

1.5.6 Show Cause Hearing for Diversion or Conditional Discharge Agreement

An appointment for a show cause hearing to address non-compliance issues related to a diversion agreement, conditional discharge agreement or any other type of deferred or delayed adjudication agreement is an SCDV credit if:

- (a) Contractor did not receive a credit for the underlying charge; or
- (b) more than 180 days have passed since Contractor represented the eligible person at a previous court appearance.

1.5.7 Juvenile Case Credit

1.5.7.1 General Provisions

A petition which is amended from or to a delinquency or dependency petition or the dismissal of one type of petition and refiling of another type of petition is not a new credit.

1.5.7.2 Prepetition Matters

~~An appointment to represent a child who is in custody and being interrogated or is otherwise detained is a credit, even if no petition is later filed on the allegations involved.—The prepetition appointment to represent a youth in a delinquency matter or a child in a dependency matter continues through disposition on any petition that is later filed on ~~these~~ the prepetition allegations and no additional case credit is received.~~

1.5.7.3 Delinquency Petitions

An appointment on a delinquency case is credited under the ~~rules~~ provisions set out in Sections 1.5.2 - 1.5.4.

1.5.7.4 Dependency and Termination Petitions

An appointment to represent children, parents, or legal guardians on a dependency petition is ~~generally~~ one credit regardless of the number of petitions filed (see Section 1.5.7.4.1 for exceptions). Case credit in a dependency proceeding covers representation from appointment to the court's entry of the dispositional order required under ORS 419B.325, or as otherwise authorized by PDSC. An appointment to represent

children, parents, or legal guardians on a termination of parental rights petition is always one credit.

1.5.7.4.1 Representation of Multiple Children

An appointment to represent two or more related children in a dependency proceeding is a maximum of two credits if:

(a) the petition names as parents different mothers of different children; or

(b) the petition names as parents different fathers of different children, not including any putative father unless the putative father also appears in the case; or

(c) the children are living in more than one location.

1.5.7.4.2 Maximum Credit for Representing Parents

The maximum number of credits that may be counted when a Contractor attorney represents more than one parent or legal guardian in a dependency proceeding is one.

1.5.7.5 Postdispositional Juvenile Hearings

A postdispositional juvenile hearing is limited to a hearing before the court or Citizen Review Board (CRB) that is held after the juvenile court enters the dispositional order required under ORS 419B.325 or ORS 419C.440, or as otherwise authorized by PDSC. Postdispositional juvenile matters are a new credit for each hearing attended by Contractor. A single postdispositional hearing, even if it involves matters relating to more than one original juvenile petition, counts as only one postdispositional credit. Postdispositional hearings do not include probation violation hearings.

1.5.7.6 Juvenile Probation Violation Hearings

Juvenile probation violation hearings are governed by Section 1.5.5.

1.5.7.7 Waiver Proceedings

Contractor shall receive one additional "Juvenile Other" (JUDO) credit beyond that assigned for the original appointment for each waiver proceeding under ORS 419C.349.

1.5.8 Mental Health Case Credit

An appointment to represent an allegedly mentally ill, pursuant to ORS 426.070, or a person alleged to have an intellectual disability, pursuant to ORS 427.235, mentally retarded person is a one credit. The appointment ends at the original disposition of that matter.

1.5.9 Contempt Case Credit

An appointment to represent a client on a contempt case is one credit. Contractor receives no additional credit for appointments on new allegations of contempt if the original contempt allegation on which Contractor was appointed has not been adjudicated.

1.5.10 Post-Conviction Relief Case Credit

An appointment to represent a client on petitions filed at

the same time or petitions with sequential numbers counts as one credit for each separate prosecution that is challenged by the petitions, with a maximum of five credits. The appointment ends at the original disposition of that matter.

1.5.11 Habeas Corpus Case Credit

An appointment to represent a client on a petition for a writ of habeas corpus is one credit if Contractor does not represent the petitioner on the charge to which the habeas corpus case is related. Petitions filed at the same time or petitions with sequential numbers count as one credit. The appointment ends at the original disposition of that matter.

1.6 Appointments That Do Not Qualify for Credit

1.6.1 Verification Removal

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case credit where:

(a) Finding of Ineligibility

~~the~~The court finds, after screening or verification, that the client is not financially eligible for appointed counsel at state expense; or

(b) Withdrawal of Application for Counsel

~~the~~The court withdraws counsel because the client withdraws the application for appointed counsel before the court completes verification.

1.6.2 Client Retains Counsel

An appointment to represent a client who later retains Contractor or, in the case of a consortium, retains the same consortium member, on the same case does not qualify for credit.

1.6.3 Reassignment Within Consortium

If a case is reassigned within a consortium for any reason, no new credit may be claimed.

Formatted: Font: Not Bold

2 MUTUAL RIGHTS

2.1 Waiver

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

2.3 Termination

The parties may agree in writing to terminate this contract

at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts

Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

3.3 PDSC ~~Powers~~ Rights for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
 - (i) for ~~willful or habitual~~ repeated instances of failure to comply; or
 - (ii) for failure to comply within 30 days after PDSC suspends this contract.

3.4 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document. (See

Section 6.1)

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of ~~this any duty or obligation under this~~ contract-including material misuse of contract funds;
- (b) Contractor's willful or ~~habitual-repeated~~ disregard of the procedures required by the courts in which Contractor provides services; provided, however, that good faith actions of counsel undertaken to advance or preserve a constitutional or statutory right of a client shall not be deemed cause for termination;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate legal services under this contract or fulfill the obligations of this contract.

3.5.2 No Appointments After Notice

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

3.6 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably ~~believes-determines~~ that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

3.7 Increasing Workload: Renegotiation at PDSC Option

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the probable number of available cases increases substantially;

(b) Contractor demonstrates that it has a sufficient number of attorneys and other staff to manage the additional workload; and

- ~~(c)~~ PDSC determines that renegotiation is in the state's interest.

PDSC will not pay Contractor for credits in excess of the

maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor's assignment to such excess cases.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval. PDSC and its agents will comply with the American Bar Association's "Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor" (2002) when conducting any fiscal or performance audit or review.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

3.8.3 Other Information

Upon the PDSC's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.4, 4.5 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the question or concern identified.

3.8.4 Timely Reports by PDSC

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

3.9 Use of Equipment Purchased with Contract Funds

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this

contract. Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.

3.10 Return of Equipment Purchased with Contract Funds

Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:

- (a) Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;
- (b) had an original dollar value of \$500 or more; and
- (c) whose useful life exceeds the term of this contract.

3.11 Limit on Return of Equipment to PDSC

Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

4.2 Court Appointments Outside Contract

Contractor may accept additional court appointments to cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional appointments do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "representation", set forth in Section 7.1, for cases assigned under this contract.

