

Members

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



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, March 17, 2016
10:00 a.m. – 2:00 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 January 21, 2016 (*Attachment 1*) Chair McCrea
2. Commission Training: Commission Handbook (*Attachment 2*) (Hard copy provided at meeting) Paul Levy
3. Juvenile Dependency Task Force Update Nancy Cozine
4. **Action Item:** Approval of Case Manager Contracts (*Attachment 3*) Amy Miller
5. **Action Item:** Approval of adjustment to ACP Contribution Amounts (*Attachment 4*) Caroline Meyer
6. PDSC October meeting date change Nancy Cozine
7. OPDS Monthly Report OPDS Staff
 - JAS
 - CAS
8. Executive Director's Annual Report (*Attachment 5*) Nancy Cozine
9. Executive Session* - Executive Director Performance Evaluation Commission members

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

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: April 21, 2016, 10 a.m. – 2 p.m., at the Office of Public Defense Services, 1175 Court Street, Salem, Oregon. Meeting dates, times, and locations are subject to change; future meetings dates are posted at:

<http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, January 21, 2016
10:00 am – 12:30 pm
Office of Public Defense Services
1175 Court St NE
Salem, Oregon 97301

MEMBERS PRESENT: Shaun McCrea
John Potter
Janet Stevens (by phone)
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Amy Miller
Caroline Meyer
Billy Strehlow
Ernest Lannet
Cynthia Gregory
Rachel Woods

The meeting was called to order at 10:08 am

Agenda Item No. 1 Approval of minutes – PDSC meeting held on December 10, 2015

MOTION: Commissioner Potter moved to approve the minutes; Commissioner Welch seconded the motion; hearing no objection the motion carried: **VOTE:** 4-0

Agenda Item No. 8 Commission Approval of Payment Policies and Procedures – Updated GSA Rates

Chair McCrea explained that certain agenda items would be taken out of order to ensure that a quorum of the Commission was present for the action items.

Caroline Meyer, OPDS Contracts Manager, explained that the commission's payment policies and procedures needed to be revised to reflect a decrease in the federal cost-per-mile rate, which the state follows. Commissioner Potter asked about the published rates for lodging, why the rates differed for Lincoln County. OPDS staff explained that these rates, like the mileage rate, are set by the federal government and that state agencies follow them. Ms. Meyer explained that they are guidelines, and that deviations are approved where necessary, **MOTION:** Commissioner Welch moved to approve the updated payment policies and procedures; Commissioner Potter seconded the motion. **VOTE:** the motion was approved, 4-0.

Agenda Item No. 9 Commission Approval of Case Manager Contracts

Amy Miller, OPDS Deputy General Counsel, reminded Commission members of the Parent Child Representation Program expansion to Columbia County in January 2016, and the essential services offered by case managers. Ms. Miller asked the Commission to approve a case manager contract for Ms. Agee, whom she described as a fantastic choice. She further indicated that the RFP had been extended and she expected to be back before the Commission asking for approval of additional contracts to provide more capacity in the county. She added that there is a great deal of excitement in the county about the PCRCP and, in particular, the support that case managers will provide.

MOTION: Commissioner Potter moved to approve the Case Manager Contract; Commissioner Welch seconded the motion; the motion carried: **VOTE:** 4-0.

Agenda Item No. 2

PCRCP Annual Report

Amy Miller provided an overview of the first PCRCP Annual Report. She thanked the Commission for their past emphasis on the value of data in assessing program performance. She said the structure of the report is based in large part on an assessment tool produced in 2015 by the American Bar Association entitled "Indicators of Success for Parent Representation. The tool, which has been validated by the ABA, is meant to be adapted to local circumstances. Ms. Miller said that adaptation process involved consultation with PCRCP partners, including the Oregon Judicial Department, the Department of Justice, the CASA program, and the Department of Human Services. She said her report focuses on four high priority measures: caseload size, access to multidisciplinary staff, lawyer time spent with clients outside of court hearings, and the time to safe permanency. She cautioned the Commission that it is still too early in the program to draw big conclusions, but noted that the first year report is very encouraging. She pointed to several themes from the report. First, the quality of representation in PCRCP counties has changed for the better. Lawyers are using investigators, experts, and case managers where they either were not at all before or more frequently now; they are spending nearly 30% of their work time with clients; they are present at shelter hearings; and they attend non-court meetings where important decisions are made about the case. And the number of children discharged from foster care to reunification has increased. She noted that there has been a statewide increase as well, but that in PCRCP counties it has increased much more quickly.

Commissioner members complimented the report and expressed interest in a more detailed comparison of PCRCP lawyer performance with non-program lawyers. Ms. Miller said that a subcommittee, on which she serves, of the Governor's Task Force on Dependency Representation is looking at developing metrics for assessing quality of service statewide in dependency cases.

Agenda Item No. 4

PDSC Review of Contracting Process

Caroline Meyer, OPDS Contracts Manager, provided the Commission with an overview of the PDSC contracting process, and asked for feedback from the Commission. Commissioner Potter noted that contractors had complained about the "take it or leave it" nature of the process and wondered if more information about funding priorities going into the process might help. Ms. Meyer responded that the agency does not have an approved budget until the end of the legislative process. Ms. Cozine said that there are discussions well in advance about building Policy Option Packages, and indicated that OPDS would look for opportunities to keep contractors informed. Jon Weiner, the Executive Director of the consortium in Marion County, said he felt that OPDS had good transparency but it took a lot of time and attention to keep up on what's happening. Jennifer Nash, the administrator of the consortium in Benton County, said the transparency issue for her was around the assumptions and formulas used to allocated available money and determine case rates. Chair McCrea acknowledged that a lot of information is available, but suggested OPDS and the Commission could do more to make it accessible to providers.

Agenda Item No. 5 Executive Director’s Annual Report to the PDSC

Nancy Cozine reviewed her annual report to the commission, and elaborated on her work with the planning for a Public Defense Resource Center in the new courthouse planned for Multnomah County. The center will serve as a meeting place for clients and lawyers, with ten client conference rooms, a receptionist and social worker, and will also be equipped for lawyers to do work while awaiting court or during breaks in proceedings. Commission members complimented the report, and suggested specific edits.

Agenda Item No. 6 Legislative and Budget Update

Nancy Cozine provided an update on legislative and budget developments, reminding the Commission that the Legislature was meeting in February for its short session. She said the agency has been involved with a bill to address access to juvenile court records and the process for juveniles subject to sex offender registration requirements. The access to records component requires a provision that specifically provides OPDS access to otherwise confidential records for the purpose of conducting financial audits as a regular part of its business processes and to investigate complaints. Amy Miller explained the sex offender registration components, which are a “fix” to a major revision of the process that was passed in 2015. One focus of her concern is assuring that youth have access to lawyers when it concerns whether a youth will be required to register or not, which happens toward the end of probation under the new procedures. She also described her work with a task force that is looking at how to address the reporting and investigation of lapses in the foster care system, which is the subject of a bill scheduled for the February session. Her focus, again, is with access to counsel by youth who may be interviewed during investigations when the subject may touch on potential criminal activities by the youth.

Nancy Cozine also described work of the juvenile dependency task force, which is focused on ways to improve representation for both the Department of Human Services and parents and children. She indicated that the work of this group will likely result in legislation for the 2017 session. Finally, Ms. Cozine described efforts she has undertaken for the February session to address the growing public defender pay disparities.

Agenda Item No. 7 Best Practice Performance Indicators

Nancy Cozine discussed a new report that sought to find data points that could measure the use of best practices by public defense providers in criminal cases. She recommended the report to the Commission and to providers as an example of an effort to find objective measures of attorney performance. She said she will follow up on the report with one of its participants with whom she has served on a National Legal Aid and Defender Association data committee. Commissioner Potter expresses frustration with both the use of jargon in the report and its failure to actually correlate the use of best practices with better case outcomes. Ms. Cozine acknowledged that the report is only a beginning of an effort to use data to measure performance but said it’s a useful step in the process.

Agenda Item No. 10 OPDS Monthly Report

Ernie Lannet, Chief Defender of the Appellate Division’s Criminal Section, began by reviewing changes in the membership of the Oregon appellate courts. He also described to recent attorney hires in the Appellate Division, and told the Commission about two recent cases decided by the Oregon Supreme Court that were handled by AD attorneys. Cynthia Gregory, the OPDS Human Resources manager, discussed recent OPDS recruitments and shared with the Commission a new brochure that AD attorneys are using at job fairs. Caroline Meyers introduced Rachel Woods, a new contracts/research analyst.

Agenda Item No. 3

Washington County Service Delivery Review

Nancy Cozine provided a summary of information gathered by Paul Levy, OPDS General Counsel, in response to the Commission's requested follow-up to the Washington County Service Delivery Report. Chair McCrea asked that the Commission be updated as developments in the county occur.

Commissioner Potter asked about any developments concerning the unwarranted use of shackling in juvenile court, which was an issue discussed in the Service Delivery Report. Amy Miller said there had not been specific developments in the county, but a statewide effort was underway to address shackling in the 2017 legislative session. Work is being done now to better document and understand how the use of shackling statewide.

Meeting Adjourned. There being no further business, the Commission adjourned the meeting.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, January 21, 2016
10:00 am – 12:30 pm
Office of Public Defense Services
1175 Court St NE
Salem, Oregon 97301

MEMBERS PRESENT: Shaun McCrea
John Potter
Janet Stevens (by phone)
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Amy Miller
Caroline Meyer
Billy Strehlow
Ernest Lannet
Cynthia Gregory
Rachel Woods

The meeting was called to order at 10:08 am

Agenda Item No. 1 Approval of minutes – PDSC meeting held on December 10, 2015

0:07 Chair McCrea Welcome everyone to our January meeting. I just feel remiss that Barnes isn't here, but we are going to carry on. I think what we will do since we have a quorum with Janet on the phone is we will take our three action items, number one, number eight and number nine on the agenda in tandem just so we can have those completed in case we lose Janet. Then, I understand that Paul Levy is delayed so we will take him towards the end of the meeting. As to action item number one, approval of the minutes, are there any additions, corrections or comments on the minutes?

0:55 J. Welch No.

0:56 J. Potter No.

0:57 Chair McCrea Janet, any comments on the minutes?

0:59 J. Stevens No.

1:00 Chair McCrea I would entertain a motion to approve. **MOTION:** John Potter moved to approve the minutes; Judge Welch seconded the motion; hearing no objection the motion carried: **VOTE:** 4-0

Agenda Item No. 8 Commission Approval of Payment Policies and Procedures – Updated GSA Rates

1:10 Chair McCrea Do we have Angelique here for number eight?

1:12 C. Meyer She is not, but I am going to cover for her.

1:14 Chair McCrea Okay, Caroline, action item number eight, Commission approval of payment policies and procedures, the updated GSA rates.

1:22 C. Meyer Good morning. Thank you Chair McCrea and members of the Commission. Attachment number six is actually the full list of guideline rates and on the back of the first page at the very top is the box regarding mileage and this just reflects the change in the government rate which we follow. You will notice it went down for one of the first times and that is simply to reflect the decrease in gas prices. Even though our contractors will notice a little bit of a decrease in their mileage reimbursement, it will be made up for in the savings at the pump. This just reflects that change and we do need to get your approval on that.

2:15 J. Welch I move for the approval of this document called the Schedule of Guideline Amounts.

2:24 J. Potter I will second the motion and ask a question. On the travel expenses meal allowance, twenty dollars for the first day of travel, nineteen dollars for the last day and thirty-nine dollars in combination. I am assuming, it is a minor thing, the first day of travel suggests that you don't have any breakfast and you don't have any lunch and you only reimburse for dinner. And, the last day of travel assumes that you have breakfast and lunch but no dinner. It's not a big deal but a first day of travel; it just struck me that most people would start traveling before lunch.

3:07 C. Meyer We do have specific time frames in the guidelines that are listed below. If you leave prior to 6:00 am, but I will tell you at the present time that we are not making any changes to this but Angelique would be in the best position to speak to that. I am certainly no expert on any of these amounts. That is really her field.

3:33 J. Potter Like I said, it's just a nitpick thing.

3:36 C. Meyer I know it's something that she intends to be making changes to this. We would bring those to your attention at future meetings.

3:45 J. Potter The other question I had is on the lodging maximums per night, Multnomah County I understand that being a maximum but what is special about Lincoln County that puts it in the same category as Multnomah County?

4:02 N. Cozine May I? These are just state rates. We don't make the determination and I am assuming that they follow something around the tourist schedule but I don't think we can answer that question with any specificity without knowing what the state's rationale was.

4:18 C. Meyer The other thing I will tell you Commissioner Potter is that we do get requests when individuals are traveling in these areas and they can't find something at that rate they contact us and let us know. These are guidelines; it doesn't mean that we cannot approve something. If they can't find something and it's the Seafood and Wine festival in Newport and there is no place to stay, if they have to get something outside of these rates we work with them.

4:44 N. Cozine Cynthia Gregory, who is our HR person, just informed me that these are federal rates.

4:50 J. Potter These are federal rates?

4:51 C. Gregory The State of Oregon follows the federal guidelines.

4:56 J. Potter So the feds have determined that Lincoln County is special. Okay.

5:02 Chair McCrea Other questions or comments? I just have to say that it was painful looking at the first page but that is something we are going to keep working on. **MOTION:** Chair McCrea moved to approve the Schedule of Guideline Amounts; **VOTE:** 4-0

Agenda Item No. 9 Commission Approval of Case Manager Contracts

5:27 Chair McCrea Now onto action item number nine, Commission approval of case manager contracts. Amy?

5:32 A. Miller Thank you Chair McCrea, Vice Chair Potter, members of the Commission. As you can see attachment seven has a contract for your approval for a case manager. As you know, the Parent Child Representation Program has, through some cost savings, been able to expand to Columbia County starting with the first of this calendar year. Part of the program which we have talked about before are the social services professionals, to work as part of the legal representation team on about 11% of cases. We actually need capacity for about one and a half case managers. Ms. Agee is going to be doing this work half time and she is fantastic. We submitted an RFP, probably not the world's greatest time, between Thanksgiving and Christmas and we didn't get a huge response. We did get her response which was fantastic. We have extended the deadline for the RFP through last Friday. We have had several more very good candidates who we will be interviewing next week. I expect to be in front of you with a couple more contracts to fill that gap. This is the first one. She is excited to begin and we are excited to move forward. I am happy to answer any questions if you have them. I did want to make one more comment about Columbia County which is when we offered this part of the program case managers to the lawyers in Linn and Yamhill counties I think there was some resistance. Folks were at first hesitant to take advantage of case managers because it was something new and trying to figure out how to work together. Now, I think all of them will talk about the excellent job that they do and how important they are, but I want to commend Columbia County because since the first of the year I think I have gotten five or six emails from the lawyers up there saying 'when are they coming, what can we do?' The court emailed me and said 'I want an update; I want to know when these people are available.' So, there is some excitement around this resource, frankly Columbia County doesn't have a lot of resources. I think it bodes well that folks up there are excited to use this resource.

7:35 J. Potter How much money is going to be available in Columbia County? You said there are a couple more contractors that we would be asked to approve.

7:42 A. Miller I don't have the budget spreadsheet in front of me. The way that we build the cost of the program includes case managers at about 11.5% of cases. The suggested rate for them is between \$30 and \$40 per hour based on their qualifications and experience. When we came up with a budget for the program, we included that as part of the budget.

8:09 Chair McCrea Other questions? **MOTION:** John Potter moved to approve the Case Manager Contracts; Judge Welch seconded the motion; hearing no objection the motion carried: **VOTE:** 4-0

Agenda Item No. 2 PCRCP Annual Report

8:24 Chair McCrea Amy, I am going to have you stay and we are going to go back to number two on our agenda which is the PCRCP Annual Report.

8:33 A. Miller Alright, thank you, I need to do some paper shuffling. I want to put on the record that all of you have color copies. Nancy astutely noticed this morning that the printed copy in the materials is in black and white and there are all these graphs with color and it makes it much easier to follow, so I want to say thank you to Nancy for pointing that out. I am such an electronic reader that in my mind the thought that you'd be stuck with the paper black and white copies wasn't first and foremost. I just want to talk a little bit about this report that we put together which goes into a little detail of the first year of the Parent Child Representation Program. I have gathered about a year's worth of data and created this report. Before I go into

the notable observations of the report, I just want to talk a little bit about how it was developed. When we received funding for this program back in 2013 one of the directives from the legislature was that we need to be able to demonstrate results. So, through Nancy's investigation and the recommendations of this Commission, was to proceed in this way with a pilot program. I remember presenting to you a little over a year ago and Vice Chair Potter and Commissioner Ramfjord asking a lot of questions about data, about bench marks, about metrics and how will we know if this is working. I remember sitting there with my head spinning thinking that was something I would have to own so I appreciate the guidance from the Commission for putting that in my mind that long ago. As we move towards a more data driven organization, this is really our first foray into this. Late last summer the American Bar Association released what they called "Indicators of Success for Parent Representation." It is an evaluation tool that was three years in the making and validated by one of the federal regions down south. What that tool does is lists out a whole lot of different metrics that we should be considering for programs like this occurring all over the country and this is sort of a guide on what we need to be looking at to see whether or not we are making positive change and moving in the right direction. I relied pretty heavily on those indicators and I am very thankful that someone else had done the work to identify measures and validate them. It was fairly easy to replicate. I do want to point out though that what was in the Evaluation Tools suggested that one of the things we needed to do was to adapt the measures as appropriate for our local jurisdictions. I worked hard to do that in partnership with the partners of the Parent Child Representation Program, the Judicial Department, the Department of Justice, CASA and DHS. We worked hard together to come up with some alternative measures and metrics as well. The ABA tool, although it has about 20 different measures and metrics, it prioritizes four as really things when you start a program like this you need to be looking at and all of them are in this report. Those are: reasonable caseloads, access to multidisciplinary staff, out of court representation which would be time spent with clients whether lawyers are at case related meetings, and decreased time to safe permanency. With that I can launch into a little bit of information about the report. I was having a conversation with Commissioner Welch just before this meeting started and we talked about the caution I think that needs to be used in interpreting this report. This is sort of my first foray in compiling metrics and trying to establish benchmarks, but I think it is too early to draw any big conclusions. I think it's a solid report that shows some positive things but I want to be really cautious, I think as I reference this report there are a number of metrics that can influence these measures such as whether DHS is staffed fully or not, whether other programs are being rolled out in other counties. I have also received feedback already from some of our partners that these metrics alone don't tell the whole story. For every one of these metrics there is a launching off point to a number of sub-metrics that you really need to look at to draw conclusions, so that is something that I will be doing moving forward.

Of the fifteen in this report, I think it is a reasonable picture of where we are, where we are going and things we are doing well and things I think we need to investigate and work on. I think there are three themes that come out of this report; one is that the quality of representation has improved. Practice has changed. The lawyers in these counties have access multidisciplinary staff, investigators, experts, case managers which is new, and you can see that they are using experts more frequently, still in less than in a fourth of cases but certainly more frequently than lawyers not in the program and using investigators more frequently as well. Lawyers in this program are spending nearly 30% of their time with clients. I have over the year received feedback from attorneys that time spent with clients isn't the only appropriate measure of client centered representation. I think that is one thing I want to make sure we are all aware of is that although I talk about time spent with clients in this report, and that is one of the metrics that the Washington program relies heavily on, the lawyers reported time and activities and so we also keep tabs on how often lawyers are visiting clients and we track whether lawyers are having initial interviews within 72 hours of appointment. So, we track some other client centered measures besides just the sheer amount time that is spent with the client. As you know, lawyers are present and advocating at shelter hearings and that has been really positive. I am pleased to say Columbia County was another place where lawyers

had very rarely been present at shelter hearings and that has changed. In Clackamas County, I talked to you about that last summer, in Clackamas County with the change in the OPDS contract those lawyers are appearing at shelter hearings now as well. The lawyers in the Parent Child Representation Program are attending a large number of case related meetings and I have been to more of those than I can count and that is really where the rubber hits the road in these cases. I think it makes cases go smoother, it eliminates the use for a lot of court time and it's essential that a lawyer be there. When you have case related meetings and they are all professional service providers, DHS, foster parents, and others and you have a parent who is expected to participate and engage appropriately with the folks that may or may not be aligned with what the parent is seeking. So, I think it is very important that lawyers are there to help guide that conversation. Interestingly, we did a survey back in April of stakeholders in both counties and in both, external stakeholders noticed that there was a much higher level of lawyer participation in these meetings but they also noticed that it wasn't sufficient. That is something we are continuing to work towards and I think it is just an example of how these cases are different and how so much happens outside of the court system in a lot of cases.