4.3 Request for Additional Credit

Contractor may make a written request for additional credit for cases Contractor believes required an extraordinary amount of time, effort, or expense, ~~etc.~~ on cases closed since the preceding periodic review (see Section 5.7). Only PDSC may approve additional credit for cases assigned under this contract. Contractors shall not make requests of the court or court staff to approve additional credit.

4.3.1 In General

Contractor shall submit in writing any materials needed to show extra services beyond the contract and the amount of additional credit proposed.

4.3.2 Complex Cases in Which Contractor Withdraws

Contractor shall submit any materials needed to show extra services performed prior to a withdrawal for any reason on a complex case and the amount of additional credit proposed beyond one OTHR credit.

4.4 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe attorney/client consultations or to review information in case files that is:

(a) privileged because of the attorney/client relationship; or

(b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.5 Personnel Records

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.2 Compliance with Applicable Law

5.2.1 In General

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and

independent contractor status.

5.2.2 Laws Incorporated by Reference

The provisions of ORS 279B.220, 279B.230, and 279B.235 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

5.3 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall:

(a) be in writing;

(b) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;

(c) become effective for willful breach not less than 14 days from delivery ~~by certified mail or in person~~; and

(d) become effective not less than 60 days from delivery ~~by certified mail or in person~~ for non-willful breach.

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Caseload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

5.6 Renegotiation Shall Minimize Reductions in Staff

PDSC shall renegotiate with all Contractors affected by case decreases to apportion decreases in a manner that minimizes reductions in staff. Such renegotiations shall:

(a) reduce the total number of cases for the contract period and adjust the monthly payments to Contractor accordingly; or

(b) have Contractor refund or otherwise repay to the State any moneys saved.

5.7 Periodic Review

At the request of either party, PDSC and Contractor will periodically review case assignment trends, requests for additional credit and any other matters needed to determine contract compliance or any necessary contract

modifications.

5.7.1 Review of Assignments to Multiple Contractors and Mixture of Cases

In counties where more than one Contractor provides legal services, periodic review shall include a review by PDSC, ~~the court, and the Contractors~~ of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates and the rates contemplated under the contracts, PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected, to the extent total cases are available. Similarly, if the periodic review discloses a substantial disparity between the case mix under the contract and the case mix actually assigned to Contractor, PDSC ~~will~~ shall notify the court and Contractors that appointment case mix must be adjusted and corrected, to the extent total cases are available. (See Section 7.8.2.5)

5.7.2 Fungibility

The parties agree that PDSC is contracting for the provision of legal representation by Contractor, as measured by value, and that the estimated workload, by case type, is the parties' expectation as to the distribution of the cases which may be available during the contract period. The parties expressly agree that Contractor may substitute one type of case for another, for the purposes of contract performance, with cases being fungible, except as specifically provided to the contrary in this contract.

5.8 Other Contractors and Vendors

PDSC may undertake or award other contracts for additional or related work. Contractor shall cooperate with PDSC and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for public defense services.

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

5.9 Management Conference

~~Contractor's administrator or administrator's designee shall attend an educational conference on the topic of public defense management each year one is sponsored by either the Oregon Criminal Defense Lawyers Association, the Office of Public Defense Services (OPDS) or another sponsor approved by PDSC. If no representative of Contractor is available to attend such a conference, Contractor will make arrangements, in consultation with the assigned OPDS contract analyst to ensure that the community served by Contractor is represented at such a management conference.~~

~~PDSC expects contract administrators, and any staff the administrator deems necessary, to attend a public defense management conference each year of the contract, whether the conference is sponsored by OCDLA, OPDS, or another Oregon State Bar approved~~

~~provider. If the contract administrator is unable to attend, the Contractor agrees to contact the assigned contract analyst to discuss alternative options so that the community served by that provider is not without representation at a public defense management conference.~~

6 OBLIGATIONS OF PDSC

6.1 ~~De Minimis Changes in Contractor Reports/Documents~~

~~PDSC shall not make any change that would cause more than a de minimis increase in cost or time required to perform the contract except by written agreement signed by both parties. (See Section 3.4)~~

6.12 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers, including the private bar. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider ~~both the funds available, the requirement to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct~~ cost and the level of representation that meets minimum allowable professional standards. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

6.23 Contract Payment

Payment under this contract shall be based on the Payment Schedule included in the Specific Terms.

6.34 Payments in Addition to Contract Price

PDSC shall pay for the following case expenses from funds available for the purpose:

(a) Discovery

Discovery expenses include material provided by DHS or a county juvenile department for representation in a juvenile case. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, district attorney or court files pertaining to the underlying case;

(b) Preauthorized Non-Routine Expenses

Non-routine case expenses requested by Contractor and preauthorized by PDSC or other authority designated to approve non-routine expenses in compliance with the requirements of ORS 151.216 and ORS 135.055(3). Unless the services are performed by Contractor's staff or subcontractors, non-routine expenses include, but are not limited to:

- (i) medical and psychiatric evaluations;
- (ii) expert witness fees and expenses;
- (iii) interpreters who charge a rate above the guideline

amount as shown in the payment policy, or interpreters for services other than attorney/client communication; (iv) polygraph, forensic and other scientific tests; (v) investigation expenses; and (vi) any other non-routine expenses PDSC or other authority designated to approve non-routine expenses preauthorizes and finds necessary and proper reasonable for the investigation, preparation, negotiation, and presentation of a case;

(c) Lay Witness Fees

Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

(d) Copying Clients' Files

The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

(e) Copying Direct Appeal Transcripts for PCR Trial-Level Representation

The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;

(f) Records

Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and

(g) Process Service

The cost for the service of a subpoena as long as the rate per location does not exceed the guideline amount as shown in the payment policy.

7 OBLIGATIONS OF CONTRACTOR

7.1 Performance Obligations of Appointed Counsel To Appointed Clients

7.1.1 Standard of Representation

Appointed counsel shall fulfill applicable state and national standards of performance, including those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center and National Legal Aid and Defender Association. Counsel shall also satisfy applicable state and federal constitutional requirements for the provision of adequate and effective assistance of counsel, and meet state and federal statutory requirements for counsel in the applicable proceedings. And counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

7.1.2 Representation at all Stages of a Proceeding

Contractor shall provide representation in all proceedings related to the legal matter that is the subject of the representation, including but not limited to proceedings below. Representation under this contract does not include related Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations and probate proceedings, and other civil proceedings not otherwise provided for under this contract.

7.1.2.1 Pre-appointment representation

Subject to the express prior approval of PDSC, where an individual would be eligible for appointed counsel at state expense if charged with a crime or served with a petition in juvenile court but exigent circumstances preclude an appointment order, contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of a client.

7.1.2.2 Appearance at first proceedings

(a) Contractor shall provide representation at all scheduled arraignments, shelter hearings and other initial appearances in criminal and juvenile cases.

(b) Notwithstanding subsection (a), Where PDSC has approved in writing other arrangements for representation at first proceedings, contractor is not required to provide representation.

(c) Contractor shall establish and follow procedures to ensure prompt notification to the court and client of the specific attorney assigned to each case.

7.1.2.3 Representation following the commencement of proceedings

Contractor shall provide representation, meeting the standard of representation set forth in Section 7.1.1 of the contract, during the pendency of a case through judgment or other final order of the court on the case, including but not limited to:

(a) Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions;

(b) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705;

(c) Filing a petition for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,

(d) To the extent ethically permitted, representing a client at a show cause hearing to determine the client's financial eligibility for appointed counsel.

7.1.2.4 Post-judgment proceedings

Following the entry of judgment or other final order in a case, counsel shall:

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt, Bold

Formatted: Font: Bold

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt, Bold

Formatted: Font: Bold

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt, Bold

Formatted: Font: Bold

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt, Bold

Formatted: Font: Bold

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt, Bold

Formatted: Font: Bold

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt, Bold

Formatted: Font: (Default) Arial, 9 pt, Bold

Formatted: Font: (Default) Arial, 9 pt

(a) Seek modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order.

(b) Complete questionnaires, forms or other process necessary to obtain appellate counsel for clients requesting an appeal.

(c) Seek court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;

(d) Consult with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and

(e) Upon request, provide copies of the entire file to appellate or post-conviction relief counsel.

7.1.3 Client Contact

7.1.3.1 In-custody Initial Contacts

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

(a) Within 24 hours of appointment; or

(b) By the next working day if the court appoints Contractor on a Friday, or if the day following the appointment is a holiday.

7.1.3.2 Out-of-Custody Contacts

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

7.1.4 Contractor Responsibilities Regarding Financially Ineligible Clients

Contractor shall consult Oregon State Bar Formal Ethics Opinion 2005-34, in conjunction with state and federal constitutional provisions, in determining what course to follow if Contractor learns that a client is ineligible for state-funded legal services under this contract.

7.1.5 Withdrawal From Case Only on Court Approval

Contractor may withdraw from representation following appointment by the court only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course. Contractor shall ensure continuous representation of a client until withdrawal is approved and then assist in the prompt establishment of a new attorney/client relationship.

7.2 Quality Assurance Obligations of contract administrator,

7.2.1 Training and Supervision

Contractor shall establish and implement, as appropriate for contractor's entity structure, written quality assurance procedures consistent with the practices set forth in the Office of Public Defense Services Best Practices for Oregon Public Defense Providers (2010), including but not limited to procedures for recruiting high quality attorneys and staff, procedures for training and supervising contract attorneys and staff, regular performance evaluations of contract attorneys and staff, procedures to receive and promptly address complaints about the performance of contract attorneys and staff, and procedures to remedy performance deficiencies by contract attorneys and staff.

7.2.2 Case Assignment and Workload

Contractor shall ensure that the attorney assigned to represent a client under this contract:

(a) Possesses the qualifications for representation of the case-type involved, as set forth in the PDSC's Qualification Standards for Court-Appointed Counsel, and has been approved for appointment to the applicable case type by PDSC. Contractor shall provide to PDSC the name and current qualifications, including a Certificate of Attorney Qualification and Supplemental Questionnaire, of any attorney providing representation under this contract, including attorneys who begin providing representation during the term of the contract.

(b) Has a current workload, including private practice cases not covered by this contract, that will not interfere with competent and diligent representation that fulfills the Standard of Representation set forth in Section 7.1.1 of this Contract.

(c) Will provide continuous representation by the same attorney, when possible, from the commencement of proceedings continuously until the final disposition of the case.

7.2.3 Continuing Legal Education Requirements

Formatted: Normal
Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: 9 pt, Bold
Formatted: Font: Bold
Formatted: Font: (Default) Arial, 9 pt
Formatted: Font: (Default) Arial, 9 pt
Formatted: Font: 9 pt
Formatted: Font: 9 pt, Bold
Formatted: Font: Bold
Formatted: Font: 9 pt

Formatted: Font: 9 pt
Formatted: Font: 9 pt, Bold
Formatted: Font: Bold
Formatted: Font: 9 pt
Formatted: Font: 9 pt
Formatted: Font: (Default) Arial, 9 pt, Bold
Formatted: Font: Bold
Formatted: Font: (Default) Arial, 9 pt
Formatted: Font: (Default) Arial, 9 pt, Bold
Formatted: Font: Bold
Formatted: Font: (Default) Arial, 9 pt
Formatted: Font: (Default) Arial, 9 pt, Bold
Formatted: Font: Bold
Formatted: Font: (Default) Arial, 9 pt
Formatted: Font: (Default) Arial, 9 pt, Bold
Formatted: Font: Bold
Formatted: Font: 9 pt
Formatted: Font: (Default) Arial, 9 pt
Formatted: Font: 9 pt
Formatted: Font: (Default) Arial, 9 pt
Formatted: Font: (Default) Arial, 9 pt, Bold
Formatted: Font: Bold
Formatted: Font: 9 pt

Contractor shall ensure that all contract attorneys providing representation under this contract:

- (a) Obtain 12 hours of continuing legal education credits related to the practice of juvenile law during each year of this contract, if the attorney is handling juvenile court cases;
- (b) Obtain 12 hours of continuing legal education credits related to the practice of criminal law during each year of this contract, if the attorney is handling criminal court cases; and
- (c) For attorneys with mixed caseloads including both juvenile and criminal cases, obtain 12 hours of continuing legal education credits during each year of this contract, apportioning those credits between programs related to juvenile and criminal law according to the percentage of the attorney's cases assigned under this contract in each of those practice areas.

arraignments or other initial appearance;

~~(b) establishing and following procedures to ensure prompt notification to the court of the specific attorney assigned to each case;~~

~~(c) filing all necessary motions, including pre and post-judgment motions;~~

~~(d) representation through judgment or other final order of the court on the case, including but not limited to:~~

~~—(i) filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions;~~

~~—(ii) filing necessary paperwork under ORS 161.705 ("reduction of certain felonies to misdemeanors"); and~~
~~(iii) all prejudgment proceedings arising from a petition for a writ of mandamus or habeas corpus related to the case on which counsel was appointed;~~

~~(e) legal assistance to individuals who would be eligible for counsel at state expense if charged with a crime and where exigent circumstances preclude an appointment order (e.g., interrogation);~~

~~(f) preparing all documents, letters, research and referrals to appropriate agencies;~~

~~(g) continuous legal and support staff services, during case substitutions, to the extent necessary to ensure continuous representation and the establishment of the new attorney/client relationship;~~

~~(h) consulting with clients regarding appellate review;~~

~~(i) upon request, assisting in filing a notice of appeal and motion for appointment of appellate counsel and timely responding to appellate counsel's questionnaire or questions regarding the case;~~

~~(j) to the extent ethically possible, representing a client at a show cause hearing to determine client's financial eligibility;~~

~~(k) to the extent ethically possible, consulting with appellate or post-conviction relief counsel on an appeal or post-conviction relief proceeding; and~~

~~(l) upon request, providing copies to appellate or post-conviction relief counsel in a timely manner.~~

Formatted: Font: 9 pt

Formatted: Font: 9 pt

Formatted: Font: 9 pt, Bold

Formatted: Font: Bold

Formatted: Font: 9 pt

Formatted: Normal

7.2.4 Report to PDSC

Upon request, Contract shall provide to PDSC copies of its written quality assurance procedures, including documentation demonstrating current compliance with those procedures; provided, however, that PDSC shall not have access to client information that is privileged because of the attorney/client relationship, or confidential personnel information, unless the client or Contractor personnel expressly, knowingly, and voluntarily provides such access in writing or unless such permission is not legally required.