Other themes that came out of the report: efforts to preserve families through reunification and guardianship. The number of children who are discharged from foster care to reunification is going up around the state, but in this program it has gone up much more quickly. For guardianship, exit from foster care to guardianship is going up quickly as well. Across the state it has gone up by about 12.5% since this program has started but in our program it is almost doubled and for the PCRCP counties children are exiting guardianship at a rate just barely above the statewide level, and adoption is going down across the state but is going down more rapidly in these counties. I think it is hard to conclude that one exit type is better than another. You can't say adoption is bad and guardianship is good or the reverse but what I can tell you anecdotally is lawyers talk about these cases and one of the judges talked about these cases resolving in a way that is appropriate for these families. Because lawyers have time to work more closely on these cases, when there is a possibility of something less drastic than termination of parental rights sometimes that is achievable because the parties have been working together, the lawyers are doing advocacy in between court hearings and so the cases are resolving in a more appropriate way. I think that is some of what we are seeing here and that is another piece of information that I am going to need to be delving down further into. One of the goals of the program is to work towards reducing the number of children in foster care and there is a nice chart in here and you can see that the number of children in care in these counties has declined over ten percent in both counties as opposed to the statewide number which has inched up just a little bit over the same period of time. Really, the use of foster care in Oregon peaked in 2012 and that number is going down, regardless of this program it was coming down. The good news is that it is coming down more rapidly in these counties and I think that is a positive as well. With that, there is some initial information for you and I will be back, I am sure, to talk about this report and some of the other changes that we are making.

18:33 Chair McCrea

Judge Welch, what do you think?

18:35 J. Welch

Well, I have a few things. It's a really good tight report, there are lots and lots of issues but they are not issues about the report nor particularly about the program. The one area that, from the Commission's stand point that you and I did not talk about, this business about comparing caseloads I think there is a layer of discussion there that needs to happen and this is you talk about, first of all, the people in the program may not have more than 80 clients active whether it is in the program or in general in the practice. That's the element that interferes with meaningful comparison because you don't necessarily know other lawyers doing this work around the state what their caseload is outside of their contract with this entity. I would hope for purposes of twisting arms that whatever the outcome is, this program is something that needs to happen. People need to have lawyers and they need to have a lot of TLC, in the beginning particularly. It's those first few weeks and months that really tell the

tale on reunification. It's not something that usually happens way down the road with birth families. It strikes me reading this that here are these lawyers that self-selected into this program who are probably very committed to it as distinct from the run of the mill, those of us who practiced in this field know, lawyer doing this kind of work may be kicking and screaming to even be doing it. So, there is an enthusiasm, there's the idea that this is something important and being involved in something that is groundbreaking and really positive. All that positive energy is obviously a part of what is going on here and you can't do anything about that. But, I would really like you to take a look at how you can compare so you can make that case even more strongly about how many cases a lawyer should have when doing this kind of work. Right on.

21:13 Chair McCrea

Thank you. Nancy?

21:15 N. Cozine

Chair, members of the Commission, it thought I would just add on quickly on this idea that this program is affecting the number of children in foster care. Because the difference was so dramatic between PCRCP counties and statewide, and we have looked at the counties and have worked closely with OJD and DHS, it does not appear that there were any other substantial factors that began around that same time. We will be looking into creating that causal nexus and maybe we can or can't and maybe we can have some help making that determination. Clearly, as a matter of fact, it's interesting and it's positive and it really dovetails right now with one of the legislatures concerns and ambitions which is to improve the quality of foster care providers. So, when too many children are being placed in foster care, what happens is you have more kids than you do quality providers and resources get spread too thin. Because January included legislative days, I had an opportunity to touch base with legislators and they are very interested in this program and they are very interested in reducing the use of foster care throughout the state so they can improve the quality. So, it is good timing and it is of particular interest to many legislators. I just wanted to add that on.

22:49 J. Potter

I just had a question. I applaud this report. It's a great report, it's quite promising and there is clarity to the report that I appreciate. I didn't see it, but it must be in here, on the evaluation component it said that 24 former clients completed the survey. Out of how many possible clients was that?

23:10 A. Miller

That is a good question, I should go look. I have a chart and I could count them but it is not in here, but I could find out what the response rate was. I have to say, it is extraordinarily difficult to reach these former clients. We make attempts by text and by phone. So, I don't know if it is fair to interpret the percentage of responses as people not interested in responding, but certainly I can find out how many attempts we have made and how many former clients there are. I did some guestimates early on but I can find out more accurate data.

23:50 J. Potter

I suppose there is no comparative information to people outside the program in other counties? No survey has been done with those people there to measure those satisfaction rates?

24:02 A. Miller

We haven't, and I looked into this when we first started and I wanted to. I wanted to go to courtrooms and sit with my iPad and have folks when they walk out touch the screen and try to do some comparative analysis. I haven't. I do have to say, one thing that is interesting and exciting as part of this Governor's Task Force on Dependency Representation, I am sitting on the quality assurance subcommittee and these quantitative types of metrics are something that we are considering suggesting not only for clients of lawyers for parents and children but also for social workers for the agency who can also take some stories about their relationship with the Department of Justice and the district attorneys who provide representation. I think we are thinking about making some recommendations about expanding this idea. Thank you.

24:54 Chair McCrea I thought the report looked really good Amy, and thank you for the color copies. It looked good attached to the agenda but color really does make a difference and I also appreciate your continuing enthusiasm.

25:07 A. Miller Thank you Chair McCrea and members of the Commission and I will take under advisement how much better the color is, I try to be cautious about using the color printer.

25:16 Chair McCrea I understand.

25:17 N. Cozine We use it very sparingly.

25:18 Chair McCrea We do appreciate it. That's what I wanted you to know. We will skip over agenda item number three and if Caroline, you will come up and talk to us about number four, the review of the contracting process attachment number three.

Agenda Item No. 4 PDSC Review of Contracting Process

25:33 C. Meyer We printed a summary, and I don't think we have provided a printed summary to you before although we go through the debrief process every two years after the contract process is complete. It really was helpful when I was creating this, it was a reminder to me of all the steps we go through and there really is a lot of detail to it but, I am happy to answer any questions but really this is your opportunity to talk about what worked and what didn't work for you, if there are changes that we should be making. Two years ago I know we had talked about a couple of things, one was making sure we had personal contact with those that we didn't intend to enter a contract with. I checked with the analysts and that was done, with one exception where they didn't even give us enough information for there to be a full proposal. With that exception, everyone else received personal contact. Of course, at the October management conference, we received some feedback from contractors as part of the breakout groups. So, we certainly got some feedback from them on some improvements that they would like us to make. But, this really is your opportunity to say 'here is what we think.'

26:54 J. Potter You got feedback from contractors suggesting that there was no negotiation process and sort of a take it or leave it attitude. To the degree that we can address that, and I am not sure how we do that, but to a degree that we can I think that we should work to that end. It strikes me possibly that in the contracts team meetings that take place in June and July where you have contract teams discussing common requests, funding priorities and create a statewide contracting plan, establishing the funding priorities earlier and you put it in the RFP so the contractors know what the funding priority is before we go into the process might help alleviate some of those concerns. Is there any way to do that?

27:50 C. Meyer We certainly don't have a budget, we don't know what our budget is at that point so the most that we would be able to do, I am thinking back trying to figure out if we had, yeah it really is difficult to get to any specifics.

28:09 N. Cozine If I may? I hear what you are saying and I do think that the discussion on funding priorities is possible. What is interesting is that in the RFP responses, in the proposals that we get, there are sometimes themes that occur that were never brought to our attention during Commission meetings and I think that may be partially because not everyone comes to Commission meetings. So, one approach would be to post an agenda item establishing PDSC funding priorities before we go into the contracting process. But, there is a lot of discussion around POP building but things do change, dynamics shift. I would think that we could have a conversation about funding priorities and set some parameters so that people know what the current thinking is. I think what Caroline's point is that to some extent the legislature's granting or partial granting of policy option packages informs funding priorities. But, as long as that is acknowledged as a set aside, I think we could have that discussion prior.

- 29:35 J. Potter Do you think that we can't really get away from the contracting process being non-negotiable? Is it always going to be to some degree 'this is how much money we got from the legislature, these are all our needs and this is what we can give you?' If it is the case, and I am not being critical, but if it is the case I would support sort of advertising that.
- 30:12 C. Meyer We are discussing this as part of the operational review and I don't know how much we can say at this point about it. We certainly have been discussing that piece. We know it is a concern for contractors. We'd like for there to be, if its transparency that they feel is not there we want to be able to be as transparent as we can. We think there is more information that we can provide prior to that July meeting where we go into executive session and we talk about specifics. Obviously, we can't talk about specifics of proposals on the record but there is probably some information that we can provide where contractors are present. In terms of the negotiation it is difficult. You can imagine what would happen if we say 'each of you gets your pot of money' and then it really does become difficult. We are certainly working through that with Geoff Guilfooy as part of the strategic planning.
- 31:16 N. Cozine One of the points of discussion is how we can revise the RFP so that it kind of does a little bit more of that information providing and perhaps even simplifies the response process. I think the difficulty, and you have been part of many of these discussions, there has been, at least since I have been here, a significant interest in people being treated sort of similarly in an effort to achieve a more fair contracting system. That is something I think the Commission can sort of balance as we establish funding priorities. Maybe there are unique needs in a county that the contract analysts will have the ability to address on more of a one on one basis. I think those are sort of the discussions that we are having is what can we build in to this process so that if there truly is a unique need we're not locked into something of a one size fits all model. That won't work. There has to be some discretion at the local level. I think the answer is 'yes, there can be more' and we are really working toward how we can revise our own processes to make room for that. We did hear it and we are actively having those discussions and sharing different ideas about how we can make that work. Obviously it is not going to open up this huge panacea of funding streams but bits and pieces.
- 33:06 C. Meyer We have worked hard to justify certain rates depending on the region. That is sort of where that area becomes less negotiable. It is less negotiable at the time we are doing contracts but we have received input outside of that process that helps us get to those rates but there certainly are in terms of caseload some other things that may have some flexibility.
- 33:31 Chair McCrea It's not easy. It is a tension between the one size fits all that we don't want to have versus the regional needs and special needs and the use of discretion and then that can engender claims of priority to someone who shouldn't have it, and I know. We've gone over this.
- 33:56 J. Potter You want to have people tell you what they need. We have been preaching that before. You have got to put in your RFP what you need or else you are not going to get it. On the other hand, you're not going to get it because there is already a determination made of how much money there is going to be or how much money there is. I understand the struggle. It is possible the front end loading of that, getting everybody to understand that we can do a better job.
- 34:25 N. Cozine The other thing that I think Geoff Guilfooy, working through some of these issues with him on the strategic planning side, one of the sort of wild cards that we always run into is there are contract overages. The contract ends in the new biennium and so out of our funding we have to project what those overages are going to be and set it up aside that we can meet our obligations for our prior contract year that ends in the new biennium. That really effects then what is available for contracting in the new contract cycle. We are working through some different approaches that we could use in our own budget request to help ameliorate the effects of that or avoid it all together. So, I think that might help too.

- 35:16 Chair McCrea I think that is a really good point as well Nancy. Before we leave this topic, I just want to see if anyone in the audience, our contractors, wants to weigh in or make any comments on this. I don't want to leave you out. Okay.
- 35:36 J. Welch What were some of the things that came up in your debriefing with the folks in October?
- 35:53 C. Meyer I would say two of the primaries were the fact that there was no negotiation and I think the other was the transparency. You submit your RFP and then you don't hear anything for a few months and then suddenly you are presented with a proposal and there is not much information provided in between. On that particular point we have discussed ways we can change that. It is not that we have actively been trying to keep that information from anyone, but it has become clear to us that there are probably a couple of points along the way where we can provide general budget update information that would otherwise be public information. The negotiation piece is the one that is a little more difficult but we are certainly discussing that as well. It was interesting because you have seasoned contractors, I remember Jim Arneson in our breakout group in response to one person saying that there needs to be more negotiation he stood up and said 'wait a minute, I remember back in the day that's exactly what we had and the person who got the best deal was the best negotiator.' It is really a struggle to balance that so people feel like the information they are providing us makes some difference. We are going to keep working on that.
- 37:13 J. Potter Maybe it shouldn't be called 'Request for Proposals' but 'Request for Acceptance.'
- 37:25 Chair McCrea Well, thank you for your work Caroline.
- 37:28 J. Weiner I just wanted to comment with respect to transparency and priorities, I feel like the information is out there and I feel like we were aware of it when we crafted our RFP. Perhaps the problem is, transparency to me is the ability to see through and with the information there and we found it, you have to look. We are all incredibly busy with caseloads. I don't know if lack of transparency is the way that we look at it, but perhaps more user friendly, spoon feed us. The information is there, we knew that there was X amount of money, 5.2 to 5.3 million dollars of new money and that was about it. You do the math. Everybody is really busy and we don't really have the time to investigate but I do feel like you were really transparent but I was lucky enough to be on pay parity so I was kind of in the middle of it. So, it is easy for me to say 'other people should look' when I was kind of thrust, but the idea that wasn't transparency I would take issue with that. That the priorities weren't out there up front, they were you just kind of had to look.
- 38:53 J. Nash I don't think it was, from my perspective, I agree with Jon. But, the lack of transparency issue I think is not knowing how OPDS got to the numbers they got to for your individual county. That is the feedback I heard to from other people. I asked. I was able to get that information because I knew what to ask and I was on the pay parity committee as well, so I feel like I sort of have an inside track. But, if you don't know what to ask or what information you are looking for, and this has happened to me many years ago, if you're presented with 'here is what you are going to get,' it sure feels like there is a lack of transparency. It feels like there is no negotiation. You don't know why you are being presented with the information you are being presented with. You don't know how it is that your number is X and their number is Y but they don't tell you how they got to Y, that is the lack of transparency piece, not 'we have 5.6 million dollars to divvy up,' Its '5.6 million dollars, why am I only getting X dollars of that?' That is the piece that I think that a lot of people felt like they were missing. Of course you run into that difficulty with the more information you provide. We are all lawyers so if you argue with the underlying assumptions that go into that then we can change that number and I think that is probably what is really going on. OPDS doesn't want to provide too much information because then that's what winds up happening is the attempted negotiation ends up 'well, your number here is wrong and this is what the number should be.' My sense is that is

where the feeling of lack of transparency came from is not knowing the underlying assumptions that go into the math.

40:40 Chair McCrea I think that is a good point and I think that dovetails with that well is something that I observed at the management conference which is there a is a significant difference in terms of awareness of the contractors that come to these meetings and those who don't and I know that was a suggestion that you made to the people in the regional group is that they should come to the meetings or read the agendas so there is responsibility to be informed. I understand what you are saying Jon, we are all busy and maybe we can spoon feed a little more and provide information but it makes a difference when people take at least a little bit of time to understand the process.

41:35 C. Meyer Hopefully improvement in both of those areas, on their end and our end, and we will be able to make some significant improvements.

Agenda Item No. 5 Executive Director's Annual Report to the PDSC

41:49 Chair McCrea Thank you. Nancy, let's go to the Executive Director's annual report to the PDSC.

41:59 N. Cozine Attachment number four, as hopefully you have already seen, really summarizes the activities of this office over the course of this last year. The odd years are always very report intensive because we provide a biennial report and at the end of the year provide an annual report. Hopefully you don't feel reported out. Really, when I reflected in writing the report, and of course others helped significantly with this report, quite a bit happened. We got the first year of the PCRCP completed and you have heard Amy's report on that. We really have been working hard on, and primarily I have taken responsibility on the Public Defense Resource Center in Multnomah County, and those conversations are moving forward. It is sort of a funny process. It spits and starts in a bit in a way because there are times like right now where decisions are being made and it's a very intense and frequent conversation and then there are other times where architects are doing their thing and we don't have a lot of conversation but that has been a really good development and I am still working on it. I am going up to Multnomah County this afternoon for a 4:30 meeting with latest plans. Sorry, I am giving you summaries on where that is in the middle of my annual report. Just to give you the brief update, I think we are currently talking about being adjacent to the presiding courtroom so for things like morning call and other call dockets our clients have a space to wait and connect with their lawyers that is not a public hallway but in a quiet private space. There will be at least ten conference client meeting rooms. We hope to have a social worker receptionist and then offices and a conference room that is in a more private secured area that is quite for sustained working and for lawyers to be working between hearings and during trial breaks. It's an exciting concept because we think it really will allow us to better connect without clients and keep our clients engaged and create an environment where they do not have to run all over the courthouse trying to find their lawyer and their lawyer has to do the same. So, it is a big courthouse. It's 15 stories. There is a lot of territory to cover and the architects and the county and the courts have been wonderful to work with and I will keep you updated on how these planning sessions go. I would also note that the court itself has been incredibly supportive of having this resource and really use it as something that will change the dynamics and efficiencies in a positive way. Our office, of course, took this step into data driven decision making and to really trying to harvest the data we need and look at things from an objective perspective. We will continue to develop there. That includes both looking at court data, and it is true that contractors that are not in the PCRCP do not report to us about their caseload but we may have other ways of looking at non-public defense work through the use of data. Then, finally, this year was a legislative session that took up a lot of our time. We had a very effective three days of budget hearings with lots of participation from our contractors, from stakeholders, from clients and we had a good success with additional funding for public defense. Those were all really significant achievements and then of course, all of the change. We have got Mr. Gartlan enjoying his life in Washington State and we have

a great new chief defender for criminal and a chief defender for juvenile. As you will hear from them later, the Supreme Court arguments have been going so well and I continue to hear amazingly positive things about our appellate lawyers. With that, I would be happy to accept any recommendations for change in this report or questions.

- 47:11 J. Potter I like the report. It was good to read because it went through and I thought ‘oh yeah, we did that and we did that, that was good.’ One of the areas that I have used when I talk to legislators is the number of criminal and juvenile cases and proceedings for the amount of money that we spend. My math says that 92 million divided by 167,000 criminal and juvenile proceedings, and I know we have talked about what the definition of proceedings is, but the value is \$550 for each of them. That strikes legislators and I as amazing value to do all that work for \$550 per proceeding. You might just want to point that out. I appreciate the enthusiasm that the report reflects; however, I would probably take out the ‘celebrated another year of success’ statement in the first sentence and just leave in that we achieved incremental improvements. Celebrated another year of success is just maybe a little too party like. It was nice, but.
- 48:41 J. Welch I am not much of a nitpicker but...
- 48:46 J. Potter Are you saying I am?
- 48:50 J. Welch On page five of your report, in the last full paragraph. In the first sentence it is on subject A and the rest of the paragraph I think is on subject B. It’s really nitpicky but it sort of jolted me when I was reading it because it is a complete change of subject and kind of takes away from the second subject.
- 49:19 N. Cozine Are you looking at the ‘finally?’
- 49:22 J. Potter No, it’s the ‘General Counsel.’
- 49:36 J. Welch For whatever it’s worth, just think about it and do what you need to do with it.
- 49:49 J. Potter This is not an action item, is that correct?
- 49:52 N. Cozine It’s not, it is just your opportunity to provide feedback.
- 49:56 Chair McCrea I thought it was a very good report Nancy. One of the things that I really liked about it is that it is easy to read. You have the topic areas and the sub-topics because reports can be overwhelming when it is just one big paragraph. Things were broken out really well I thought and I commend you for that. My one suggestion in terms of the challenges for 2016 is, and this is my personal bias, I would move the last item ‘funding to address recruitment retention and succession planning’ to the top.
- 50:40 N. Cozine Okay.
- 50:43 Chair McCrea I think that is sort of our overarching continued challenge and more than the need to reduce caseloads is more complicated than simply that. That would be my one suggestion.
- 51:04 J. Welch I am curious if that item that you have just moved could include the issues of young attorneys’ debt load and if it does whether it might be worthy of being actually mentioned?
- 51:24 N. Cozine Being called out specifically?
- 51:27 J. Welch Back to my nitpicking, this doesn’t have to do with the report, I am just curious and I didn’t want to let it drop. That first sentence, I would be interested in hearing about, not today but sometime, about the process and what change is going on if any in the process of certifying

people as being qualified to do certain levels of work, just because it is there. It is something we haven't heard about, at least I don't remember.

52:07 N. Cozine The last time we talked about it in detail was in relation to the qualifications of capital providers. You are right, we have had it in our list of things to circle back to in non-death penalty arena so we can certainly do that.

52:30 Chair McCrea Any other comments or observations? Janet, are you still there?

52:34 J. Stevens I am, but I am going to have to leave, I need to make a phone call.

52:37 Chair McCrea Okay. Thank you for participating with us and I am glad we got the action items done.

52:42 J. Stevens And I am sorry to have missed you all.

52:45 Chair McCrea Well, we miss you too.