7.1.1 — Representation At All Court Proceedings in the Relevant Court

Contractor shall provide representation at all stages of a case assigned under this contract as limited by this contract. Representation means the provision of competent legal advice and assistance by appointed counsel to a person that a state court has determined to be financially eligible and entitled to appointed counsel at state expense on all matters related to the appointment, except DMV license suspension hearings, civil forfeiture proceedings, domestic relations proceedings and other civil proceedings.

7.1.2 — Standards of Representation

Representation further means providing a level of legal service that meets Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice.

7.1.3 — Specific Representation Services

Contractor shall provide services on any and all matters necessary to provide adequate representation of the client, including but not limited to:

- (a) having an attorney present at regularly scheduled

7.1.4 — Client Contact

7.1.4.1 In-Custody Initial Interviews

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

- (a) within 24 hours of appointment; or

(b) by the next working day if the court appoints Contractor on a Friday, weekend, or holiday.

7.1.4.2 Out-of-Custody Interviews

Within 72 hours of the appointment, Contractor shall

~~arrange for contact with out-of-custody clients, including notification of a scheduled interview time or what client must do to schedule an interview time.~~

~~7.1.5 Contractor Responsibilities—Financially Ineligible Clients~~

~~Contractor shall comply with the requirements of federal and Oregon constitutions, the Oregon Rules of Professional Conduct, and consider OSB Ethics Opinion 2005-34 if Contractor learns that the client is ineligible for state-funded legal services under this contract.~~

~~7.2 Withdrawal From Case Only on Court Approval~~

~~Contractor may withdraw only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course.~~

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor, Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its

subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter ~~659A-656~~ and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor and each law firm or sole practitioner member of a consortium shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these

insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

7.3.6 Malpractice Insurance

During the entire contract period, and at the Contractor's own expense in whole or in part from contract funds, Contractor shall ensure that each of its attorneys has malpractice insurance coverage in the minimum amount required by the Oregon State Bar. Contractor shall provide proof of such insurance to PDSC on request.

7.3.7 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly received, expended, and accounted for.

7.3.8 Oregon Judicial Information Network Oregon Judicial Case Information Network (OJCIN)

For juvenile cases, Contractor shall limit use of OJCIN, including the Oregon Judicial Information Network (OJIN) and the Oregon eCourt Case Information Network (OECI) to access only those cases that involve parties Contractor represents.

7.3.9 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Staff and Equipment

7.4.1 Staffing Levels

Contractor ~~has shall~~ secured, ~~or will secure at~~ at its own expense in whole or in part from contract funds, all personnel or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support staff to perform its contract obligations.

7.4.2 Assigning and Associating Attorneys

7.4.2.1 Diligence in Hiring

~~Contractor shall use due diligence to hire, assign, or associate attorneys for this contract who are qualified to provide competent and effective services to their clients and the courts.~~

7.4.2.2 Supervision

~~Contractor shall have more experienced attorneys closely supervise lesser experienced attorneys' performance. Contractor shall provide information on the extent of supervision on PDSC's request. However, Contractor shall not provide to PDSC or any other person the contents of any employee's personnel files unless~~

~~Contractor's employee expressly, knowingly, and voluntarily agrees in writing.~~

7.4.2.3 Certification to PDSC

~~Contractor shall provide to PDSC the name and qualifications of any attorney added during the contract term to perform contract services. The newly added attorney shall meet the qualification standards established by PDSC, for the type of cases that will be assigned. A "certificate of attorney qualification" shall be provided to PDSC for each newly added attorney.~~

Contractor shall provide a certification from any attorney added during the contract that the attorney has read this contract, including the payment schedules and other specific terms, and understands the obligations of attorneys providing services under the contract and the duties and responsibilities of the contract administrator.

7.4.3 Interpreters

For out-of-court attorney/client communications, Contractor may use staff who are either qualified, as defined by ORS 45.275(9)(c), or who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. ~~For in-court interpretation,~~ Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor ~~and provide in-court interpretation~~ comply with all certification requirements established by OSCA and the Code of Professional Responsibility for Interpreters in Oregon.

7.4.4 Limit on Contractor and Staff Noncontract Work

~~Contractor and Contractor's staff shall not let noncontract work interfere with adequate representation of court-appointed clients under this contract.~~

7.5 Record Keeping

7.5.1 Case Records

Contractor shall preserve all case documents, notes, files, physical evidence or any other items created or received in the course of the representation of a client in an orderly and organized manner such that it can readily be made available to successor counsel, if one is appointed or retained. ~~maintain current information, including case log notes, on individual contract cases.~~ To the extent ethically possible, records shall be kept in a manner to be available on request for inspection by PDSC, or PDSC's designee or agent.

7.5.2 Financial Records

Contractor shall maintain financial records on an accrual basis. 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.

7.5.3 Retention Period

For purposes of this contract only, Contractor agrees to

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt

preserve all appointment, service and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to preserve all case files a minimum of ten (10) years from the date the case is closed for all cases except aggravated murder and Measure 11 cases. Case files in aggravated murder and Measure 11 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to PDSC

7.6.1 Case Inventory

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly case inventory report for the preceding month. Contractor may submit amended case inventory reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly case inventory report to be amended.

7.6.2 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by PDSC, to track the disposition of, or withdrawal from, all cases reported under the contract. Contractor shall maintain data on other case activity upon the request of PDSC. Contractor ~~will~~ shall make the data available for PDSC ~~to~~ review ~~up~~ upon request.

7.6.3 Caseload Reports

Contractor shall maintain data, at the request of PDSC and in a format authorized by PDSC, on the current number and type of open cases of each contract attorney, including any private practice noncontract cases. Contractor shall make the data available for PDSC review upon request.

7.6.43 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment until PDSC receives the report and supporting documentation.