52:47 J. Stevens Okay, see you later.

Agenda Item No. 6 Legislative and Budget Update

53:14 Chair McCrea I suggest we go ahead with the legislative and budget update with you Nancy before we take a break.

53: 24 N. Cozine We are heading into a short legislative session, as I mentioned earlier we had January legislative days. It provided me with an opportunity to meet with legislators about the work that we are doing and I will have more meetings in February, but the January meetings went very well. Some issues that will be coming forward in February on the substantive side, LC211 is a bill that includes both access to juvenile court records and it will also have juvenile sex offender registration clarifications. Amy, do you want to talk about that one?

54:05 A. Miller Sure, I can.

54:09 N. Cozine The two were separate LC's and they are going to be combined into one and I will just briefly mention that the simpler one, which is the juvenile court records, there is a provision that will more specifically call out our authority or our ability to get access so that we can do the audit of casework that we need to be doing. As you know, we don't pay a provider for work until we confirm through the court system that they have done the work. Because of the way that the statutes were redrafted in anticipation of an electronic court environment, we really need something that is very specifically drafted to address our needs so that it is clear that we do get access and there isn't a question about whether it is permissive or mandatory. The provision that we have worked through with the department of justice and other stakeholders gives us that access. It was difficult. It took quite a bit of work to get language that was acceptable to Region Ten which is the entity that controls federal funding, the 4E funding, and the 4E funding is linked to confidentiality and how the state manages the confidentiality of records. So, we had to make sure that whatever language we chose didn't create an impression by Region Ten that we were being too permissive with our data sharing. That is that.

55:43 A. Miller I can talk about the other part of LC211 which is related to juvenile registration and reporting. You may recall that House Bill 2320 was signed by the governor back in August and what that did was eliminate that automatic reporting requirement for juveniles adjudicated for felony sex offenders and what it did was set up this procedure for an automatic hearing about six months prior to the determination of juvenile court supervision over the youth. It was fantastic and a real achievement and much of the credit goes to Youth Rights and Justice for bringing that measure forward and shepherding that through in partnership with Jeff House at the Multnomah County DA's office. After that passed it was clear that that bill contained a lot of

different things that were thrown together very quickly towards the end of the session. It became clear that some cleanup work needed to be done and some process work needed to be done around how the hearings will be scheduled, how a lawyer will be appointed, how will discovery going to come in and what would happen then and if the youth could waive the hearing. In addition, it becomes more complicated because then there was this time lag between when the governor signed this bill in august and when these revisions will come into play in March probably. So, there are these youth in that period who have been adjudicated who have maybe come off jurisdiction but should have been entitled to one of these hearings. Mark can do a much better job talking about how the different population groups need to be handled, but suffice to say that it was much more complicated than one would anticipate from the get-go. It took a number of meetings but I think we got there, and there are just a few amendments that need to happen to LC211 and those should come in, but we have some consensus amendments that all of the folks involved agree upon and it was for such a controversial topic. It really was a group of people working together to try to move forward with the intent of the legislature. I think that is really positive. Do you want me to talk about the Children's Safety and Dignity bill as well? Nancy asked me also to mention briefly LC219 which is 71 pages long. Senator Gelser has been championing this bill which she has called the Children's Safety and Dignity bill. The bill is intended to address, I am not sure how much you have been following with the Give Us this Day foster homes up in Portland and what has come to light; years of complaints, abuse, financial mismanagement, issues around employee compensation, a whole host of issues, poor management and harm to children that were reported in a variety of different ways to DHS over a long period of time and unfortunately all of that information was never collated and actions weren't really taken until things really came to head and there have been a couple of big hearings and you may have read some it in the press. Certainly, as a result of that, the governor has created a task force. There is an independent consultant coming in and Mark Mekechne is on that task force. Among other things, there is this very thick LC trying to address some of the issues that came out of those investigations and some of the issues with information not being cross reported or one part of the agency having some information but others not. You can kind of review through years' worth of emails and information and it is unfortunate to say the least. That being said, this bill really applies to policies and procedures around receiving complaints, around how the agency should be required to respond to those complaints. One of the things the agency said was it wasn't clear what action it could take regarding this foster provider, so this provides a clear map on what kind of action they can take and the action that is expected. It is pretty complicated. Much of it was already a rule, truthfully, but not it is being escalated to statute. A couple of notable things: one is that it requires any DHS employee who has reasonable cause to believe that abuse is occurring or that the home is not in compliance such that there is risk of harm to a child to make a report to the director of DHS or their designee and then it requires DHS to do an investigation and failure to do either one of those two things is a crime of official misconduct in the second degree which is a misdemeanor. Some of the things that I think had been occurring would fall within that. It also establishes a process for the investigation then of these reports. The thing I am particularly interested in among many others in this bill is around that investigation process. When you listen to Senator Gelser talk about some of the stories, she has done some interviews of people that have been in these homes and she talks about how some of these youth were not only victims of abuse and neglect but also perpetrators. She talks about these girls who had to end up stealing feminine hygiene products because they weren't provided and that is just one example. I wanted to make sure is that when there are these investigations that a lawyer is able to be present with these youth to protect their rights. That is one of the things I am kind of working on at the moment is making sure that is really clear. Senator Gelser talked about that and wanted to make sure that protection is offered, but I think it needs to be possibly tightened up with some of the language. I expect that there are other amendments that are going to be coming in from other folks as well. That is that, and like I said, I expect there to be more amendments coming in. the draft just came out last week. I can answer questions if you have them.

1:01:49 J. Welch

How many hours of the day do you work?

1:01:53 A. Miller Well, much of it was in a hearing.

1:01:56 J. Welch That's a rhetorical question.

1:02:01 A. Miller It's important, this is one thing that we really want to be paying attention to and I very much appreciate proponents of the bill being willing to take feedback from us about it.

1:02:16 N. Cozine I will continue with the dependency theme which is this Dependency Task Force on Representation. Before that, let me mention that the other February bill that is going get a lot of attention is grand jury. That is OCDLA's bill and it has quite a bit of support and we are continuing to look at that and there is a lot discussion around what the impacts will be of having a grand jury bill. It would require the recording and sharing of grand jury proceedings. I don't know John, if you want to talk about it.

1:02:51 J. Potter It would make them discoverable. It is currently scheduled for eight o'clock on February fifth.

1:03:00 N. Cozine We are watching that one carefully and then the Dependency Task Force on Representation will not be yielding any legislative concepts for 2016. We are aiming for 2017. We meet in Linn County tomorrow to talk and focus on the Parent Child Representation Program model. That will be a good meeting and of course Amy has been very helpful with getting that set up. I am on what they call the alternative models subcommittee, Amy is on the quality assurance subcommittee. There are several other subcommittees. I talked about this at our last meeting briefly, but the work is ongoing and the participants in the task force are being encouraged to look at what a perfect system would be and not be attached to what the system is. Try to get past the barriers by thinking creatively. We will see. It really means tackling the way that the department is represented and the way the parents and kids are represented with the objective of creating better outcomes by perhaps changing the current models. I will keep you updated on how this task force goes. The final thing on the budget side, I mentioned in our last meeting briefly that when we asked the Commission to approve the compensation plan for the biennium we followed what was in our agreement with AFSCME, we followed what happened at central bargaining table for other state employees and we later found out that some significant changes were taking place in other state agencies outside of the central table bargaining. So, it has come to light that by January of 2017 our attorney positions will be 20-38% behind comparable classifications at the department of justice and non-attorney positions will be 3-10% behind other state agencies as a result of these other shifts that have happened. We, of course, go into bargaining, we only have a one year contract with AFSCME, we go into bargaining again in May of this year. We expect that there will be some desire to get us back to or closer to parity. In February, I am preparing to ask legislators for a special purpose appropriation that would be set aside so that we can engage in good faith bargaining so that we can get us closer to parity again. In our current contract with AFSCME we have an agreement that we will continue to pursue parity, so it aligns with our current contract. The amount that we anticipate would be required to get us to parity for the rest of the biennium assuming we made changes to a compensation plan of January 1 of 2017. So, lining up with when the last DOJ change takes effect, they have three sets of changes. It would be about \$541,000 impact for the appellate division. There are then rollup costs. If we are able to make changes for the whole agency the rollup costs are about 2.5 million for the next biennium. We are talking with legislators. We don't want to be caught in a position where they aren't put on notice of what is coming down the pike. We will be making that request. People were fairly positive and supportive, but of course no promises are ever made, but we are having these conversations and unless the Commission felt like this was a huge step in the wrong direction to ask the legislature to set something aside, I would plan to proceed.

1:06:59 J. Potter Aren't we statutorily directed to do that?

1:07:03 N. Cozine You are, and that is what I have in the letter. It is very brief. The line in the letter is, 'The Public Defense Services Commission shall adopt a compensation plan classification system and personal plan for the Office of Public Defense Services that is commensurate with other state agencies.' So, we have pointed that out in the letter, and given the fact that negotiations don't start until May, it seems premature to actually ask for money, but at least putting them on notice and asking for that special purpose appropriation seems rather prudent.

1:07:40 Chair McCrea Yes, that is a good plan. Other questions or comments about the legislative piece? Okay, I suggest we take, in a memorial of Barnes, a five minute break which will probably be a little longer than that.

Back From Recess

00:58 Chair McCrea We are going to move this along and if Paul is not back then we can defer him to the next meeting, but I don't want to keep people from important business.

1:11 N. Cozine Paul did give me a summary and I can step in. I can provide the update if you need me to.

Agenda Item No. 7 Best Practice Performance Indicators

1:15 Chair McCrea Okay. Would you like to take us through the best practice performance indicators and attachment five please, Nancy?

1:23 N. Cozine Certainly. Paul mentioned this report at our last meeting but it was brief and in passing and we hadn't provided it in your materials. I wanted to provide it in your materials today so that you had an example of the direction some people are going in when it comes to finding data points that help measure best practices in legal practices. This report was something done by The Committee for Public Counsel Services in concert with The Center for Court Innovation. What they did was they took best practices and then identified measurable data points that could help determine whether or not that best practice is being implemented. You can look through the report and you can see what their approach was and what the data points were they looked at. On page six there is a good clear example which is the independent investigation of the case and they looked at the data and indicators but in order to look at the performance there they looked at the number of cases with the investigator and the days to engagement of the investigator, the number of witnesses interviewed by the defense team, the number of records collected, the number of cases with discovery provided to the opposing party. That is just one little example. They went, though, to the trouble of finding data points that really could be measured and this is a discussion that this Commission had repeatedly when we were talking about key performance measures and what might be helpful to measure. I think these largely get at what Barnes always used to say were inputs rather than outputs. So, I think what Amy's report was getting at was outcomes. By taking these steps did we reduce the use of foster care beds; did we shorten the time to permanency? These are really looking at those discreet data points but it does provide a road map. I think it is worth looking at. I think it's worth this Commission looking at. I think it's worth our providers taking a look at. These are things that individual providers could implement in their own practices to help shape representation. I thought it was a good report. I thought it was exciting because it does take what we have been talking about and provides a clear demonstration of how it could be done. I have not talked to Ziad, who is one of the people who participated, about what has happened since the report came out in December of 2014, but that is a conversation I would like to have. He was on the NLADA Data Committee with me and he and I have talked repeatedly on how to measure performance and do that through a data process. I am interested in the work he has done since this time, but I wanted you to have it so that you had an example.

4:47 Chair McCrea John?

4:48 J. Potter A minority report?

4:50 N. Cozine Yes.

4:52 J. Potter This reminded me a little bit of high school when you were assigned a ten page paper to write and you knew you only have two pages of material. I truly read this a few times trying to figure out what some of this stuff meant. In section three on recommendation number one, there are two sentences there and I read them and I don't understand it all. I understand what they are trying to get at and they tell us on three different occasions in here that this was a reflective process, self-reflection. In the performance indicators they say that one of the big take-aways from this that is relevant to things outside of Massachusetts that we could all learn from 'the systemic process of reflection to develop indicators helps to coalesce a community of indigent defense practice.' I don't know what that means. Then they proceed to list the eight best practices, some of them in my mind like 'best practices to evaluate the government's case and to investigate the government's case and to challenge the government's case,' seems like it should be called really good ideas, but as a best practice they don't even tell us what the quantitative indicators are of that. They tell you that you should count the number of times you do various things but they don't give us any idea of if there is a relationship between those number of times and the outcome of the case. So, how can it be a best practice if we don't know if it affects the case? To me, that was missing from this report all the way through. I found it a little discouraging.

7:03 N. Cozine Vice Chair Potter I understand and I said that from the beginning. These are really the inputs and it doesn't get to the outputs the way that Amy's report did. What I think is nice, though, is that we have our own best practices and we have had conversations about if we could turn those best practices into some kind of measurable component and I think that this is, and that is why I directed you to page six very quickly in my summary. I think this does set forth a nice way to think about different inputs that could be measured, but I agree that you then have to get to the outputs and that is why I do want to talk to him about what has been done since and if they have been able to take these and connect them to the outputs, because that is the necessary next step. Prior to this report, I hadn't really seen anyone issue a report that tried to link specific data points to best practices and that's a tough thing to do.

8:11 J. Potter Yeah, I don't think they have done it?

8:13 N. Cozine I hear that. I think it is moving in the right direction. There is more work to be done.

8:27 J. Potter I like the concept. Best practices gets kicked around a whole bunch and we need to figure out what they outcome is of this supposed best practice. It sounds like a good idea. It sounds like he should investigate and challenge the government's case. It sounds like a good idea.

8:50 Chair McCrea A novel concept.

8:53 N. Cozine It is not a novel concept. I think that what you would find if you looked at the data is a shocking number of cases that are processed at an average of \$550 per case, which if you looked closely some of these steps were missing.

9:17 J. Potter And this lawyer should be disbarred, that's the outcome.

9:20 Chair McCrea I think the better point, and I have for full disclosure carpooled with John so I turned to him because I knew what the minority report was going to be and so I wanted him to go forward. What could be helpful with these sort of issues is to be able to parlay it into a presentation to the legislature about the kinds of things that lawyers need to do and with what we have available to compensate them and the multidisciplinary team with investigators and experts, these things cannot be done and they need to be done because we go back to the best practices which we all know what they are. I think this is your point Nancy, if there is a way to be able

to have the input and the output and to correlate that then we have a stronger position with the legislature.

- 10:25 N. Cozine Right, because you have to have the inputs identified before you can actually start to analyze the outputs. By no means am I suggesting this is an ending point, it is very much a starting point but I was glad to see that someone actually started in a concrete way.
- 10:43 J. Potter Amy, in my mind, with her report in the juvenile arena did a much better job.
- 10:49 N. Cozine There is no question about it and as I have said many times we are extremely fortunate to have Amy. But, I will say that someone before Amy created the ABA indicator report and before that they created an inputs report. That process is about 15 years down the line, so you are seeing I think in this report the baby step and with hopefully much more to come. Hopefully there is much more to come because I think we know, but we don't yet have data to say it, that when people get a lawyer early in a criminal case and they are able to make bail and be out of custody retaining a job, retaining their house, caring for their children instead of in custody they get a better outcome at the end. That has been studied. But, other pieces along the line have not been studied and I want to get to the point where the legislature can have confidence that by improving representation on the criminal side we will reduce the use of prison beds. I think many legislators are there sort of anecdotally and it's not just a reduction but the appropriate use of. Too many people slide into the prison system because there wasn't adequate time to handle their case and develop defenses and do the mitigation work necessary to create an alternative that the court can endorse and impose.
- 12:26 J. Potter A decade or two ago the Bar did a fairly comprehensive study. It was task force one, two and three. Within one of those three or two of the three, there is fairly detailed representation of what a lawyer should do in each type of case and that might be worth a review too.
- 12:45 N. Cozine I think we have, but there aren't the data points associated with it. So, okay yes, you should visit your client, anyway, you know what I am saying.
- 12:57 J. Potter Right, how many times?
- 12:58 N. Cozine And how do you measure it and what is the outcome?
- 13:00 J. Potter When does it not make a difference and when does it make a difference?
- 13:03 N. Cozine That is exactly what we need to get to.
- 13:06 J. Potter So, 48 hours versus 72 hours.
- 13:07 N. Cozine Right, without actually creating a cookie cutter approach. That's it.
- Agenda Item No. 10 OPDS Monthly Report**
- 13:13 Chair McCrea Alright, let's move onto the monthly report.
- 13:19 N. Cozine Ernie, do you want to take the lead with appellate division?
- 13:26 E. Lannet Chair McCrea, Vice Chair Potter, members of the Commission; Nancy had asked me first to go over the changes in the appellate courts that are happening here at the end of the year beginning 2016. As you may know, now Justice Lynn Nakamoto was appointed to fill Virginia Linder's seat on the Oregon Supreme Court. She is now part of the Oregon Supreme Court. With the retirement of Chief Judge Rick Haselton, that created two vacancies on the Court of Appeals. The governor has appointed Roger DeHoog who actually looks like he started his career in the Deschutes County Public Defender's Office.

14:10 J. Potter He's an OCDLA member.

14:12 E. Lannet He ended up on the bench there in Deschutes County. I think he sat for the first time on cases that we have presented to the Court of Appeals and I think everyone was very impressed with the questions he asked. So, we are excited to see him there. Scott Shorr was the other person appointed who was the managing partner at Stoll Berne. Finally, with the departure of Judge Haselton, the Chief Justice with the support of the Court of Appeals appointed Erika Hadlock as the new Chief Judge of the Court of Appeals. Internally, you won't be hearing from Shannon Storey today because her team is doing a lunch to welcome Amelia Anderson who has joined the office this week. As I mentioned last time, she is a recent grad from the University of San Francisco. In the beginning of February, the criminal appellate section will be joined by Sara Werboff. She clerked for Justice Walters and has spent a number of years at Janet Hoffman's shop in Portland. As far as the Oregon Supreme Court, we received two decisions since we last met. Both of them were favorable to positions that we took and one was litigated by Deputy Defender David Sherbo-Huggins. The issue was whether a woman who was driving a borrowed car with her two daughters who had some drugs in her purse was committing the crime of child endangerment by allowing children to enter or remain in a place where unlawful activity involving controlled substances is maintained or conducted. We had two arguments that we pressed. One was that secretly possessing drugs in a purse is not the type of drug activity that we are talking about. The court rejected that. Our other argument was that a car in an isolated instance where drugs are present is not a place where this kind of activity occurs and in a unanimous opinion the Oregon Supreme Court agreed and they declared that the type of place that triggers a statute is where a principal or substantial use of the place to facilitate unlawful drug activity. So, a very great and reasonable solution to a statute that was really brought forth in the age of opium dens. The second decision was an article one, section nine search and seizure case, *State vs Bonilla*. In that case the Oregon Supreme Court held to the position that when a police officer relies on consent to conduct a search, the consent must be given by someone who has actual authority to allow the intrusion to occur and reasonable mistakes of the police officer do not fall under the consent exception. Good news on that front.

17:23 J. Welch Was that a surprise?

17:29 E. Lannet It was put directly at issue by the Attorney General's office. They were arguing that as long as, because the constitution only prohibits unreasonable searches and seizures, if a police officer is making a reasonable mistake about whether they have permission then that should be enough to satisfy constitutional muster. Other than that, I think that is all that I have.

17:53 N. Cozine I have one question. Has a new Chief Judge of the Court of Appeals been identified?

17:58 E. Lannet Yes, Erika Hadlock.

18:00 N. Cozine So, we have a new chief judge?

18:03 Chair McCrea Thank you Ernie.

18:12 C. Gregory Chair McCrea, Vice Chair Potter; we have been working through a number of recruitments. We have had a number of departures in Angelique's Financial Services section. We are hiring an accounting tech one and an accounting tech two filling out her positions to help us continue with processing. In support of what the appellate division is doing as far as attending job fairs, we've produced and I will share with you a brochure that we just got this morning, which Josh Crowther will be taking to both the OLIO and the Northwest Public Service Career Fair in the next couple of weeks. We wanted to have a little bit more of a professional look to some of the materials that we were providing to the schools and we think that this is a good start.

19:07 Chair McCrea Great.

19:10 J. Potter You were represented last night by Sarah Petersen at Willamette University with a group of law students that were interested in criminal defense. She talked about the opportunities here at OPDS.

19:21 C. Gregory Yes, thank you.

19:30 C. Meyer I wanted to give an update on the contracts team. I think we mentioned in December that we were recruiting to fill our open analyst position and I am pleased to announce that we were able to promote Rachel Woods who has been with us and she is here today.

19:44 R. Woods Hello.

19:45 Chair McCrea Hi Rachel.

19:46 C. Meyer She has been with us since April 2014 fresh from Willamette University. She came to us as a temporary office assistant and we were able to move her into a limited duration but it still wasn't a permanent position. Then, we had hired a research analyst last year and I know had kept you updated on that and he was just with us for six months before he left to go to law school. So, it had been open. She was incredible in supporting us in that transition where we didn't have a full time contract analyst for many months and she stuck with us and thankfully didn't run scared from all the work that we were piling on her during that period of time. So, we are very pleased to have been able to offer her that position. That happened in late December, so now her contract assistant position is vacant and we are in the middle of recruiting for that and going through applicants. We are excited to get those positions filled and have a complete team again.

20:45 N. Cozine I think it worth mentioning that Rachel joined the contract analysts for the staff breakout during the management conference and had rave reviews. She knows the community and she actually has a really nice skill set in analyzing data as it happens as well, so we feel very lucky.

21:05 C. Meyer It is a contract analyst slash research analyst position and she will be sharing that roll, doing both of those functions so we are excited.

21:13 Chair McCrea Thank you Caroline and welcome Rachel.

21:15 R. Woods Thank you.

21:16 Chair McCrea We are glad to have you here permanently on board.

21:18 R. Woods Thank you, me too. I am happy to be here.

21:23 N. Cozine That concludes the OPDS update.

Agenda Item No. 3 Washington County Service Delivery Review

21:25 Chair McCrea Would you like to give the summary for Paul Levy on the Washington County Service Delivery Review, since he is still delayed.

21:36 N. Cozine At the last meeting there was a request for an update on what was happening around the concern in the report that perhaps there were, I think Paul's report said very specifically not a policy certainly by the elected district attorney but perhaps some of the deputies actually engaging in conversations with people in custody and then turning those people into witnesses

in existing cases thereby creating a conflict for MPD. The scenario was MPD represented someone who was charged with a crime; they also represented someone else who was in custody simultaneously. The DA's office would then contact the person who was simultaneously in custody and have a conversation with them, then they were a witness for the trial and Mr. Borg had described that as a significant problem because they would have to have these late substitutions of attorney and he didn't feel like those people would actually be called as witnesses. They have since had the opportunity to track it in three separate instances where in fact the state did not call that former client as a witness. So, they are communicating with the bench and communicating with the district attorney's office to try and resolve this issue and perhaps avoid it in the future. But, because the Commission had asked for an update on it, Paul did connect back with Mr. Borg and got the information. That is the status. We can continue to report on this if that is of interest to you.

23:36 Chair McCrea

Let's have more as it develops, that would be my suggestion. Anything else for the good of the order?

23:45 J. Potter

I have just one question for Amy. Also, at the last meeting we talked about shackling of juveniles and the contractors in Washington County were going to do some follow up with the judges. Have we heard anything more with that?

24:00 A. Miller

Vice Chair Potter thank you for raising this issue because I wanted to talk about it briefly with you. Just as a broader sphere, outside of Washington County for a moment, you know that we were working to put together a bill for this legislative session that really codified case law that has been around now for 15 years. However, we got some push back. Mark MeKechnie and I worked closely together on this and we got some push back and so we could not present to the legislature that this bill was free of detractors or free of controversy. As a result, the information that we have received is that legislators are open to having a hearing on this issues as kind of an educational way to hopefully begin to launch this for the next session. I wanted to provide a brief update on that. In doing so, we went back to the drawing board and tried to figure out what we should do now. We have this concept and we have this hearing to prepare for but what else could we do? The group of us, that includes OCDLA, Jeff Carter is in the group, what we decided to do was take a real thorough look at the practices around the state. I did a survey back in April during the OCDLA conference last spring, and what we decided to do was identify jurisdictions where through local practice changes there might be opportunity. Washington County is on that list as are a couple of others. We are actually going to be meeting February first to figure out a strategy to move forward on that. That is where that issue at the moment. I think that means either encouraging lawyers to raise this issue through motion when possible or to really push on a couple of jurisdictions to coalesce with the court and other stakeholders. I don't have any specific updates into Washington County, but that is our strategy. What Jeff had actually suggested was 'okay, let's take a look at the counties across the state, let's split them up and let's see if we can start working on this at a local level in interim before next session.' That is what we plan to do.

26:14 J. Potter

In (inaudible 26:15), where are they coming from?

26:21 A. Miller

It has become clear to us that every county is unique and every courthouse is unique and every county seems to handle security slightly differently. Some juvenile departments in some counties are very concerned about potential increase in security that they might need where others are thinking that this isn't much of an issues. Mark and I went to present at the juvenile department directors meeting and have a number of quite concerned juvenile department directors talking about it. On the other hand, that was the beginning of the meeting and after Mark and I spoke I think the mood had already started to change and folks realized that in most counties youths are being unshackled when they come into the courtroom. There is just more groundwork that needs to be done and I think that was maybe slightly unanticipated because the counties that I have been working with are also in some cases small and aren't blessed with court houses that make this really easy and have been able to figure out ways to

make it work. I think that is what I meant by going back to the drawing board to try and identify some of these counties specifically.

27:35 Chair McCrea

Any other business for the good of the order?

27:38 N. Cozine

Chair McCrea, members of the Commission, I think that concludes our agenda items. I don't know if anyone in the room has any questions or suggestions.

27:51 Chair McCrea

Hearing none, I would only note that our next meeting is March 17, it does say 2015 and I think that means to actually say 2016. So, I will expect you all to be wearing green and I would entertain a motion to adjourn. **MOTION:** John Potter moved to adjourn the meeting; Judge Welch seconded the motion; hearing no objection the motion carried: **VOTE:** 3-0

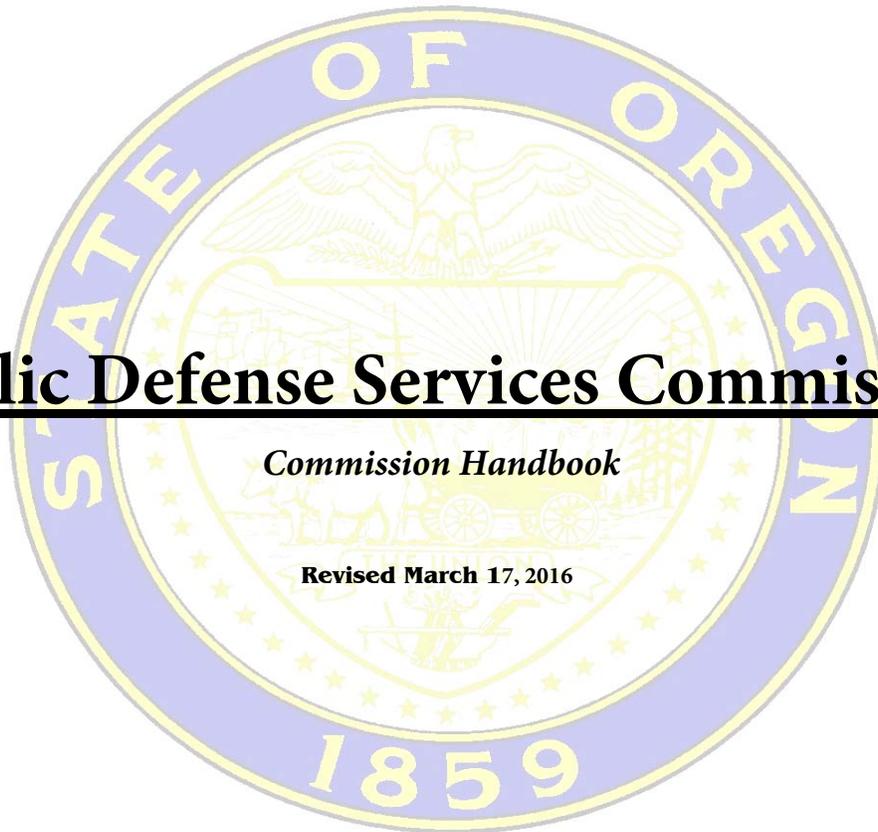
Meeting Adjourned

Attachment 2

Public Defense Services Commission

Commission Handbook

Revised March 17, 2016





Oregon

Office of Public Defense Services

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March 17, 2016

Dear PDSC Commissioners:

I want to thank you all again for your service on the Public Defense Services Commission. Your generous contribution of time and talent helps ensure that the Office of Public Defense Services meets its obligations to administer a statewide cost-efficient public defense system that fulfills the constitutional and statutory rights of all those eligible for appointed counsel and meets state and national standards of justice.

The purpose of this handbook is to help you fulfil your obligations to guide the provision of public defense services in Oregon. That obligation places a responsibility upon you to regularly attend PDSC meetings and actively participate in the Commission's work. I hope this handbook assists in those efforts by:

- Providing an overview of the history and structure of the PDSC.
- Outlining best practices for boards and commissions.
- Explaining the Oregon Government Ethics Law, the Oregon Public Meetings Law, and other state laws that govern the operations of all public bodies and officials in Oregon.
- Setting out the specific statutory obligations of the PDSC and OPDS.
- Explaining the state and national standards of justice that the PDSC is obligated to fulfill.
- Providing links to other online resources to better understand the Commission's work and the operation of OPDS.

Like public defense in Oregon, this handbook is a work-in-progress. We expect to periodically update and add to the material in the handbook. As always, your suggestions for how it can better assist you are welcome and appreciated.

Sincerely,

Nancy Cozine
Executive Director

Public Defense Services Commission **Commission Handbook**

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I. History and Structure of the Public Defense Services Commission

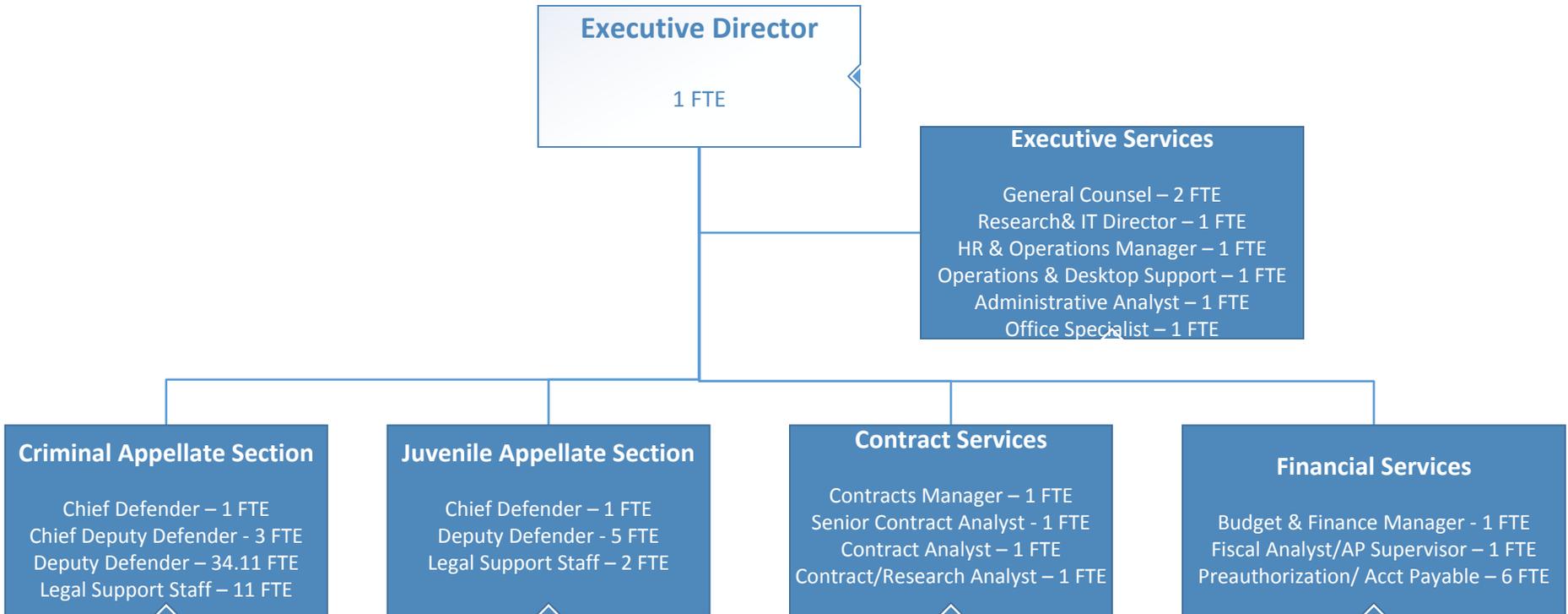
In 2001 Oregon Legislative Assembly passed Senate Bill 145 (Oregon Laws 2001, Chapter 962), establishing the Public Defense Services Commission (PDSC) and the Office of Public Defense Services (OPDS). The bill was the work of a study commission, established by the 1999 Legislative Assembly, which heard testimony from existing public defense providers, judges, prosecutors, and others about how to improve Oregon's public defense system. The study commission, chaired by Barnes Ellis, had the benefit of over ten prior evaluations of public defense services in Oregon.

Senate Bill 145 merged two separate entities, the State Public Defender (SPD) and the Indigent Defense Services Division (IDSD), into an Office of Public Defense Services that would be governed by the Public Defense Services Commission. Since 1965, the SPD had existed as an independent agency in the judicial branch under the administration of the State Public Defender Committee. The SPD was a state office that handled most of the appeals for financially eligible persons in criminal, probation, and parole appeals. Trial level public defense services had been the responsibility of a state Indigent Defense Program since 1983, when the state assumed responsibilities from the counties for funding public defense services. The IDSD, a division of the State Court Administrator's office, had managed trial level services since 1987.

The PDSC, through OPDS, assumed the responsibilities of the SPD on October 1, 2001. On October 1, 2003, the PDSC, again through OPDS, took over the operations of the IDSD.

The Organizational Chart that follows provides a snapshot of the current size and structure of OPDS.

The 2013-2015 PDSC Strategic Plan, which follows, provides an overview of the current mission, values, and goals of the PDSC. As of the writing of the first edition of this handbook, the PDSC and OPDS are in the process of a major update to its strategic plan.



Public Defense Services Commission

Strategic Plan 2013 – 2015

September 2014

Background

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

Vision

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

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

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

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

Mission

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

Values & Policies

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

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

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

Organization and Decision Making

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

OPDS is comprised of several work units:

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

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

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

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

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

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

ORS 151.216 directs PDSC **not** to:

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

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

Standards of Service

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

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

All of OPDS's employees will:

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

Accomplishments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2013-2015 Goals and Strategies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Best Practices for Boards and Commissions

As part of the PDSC's legislatively approved key performance measures (more on those in the next section of this handbook), the PDSC seeks to fulfill 15 "best practices" for Commissions. A 2015 report listing those practices and identifying how PDSC has fulfilled them follows this page.

For a more detailed discussion of the governance and operational challenges of state boards and commissions, see the 2012 Oregon Secretary of State Audit Report, entitled *Boards and Commissions: Common Risks, Needed Oversight, and Steps to Manage Them*, available at <http://sos.oregon.gov/Documents/audits/full/2012/2012-20.pdf>. A review of the report is instructive since it highlights how PDSC has managed to avoid many of the pitfalls common to other boards and commissions.

This report identified many concerns about the governance and operations of the approximately 250 state boards and commissions it was able to locate (the audit was not certain it had found them all). Among the concerns were the following:

- *Inadequate staff.* Many boards and commissions lacked sufficient staff to segregate critical financial functions, and staff often lacked necessary administrative and technical skills in personnel management, fiscal management, contracting, and procurement. As a result, there was a concern about a high risk for theft and misappropriation of funds.
- *Lack of separately approved biennial budgets.* The audit identified only 36 boards that operated on their own legislatively approved budgets, meaning that most boards and commissions received very little scrutiny by the legislature during its biennial budgeting process.
- *Absence of training.* The audit found that board and commission members often lacked familiarity with governing statutes, and with state and federal laws applicable to their operations. They also lacked sufficient knowledge to responsibly ensure that staff complied with established policies and procedures.
- *Inadequate oversight of agency director and other staff.* This was a common theme.
- *No website or readily available public information.*
- *Boards rarely met.*
- *No strategic plan.* Or no plan that was easily accessed by the public.

The audit recommended the elimination of unnecessary or underutilized boards, and better deliberations about the costs and other consequences of creating new boards and commissions. It also recommended training for board members, and better fiscal and operation reviews.

September 2015: PDSC Compliance with Commission Best Practices

1. Executive Director's performance expectations are current. **ED Position Description last updated April 2011; still current.**
2. Executive Director receives annual performance feedback. **Nancy Cozine evaluation began December 2014; completed January 2015.**
3. The agency's mission and high-level goals are current and applicable. **The mission and high-level goals are reviewed annually for the Annual Performance Progress Report; agency has been examining KPMs; Legislature approved new KPMs in July 2015 (these were included as part of the 2015-17 agency request budget). Commission members also received the Executive Director's Annual Report which addresses the current goals of the agency and includes a progress report on efforts to achieve those goals.**
4. The board reviews the *Annual Performance Progress Report*. **The Annual Performance Progress Report is due in September each year. The Commission reviewed the 2014 report in September 2014, and is reviewing the 2015 at the September 2015 PDSC meeting.**
5. The board is appropriately involved in review of agency's key communications. **The Commission is asked to review and approve key agency documents - the agency's biennial budget proposal, Emergency Board submissions, requests for proposals, proposed contracts, rule and policy changes.**
6. The board is appropriately involved in policy-making activities. **The Commission is the policy making body for the agency. Its policy making responsibilities are set forth in statute. Its strategic plan establishes the goals and strategies the agency follows in pursuing its mission; the Commission is actively pursuing an updated strategic plan that should be complete in the spring of 2016.**
7. The agency's policy option packages are aligned with their mission and goals. **PDSC's mission is to establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice. All of the agency's policy option packages have been directed at achieving that mission.**
8. The board reviews all proposed budgets (likely occurs every other year). **The Commission reviewed the agency's proposed 2015-17 policy option packages at its June 19, 2014, meeting, and approved the 2015-17 agency request budget at its September 2014 meeting.**
9. The board periodically reviews key financial information and audit findings. **Throughout the course of the year the Commission receives periodic updates on budget developments and the agency's expenditure of funds. The results of all reviews are presented to the Commission when they occur.**
10. The board is appropriately accounting for resources. **The Commission approves a budget proposal for the agency that is then presented to the Legislative Assembly. The Legislative Assembly ultimately passes budgets for CBS, AD and the Public Defense Services Account. Funds are expended in accordance with budget requirements and in some biennia, interim reports are prepared for the Emergency Board and the Interim Ways and Means Committee. Copies of**

these documents are provided to the Commission. During the course of the biennium, OPDS management reports to the Commission regarding use of budgeted funds.

11. The agency adheres to accounting rules and other relevant financial controls. **The agency has been awarded the State Controller's Gold Star Certificate for achieving statewide accounting goals and excellence in financial reporting for each fiscal year since the agency was created.**
12. Board members act in accordance with their roles as public representatives. **The Commission meets 8-10 times a year. The attendance and involvement in Commission business demonstrated by the Commissioners shows their strong commitment to public service. Meetings held around the state in conjunction with service delivery reviews often provide stakeholders their first contact with the agency. Commission members are careful to make a distinction between their role as Commissioners and their other roles.**
13. The board coordinates with others where responsibilities and interests overlap. **The Chief Justice's role on the commission and in selecting other members of the commission permits coordination with the Oregon Judicial Department. Public defense providers are consulted on a regular basis through PDAG. The Commission has made them welcome at all of its meetings, has invited them to participate actively in those meetings and to provide input on a regular basis to the decisions made by PDSC. The Commission coordinates with OCDLA to provide training, to receive feedback, and to research insurance and health care coverage for providers.**
14. The board members identify and attend appropriate training sessions. **The agency's General Counsel provides periodic training sessions for Commission members, related to changes in criminal or juvenile law, public meetings laws, and public records laws.**
15. The board reviews its management practices to ensure best practices are utilized. **This self-assessment is the Commission's review of its practices.**
16. Others. **The Commission may wish to define additional best practices for itself but to date has not added any additional standards.**

III. PDSC Key Performance Measures

In 1993, the Oregon Legislative Assembly first required state agencies to include performance measures in its budget development process. In 2001, the legislature added specific requirements for how performance measures should be developed and reported. ORS 291.110 sets out the requirements for all state agencies to develop measureable performance benchmarks, and requires the Oregon Department of Administrative Services to develop performance measure guidelines for state agencies, and a uniform format for reporting and monitoring progress on performance measures.

The pages that follow are from the most recent PDSC Annual Performance Progress Report. Although it follows a mandated format that is not the most conducive to easy comprehension, it is useful to understand the current agency approved key performance measures and our progress on them.