7.6.54 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

7.7 Costs, Expenses and Client Clothing

7.7.1 Costs and Expenses

Except for the expense items listed in Section 6.4, Contractor shall pay for:

(a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;

(b) all other routine expenses related to case preparation and trial; and

(c) staff services, including routine travel expenses, if Contractor has staff investigators, interpreters, or polygraphers.

Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express written authorization of PDSC.

7.7.2 Client Clothing

Prior to requesting preauthorization to purchase clothing for a client's court appearance, Contractor agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is available. (Contact PDSC for a current list.) If Contractor receives preauthorization to purchase clothing for a client, that clothing shall be provided to a "clothing room" upon completion of the case.

7.8 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

(a) Contractor's ability to carry out this contract, including changes in staff attorney names, staffing levels and office location;

(b) Contractor's ability to meet financial obligations; and

(c) matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

7.8.2 Specific Notices and Responses Required

7.8.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 - 7.3.6 and immediate notice of the cancellation of any such policies.

7.8.2.2 Staffing

Contractor shall provide, to PDSC and the affected court, notice of the names of attorneys who are hired or leave Contractor's employ and any other substantial staffing changes. Upon request by PDSC, Contractor shall provide a current list of attorneys and staff positions by full time equivalent, and provide timely responses to PDSC surveys or other inquiries concerning the diversity of attorneys and staff employed by or otherwise performing services for Contractor.

7.8.2.3 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall ~~assure~~ demonstrate to PDSC ~~of~~ its continued ability to meet contract requirements or shall propose reductions in caseload and or price value if Contractor is unable to

meet contract requirements because of such organizational change.

7.8.2.4 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

(a) Criminal Charges

A member of Contractor's attorney or investigator staff has been charged with a crime.

(b) Criminal Conviction

A member of Contractor's attorney or investigator staff has been convicted of a crime.

(c) Formal Bar Complaint

A formal accusation of misconduct, ~~that is alleged to have occurred with respect to representation provided in a contract case~~, has been filed by the Oregon State Bar against a member of Contractor's attorney staff.

(d) Bar Discipline

Disciplinary action is taken by the Oregon State Bar against one of Contractor's attorney staff.

(e) Uninsured Practice of Law

A member of Contractor's attorney staff has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

7.8.2.5 Nonassignment of Available Cases or Early Quota

Contractor shall notify PDSC immediately upon determining that:

- (a) the court is not assigning Contractor to cases available for appointment; or
- (b) Contractor will reach its total contract quota before the expiration of the contract.

Within forty-five (45) days of notification to PDSC that the court is not assigning Contractor to cases available for appointment, PDSC shall propose a plan to Contractor and the court to ~~remedy-resolve~~ the nonassignment of available cases.

7.9 No Dual Payments for Contract Work

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract ~~without PDSC authorization~~;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) accept or keep credit for a case for which Contractor's attorney is subsequently retained.

7.10 Independent Audit Required

Contractor shall, from contract funds, be subject to an annual independent audit by a CPA firm and shall provide a copy to PDSC.

7.11 Limits on Full Time Public Defender Attorneys

Attorneys employed full time by nonprofit public defender offices shall not accept employment for legal services on a retained basis and shall not accept appointment to a public defense case outside this contract without the authorization of PDSC.

7.12 Limits on Pro Bono Work

Nonprofit public defenders may provide pro bono representation only for:

- (a) cases covered by contractor's or another's malpractice insurance; and
- (b) cases that are:
 - (i) related to cases to which contractor's attorneys have been appointed; or
 - (ii) unrelated to contract cases, provided the pro bono services are rendered outside of the contract.

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

9 RISKS OF CONTRACTOR

9.1 Refund for Shortage

If Contractor's actual caseload value, at the expiration or termination of the contract, is less than the workload value ~~set forth in this contract~~, Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

9.2 Wind-Down Procedures

Unless PDSC agrees in writing, if either party suspends or terminates the contract, or the contract expires,

Contractor shall complete timely and adequate legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination.

9.2.1 Negotiations

If the contract expires or terminates, PDSC and Contractor shall negotiate wind-down procedures. Whenever possible, Contractor shall wind down pending cases within three months of contract expiration or termination by completing or, with PDSC's agreement, reassigning the cases.

9.2.1 Negotiations

Except when PDSC terminates the contract for cause under Section 3.5 and unless otherwise agreed, the parties shall, whenever possible, agree on wind-down procedures before the contract expires or terminates. If the parties cannot agree on wind-down procedures, PDSC alone shall decide what state funds, if any, will finance wind-down procedures based on what PDSC reasonably believes is necessary to ensure that the clients' right to adequate assistance of counsel and that Contractor's legal obligations are met.

9.2.2 Reduction in Contractor's Caseload

If Contractor's caseload or contract amount is reduced significantly resulting in layoffs, whether as a result of contract modification or contract renewal, PDSC and Contractor may negotiate wind-down procedures.

10 APPOINTMENT TYPE DEFINITIONS

() denotes the applicable appointment code.

10.1 CRIMINAL CASES

10.1.1 Appointments After Diversion or Conditional Discharge Agreement (SCDV)

For all criminal cases, Contractor shall report separately on cases where Contractor is first appointed:

(a) after the defendant enters into a diversion or conditional discharge agreement or any other type of deferred or delayed adjudication agreement, and

(b) when the court orders the defendant to show cause why the agreement should not be terminated.

Contractor shall report these cases as SCDV rather than as the original case type.

10.1.2 Capital Murder Case (CMUR)

A capital murder case is any appointment to represent a person charged with aggravated murder as defined by ORS 163.095 except as provided under paragraph 10.1.3., below.

10.1.3 Noncapital Murder Case (MURD)

A noncapital murder case is any appointment to represent a person charged with:

(a) murder as defined by ORS 163.115; and

(b) aggravated murder where the person is a juvenile under 15 years of age who is waived to circuit court on the charge (a convicted juvenile cannot be sentenced to death or life without parole under ORS 161.620) or aggravated murder where the person was 15, 16 or 17 years of age on the date the crime is alleged to have occurred (no death sentence may be imposed under ORS 137.707(2)).

10.1.4 Felony Case

A felony case is any appointment to represent a person charged with one or more crimes described by ORS 161.525, excluding capital murder and noncapital murder. It includes manslaughter and negligent homicide. A case is a felony case if it includes a felony charge at any time after defendant appears in circuit court, even if later reduced to a misdemeanor.

10.1.4.1 Measure 11 Felony (AM11, BM11, JM11)

Other than murder, a felony that is the subject of ORS 137.700 or ORS 137.707. AM11 is a Class A Measure 11 felony with an adult defendant; BM11 is a Class B Measure 11 felony with an adult defendant; and JM11 is a Class A or Class B Measure 11 felony where a 15-, 16- or 17-year-old is indicted as an adult in circuit court.

10.1.4.2 Class A Felony (AFEL)

A Class A felony is a crime that a statute expressly designates as a Class A felony, other than an AM11 case.