2014-15 KPM #	2014-2015 Approved Key Performance Measures (KPMs)
1	APPELLATE CASE PROCESSING – Median number of days to filing opening brief.
2	CUSTOMER SERVICE – Percent of customers rating their satisfaction with the agency’s customer service as “good” or “excellent”: overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information
3	BEST PRACTICES FOR BOARDS AND COMMISSIONS – Percentage of total best practices met by Commission
4	NEW - TRIAL LEVEL REPRESENTATION – Percentage of attorneys who obtain at least 12 CLE credits annually
5	NEW - PARENT CHILD REPRESENTATION PROGRAM (PCRP) – Percent of PCRP attorneys spending 1/3 of their time meeting with clients.

PUBLIC DEFENSE SERVICES COMMISSION

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

Contact: Nancy Cozine

Alternate: Angelique Bowers

1. SCOPE OF REPORT

Key performance measures address all agency programs.

2. THE OREGON CONTEXT

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

3. PERFORMANCE SUMMARY

The agency was not able to show improvement in all three Key Performance Measures in 2015. We have described in greater detail below measures that will be taken to improve payment processing and the availability of information, as well as reducing the median filing date of appellate briefs. With these improvements, we would expect to see progress in all three measures in 2016.

4. CHALLENGES

The primary challenge for the agency is that public defense in Oregon has been chronically underfunded. Prior to fiscal year 2008, the hourly rate for an attorney appointed on a non-Aggravated Murder case was \$40 per hour (the rate established in 1991). Over time, the skills, abilities, and experience-level of the attorneys willing and able to work at that rate has steadily declined. Although the 2007 Legislature provided funding to increase that rate to \$45 per hour, and the 2013 Legislature provided a one dollar increase to \$46, this still represents a decline in real dollars based on the Consumer Price Index increases over this 24-year period. Contractors who are paid a flat rate under a contract are assigning excessively high caseloads to their attorneys in order to cover operating expenses. Contract rates were improved for non-profit public defender offices in the 2014 contracting process, and will be improved for consortium and law firm providers during the 2016 contract cycle, but the rates remain well below what is available to privately funded lawyers. This combination of being either over-worked or under-paid, and in most cases both, prevents attorneys from being able to provide an acceptable level of representation.

Another challenge for the agency is that workload is driven by a variety of factors outside the agency's control. The enactment of laws that create new crimes or increase penalties for existing crimes impact the agency's expenditures and workload. Federal requirements have shortened the timelines and increased the complexity of cases involving abuse and neglect of children. **Additional funding is needed to allow the agency to execute contracts that provide lawyers with the resources necessary to reduce caseloads and retain talented lawyers.**

5. RESOURCES AND EFFICIENCY

The agency's 2013-15 Legislatively Adopted Budget was \$248,747,113. Within existing resources, the agency continues to convert to electronic storage and retrieval of documents; has further automated document production with improvements to the case management database. With the implementation of e-filing, the agency continues to move toward a largely paperless office. In addition to saving paper and file storage costs, it saves attorney and staff time by having files instantly available at the click of a button.

KPM #1 APPELLATE CASE PROCESSING – Median number of days to file opening brief.

Goal: Goal 1: Reduce delay in processing appeals. Goal 2: Ensure cost-efficient service delivery.

Oregon Context: Mission Statement

Data Source: Case Management Database Reports

Owner: Appellate Division, Ernest G. Lannet, (503) 378-3479

1. OUR STRATEGY

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

2. ABOUT THE TARGET

In 2004 the Criminal Section of the Appellate Division first identified a target date for filing the opening brief, that being 210 days following record settlement. The Oregon Court of Appeals, the Oregon Department of Justice, and the Appellate Division entered into an agreement that set the first due date for the opening and answering briefs 210 days after record settlement (or, for answering briefs, 210 days after the opening brief is filed). In 2009 the Appellate Division ceased measuring its progress by reporting the number of appeals pending (unbriefed) more than 210 days past record settlement (“Appellate Case Backlog”) and began measuring its progress by reporting the median filing date of briefs for each fiscal year (“Appellate Case Processing”). In February 2014, the Legislature approved the Appellate Division’s request to set a new goal of filing the opening brief within 180 days of record settlement. The 180-day target addresses several considerations. First, the agency considers it intolerable that an individual would have to wait more than six months before an appellate attorney was in a position to review a transcript and competently advise the client of the viability of his appellate challenge to his conviction and/or sentence. Second, the Attorney General’s Office consistently files its answering briefs at or near the 210-day brief due date, which means that, until the court and state agree to a more expedited briefing schedule, any reduction in delay must come from the Appellate Division. Third, federal courts have intervened when a state appellate system routinely takes two years to resolve criminal appeals. The 180-day target represents a reasonable attempt to meet various systemic considerations in a criminal justice system that is fair, responsible, and well administered.

3. HOW WE ARE DOING

The agency has made significant progress over the past ten years and appears back on track for further improvements. In 2006, the median number of days to file the opening brief was 328; in 2009 that number was reduced to 230 days. During the next four years, the number fluctuated between a low of 221 (2013) and a high of 231 (2012). In 2014, the number rose to 227 days. In 2015, the number was back down to 223. The fluctuations and latest progress is primarily attributable to two causes. First, appellate practice is a specialty area. It generally takes about three to five years to develop a sound, reliable attorney who can confidently and efficiently manage an appellate caseload. Since 2009, the Criminal Section has hired and trained eighteen (18) new attorneys, while losing ten (10) attorneys who had, on average, more than 12 years of experience (from more than 25 years to 3 years). Currently, fourteen of the thirty-three non-managing attorneys in the Criminal Section (over 40%) have less than 5 years of appellate experience. Second, in 2012 the Criminal Section stopped assigning overflow cases, up to 289 cases per year, to attorneys outside the office and absorbed all work internally, other than conflict cases. Assuming adequate resources, the continued development of attorneys with less than 5 years of appellate experience, and the retention of attorneys with five or more years of experience, the agency anticipates making significant strides toward its 180-day goal by the end of fiscal year 2016.

4. HOW WE COMPARE

Appellate Division attorneys have significant workloads. Nationally, an appellate public defender's workload ranges from 25 to 50 cases annually. For example, Florida and Louisiana set the maximum annual appellate caseload at 50 cases per attorney; Nebraska sets the maximum appellate caseload at 40 cases; and Georgia, Indiana, and Washington set the maximum annual appellate caseload at 25 cases per attorney. US Department of Justice, Compendium of Standards for Indigent Defense Systems, vol. IV, C 1-5 (2000). On average, an Appellate Division attorney in the Criminal Section was assigned 46 cases in the fiscal year ending in 2015, which exceeds most practices.

5. FACTORS AFFECTING RESULTS

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

6. WHAT NEEDS TO BE DONE

Approximately forty percent (40%) of the attorney group has less than five years of appellate experience. As the attorneys mature, the office efficiency will improve. Systemically, the agency continues to meet regularly and work cooperatively with the appellate courts and the Attorney General's Office to promote system efficiencies. The agency has made significant progress over the past several years to reduce the median brief filing date for its criminal cases (from 328 days in 2006 to 223 days in 2015), but the agency aspires to reduce that number over the coming fiscal year. Barring significant and unforeseen events, such as a significant increase in caseload, the issuance of milestone Supreme Court decisions that affect hundreds of open cases, or an excessive loss of talented and experienced attorneys, the agency expects to make significant progress in fiscal year 2016 toward its target of filing briefs in criminal cases within 180 days of record settlement.

7. ABOUT THE DATA

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

KPM #2 CUSTOMER SERVICE – Percent of customers rating their satisfaction with the agency’s customer service as “good” or “excellent”: overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.

Goal – To provide greater accountability and results from government by delivering services that satisfy customers

Oregon Context: To maintain and improve the following category ratings of agency service: overall quality of services, timeliness, accuracy, helpfulness, expertise and availability of information.

Data Source: Customer Service Surveys (survey and results stored on SurveyMonkey).

Owner: Contract Services, Caroline Meyer, (503) 378-2508

1. OUR STRATEGY

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

2. ABOUT THE TARGETS

Targets for 2014-15 have been set at 95% of respondents rating the agency as good or excellent.

3. HOW WE ARE DOING

The most recent survey was conducted in June 2014. The survey results indicated a high level of customer satisfaction with the agency. The overall service provided by OPDS was rated as good or excellent by more than 90% of the respondents. The standard reporting measure for state agencies groups both “good” and “excellent” into one category. In the categories of helpfulness of OPDS employees, over 95% of respondents rated the agency’s service as “good” or “excellent”. Our lowest rating was in the category of availability of information, where 85% of the respondents rated the agency’s service as “good” or “excellent”.

4. HOW WE COMPARE

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

5. FACTORS AFFECTING RESULTS

Despite the overwhelmingly positive responses, the ratings in all but one category were somewhat lower in 2014 than in prior surveys. The agency believes the lower ratings are a reflection of some dramatic changes in the office structure that took effect in the spring of 2013. As a result of the retirements of two tenured management level employees, there was a complete reassignment of particular tasks associated with the processing of non-routine expense requests and billings. This change naturally required additional time for training and oversight which translated to slightly increased processing delays. This change also meant that phone calls and other requests for information that had been routed through the same management level employees with years of experience, were now being assigned to other individuals in the office with less experience and authority to respond. The agency believes this resulted in providers feeling that their questions were not always being fully answered and information being less available to them.

6. WHAT NEEDS TO BE DONE

The agency's rating declined most significantly in the area of availability of information, and timely payment processing. Providers commented that although the agency still processes payments much more quickly and efficiently than other agencies, they saw a noticeable decrease in processing time as a result of the office changes mentioned above. Agency management and staff have met and discussed specific steps that can be taken to ensure information continues to be readily accessible to providers, and payments get processed more timely. We continue to refine these improvements.

7. ABOUT THE DATA

A total of 1,348 contract attorneys, private bar attorneys, and service providers were invited to complete the agency's Customer Service Survey. The survey was administered in June 2014. There was a 25% response rate (342 responses) to the survey. The agency administers the customer service survey every two years to coincide with its two-year contract cycle. The next survey will be conducted in June 2016.

KPM #3 – BEST PRACTICES FOR BOARDS AND COMMISSIONS – Percentage of total best practices met by Commission

Goal: For the PDSC to meet all best practices for Oregon boards and commissions.

Oregon Context: Requires KPM for all Oregon boards and commissions.

Data Source: Commission agendas and minutes.

Owner: Office of Public Defense Services, Nancy Cozine, (503) 378-2515.

1. OUR STRATEGY

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

2. ABOUT THE TARGETS

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

3. HOW WE ARE DOING

The Commission's minutes provided in the materials for its September 18, 2014, meeting included the discussion of the self-assessment confirming that the agency met all of the best practices for boards and commissions. Another self-assessment is on the agenda for the September 17, 2015, meeting.

4. HOW WE COMPARE

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

5. FACTORS AFFECTING RESULTS

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

6. WHAT NEEDS TO BE DONE

No change is needed.

7. ABOUT THE DATA

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

KPM #4 – TRIAL LEVEL REPRESENTATION – Percentage of attorneys who obtain at least 12 CLE credits annually.

Goal: For all attorneys providing public defense representation to be sufficiently trained in their areas of legal practice.

Oregon Context: To ensure public defense attorneys under contract with the PDSC receive sufficient training in their areas of public defense practice.

Data Source: Contract compliance documentation.

Owner: Contract Services, Caroline Meyer, (503) 378-2508

1. OUR STRATEGY
2. ABOUT THE TARGETS
3. HOW WE ARE DOING
4. HOW WE COMPARE
5. FACTORS AFFECTING RESULTS
6. WHAT NEEDS TO BE DONE
7. ABOUT THE DATA

This is a new KPM for which we will report detail in 2016.

KPM #5 – PARENT CHILD REPRESENTATION PROGRAM (PCRP) – Percent of PCRP attorneys spending 1/3 of their time meeting with clients.

Goal: To improve the quality of representation of parents, children and youth in juvenile dependency and delinquency cases in the PCRP counties by ensuring attorneys spend sufficient time meeting with their parent clients or child clients with decision-making capacity.

Oregon Context: The Oregon State Bar standards of representation in both dependency and delinquency cases emphasize the importance of consistent client communication.

Data Source: Contract compliance documentation.

Owner: Office of Public Defense Services, Nancy Cozine, (503) 378-2515.

1. OUR STRATEGY
2. ABOUT THE TARGETS
3. HOW WE ARE DOING
4. HOW WE COMPARE
5. FACTORS AFFECTING RESULTS
6. WHAT NEEDS TO BE DONE
7. ABOUT THE DATA

This is a new KPM for which we will report detail in 2016.

1. INCLUSIVITY

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

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

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

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

2. MANAGING FOR RESULTS

The agency's lowest customer service rating in 2014 (85% good or excellent) regarding availability of information has caused us to explore ways to improve our website and other improvements in our communication with providers. We are in the process of implementing these improvements and would expect to see a corresponding increase in this rating in the next survey.

3. STAFF TRAINING

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

4. COMMUNICATING RESULTS

***Staff:** The Annual Performance Progress Reports are available to staff online. The results and future plans are discussed at staff meetings.

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

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

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

IV. Oregon Government Ethics Law

As persons who “serve the State of Oregon,” PDSC Commissioners are “public officials” under the Oregon Government Ethics Law. The law is aimed at preventing public officials from using their position to benefit financially from government services (other than from regular compensation or reimbursements). There are lots of exceptions and qualifications, however. The PDSC has received training on the law a number of times, and it’s expected that such trainings will continue. The outline that follows was first presented to the Commission in 2008, then again in 2010 after some major revisions to the law, which are reflected in the outline. The changes enacted in the 2015 Regular Session of the Oregon Legislative Assembly are listed in the document that follows the outline, and are as follows:

- The “First Partner” of the Governor, who may also be known publicly as “First Lady,” “First Husband,” or “First Spouse,” is a public official. The addition of this provision also required the renumbering of many other provisions of the law.
- The spouse of siblings of a public official or candidate, and the spouse of siblings of the spouse of a public official or candidate are removed from the definition of “relative.”
- The Governor, First Partner, Secretary of State, Attorney General, and Commissioner of the Bureau of Labor and Industries are prohibited from soliciting or receiving an honorarium, money or any other consideration for a speaking engagement or presentation.
- “Relative” is added to the list of persons permitted to accompany a public official at a reception, meal or meeting excluded from the definition of “gift.”
- The composition of the Oregon Government Ethics Commission is increased from seven to nine, and the manner of appointing members has changed to reduce the number appointed by the Governor (from three to one) and increased the number appointed by a combination of Democratic and Republican leadership in the House and Senate.
- The timeline and manner in which investigations are conducted has changed:
 - Preliminary Review Phase has shortened from 135 days to 30.
 - Suspension of investigations are no longer required if a related criminal matter is also pending.
 - Other technical changes.
 - An increase in certain fines.



Oregon Government Ethics Law: Overview and Developments

Presented to the Public Defense Services Commission

By Paul Levy, General Counsel

December 9, 2010

I. Introduction. The Oregon Government Ethics Law, which applies to all public officials in Oregon, including members of the Public Defense Services Commission (PDSC) and the staff of the Office of Public Defense Services (OPDS), has undergone several significant changes since it was first enacted by initiative in 1974. A major legislative overhaul of the law in 2007 included new definitions and limitations on gifts to public officials and enhanced reporting requirements for many public officials. The PDSC received training on these changes at a retreat on March 21, 2008. In 2009 the Legislative Assembly, responding to widespread dissatisfaction with some provisions of its 2007 enactment, made further changes to the law's gift and reporting requirements, among other changes.

II. Scope of the Law. The Oregon Government Ethics Law is codified in Chapter 244 of the Oregon Revised Statutes.¹ It applies to any Oregon "public official," defined as any person serving the State of Oregon or any of its political subdivisions or any other public body as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services. ORS 244.020(14).

A defining feature of the law is the imposition of personal responsibility for complying with its provisions and personal liability for any sanction imposed for violations of the law. ORS 244.260; 244.350

III. Operation of the Law. The Oregon Government Ethics Commission (OGEC) and its staff are responsible for enforcement of the law. The OGEC has issued administrative rules in Chapter 199 of the Oregon Administrative Rules.² In addition to investigating complaints concerning violation of the law, the OGEC staff will provide prompt informal and written advisory opinions to public officials. Reliance on those opinions may mitigate a sanction for violation of the law. ORS 244.282-244.284. The OGEC will also issue formal advisory opinions. The OGEC cannot impose a penalty on a public official who relies upon one of its formal opinions, although a person who does so may still be found in violation of the law. ORS 244.280. In other words, as the OGEC explains in

¹ <http://www.leg.state.or.us/ors/244.html>.

² http://arcweb.sos.state.or.us/rules/OARS_100/OAR_199/199_tofc.html.

their newly updated *Guide for Public Officials*³, there is no “safe harbor” for violations of the law.

The OGEC maintains a website with a variety of resources for understanding the law, including the *Guide for Public Officials*.

IV. Major Provisions of the Law. The following are provisions that members of the PDSC and its staff will encounter most frequently. This outline does not discuss other significant provisions, such as those addressing nepotism and restrictions upon former public officials. The *Guide for Public Officials*, referenced above, is an excellent overview of the entire law.

1. Use of position or office for financial gain. A cornerstone of the Government Ethics law prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the benefit would not otherwise be available but for the position held by the public official. ORS 244.040(1). A “financial benefit” can be either an opportunity for gain or avoidance of an expense. Government employees violate this provision if they conduct personal business on an agency’s time or with government equipment. Similarly, a public official could not make personal purchases from a vendor offering discounted prices for services or supplies to a government agency unless those discounted prices were also available to a significant portion of the general public.

A corollary of this rule is the prohibition on the use or attempted use of confidential information gained because of the public position to further the public official’s personal gain. ORS 244.040(4).

Public officials are permitted to accept certain statutorily identified financial benefits that would not otherwise be available but for holding a public position. ORS 244.040(2). These include official compensation, publicly paid reimbursement of expenses, certain honoraria and awards for professional achievement, and gifts that do not exceed the limitations set forth elsewhere in the Government Ethics Law.

2. Conflicts of Interest. Public officials must respond as directed by the Government Ethics Law to conflicts of interest when participating in official action that “would or could” result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either the public official or a relative is associated. ORS 244.120. Different responses are required depending upon the position held by the public official and whether the conflict of interest is “potential” (“could” result in a personal benefit) or “actual” (“would” result in a personal benefit). Public employees must provide written notice of actual or potential conflicts of interest to the person who appointed or employed them, and request that the appointing or employing authority dispose of the matter giving rise to the conflict. Members of commissions must publicly announce the nature of the conflict before participating in any official action on the issue giving rise to the conflict, and then:

³ <http://www.oregon.gov/OGEC/index.shtml>.

- For potential conflicts of interest, following the public announcement, the commissioner may participate in official action on the issue that gave rise to the conflict.
- For actual conflicts of interest, following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict, unless the official's vote is necessary to meet a number of votes required for the official action, in which case the public official may vote but must otherwise refrain from any discussion of the matter. This exception does not apply when there are insufficient votes because of a member's absence when the governing body is convened.

There are a number of important exemptions from the law's conflict of interest provisions, including when a conflict arises from a membership or interest held in a business, occupation, industry or other class that is a prerequisite for holding the public office or position; when the financial impact would affect a public official to the same degree as all other inhabitants of the state or a smaller class or identifiable group; and when the conflict arises from an unpaid position as officer or member in a nonprofit corporation that is tax-exempt under Sec. 501(c) of the Internal Revenue Code. ORS 244.020(12).

3. **Gifts.** The gift sections of the Government Ethics Law are among its most vexing provisions, and also among those provisions that were significantly modified by the 2009 legislation. Generally, public officials may receive gifts. Indeed, the acceptance of lawful gifts is an exception to the general prohibition, discussed above, on the use of an official position to gain personal financial benefits. In most instances, the questions for public officials concern whether a gift may be accepted with or without limitations and the nature of any applicable limitations.

Generally, the law prohibits a public official from receiving gifts that exceed \$50 in a calendar year from a source that has a "legislative or administrative interest" in the decisions or votes of the public official. ORS 244.025. If the source does not have such an interest, the public official can receive unlimited gifts from that source. ORS 244.040(2)(f). Thus, the analytical framework for the law's gift provisions require an understanding of what it means to have a "legislative or administrative" interest, and how the law defines "gifts."