10.1.4.3 Class B Felony (BFEL)

A Class B felony is a crime that a statute expressly designates as a Class B felony, other than a BM11 case.

10.1.4.4 Class C Felony (CFEL)

A Class C felony is a crime that a statute expressly designates as a Class C felony, other than a DUII felony (DFEL), or domestic violence Class C felony (DVIO).

10.1.4.5 DUII Felony (DFEL)

A DUII felony is a DUII case in which an element of the crime charged is that the defendant has at least three prior DUII convictions within the past ten years (ORS 813.010(5)).

10.1.4.6 Domestic Violence Class C Felony (DVIO)

An Assault IV case which is elevated to a Class C felony under ORS 163.160(3).

10.1.4.7 Unclassified Felony (UFEL)

A felony crime that the statute(s) do not expressly designate as a Class A, B, or C Felony.

10.1.5 DUII (DUIS)

A DUII case is any appointment to represent a person charged with driving under the influence of intoxicants, other than DUII felony (DFEL).

Formatted: No underline

Formatted: No underline

10.1.6 Misdemeanor Case (MISS)

A misdemeanor case is any appointment to represent a person charged with one or more crimes described by ORS 161.545 or by local ordinance as a misdemeanor, excluding DUII, misdemeanor contempt and the misdemeanor traffic cases defined below.

10.1.7 Misdemeanor Traffic Case

A misdemeanor traffic case is any appointment to represent a person on a misdemeanor traffic charge for which a convicted defendant may be incarcerated as an original sentence under the Oregon Vehicle Code, other than a traffic offense charged as a felony or DUII. For statistical purposes, report cases in the following categories:

- (a) Misdemeanor Driving While Suspended (DWSS).
- (b) Other Traffic Misdemeanor (OTMS).

10.1.8 Extradition Case (EXTR)

An extradition case is any appointment to represent a person in a proceeding under the Uniform Criminal Extradition Act, ORS 133.743 - 133.857. It includes representation on a writ of habeas corpus filed in a pending extradition proceeding.

10.2 PROBATION VIOLATIONS

10.2.1 Probation Violation

A probation violation is any appointment or reappointment to represent a person in a proceeding concerning an order of probation, including but not limited to the revoking thereof, arising out of a criminal or civil contempt conviction(s) and sentencing(s), under Section 1.5.5. For reporting purposes, Contractor shall report each type of probation violation case by the following subcategories:

10.2.1.1 Felony Probation Violation (FPV)

A felony probation violation case is any appointment to represent a person in a probation proceeding arising out of a felony conviction.

10.2.1.2 Misdemeanor Probation Violation (MPV)

A misdemeanor probation violation case is any appointment to represent a person in a probation proceeding arising out of a contempt case, or a misdemeanor conviction, except DUII.

10.2.1.3 DUII Probation Violation (DPV)

A DUII probation violation is any appointment to represent a person in a DUII probation proceeding arising out of a DUII conviction.

10.3 CONTEMPT CASES

10.3.1 Contempt Case

A contempt case is any appointment to represent a person charged with contempt of court. For statistical purposes, report cases in the following three categories:

10.3.1.1 Family Abuse Prevention Act (FAPA)

Contempt for violating a Family Abuse Prevention Act (ORS 107.700 - 107.735) restraining order.

10.3.1.2 Support (SUPP)

Contempt for failure to comply with an order or judgment in domestic relations or juvenile court proceeding for the payment of suit money, attorney's fees, spousal support, child support, maintenance, nurture, or education.

10.3.1.3 Contempt (CONT)

Misdemeanor contempt or any other contempt that is not a FAPA or SUPP contempt.

10.4 CIVIL COMMITMENT CASES

10.4.1 Civil Commitment Case (MHMI)

A civil commitment case is any appointment to represent a person in a proceeding brought under ORS Chapter 426 or 427.

10.5 JUVENILE CASES

10.5.1 Juvenile Case

A juvenile case is any appointment or a reappointment to represent a person(s) in a proceeding brought under ORS Chapter 419B or 419C. For statistical purposes, report juvenile cases in the following categories:

10.5.1.1 Juvenile Felony (JUDF)

If committed by an adult, alleged act would constitute a felony.

10.5.1.2 Juvenile Misdemeanor (JUDM)

If committed by an adult, alleged act would constitute a misdemeanor.

10.5.1.3 Juvenile Other (JUDO)

(a) if committed by an adult, alleged act would constitute a violation or infraction;

(b) alleged act is a status offense;

(c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);

(d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340);

(e) appointments under ORS 420A.203 (Eligibility for second look; report to sentencing court; hearing; disposition);

(f) appointments under ORS 181.823(12) (Relief from reporting requirement; juvenile offenders); and

(g) appointment to a juvenile case for which no other juvenile case type applies.

Formatted: No underline

10.5.1.4 Probation Violation or Motion to Modify (JPV)

Proceeding based on allegation(s) that the child has violated the terms of probation or a proceeding based on a motion to modify a disposition.

10.5.1.5 Juvenile Dependency Case

A juvenile dependency case is any appointment to represent a person based on a new petition alleging that a child is within the jurisdiction of the juvenile court under ORS 419B.100(1)(a) - (h).

(a) Parent (JDEP): Appointment to represent parent(s) or guardian(s).

(b) Child (JDEC): Appointment to represent child(ren).

10.5.1.6 Postdispositional Proceeding

A postdispositional proceeding is any appointment in a juvenile court proceeding to represent a person at a court or CRB review hearing and shelter care hearings held after the original disposition. It does not include probation violation proceedings or family unity meetings. Probation violation proceedings are a separate category under delinquency.

(a) Parent (JPDP): Appointment to represent parent(s) or guardian(s).

(b) Child (JPDC): Appointment to represent child(ren).

10.5.1.7 Termination of Parental Rights Case

A termination of parental rights case is any appointment to represent the parent or child in a proceeding under ORS 419B.498 - 419B.530 ~~OR-or~~ in a contested adoption matter (Zockert v. Fanning) ~~OR-or~~ in a contested permanent guardianship proceeding under ORS 419B.365. Guardianship proceedings under ORS Chapter 125 are excluded.

(a) Parent (JUTP): Appointment to represent parent(s) or guardian(s), including contested adoption proceedings.

(b) Child (JUTC): Appointment to represent child(ren), including contested adoption proceedings.

10.6 OTHER CIVIL CASES

10.6.1 Habeas Corpus Case (CVHC)

A habeas corpus case is any appointment to represent a person in a proceeding for a writ of habeas corpus under ORS 34.355, excluding:

(a) habeas corpus petitions filed in a pending extradition proceeding; and

(b) habeas corpus petitions filed for a client whom Contractor represents on a related matter (not a separate appointment under the contract).

10.6.2 Post-Conviction Relief Case (CVPC)

A post-conviction relief case is any appointment to represent a person under ORS 138.510 - 138.686.

10.6.3 Psychiatric Security Review Board Case (PSRB)

A Psychiatric Security Review Board case is any appointment by the PSRB to represent a person under ORS 161.346(11).

10.7 OTHER CASES (OTHR)

An other case is: a complex case from which Contractor withdraws; an appointment under ORS 136.611 (Material Witness Order); an appointment under ORS 137.771(2) (Sexually Violent Dangerous Offenders); an appointment under ORS 138.694 (DNA testing); a criminal forfeiture credit; or an appointment to a case for which no other case type applies.

Formatted: No underline

SPECIFIC TERMS

1 PARTIES TO CONTRACT

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and _____ ("Contractor").

2 TERM OF CONTRACT

The contract term shall be from January 1, 201~~6~~⁴ through December 31, 201~~7~~⁵.

3 NOTICE

Each party shall provide to the other all notices regarding this contract:

- (a) in writing, and
- (b) delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:
mail@opds.state.or.us

Contractor:

(Contract Administrator email address)

4 TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$_____ during the term of this contract. PDSC shall pay the total workload value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct

8 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONTAINED IN THE 2013 REQUEST FOR PROPOSALS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

NANCY COZINE, EXECUTIVE DIRECTOR
PUBLIC DEFENSE SERVICES COMMISSION

DATE

CONTRACTOR

DATE

TITLE OR REPRESENTATIVE CAPACITY

deposit into the account designated by Contractor.

5 CASE TYPES

Contractor shall provide legal representation in the Circuit Court of _____ County for the types of cases included in the Caseload and Case Value Matrix.

6 WORKLOAD

6.1 Estimated Number of Cases

Contractor's workload is estimated to be _____ cases for the contract term.

6.2 Caps, Limitations, or Parameters on Number of Certain Cases

[Describe here as needed.]

7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

All lawyers representing children, parents, or guardians in dependency cases are required to attend at least 16 hours of continuing legal education related to the practice of juvenile law during the term of this Contract.

[Add additional agreements as needed.]

**CONTRACT BETWEEN PDSC AND
CONTRACTOR PAYMENT SCHEDULE**

End of Month (Unless noted)	Monthly Payment
January 2014	
February 2014	
March 2014	
April 2014	
May 2014	
June 2014	
July 2014	
August 2014	
September 2014	
October 2014	
November 2014	
December 2014	
<i>First-Year Subtotal</i>	\$0
January 2015	
February 2015	
March 2015	
April 2015	
May 2015	
June 2015	
July 10, 2015	
July 2015	
August 2015	
September 2015	
October 2015	
November 2015	
December 2015	
<i>Second-Year Subtotal</i>	\$0
Total Payments	\$0

**CONTRACT BETWEEN PDSC AND CONTRACTOR CASELOAD
AND CASE VALUE MATRIX**

Case Types 1/1/14 - 12/31/14	Value	Number of Cases	Total Value
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
First-Year Total		0	\$0
1/1/15 - 12/31/15			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0

Attachment 7

ANALYSIS

Item 6: Public Defense Services Commission

Compensation Plan Changes Report

Analyst: Steven Bender

Request: Acknowledge receipt of a report on compensation plan changes.

Recommendation: Acknowledge receipt of the report.

Analysis: The Public Defense Services Commission (PDSC) is reporting on compensation plan changes that it may implement in the current biennium. Under law, the Commission establishes the compensation plans for PDSC agency employees. In 2012, the Legislature added a requirement for judicial branch agencies to report to either the Joint Committee on Ways and Means or to the Emergency Board prior to making compensation plan changes. This action extended the compensation plan change reporting requirements previously established for the executive branch to judicial branch agencies as well.

Later this month, the PDSC will consider compensation increases for most of its employees that would become effective on January 1, 2015. If adopted, these compensation plan changes will affect 47 of the agency's 76 positions, including 40 deputy defender positions (falling in three job classifications: Deputy Defender 1, Deputy Defender 2, and Senior Deputy Defender). Deputy defenders are the agency attorneys who provide appellate-level public defense representation for eligible clients. The 40 deputy defenders became certified as a collective bargaining unit represented by the American Federation of State, County and Municipal Employees, Council 75, in August 2014. The seven other classifications covered by the compensation plan changes include an Administrative Analyst, Deputy General Counsel, General Counsel, Legal Secretary Supervisor, Paralegals, and the Juvenile Appellate Section Chief Deputy.

Plan Changes

The compensation plan changes are primarily designed to reduce the salary level differentials between PDSC's public defenders and the assistant attorney generals employed by the Department of Justice's (DOJ) Appellate Division. The Commission has approved targets for Deputy Defender 1 position salaries as the levels paid to DOJ Assistant Attorney Generals, targets for Senior Deputy Defender salaries as the levels paid to DOJ Senior Assistant Attorney Generals, and targets for Deputy Defender 2 position salaries as the average of those two salary levels.

Currently, salary levels are approximately 10-11% below these targets for Deputy Defender 1 positions, approximately 13-14% below targets for Deputy Defender 2 positions, and approximately 18% below targets for Senior Deputy Defenders. The proposed compensation changes, for the deputy defenders and for the other positions, increase current pay levels by between 1% and 14%. Salary levels for the largest single classification affected by the changes, the Deputy Defender 2 (with 22 positions), are increased 7%.

The planned compensation increases reduce the pay level differentials from the targets to between 6.4% and 7.6% for all three deputy defender classifications. In addition, a ninth step is added for the Juvenile Appellate Section Chief Deputy; and the top steps are eliminated for the Deputy Defender 2, Senior Deputy Defender, and Deputy General Counsel positions (leaving eight steps remaining), and eliminated for the Legal Secretary Supervisor position (leaving nine steps).

Additionally in this biennium, the Public Defense Services Commission approved two compensation increases covering all PDSC employees – a 2% cost-of-living adjustment effective December 2013, and a second 2% cost-of-living adjustment effective December 2014. As a result, the full 2013-15 biennium compensation increase amounts for PDSC employees will vary by position, ranging from a low of a 4% increase (for positions not affected by the forthcoming January 2015 compensation plan changes), to a range of 5.1% to 18.6% increases (for positions included in the January 2015 plan changes). These full-biennium salary increases compare to the 3.5% increase that state agency employees generally received, from the two statewide cost-of-living increases awarded this biennium. These percentage amounts exclude any merit increases awarded to eligible employees.

Budget Impact

The compensation plan changes are projected to increase expenditures by \$120,394 General Fund in the current biennium, and by \$734,938 in the 2015-17 biennium. This results in compensation costs that exceed the agency's 2015-17 current service level by \$428,395 General Fund. The agency indicates that because current-biennium General Fund expenditures will be below the level budgeted (even after including the impact of the planned compensation changes), there will be sufficient General Fund carry forward monies from its 2013-15 biennium appropriation to fund the increased costs through the 2015-17 biennium. (Note that judicial branch agencies carry forward any unspent General Fund remaining at the end of the biennium.)