- A. **Definition of "legislative or administrative interest."** **CHANGED!** This concept was significantly modified by the 2009 legislation in a way that narrows the application of the gifts provisions. Prior to the 2009 amendments, the focus was on whether the source of a gift had an economic interest, distinct from that of the general public, in any official action of the public official's governmental agency. Now the focus is on an interest in the decisions or votes of the particular public official to whom a gift is offered. ORS 244.020(9); ORS 244.040(2)(f). Thus, now it's possible that one public official may be able to accept a gift without limitations while another, working in the same setting, may not because the authority of the public officials may differ. For instance, the OGEC, by administrative rule, has said that making a recommendation or giving advice in an advisory capacity does not constitute a "decision." OAR 199-005-0003. If a

person does not have authority to make a decision or to vote on a matter of interest from a source, or the particular interest is not subject to a vote or decision by a person, that person may be permitted to accept a gift from the source without limitation.

B. **Definition of “gifts.”** A “gift” means something of economic value that is offered to a public official, or to relatives or members of the household of the public official, without cost or at a discount or as forgiven debt, and the same offer is not made or available to the general public. ORS 244.020(6)(a). This is a fairly unremarkable meaning. The crux of the “gift” definition, however, is the many things of economic value that are statutorily exempted from the definition. Some of these include:

- a. “An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.” ORS 244.020(6)(b)(C).
- b. **CHANGED!** The cost of admission to or the cost of food or beverage consumed by a public official at a reception, meal or meeting held by an organization when the public official appears as a representative of a public body. ORS 244.020(6)(b)(E). Prior to the 2009 legislation, this provision only applied if the public official was a scheduled speaker at the event.
- c. **CHANGED!** The reasonable expenses for attendance by a public official at a convention or other meeting at which the person is scheduled to deliver a speech or make a presentation or appeal on a panel if the expenses are paid by any unit of federal, state or local government, a recognized Native American tribe, a membership organization to which the public body pays membership dues or a not-for-profit corporation that is tax exempt under Sec. 501(c)(3) of the Internal Revenue Code.
 - i. Prior to the 2009 legislation, the “not-for-profit” corporation, in order to qualify, had to receive “less than five percent of its funding from for-profit organizations or entities. This language, which effectively excluded the Oregon Criminal Defense Lawyers Association (OCDLA), was deleted from the law. Thus, for instance, with the change, assuming that OCDLA had a legislative interest in a public official’s vote or decision, that public official may receive travel expenses in excess of \$50 from OCDLA in connection with the appearance of that official as a presenter at an OCDLA program.
 - ii. However, even before this amendment, the OPDS had received a staff advisory opinion from the OGEC that *any* public official could receive such payment from OCDLA because OPDS paid for staff membership in the organization, making it a “membership organization to which a public body pays membership dues.”

- d. Contributions to a legal expense trust fund established for the benefit of the public official for purposes of defending against actions brought in connection with performance of the person's public duties. ORS 244.020(6)(b)(G).
- e. Waiver or discount of registration expenses or material at a continuing education event that bears a relationship to the public official's office and at which the person participates in an official capacity. 244.020(6)(b)(J).
- f. Food or beverage consumed by the public official where no cost is placed on it, and entertainment that is incidental to the main purpose of an event attended by the public official. ORS 244.020(6)(b)(L)&(K).
- g. **NEW!** Anything of economic value that is received as "part of the usual and customary practice" of the person's private business or employment or volunteer activities, and the thing bears no relationship to the person's public office or position. 244.020(6)(b)(O).

C. **Entertainment expenses. *REPEALED!*** Prior to the 2009 legislation, public officials were prohibited from soliciting or accepting any gifts of entertainment by ORS 244.025(4). This provision was repealed. Now such "gifts" cannot exceed \$50 in a calendar year from a single source with a legislative or administrative interest.

4. **Statements of Economic Interest. *CHANGED!*** The 2007 legislation required quarterly and annual "verified statements" from many public officials that were widely condemned as overly intrusive and unnecessarily burdensome. In response to these concerns, the 2009 legislation eliminated entirely the requirement of quarterly filings and narrowed and simplified the matters to be reported on the annual filing. The 2009 legislation did add the Executive Director of OPDS to the list of public officials required to file annual statements. ORS 244.050(1)(g)(MM). Members of the PDSC are not among those required to file reports.



2011 – 2015 LEGISLATIVE UPDATES

DISCLAIMER

This supplement is intended only for use as a tool in identifying recent legislative changes affecting text of the 2010 publication of the Oregon Government Ethics Commission’s Guide for Public Officials. **This document is not intended to replace the 2010 Guide for Public Officials, and may not reflect all legislative changes to Oregon Government Ethics Law (ORS Chapter 244) to date.**

A PUBLIC OFFICIAL

Are you a public official?..... p. 5

- “First partner” added to definition of “public official” (“First partner” is also newly defined at ORS 244.020(6), resulting in extensive renumbering of the definitions that follow it at ORS 244.020, (7) – (17)). *[HB 2020 (2015)]*
- Definition of “public official” renumbered ORS 244.020(15). *[HB 2020 (2015)]*

Who is a relative?..... p. 7

- “Spouse of siblings of a public official or candidate” and “ spouse of siblings of the spouse of a public official or candidate” removed from definition of “relative”. *[HB 2079 (2013)]*
- Definition of “relative” renumbered ORS 244.020(16). *[HB 2020 (2015)]*

USE OF POSITION OR OFFICE

What are the provisions of law that prohibit a public official from using the position or office held for financial gain?..... p. 10

- “Conflict of interest” definition referenced at ORS 244.020(12) renumbered ORS 244.020(13). *[HB 2020 (2015)]*

Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available but for holding the position as a public official?..... p. 12 - 13

Honorarium

- Definition of “honorarium” renumbered ORS 244.020(8). *[HB 2020 (2015)]*
- Newly added ORS 244.042(4) prohibits the Governor, First Partner, Secretary of State, State Treasurer, Attorney General and Commissioner of the Bureau of Labor and Industries from soliciting or receiving an honorarium, money or any other consideration, as defined in ORS 171.725, for any speaking engagement or presentation. *[HB 2020 (2015)]*

Awards for Professional Achievement

- “Awards of appreciation” referenced at ORS 244.020(6)(b)(C) renumbered ORS 244.020(7)(b)(C). *[HB 2020 (2015)]*

NEPOTISM

Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?..... p. 14

- “Relative” and “member of household” definitions at ORS 244.175 removed (apply “relative” and “member of household” definitions at ORS 244.020(16) & (11)). *[HB 2079 (2013)]*

EMPLOYMENT OF FORMER PUBLIC OFFICIALS

What are the restrictions on employment after I resign, retire or leave my public official position?..... p. 18

ORS 244.045(3)

- “Chief” removed from title of “Chief Deputy State Treasurer” (now “Deputy State Treasurer”). *[SB 11 (2011)]*

CONFLICTS OF INTEREST

..... p. 21 - 24

- “Conflict of interest” definition referenced at ORS 244.020(12) (“potential conflict of interest”) renumbered ORS 244.020(13). *[HB 2020 (2015)]*

GIFTS

..... p. 26 - 32

- “Gift” definition referenced at ORS 244.020(6) (including the exceptions discussed with reference to ORS 244.020(6)(b)(A)-(P)) renumbered ORS 244.020(7). *[HB 2020 (2015)]*
- “Legislative or administrative interest” definition referenced at ORS 244.020(9) renumbered ORS 244.020(10). *[HB 2020 (2015)]*

What does a public official need to know about a “Legislative or Administrative Interest”?..... p. 31

- “Relative” added to listed persons permitted to accompany a public official at a reception, meal or meeting excluded from the definition of “gift” under ORS 244.020(6)(b)(E) (renumbered ORS 244.020(7)(b)(E)). *[SB 293 (2015)]*

GIFTS AS AN EXCEPTION TO THE USE OF OFFICE PROHIBITION IN ORS 244.040

..... p. 33 - 37

- “Gift” definition referenced at ORS 244.020(6) (including the exceptions discussed with reference to ORS 244.020(6)(b)(A)-(P)) renumbered ORS 244.020(7). *[HB 2020 (2015)]*

ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST

..... p. 38 - 39

- NOTE: Annual Verified Statements of Economic Interest (SEI) will be filed online beginning April 2016. As a result of the Commission’s new electronic filing system, paper copies of the form will no longer be mailed directly to each public official required to file. Rather, notifications and instructions for e-filing will primarily be sent to SEI filers electronically via email. The Commission will now require the contact person for each jurisdiction to maintain and provide email addresses for each SEI filer in addition to the other relevant contact information.

SEI Form..... p. 40

- Reportable expenses paid for attending event specified in ORS 244.020(6)(b)(F) & (H) renumbered ORS 244.020(7)(b)(F) & (H). *[HB 2020 (2015)]*

OREGON GOVERNMENT ETHICS COMMISSION

..... p. 41

- Voting members of the Commission is increased to 9 (was 7). *[HB 2019 (2015)]*
- 2 recommended by Senate Democratic leadership (was 1). *[HB 2019 (2015)]*
- 2 recommended by Senate Republican leadership (was 1). *[HB 2019 (2015)]*
- 2 recommended by House Democratic leadership (was 1). *[HB 2019 (2015)]*
- 2 recommended by House Republican leadership (was 1). *[HB 2019 (2015)]*
- 1 recommended by the Governor (was 3). *[HB 2019 (2015)]*
- No more than 3 commissioners in the same political party may be appointed to the Commission to serve at the same time (was 4). *[HB 2019 (2015)]*

If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as “safe harbor” protection from becoming a respondent to a complaint filed with or initiated by the Commission?..... p. 44 - 46

Complaint Review Procedures

- Preliminary Review Phase shortened from 135 days to 30. *[HB 2019 (2015)]*
- If a pending criminal matter is related to the same circumstances or actions to be addressed in Preliminary Review, suspension is no longer required unless a court has enjoined the Commission from continuing its inquiry. *[HB 2019 (2015)]*
- Commission may no longer consent to respondents’ requests for waiver of the Preliminary Review Phase time limit (except for complaints against candidates within 61 days of an election). *[HB 2019 (2015)]*
- Preliminary Review now technically ends when Executive Director completes the statement of facts determined; the Commission meets in executive session to conduct deliberations and vote on complaints following the close of Preliminary Review. *[HB 2019 (2015)]*
- The Investigatory Phase “may” be suspended during pending criminal investigation if the Commission determines that its own investigation cannot be adequately completed until criminal investigation is complete, or if a court enjoins the Commission from investigation. *[HB 2019 (2015)]*
- The maximum civil penalty that can be imposed for any Government Ethics violation is \$5,000, except for “willful” violation of ORS 244.040 (the “prohibited use of position or office” provision) where the maximum is increased to \$10,000 (does not affect \$1,000 maximum on civil penalties for executive session violations). *[HB 2020 (2015)]*

V. Oregon Public Meetings Law and Public Records Law

Public Meetings

As the “governing body” of a “public body,” the PDSC is obligated to comply with the Oregon Public Meetings Law. The outline that follows, first presented to the Commission in 2012, discusses the major provisions of the law. The outline also refers to the Attorney General’s *Public Records and Public Meetings Manual*, which is the best guide to both the Public Meetings Law and the Public Records Law. The 2014 Edition of the manual is available at http://www.doj.state.or.us/public_records/manual/pages/index.aspx.

The attached outline refers to a trial court opinion in *Dumdi v. Handy*, a Lane County Circuit Court matter that was not appealed but of significant concern to public bodies across Oregon because of its holding that one-on-one conversations and emails among members of a public body could be construed as a meeting for purposes of finding a violation of the law. A brief but unsuccessful effort was made to address this legislatively. More recently, the Court of Appeals, in a related case, *Handy v. Lane County*, 274 Or App 644 (2015), *rev allowed*, 258 Or 550 (2016), reached a similar conclusion as the Lane County trial court in the *Dumdi* case. As indicated, the matter is now under review by the Oregon Supreme Court. OPDS General Counsel has briefed the Commission on the *Dumdi* case, and will continue to report on developments as they occur.

Public Records

There have been several recent efforts, none successful, to significantly revise the State Public Records Law. In the 2015 Regular Session of the Oregon Legislative Assembly, the legislature passed Senate Bill 9, directing the Secretary of State to conduct a performance audit on how state agencies are complying with their obligations under the existing law. The audit was published in November 2015, and is available here: <http://sos.oregon.gov/audits/documents/2015-27.pdf>. The audit found that the agencies it examined responded well to routine requests for public records but struggled with complex ones, especially as it concerns “communication technologies” such as email.

The Office of Public Defense Services regularly receives both simple and complex public records requests and is accustomed to dealing with them, including the applications of exceptions to disclosure requirements and the mechanism to defend agency decisions concern the disclosure of certain documents. PDSC Commissioners generally do not create many records in the course of their duties, except for some email communications which, in most instances, are likely to be subject to disclosure under the law.

Oregon Public Meetings Law

Public Defense Services Commission Training
Presented by Paul Levy, General Counsel
Office of Public Defense Services
March 20, 2012

1) Policy of the Public Meetings Law, ORS 192.610 to 192.710.

“The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly.” ORS 192.610.

Thus, the provisions of the law require that (1) meetings of governing bodies at which decisions are made or discussed be open to the public; (2) that the public have notice of the time, place and principal subjects of the meetings; and (3) that meetings are accessible to persons wishing to attend.

The law provides for public *attendance* at meetings, not public *participation*.

2) Governing Bodies

The law applies to “governing bodies” of state and local government “public bodies.” ORS 192.630(1).

“Public bodies” include boards and commissions. ORS 192.610(4). It does not include agency heads.

A “governing body” has authority to make decisions for a public body on policy and administration. ORS 192.610(3).

Advisory groups and subcommittees of a public body are subject to the public meetings law if they have authority to make decisions for or recommendations to a public body on policy or administration. “For example, an advisory committee appointed by an individual official, such as the Governor, the individual head of a department or a school principal, is *not* ordinarily a governing body...if the advisory committee reports only to the individual appointing official. If, however, that single official lacks authority to act on the advisory group’s recommendations, and must pass those recommendations on unchanged to a public body, the Public Meetings Law applies to the advisory group’s meetings.” *Atty Gen Public Records and Meetings Manual 2010*, 117 (hereafter, *AG Manual*; emphasis in original).

3) Public Meetings

A meeting is the convening of a governing body “for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.” ORS 192.610(5).

A majority of the voting members of the Public Defense Services Commission (PDSC) constitutes a quorum for the transaction of business. ORS 151.213(5).

A gathering of less than a quorum of a governing body is not a “meeting” under the Public Meetings Law.

“Retreats,” long-range or strategic planning sessions, and “working lunches” are public meetings if official business is discussed by a quorum of a governing body. Purely social gatherings are not “meetings” under the Public Meetings Law.

Staff meetings are not meetings under the Public Meetings Law because no quorum is required.

4) Exemptions

The definition of “meeting” specifically excludes “on-site inspection of any project or program,” and “attendance of members of a governing body at any national, regional or state association to which the public body or the members belong.” ORS 192.610(5).

Statutory exemptions are set forth in ORS 192.690(1) and (2). None of these provisions apply to the PDSC.

5) Electronic Meetings

The Public Meetings Law, last amended in 1979 in this connection, provides for meetings by telephonic or electronic communications, so long as all procedural requirements of regular meetings are satisfied. ORS 192.670.

Thus, “communications between and among a quorum of members of a governing body convening on electronically-link personal computers are subject to the Public Meetings Law...”. *AG Manual*, 124.

The use of contemporaneous email, by which a quorum of members of a governing body deliberate through use of a “reply all” option, has not been addressed by statute, appellate caselaw or the *AG Manual*. But for the risks of communications through email among members of a governing body, see *Dumdi v. Handy*, Lane

County Circuit Court No. 16-10-02760 (January 14, 2011), discussed in the attached *Letter from Legislative Counsel Dexter Johnson to Senator Floyd Prozanski*, March 28, 2011.¹

6) Procedural Requirements

a) Notice

In addition to providing general notice to the public at large, notice must be “reasonably calculated to give actual notice to interested persons including news media which have requested notice.” ORS 192.640(1).

Notice must include the time, place and principal subjects of the meeting.

Notice of executive sessions must include reference to the specific statutory provision authorizing the executive session. ORS 192.640(2).

Special meetings must have at least 24 hours notice.

If an “emergency meeting” does not permit giving 24 hours notice, the minutes must describe the “actual emergency” that exists. ORS 192.640(3).

b) Minutes

“Sound, video or digital recording” or written minutes must be made for public meetings. ORS 192.650. Neither a complete recording nor verbatim minutes are required, so long as the minutes “give a true reflection of the matters discussed at the meeting and the views of the participants.” *Id.*

Minutes must include at least:

- Members present.
- All motions, proposals and other measures, and their disposition.
- Results of all votes and the vote of each member by name (for governing bodies with 25 or fewer members).
- Substance of all discussion.
- Reference to all documents discussed.

¹ The entire 44 page opinion by Judge Michael Gillespie is available here: <http://media.kval.com/documents/Dumdi-Handy.Decision.2011.01-18.pdf>

- For emergency meetings, a description of the emergency requiring the meeting.

Minutes must be made available to the public within a reasonable time.

Same rules apply to executive sessions, except audio record of meeting need not be transcribed, and disclosure of material from meeting is not required if inconsistent with the purpose for which the executive session is convened. ORS 192.650(2).

c) Location of meeting

Except for training sessions and emergency meetings, public meetings must be within the governmental unit's jurisdiction, or at its administrative headquarters or at the "nearest practical location." ORS 192.630(4).

No meeting may be held where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced.

The location must be accessible to persons with disabilities and accommodations made, upon request, for hearing impaired persons.

No smoking. Fine of \$10 for violation! ORS 192.990.

7) Executive Sessions

Public meetings may be closed to the general public if the meeting is for a purpose set forth in the Public Meetings Law executive session provisions, ORS 192.660, which include, as relevant to the PDSC:

- Certain personnel and labor relations matters, including hiring, performance reviews, discipline and dismissal of staff.
- Consideration of information or records that are exempt by law from public inspection under the Oregon Public Records law or other provisions of law.
- To consult with legal counsel regarding current or likely to be filed litigation.

Executive sessions may not be held for the purpose of taking any final action or making any final decision. ORS 192.660(6). "It is quite likely that the governing body may reach a consensus in executive session, and its members of course will know of that consensus. The purpose of the 'final decision' requirement is to allow the public to know the *result* of the discussions. Taking a formal vote in open session satisfies that requirement, even if the public vote merely confirms a tentative decision reach [sic] in an executive session." *AG Manual*, 149 (emphasis in original).

The person presiding over the executive session must identify the specific statutory provision authorizing the meeting before closing the meeting to the public.

Ordinarily, representatives of the news media may attend executive sessions. The governing body may require that the media not report about the subject of the session. Without such a requirement, the proceedings may be reported.

8) Enforcement

Unlike the Oregon Public Records law, the Oregon Attorney General has no role in the Public Meetings Law, except to act as legal counsel to state agencies.

“Any person affected by a decision” of a public body may sue for a violation of the Public Meetings Law, pursuant to ORS 192.680, which set forth the “exclusive remedy” for an alleged violation.

- A suit must be commenced within 60 days following the date that a decision becomes a public record.
- A decision made in violation of the law is voidable but not void if the public body reinstates it in compliance with the law.
- But if violations are the result of intentional disregard or willful misconduct, the court shall void the decision or order such other equitable relief as appropriate.
- A court may order payment by a public body of reasonable attorney fees to a successful plaintiff, but members of the governing body may be jointly and severally liable to the public body for those fees for willful misconduct.

Notwithstanding the exclusive remedy described above, violations of the law’s executive session provisions may also be investigated by the Oregon Government Ethics Commission, which may impose a civil penalty of not to exceed \$1,000 for violations. However, “[a] civil penalty may not be imposed ...if the violation occurred as a result of the governing body acting upon the advice of the public body’s counsel.” ORS 244.350(2)(b).



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

March 28, 2011

Senator Floyd Prozanski
900 Court Street NE S417
Salem OR 97301

Re: *Dumdi v. Handy* and changes to Oregon Public Meetings Law

Dear Senator Prozanski:

You asked for our review of the Lane County Circuit Court case *Dumdi v. Handy*, Case No. 16-10-02760 (January 14, 2011).¹ You specifically asked whether, in our view, the court held that the public meetings law, ORS 192.610 to 192.690, applies to one-on-one meetings of public officials or to e-mail communications between public officials. We find that the court reached that conclusion, but only with respect to meetings or communication that constituted deliberations on a matter that rose to the level of being a decision because the matter had been officially noticed as a pending decision of the governing body.

The public meetings law

The public meetings law generally requires all meetings of a governing body of a public body to be open to the public. ORS 192.620. A governing body of a public body that consists of two or more members is the members that have authority to make decisions for or recommendations to the public body on policy or administration. ORS 192.610 (3). For purposes of the public meetings law, a meeting is the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. ORS 192.610 (5). Unless a statute, ordinance or rule of the public body in question provides otherwise, a quorum consists of a majority of the members of a governing body. ORS 174.130. A quorum of a governing body may not meet in private for the purpose of deciding or deliberating toward a decision on any matter, except as otherwise provided under ORS 192.610 to 192.690. ORS 192.630 (2). Finally, a meeting of a governing body that is held through the use of telephonic or electronic means of communication also must comply with the public meetings law. For meetings other than executive sessions, this includes making available a place where the public can listen to the communication at the time it occurs. ORS 192.670.

There are numerous types of meetings that may be conducted in executive session, or that are altogether exempt from the public meetings law. ORS 192.660, 192.690. None of the meetings at issue in the *Dumdi* case falls within an existing executive session or exempt category.

¹ Citations to the court opinion are omitted in this opinion.

Facts

The Lane County Board of Commissioners (board) is the five-member governing body for Lane County. Defendants are three of the five commissioners. Three commissioners are required to vote affirmatively in order for the board to take any formal action.

Among other duties, the board is charged with adopting an annual budget for the county. The board may choose to modify an adopted budget by adopting a supplemental budget. For the fiscal year 2009-2010, the board adopted supplemental budget #2 on December 9, 2009, which reallocated funds so as to be used for half-time aides for the county commissioners. Plaintiffs in the case asserted that events leading up to the adoption of supplemental budget #2 and the adoption of supplemental budget #2 were violations of Oregon's public meetings law. The court agreed with plaintiffs.

Some of the events on which the court based its conclusion occurred in the spring of 2009, as the 2009-2010 budget was being developed. Commissioner Handy and his assistant, Phyllis Barkhurst, facilitated the establishment of an informal group known as the Budget Interest Group (BIG). BIG meetings were typically attended by some combination of the defendants and county budget committee members appointed by the defendants,² though a conscious effort was made to avoid having a quorum of either the board or the budget committee at BIG meetings. The public was not invited to BIG meetings and BIG meetings were not noticed in compliance with public meetings law. Also, the two county commissioners not named as defendants—Commissioners Bill Dwyer and Faye Stewart—and the budget committee members that they appointed, did not attend BIG meetings. Commissioner Handy testified at trial that he did not want BIG meetings to be “the usual dog and pony show.” The court also considered the following May 5, 2009, e-mail from Barkhurst: “I am suggesting that the BIG be the place where the strategizing occurs along with the budget committee meetings and any meetings where two of you can gather and discuss.”

Although BIG meetings were not noticed or recorded, documents reflecting budget discussions were often considered at BIG meetings. Examples cited by the court included spreadsheets setting forth budget items and columns indicating “Yes” and “No” to reflect whether a consensus existed among BIG attendees on a particular item. Other e-mails sent by Barkhurst recounted vote commitments for upcoming budget committee meetings. Finally, other e-mails from Commissioners Fleenor, Sorenson and Hardy discussed their positions on county budget items. BIG did not meet after May 19, 2009. The budget committee approved a recommended budget on May 19, 2009. Additional modifications were made by the board, which took final action to approve the county budget on June 24, 2009. Significantly, the 2009-2010 budget adopted by the board did not include funding for commissioner aides.

At the same time that the board was making its final deliberations on the budget, the e-mails of the defendants were reviewed by County Counsel in response to a public records request made by *The Register-Guard* of Eugene. County Counsel warned the commissioners that, although there may not have been technical violations of the quorum requirements, counsel was concerned that the spirit of the public meetings law appeared to have been violated.

² Local budget law requires a county to establish a budget committee, which develops a proposed budget that it recommends to the board. Each commissioner is a member of the budget committee and the board also appoints an equal number of electors as members of the budget committee. See ORS 294.336. Under the public meetings law, the budget committee also constitutes a governing body of a public body, because the budget committee deliberates on and makes recommendations to the board. ORS 192.610 (3).

The circumstances surrounding the adoption of the county budget and the role of BIG are not at direct issue in the case, but we believe the court considered these circumstances as a kind of procedural framework through which budget decisions were made by the county. County commissioners considered supplemental budget #2 in the fall of 2009, including a string of e-mails between Barkhurst and Commissioners Handy and Fleenor that discuss the inclusion of funding for commissioner aides and the politics associated with that decision. The board met formally on December 9, 2009, and adopted supplemental budget #2, including funding for the aide positions. Three commissioners, Handy, Dwyer and Sorenson, voted in favor of the supplemental budget. There was no public discussion of the aide positions during the hearing. Most significantly, however, Commissioner Handy sent an e-mail to Barkhurst on December 11, 2009, recounting events occurring the morning of December 9 in advance of the formal board hearing. The contents of this e-mail are, we believe, pivotal to the court's decision. The e-mail recounts Commissioner Handy coming into the County Administrative Offices (CAO) when Commissioners Dwyer, Sorenson and Stewart were present in their own offices within the CAO suite—with doors open—and “knock[ing] everyone over with my booming voice” in discussing funding for the aide positions and *The Register-Guard* coverage on the issue. The e-mail describes Handy then visiting individually with Dwyer, Stewart and Sorenson to further discuss the vote. The e-mail describes a visit from Handy to Dwyer on December 8 during which Dwyer stated he would vote for the budget, Handy's visit with Dwyer the morning of December 9 confirming that support and Handy's visit to Sorenson's office communicating Dwyer's support to Sorenson. The case finally describes other instances in which two or three commissioners met informally during this period, but provides that there was a record of the content of their discussions.

Analysis of the court's decision

There are four issues addressed in the court opinion: (i) the effect of the statute of limitations; (ii) the extent to which the plaintiffs have standing to claim a violation of the public meetings law; (iii) whether the public meetings law was, in substance, violated; and (iv) whether the violation, if any, amounted to a willful violation for which individual liability for attorney fees and costs attaches.

We briefly summarize the statute of limitations and standing issues, as they have only limited bearing on the questions you ask. ORS 192.680 (5) establishes a statute of limitations under which a suit for violation of the public meetings law must be commenced within 60 days after the date the decision by the governing body becomes public record. The court could, therefore, only consider whether deliberations leading up to the adoption of supplemental budget #2 violated the public meetings law. Persons have standing to commence a suit for violation of the public meetings law if they are “affected by a decision of a governing body.” ORS 192.680 (2). The court concluded that plaintiffs met the threshold of being “affected” by the board's decision on supplemental budget #2, because all that is needed is a showing that the governing body had an obligation to allow the public to be informed of the deliberations and decisions of the governing body and the decision to adopt supplemental budget #2 was such a decision.³

The court found that it is not possible to establish a bright line to distinguish between conduct that amounts to deliberations toward a decision for which public meetings law applies, and conduct that does not amount to deliberations toward a decision. The court noted that a

³ The court cited *Harris v. Nordquist*, 96 Or. App. 19 (1989).

meeting of a quorum of the board in which they discuss county business, pursue their own agendas on matters they think important, and even seek the support of fellow commissioners is not, of itself, a violation of public meetings law. Where such conduct suddenly changes into a violation of the public meetings law, in the court's view, is following formal notice that the decision that is the subject of informal discussion is a pending decision before the board. In this case, that date occurred on December 1, 2009, when notice was given to *The Register-Guard* for publication that supplemental budget #2 was to be formally considered by the board on December 9, 2009. The court concluded that there were no violations of public meetings law requirements with respect to supplemental budget #2 before December 1, 2009, but one-on-one meetings between Handy and the other commissioners, or e-mails or other communications between Handy and the other commissioners, that occurred after December 1, 2009, were designed to line up votes in support of supplemental budget #2 and took place outside of the public view. The court characterized these one-on-one meetings and other communications as deliberations orchestrated to avoid any public discussion and to avoid adverse public comment or criticism. Therefore, the court found that all communications occurring after December 1, 2009, in which supplemental budget #2 was discussed, constituted a violation of the public meetings law.

We have reviewed other decisions made under the public meetings law and find the court's emphasis on communications after a date on which a matter formally becomes a decision that a governing body is working toward to be unique. The court also cites no authority for the proposition that conduct allowable under the public meetings law suddenly becomes a violation of the public meetings law when a matter formally becomes a pending decision of a governing body. In the court's opinion, whether or not a quorum of a governing body is present becomes far less important than whether or not communications between two or more members of the governing body are about a pending decision. The form of the communication is not particularly important to the court's analysis, though the court found that e-mail was sufficiently akin to back-and-forth conversation to be capable of being deliberations toward a decision and, therefore, potentially subject to public meetings law. In our view, the court's emphasis on when a matter formally becomes a pending decision of a governing body is not justified under the statutes and existing precedent. The actual act that is prohibited under the public meetings law is for a quorum of a governing body to meet in private for the purpose of deciding on or deliberating toward a decision on any matter. ORS 192.630 (2). The statute does not prohibit less than a quorum from deliberating. For example, in *Harris v. Nordquist*, the meetings asserted to be violations of the public meetings law all involved a quorum of a school board that met privately in local restaurants following the school board's official meetings.⁴ The court's reasoning in the *Dumdi* case also does not solve the policy problem of ensuring transparency in public process; the case would merely result in greater importance being given to the timing of when matters are officially noticed. Whether the case will be appealed to the Court of Appeals is unknown at this time. We advise waiting for appellate level review before considering a modification to the public meetings law statutes as a response to this case.

The final issue the court considered was whether the defendants' conduct in violating the public records law was "willful." ORS 192.680 (4) provides that if the court finds that a violation of the public meetings law by any member of the governing body is the result of willful misconduct, the member or members engaged in the willful misconduct shall be jointly and severally liable. The court concluded that in this context "willful" could mean either (i) acting with a conscious objective of causing the result or acting in a manner that is contrary to the applicable rule; or (ii) acting with knowledge that the conduct of the person was a violation. The

⁴ *Harris*, 96 Or. App. at 24.

court concluded that it need not determine which was the applicable standard, as the acts of defendants Handy and Sorenson were willful under either standard. The reason Handy's and Sorenson's conduct was "willful" was because they had both been expressly warned by County Counsel that their conduct during the spring of 2009 could be interpreted as violating the spirit of the public meetings law and the pattern of their conduct between December 1 and 9, 2009, was similar to that during the spring of 2009. In our view, if the court's reasoning that defendants' conduct violated the public meetings law is sound, then the court's finding that Handy's and Sorenson's conduct was willful misconduct is a justifiable conclusion. The evidence supports Handy's actions as being motivated to avoid public meetings and the evidence supports Sorenson's knowledge that such actions might be viewed by some as violating the spirit of the public meetings law. We conclude, however, that the reasoning of the court does not support the conclusion that a public meetings law violation occurred in the first place.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dexter A. Johnson", written in a cursive style.

Dexter A. Johnson
Legislative Counsel

VI. ORS Chapter 151

ORS Chapter 151 establishes the PDSC and sets out the duties and responsibilities of the Commission, along with those of the Executive Director of the Office of Public Defense Services. Because these laws are central to the work of the PDSC and OPDS, the Chapter is reproduced in full in the following pages.

Chapter 151 — Public Defenders; Counsel for Financially Eligible Persons

2015 EDITION

PUBLIC DEFENDERS; COUNSEL FOR ELIGIBLE PERSONS

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COUNTY CONTRACT FOR COUNSEL TO FINANCIALLY ELIGIBLE PERSONS

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151.497 “Counsel” defined for ORS 151.485 to 151.497

MISCELLANEOUS

151.505 Authority of court to order repayment of costs related to provision of appointed counsel

COUNTY CONTRACT FOR COUNSEL TO FINANCIALLY ELIGIBLE PERSONS

151.010 Public defender services by county. (1) The governing body of a county, on behalf of the county, may contract with an attorney, group of attorneys or full-time not-for-profit public defender organization for the provision by the attorney, group of attorneys or organization of services as counsel for financially eligible persons in proceedings in which a court or magistrate has the power to appoint counsel to represent a financially eligible person and the county is required to pay compensation for that representation.

(2) A court or magistrate may appoint an attorney who is, or an attorney member of a public defender organization that is, under a contract with a county as provided in this section to represent a financially eligible person in any proceeding in which the court or magistrate has the power to appoint counsel to represent a financially eligible person and the county is required to pay compensation for that representation. [1971 c.432 §1; 1973 c.836 §311; 1985 c.502 §11; 2001 c.962 §32]

151.020 [1971 c.432 §2; repealed by 1985 c.502 §13]

151.030 [1971 c.432 §3; repealed by 1985 c.502 §13]

151.040 [1971 c.432 §4; 1983 c.740 §22; repealed by 1985 c.502 §13]

151.050 [1971 c.432 §5; repealed by 1985 c.502 §13]

151.060 [1971 c.432 §6; repealed by 1985 c.502 §13]

151.070 [1971 c.432 §7; repealed by 1985 c.502 §13]

151.080 [1971 c.432 §8; repealed by 1985 c.502 §13]

151.090 [1971 c.432 §9; repealed by 1985 c.502 §13]

151.150 [1981 s.s. c.3 §117; 1985 c.502 §9; renumbered 151.460]

151.210 [Formerly 138.710; repealed by 2001 c.962 §114]

PUBLIC DEFENSE SERVICES COMMISSION

151.211 Definitions for ORS 151.211 to 151.221. For purposes of ORS 151.211 to 151.221:

(1) “Bar member” means an individual who is an active member of the Oregon State Bar.

(2) “Chief Justice” means the Chief Justice of the Supreme Court.

(3) “Commission” means the Public Defense Services Commission.

(4) “Director” means the public defense services executive director appointed under ORS 151.216.

(5) “Office of public defense services” means the office established by the commission under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system. [2001 c.962 §1; 2007 c.71 §43]

Note: 151.211 to 151.225 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 151 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

151.213 Public Defense Services Commission; membership; terms. (1) The Public Defense Services Commission is established in the judicial branch of state government. Except for the appointment or removal of commission members, the commission and employees of the commission are not subject to the exercise of administrative authority and supervision by the Chief Justice of the Supreme Court as the administrative head of the Judicial Department.

(2) The commission consists of seven members appointed by order of the Chief Justice. In addition to the seven appointed members, the Chief Justice serves as a nonvoting, ex officio member. The Chief Justice shall appoint at least two persons who are not bar members, at least one person who is a bar member and who is engaged in criminal defense representation and at least one person who is a former Oregon state prosecutor. Except for the Chief Justice or a senior judge under ORS 1.300, a member may not serve concurrently as a judge, a prosecuting attorney or an employee of a law enforcement agency. A person who is primarily engaged in providing public defense services may not serve as a member of the commission.

(3) The term of a member is four years beginning on the effective date of the order of the Chief Justice appointing the member. A member is eligible for reappointment if qualified for membership at the time of reappointment. A member may be removed from the commission by order of the Chief Justice. If a vacancy occurs for any cause before the expiration of the term of a member, the Chief Justice shall make an appointment to become immediately effective for the unexpired term.

(4) A chairperson and a vice chairperson shall be appointed by order of the Chief Justice every two years with such functions as the commission may determine. A member is eligible for reappointment as chairperson or vice chairperson.

(5) A majority of the voting members constitutes a quorum for the transaction of business.

(6) A member of the commission is not entitled to compensation for services as a member, but is entitled to expenses as provided in ORS 292.495 (2). [2001 c.962 §2; 2003 c.449 §15]

Note: See note under 151.211.

151.216 Duties. (1) The Public Defense Services Commission shall:

(a) Establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.

(b) Establish an office of public defense services and appoint a public defense services executive director who serves at the pleasure of the commission.

(c) Submit the budget of the commission and the office of public defense services to the Legislative Assembly after the budget is submitted to the commission by the director and approved by the commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall present the budget to the Legislative Assembly.

(d) Review and approve any public defense services contract negotiated by the director before the contract can become effective.

(e) Adopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies.

(f) Adopt policies, procedures, standards and guidelines regarding:

(A) The determination of financial eligibility of persons entitled to be represented by appointed counsel at state expense;

(B) The appointment of counsel;

(C) The fair compensation of counsel appointed to represent a person financially eligible for appointed counsel at state expense;

(D) Appointed counsel compensation disputes;

(E) Any other costs associated with the representation of a person by appointed counsel in the state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any other provision of law that expressly provides for payment of such compensation, costs or expenses by the commission;

(F) Professional qualifications for counsel appointed to represent public defense clients;

(G) Performance for legal representation;

(H) The contracting of public defense services;

(I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses only if in-state expert witnesses are not available or are more expensive than out-of-state expert witnesses; and

(J) Any other matters necessary to carry out the duties of the commission.

(g) Establish a peer review system for the approval of nonroutine fees and expenses incurred in cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review shall be conducted by a panel of attorneys who practice in the area of criminal defense.

(h) Establish a complaint process that allows district attorneys, criminal defense counsel and the public to file complaints concerning the payment from public funds of nonroutine fees and expenses incurred in cases.

(i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services Account established by ORS 151.225 for the costs of personnel and other costs associated with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court Administrator.

(2) Policies, procedures, standards and guidelines adopted by the commission supersede any conflicting rules, policies or procedures of the Public Defender Committee, State Court Administrator, circuit courts, the Court of Appeals, the Supreme Court, the Psychiatric Security Review Board and the Oregon Health Authority related to the exercise of the commission's administrative responsibilities under this section and transferred duties, functions and powers as they occur.

(3) The commission may accept gifts, grants or contributions from any source, whether public or private. However, the commission may not accept a gift, grant or contribution if acceptance would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the Public Defense Services Account established by ORS 151.225 and expended for the purposes for which given or granted.

(4) The commission may not:

(a) Make any decision regarding the handling of any individual case;

(b) Have access to any case file; or

(c) Interfere with the director or any member of the staff of the director in carrying out professional duties involving the legal representation of public defense clients. [2001 c.962 §§3,106; 2003 c.449 §§1,2,42; 2005 c.843 §23; 2011 c.708 §20; 2012 c.107 §42]

Note: See note under 151.211.

151.219 Public defense services executive director; duties. (1) The public defense services executive director shall:

(a) Recommend to the Public Defense Services Commission how to establish and maintain, in a cost-effective manner, the delivery of legal services to persons entitled to, and financially eligible for, appointed counsel at state expense under Oregon statutes, the Oregon Constitution, the United States Constitution and consistent with Oregon and national standards of justice.

(b) Implement and ensure compliance with contracts, policies, procedures, standards and guidelines adopted by the commission or required by statute.

(c) Prepare and submit to the commission for its approval the biennial budget of the commission and the office of public defense services.

(d) Negotiate contracts, as appropriate, for providing legal services to persons financially eligible for appointed counsel at state expense. No contract so negotiated is binding or enforceable until the contract has been reviewed and approved by the commission as provided in ORS 151.216.

(e) Employ personnel or contract for services as necessary to carry out the responsibilities of the director and the office of public defense services.

(f) Supervise the personnel, operation and activities of the office of public defense services.

(g) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the Public Defense Services Commission.

(h) Pay the expenses of the commission and the office of public defense services.

(i) Prepare and submit to the commission an annual report of the activities of the office of public defense services.

(j) Prepare and submit to the Legislative Assembly a biennial report on the activities of the office of public defense services.

(k) Provide for legal representation, advice and consultation for the commission, its members, the director and staff of the office of public defense services who require such services or who are named as defendants in lawsuits arising from their duties, functions and responsibilities. If requested by the director, the Attorney General may also provide for legal representation, advice and consultation for the commission, its members, the director and staff of the office of public defense services in litigation.

(2) The director may designate persons as representatives of the director for the purposes of determining and paying bills submitted to the office of public defense services and determining preauthorization for incurring fees and expenses under ORS 135.055. [2001 c.962 §4,106a; 2003 c.449 §§3,4]

Note: See note under 151.211.

151.220 [Formerly 138.740; repealed by 2001 c.962 §114]

151.221 Status of officers and employees of office of public defense services. Officers and employees of the office of public defense services, who are appointed under a personnel plan adopted by the Public Defense Services Commission, are state officers or employees in the exempt service and are not subject to ORS chapter 240. [2003 c.449 §17]

Note: See note under 151.211.

151.225 Public Defense Services Account. (1) The Public Defense Services Account is established in the State Treasury, separate and distinct from the General Fund. The Public Defense Services Account is continuously appropriated to the Public Defense Services Commission to:

(a) Reimburse the actual costs and expenses, including personnel expenses, incurred in administration and support of the public defense system;

(b) Reimburse the State Court Administrator under ORS 151.216 (1)(i); and

(c) Pay other expenses in connection with the legal representation of persons for which the commission is responsible by law, including expenses incurred in the administration of the public defense system.

(2) All moneys received by the Judicial Department under ORS 135.050 (8), 151.487 (1), 419A.211, 419B.198 (1), 419C.203 (1) or 419C.535 (2) shall be deposited in the Public Defense Services Account.