The agency can, therefore, fund the compensation increases through the next biennium without requiring approval of a policy option package. The Legislative Fiscal Office notes, however, that the effect will be to reduce the capacity for carry forward funds to support other agency expenses. The Legislature has previously used carry forward funds to finance a portion of agency costs.

The Legislative Fiscal Office recommends acknowledging receipt of the report.

Public Defense Services Commission
Analyst: Lisper

Request: Report on the Public Defense Services Commission compensation plan changes.

Recommendation: The Public Defense Services Commission is not under executive budgetary authority.

Discussion: The Commission is reporting compensation plan changes that are to take effect on January 1, 2015. The agency's proposed plan changes will reduce compensation disparity between their classifications and comparable classifications in other state agencies to seven percent or less. This change will impact the following position classifications: Deputy I, Deputy II, Senior Deputy, Juvenile Appellate Section Senior Attorney, General Counsel, Deputy General Counsel, Administrative Analyst, Legal Secretary Supervisor and Paralegal.

The Public Defense Services Commission System indicates they expect to have sufficient General Fund to accommodate these compensation plan changes. The biennium estimated costs are indicated below.

	General Fund
2013-15 Biennium	\$120,394
2015-17 Biennium	\$428,395



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

October 27, 2014

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Tina Kotek, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chair Courtney and Co-Chair Kotek:

Nature of the Request

This letter is provided pursuant to ORS 8.105, which requires the Public Defense Services Commission to present possible compensation plan changes to the Legislature prior to the effective date of those changes.

Agency Action

ORS 151.206(e) requires the Public Defense Services Commission to adopt a compensation plan commensurate with other state agencies, yet all but three employee classifications are compensated at a rate 3-18% below comparable positions in other state agencies. As reported to the Legislature in November 2013 and January 2014, the agency committed to evaluating the availability of resources throughout the course of the biennium with the intent of reducing disparities toward the end of the biennium if existing resources were sufficient to allow modifications.

The agency is now in a position to make limited progress toward parity for those classifications with the most significant levels of disparity. Lawyers classified as Deputy I, Deputy II, Senior Deputy, Juvenile Appellate Section Senior Attorney, General Counsel, and Deputy General Counsel, where disparities range from 12-18% below their counterparts at the Department of Justice, will be adjusted to reduce disparity to approximately 7%. Three additional, non-lawyer positions that are more than 7% below the comparator classifications in other state agencies will also be included: Administrative Analyst, Legal Secretary Supervisor, and Paralegal. These classifications represent 45 positions; 57 percent of the total agency personnel. The agency plans

to work with the Legislature during the 2015 legislative session in an effort to achieve full parity for all agency employees.

The fiscal impact of these compensation plan changes for the 2013-15 biennium is \$120,394 general fund. The roll up costs for the 2015-17 biennium will be \$428,395 general fund. Savings accrued through the restructure of the agency in 2013, in addition to unexpected vacancy savings realized during the course of the biennium, will be used to fund the compensation plan changes.

Action Requested

The Public Defense Services Commission requests that the Legislature acknowledge receipt of this report regarding compensation plan changes effective January 1, 2015.

Legislation Affected

None.

Sincerely,



Nancy Cozine, Executive Director
Office of Public Defense Services

OFFICE OF PUBLIC DEFENSE SERVICES
2013-15 PROPOSED COMPENSATION PLAN CHANGES EFFECTIVE JANUARY 1, 2015

Current Comp Plan - Effective December 1, 2014

Proposed Comp Plan - Effective January 1, 2015

CLASSIFICATION TITLE	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
Administrative Analyst	3,291	3,454	3,628	3,817	4,008	4,201	4,408	4,626	4,856	5,103
Administrative Analyst	3,323	3,488	3,665	3,855	4,047	4,243	4,452	4,672	4,905	5,154
Deputy Defender 1	5,054	5,316	5,581	5,858	6,148	6,460				
Deputy Defender 1	5,256	5,528	5,805	6,092	6,393	6,718				
Deputy Defender 2	5,858	6,148	6,460	6,780	7,118	7,474	7,846	8,237	8,650	
Deputy Defender 2	6,268	6,578	6,912	7,254	7,615	7,997	8,395	8,813		
Deputy General Counsel	5,858	6,148	6,460	6,780	7,118	7,474	7,846	8,237	8,650	
Deputy General Counsel	6,326	6,639	6,971	7,323	7,687	8,071	8,473	8,895		
General Counsel	6,829	7,164	7,513	7,889	8,290	8,702	9,125	9,583	10,055	
General Counsel	7,171	7,523	7,889	8,284	8,704	9,137	9,581	10,062	10,558	
Juvenile Appellate Section Senior Attorney	7,028	7,380	7,739	8,126	8,537	8,961	9,400	9,871		
Juvenile Appellate Section Chief Deputy	7,380	7,739	8,126	8,537	8,961	9,400	9,871	10,357		
Legal Secretary Supervisor	2,943	3,088	3,237	3,406	3,565	3,736	3,933	4,128	4,334	4,550
Legal Secretary Supervisor	3,296	3,458	3,626	3,815	3,992	4,185	4,405	4,624	4,854	
Paralegal	2,884	3,014	3,156	3,307	3,467	3,627	3,800	3,992	4,182	4,390
Paralegal	3,057	3,195	3,346	3,506	3,675	3,844	4,028	4,232	4,433	4,649
Senior Deputy Defender	6,460	6,780	7,118	7,474	7,846	8,237	8,650	9,083	9,537	
Senior Deputy Defender	7,364	7,730	8,114	8,520	8,944	9,390	9,860	10,355		

* The proposed compensation plan changes include only classifications that were more than 7% below comparable statewide classifications. All other classifications were within 7% of comparable statewide classifications and were not changed.

COMPARATOR CLASSIFICATIONS

CLASSIFICATION TITLE	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
Deputy Attorney General (PEM/I)	8,496	8,917	9,354	9,822	10,306	10,826	11,362	11,925	12,523	
Solicitor General (PEM/H)	7,701	8,087	8,496	8,917	9,354	9,822	10,306	10,826	11,362	
Attorney-In-Charge (PEM/H)	7,701	8,087	8,496	8,917	9,354	9,822	10,306	10,826	11,362	
Senior Assistant Attorney General in between AAG & Sr AAG	7,913	8,304	8,721	9,153	9,600	10,075	10,572	11,096		
Assistant Attorney General	6,786	7,119	7,471	7,843	8,227	8,628	9,045	9,497		
	5,658	5,933	6,221	6,532	6,854	7,180	7,518			

* Comparator classification information from the 110514 statewide compensation plan.