(3) All gifts, grants or contributions accepted by the commission under ORS 151.216 shall be deposited in a separate subaccount created in the Public Defense Services Account to be used by the commission for the purpose for which the gift, grant or contribution was given or granted. [2001 c.962 §5,106b; 2011 c.597 §43a; 2012 c.107 §37; 2015 c.27 §14]

Note: See note under 151.211.

151.230 [Formerly 138.750; 1983 c.740 §23; repealed by 2001 c.962 §114]

151.240 [Formerly 138.760; repealed by 2001 c.962 §114]

151.250 [Formerly 138.770; 1973 c.694 §19; 1987 c.320 §84; 1991 c.724 §26; 1993 c.33 §303; 1995 c.117 §3; repealed by 2001 c.962 §114]

151.260 [Formerly 138.780; repealed by 2001 c.962 §114]

151.270 [Formerly 138.720; repealed by 2001 c.962 §114]

151.280 [Formerly 138.730; 1983 c.740 §24; repealed by 2001 c.962 §114]

151.290 [Formerly 138.790; repealed by 2001 c.962 §114]

151.410 [1985 c.502 §2; repealed by 1987 c.803 §27]

151.420 [1985 c.502 §3; repealed by 1987 c.803 §27]

151.430 [1985 c.502 §5; 1987 c.803 §10; 1995 c.677 §2; 2001 c.962 §109; repealed by 2001 c.962 §115]

151.440 [1985 c.502 §6; repealed by 1987 c.803 §27]

151.450 [1985 c.502 §7; 1987 c.803 §11; 1991 c.724 §27; 1991 c.750 §9; 1993 c.33 §304; 2001 c.480 §13; 2001 c.962 §110; repealed by 2001 c.962 §115]

151.460 [Formerly 151.150; 1987 c.803 §12; 1989 c.1053 §8; 1995 c.677 §3; 2001 c.962 §111; repealed by 2001 c.962 §115]

151.465 [1987 c.803 §9; 1997 c.761 §13; 2001 c.480 §14; repealed by 2001 c.962 §115]

151.470 [1985 c.502 §15; repealed by 1987 c.803 §27]

151.480 [1985 c.502 §18; 2001 c.962 §112; repealed by 2001 c.962 §115]

DETERMINATION OF FINANCIAL ELIGIBILITY

151.485 Financial eligibility; determination; financial statement; termination of appointed counsel. (1) For purposes of determining the financial eligibility for appointed counsel of persons with a constitutional or statutory right to counsel in matters before the state courts and whose counsel is authorized to be paid by the public defense services executive director under ORS 151.219, a person is financially eligible for appointed counsel if the person is determined to be financially unable to retain adequate counsel without substantial hardship in providing basic economic necessities to the person or the person's dependent family under standards established by the Public Defense Services Commission under ORS 151.216.

(2) A determination of financial eligibility shall be made upon the basis of information contained in a detailed financial statement submitted by the person for whom counsel is requested or appointed or, in an appropriate case, by the person's parent, guardian or custodian. The financial statement shall be in the form prescribed by the Public Defense Services Commission. The form shall contain a full disclosure of all assets, liabilities, current income, dependents and other information required by ORS 135.050 (4) and, in addition, any information required by the commission and state courts as necessary to determine eligibility. The commission shall adopt uniform statewide guidelines and procedures that prescribe how to use the form and determine financial eligibility for appointed counsel.

(3) If at any time after the appointment of counsel the court having jurisdiction of the case finds that the defendant is financially able to obtain counsel, the court may terminate the appointment of counsel. If at any time during criminal proceedings the court having jurisdiction of the case finds that the defendant is financially unable to pay counsel whom the defendant has retained, the court may appoint counsel as provided in this section.

(4) In addition to any criminal prosecution, a civil proceeding may be initiated by any public body that has expended moneys for the defendant's legal assistance within two years of judgment if the defendant was not qualified for legal assistance in accordance with subsections (1) and (2) of this section. As used in this subsection, "legal assistance" includes legal counsel, transcripts, witness fees and expenses and any other goods or services required by law to be provided to a financially eligible person at state expense under ORS 151.216 and 151.219.

(5) The civil proceeding shall be subject to the exemptions from execution as provided for by law. [1989 c.1053 §13; 1991 c.825 §6; 2001 c.962 §33]

151.487 Ability to pay; effect. (1) If in determining that a person is financially eligible for appointed counsel under ORS 151.485, the court finds that the person has financial resources that enable the person to pay in full or in part the administrative costs of determining the eligibility of the person and the costs of the legal and other services to be provided at state expense that are related to the provision of appointed counsel, the court shall enter a limited judgment requiring that the person pay to the Public Defense Services Account established by ORS 151.225, through the clerk of the court, the amount that it finds the person is able to pay without creating substantial hardship in providing basic economic necessities to the person or the person's dependent family. The amount that a court may require the person to pay is subject to the guidelines and procedures issued by the Public Defense Services Commission as provided in subsection (4) of this section.

(2) Failure to comply with the requirements of a limited judgment entered under this section is not grounds for contempt or grounds for withdrawal by the appointed attorney.

(3) Except as authorized in this section, a person, organization or governmental agency may not request or accept a payment or promise of payment for assisting in the representation of a person by appointment.

(4) The commission shall promulgate and issue guidelines and procedures:

(a) For the determination of persons provided with appointed counsel who have some financial resources to pay in full or in part the administrative, legal and other costs under subsection (1) of this section; and

(b) Regarding the amounts persons may be required to pay by a court under subsection (1) of this section.

(5) The determination that a person is able to pay or partially able to pay, or that a person no longer has the ability to pay the amount ordered in subsection (1) of this section, is subject to review at any time by the court. [1989 c.1053 §14; 1993 c.33 §305; 1997 c.761 §3; 2001 c.962 §34; 2011 c.597 §42; 2012 c.107 §43]

151.489 Personnel to verify financial eligibility. For the purpose of aiding courts in making determinations of financial eligibility for appointed counsel at state expense under ORS 151.485 and 151.487, the State Court Administrator may locate eligibility verification and screening personnel or otherwise arrange for such services in the state trial and appellate courts or other locations and shall prescribe the policies and procedures for their use. [1989 c.1053 §15; 2001 c.962 §35]

151.491 Authority of person verifying financial eligibility. (1) State courts or authorized designees who conduct the verification of the financial statement submitted by a person seeking or having appointed counsel payable at state expense under ORS 151.216 and 151.219 may require the person to execute and deliver any written requests or authorizations as may be necessary under applicable law to provide the state court or authorized designee with access to records of public or private source, otherwise confidential, as may be needed to evaluate eligibility.

(2) In performing the verification duties under subsection (1) of this section, the state courts are authorized to obtain information from any public record office of the state or of any subdivision or agency of the state upon request and without payment of any fees ordinarily required by law. [1989 c.1053 §16; 2001 c.962 §36]

151.493 Release of information by state agency to State Court Administrator. (1) Notwithstanding any other provision of law, any state agency as defined in ORS 192.410 that receives a request for release of information from the state courts for the purpose of verifying the financial eligibility of a person under ORS 151.485 to 151.497 shall release all requested information to the state court. The court shall forward to the state agency a certification signed by the person about whom the requested information is sought that authorizes the release of the information.

(2) Upon its own motion or motion of the public defense services executive director, a court that has appointed counsel for a person by reason of financial eligibility may order the release of any information relating to the person's financial situation held by any other person. [1991 c.825 §4; 2001 c.962 §37]

151.495 Confidentiality of information obtained by state courts; exceptions. (1) All information supplied by a person seeking appointed counsel and all information collected by the state courts for purposes of determining financial eligibility for appointed counsel under ORS 151.485 to 151.497 is confidential and shall not be used for any purpose other than determining financial eligibility.

(2) Notwithstanding subsection (1) of this section, information supplied by a person seeking appointed counsel and information collected by the state courts for purposes of determining financial eligibility may be:

(a) Introduced in a proceeding, criminal or civil, arising out of a determination that a person is not financially eligible for appointed counsel;

(b) Introduced in a proceeding, criminal or civil, arising as a result of an allegation that a person has supplied false information in seeking appointed counsel;

(c) Used by the court in a sentencing proceeding resulting from the defendant's conviction on the matter for which the information was provided or collected; and

(d) Used by the court, the Department of Revenue, or the assignees of the court or the Department of Revenue, for the purpose of collecting delinquent amounts owed to this state by the person. [1991 c.825 §5; 1997 c.761 §4; 2001 c.962 §38]

151.497 “Counsel” defined for ORS 151.485 to 151.497. As used in ORS 151.485 to 151.497 unless the context requires otherwise, “counsel” includes a legal advisor appointed under ORS 135.045. [2001 c.472 §10]

MISCELLANEOUS

151.505 Authority of court to order repayment of costs related to provision of appointed counsel. (1) At the conclusion of a case or matter in which the first accusatory instrument or petition in the trial court was filed after January 1, 1998, and in which the court appointed counsel to represent a person, a trial, appellate or post-conviction court may include in its judgment a money award requiring that the person repay in full or in part the administrative costs of determining the eligibility of the person for appointed counsel, and the costs of the legal and other services that are related to the provision of appointed counsel, that have not previously been required to be paid under a limited judgment entered under ORS 151.487. An award under this section is a monetary obligation payable to the state.

(2) Costs that may be included in a money award under this section include a reasonable attorney fee for counsel appointed to represent the person and a reasonable amount for expenses authorized under ORS 135.055. A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by the Public Defense Services Commission under ORS 151.216. For purposes of this subsection, compensation of counsel is determined by reference to a schedule of compensation established by the commission.

(3) The court may not require a person to pay costs under this section unless the person is or may be able to pay the costs. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the person and the nature of the burden that payment of costs will impose.

(4) A person who has been required to pay costs under this section and who is not in contumacious default in the payment of the costs may at any time petition the court for remission of the payment of costs or any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the person ordered to repay or on the immediate family of the person, or will interfere with the ability of the person to complete an alcohol or drug treatment program, the court may enter a supplemental judgment that remits all or part of the amount due or modifies the method of payment.

(5) All moneys collected or paid under a money award made pursuant to this section shall be paid into the Criminal Fine Account. If the money award is part of a criminal judgment of conviction, the award is a Type 2, Level II obligation for the purpose of ORS 137.145 to 137.159. [1997 c.761 §2; 2001 c.962 §39; 2003 c.334 §§1,2; 2003 c.449 §§18,19; 2011 c.597 §43; 2015 c.186 §2]

Note: 151.505 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 151 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

VII. State and National Standards of Justice

The primary mission of the PDSC is to ensure the provision of cost-efficient public defense services in Oregon that satisfy state and federal law and are consistent with state and national standards of justice. ORS 151.216(1)(a). The staff of OPDS regularly updates the Commission on national developments concerning performance standards and efforts to improve public defense services. Consistent with its obligation to adopt standards and guidelines for the performance of public defense services, ORS 151.216(1)(f)(G), the Commission has adopted the Oregon State Bar performance standards as the application standards for public defense services in Oregon. These standards, which OPDS staff has played a major role in updating over the years, apply to representation in criminal, post-conviction, civil commitment, juvenile delinquency, and juvenile dependency cases.

The state and national standards to which OPDS staff regularly refer and with which Commissioners should be familiar are too lengthy to reproduce here, with two exceptions. First, although they have not been updated since first adopted in 2002, the American Bar Association *Ten Principles of a Public Defense Delivery System* are still the most cited guide to the essential elements of an effective public defense system. Second, in 2010 the Office of Public Defense Services published *Best Practices for Oregon Public Defense Providers*, a document that seeks to capture lessons learned from peer reviews conducted by OPDS as well as from the wisdom of leaders in public defense in Oregon and the recommendations of national public defense leaders. The document is intended to provide guidance for administrators of all public defense providers in Oregon.

There are other important standards and guidelines for public defense practitioners and administrators. Among those are:

Oregon State Bar Performance Standards for Counsel in Criminal, Delinquency, Dependency, and Civil Commitment Cases

http://www.osbar.org/surveys_research/performancestandard/index.html

American Bar Association Standards

- *Standards of Lawyers Who Represent Children in Abuse and Neglect Cases* http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf
- *Standards for Lawyers Who Represent Parents in Abuse and Neglect Cases* http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStandards.authcheckdam.pdf
- *Criminal Justice Standards*

http://www.americanbar.org/groups/criminal_justice/standards.html

- *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (the PDSC has adopted these for both the work of OPDS and the performance of Oregon attorneys appointed in death penalty cases)

http://www.americanbar.org/groups/committees/death_penalty_representation/resources/guidelines.html

- *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*

http://www.americanbar.org/groups/committees/death_penalty_representation/resources/guidelines.html

National Juvenile Defender Center, National Juvenile Defense Standards

<http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

ABA



TEN

PRINCIPLES

OF A PUBLIC DEFENSE DELIVERY SYSTEM

February 2002

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TEN PRINCIPLES

OF A PUBLIC DEFENSE DELIVERY SYSTEM

February 2002

Approved by American Bar Association House of Delegates, February 2002. The American Bar Association recommends that jurisdictions use these Principles to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.

INTRODUCTION

The *ABA Ten Principles of a Public Defense Delivery System* were sponsored by the ABA Standing Committee on Legal and Indigent Defendants and approved by the ABA House of Delegates in February 2002. The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney. The more extensive ABA policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, *Providing Defense Services* (3d ed. 1992), which can be viewed on-line (black letter only) and purchased (black letter with commentary) by accessing the ABA Criminal Justice Section homepage at <http://www.abanet.org/crimjust/home.html>.

ACKNOWLEDGMENTS

The Standing Committee on Legal Aid and Indigent Defendants is grateful to everyone assisting in the development of the *ABA Ten Principles of a Public Defense Delivery System*. Foremost, the Standing Committee acknowledges former member James R. Neuhard, Director of the Michigan State Appellate Defender Office, who was the first to recognize the need for clear and concise guidance on how to design an effective system for providing public defense services. In 2000, Mr. Neuhard and Scott Wallace, Director of Defender Legal Services for the National Legal Aid and Defender Association, jointly produced a paper entitled “The Ten Commandments of Public Defense Delivery Systems,” which was later included in the Introduction to Volume I of the U.S. Department of Justice’s Compendium of Standards for Indigent Defense Systems. The *ABA Ten Principles of a Public Defense Delivery System* are based on this work of Mr. Neuhard and Mr. Wallace.

Special thanks go to the members of the Standing Committee and its Indigent Defense Advisory Group who reviewed drafts and provided comment. Further, the Standing Committee is grateful to the ABA entities that provided invaluable support for these Principles by co-sponsoring them in the House of Delegates, including: Criminal Justice Section, Government and Public Sector Lawyers Division, Steering Committee on the Unmet Legal Needs of Children, Commission on Racial and Ethnic Diversity in the Profession, Standing Committee on Pro Bono and Public Services. We would also like to thank the ABA Commission on Homelessness and Poverty and the ABA Juvenile Justice Center for their support.

L. Jonathan Ross
Chair, Standing Committee on
Legal Aid and Indigent Defendants

ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Black Letter

- 1 The public defense function, including the selection, funding, and payment of defense counsel, is independent.
- 2 Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
- 3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
- 4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
- 5 Defense counsel's workload is controlled to permit the rendering of quality representation.
- 6 Defense counsel's ability, training, and experience match the complexity of the case.
- 7 The same attorney continuously represents the client until completion of the case.
- 8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
- 9 Defense counsel is provided with and required to attend continuing legal education.
- 10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.



ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

With Commentary

1 The public defense function, including the selection, funding, and payment of defense counsel,¹ is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.² To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.³ Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.⁴ The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.⁵

2 Where the caseload is sufficiently high,⁶ the public defense delivery system consists of both a defender office⁷ and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.⁸ The appointment process should never be *ad hoc*,⁹ but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.¹⁰ Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.¹¹

3 Clients are screened for eligibility,¹² and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request,¹³ and usually within 24 hours thereafter.¹⁴

4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.¹⁵ Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client.¹⁶ To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.¹⁷

5 Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.¹⁸ National caseload standards should in no event be exceeded,¹⁹ but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.²⁰

6 **Defense counsel’s ability, training, and experience match the complexity of the case.** Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.²¹

7 **The same attorney continuously represents the client until completion of the case.** Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing.²² The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

8 **There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.²³ Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.²⁴ Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess,

unusual, or complex cases,²⁵ and separately fund expert, investigative, and other litigation support services.²⁶ No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.²⁷ This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

9 **Defense counsel is provided with and required to attend continuing legal education.** Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.²⁸

10 **Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.** The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.²⁹

NOTES

¹ “Counsel” as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. “Defense” as used herein relates to both the juvenile and adult public defense systems.

² National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter “NAC”], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter “NSC”], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter “ABA”], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter “Assigned Counsel”], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter “Contracting”], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter “Model Act”], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter “ABA Counsel for Private Parties”], Standard 2.1(D).

³ NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter “ABA Monitoring”], Standard 3.2.

² Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Independence, 1997).

⁵ ABA, *supra* note 2, Standard 5-4.1

⁶ “Sufficiently high” is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

⁷ NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. “Defender office” means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

⁸ ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

⁹ NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

¹⁰ ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

¹¹ NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

¹² For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

¹³ NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(A).

¹⁴ NSC, *supra* note 2, Guideline 1.3.

¹⁵ American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter “ABA Defense Function”], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter “Performance Guidelines”], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

¹⁶ NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

¹⁷ ABA Defense Function, *supra* note 15, Standard 4-3.1.

¹⁸ NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

¹⁹ Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). *See also* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter “Death Penalty”].

²⁰ ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter “Appellate”], Standard 1-F.

²¹ Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

²² NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines

III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(B)(i).

²³ NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). *See* NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

²⁴ ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

²⁵ NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

²⁶ ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

²⁷ ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

²⁸ NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(A).

²⁹ NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

FOR MORE INFORMATION OR TO ORDER PUBLICATIONS, CONTACT STAFF AT:

American Bar Association, Division for Legal Services

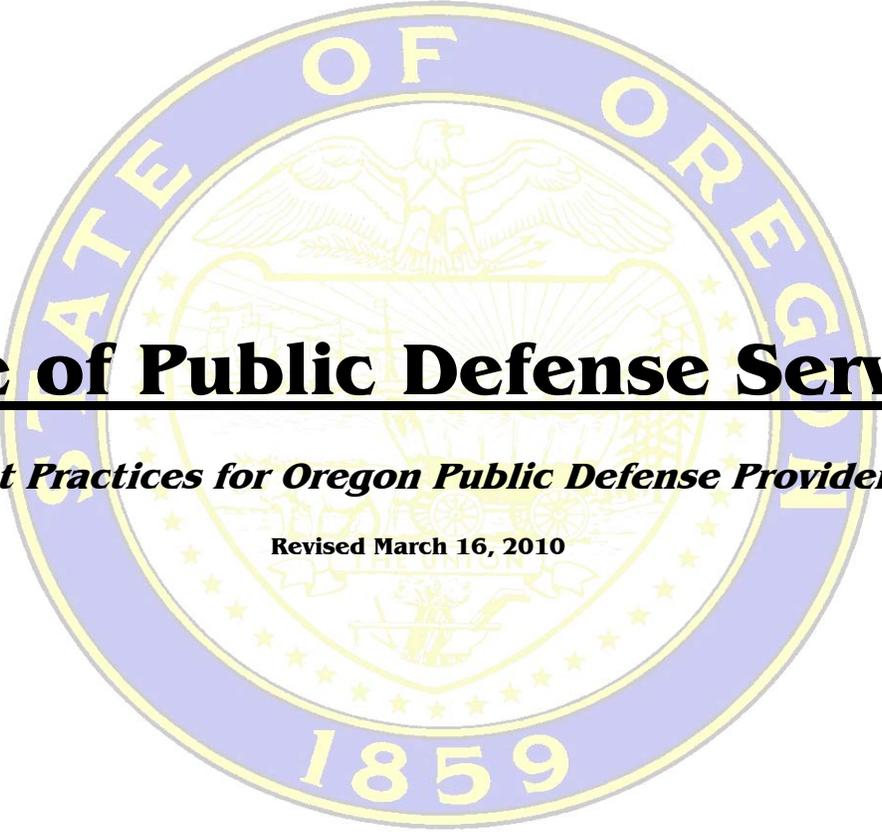
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The seal of the State of Oregon is a circular emblem. It features a central eagle with wings spread, perched on a shield. The shield contains a plow and a sheaf of wheat. The eagle is surrounded by a wreath. The entire seal is set within a circular border with a blue outer ring and a yellow inner ring. The words "STATE OF OREGON" are written in yellow capital letters along the top inner edge of the blue ring, and the year "1859" is written in yellow at the bottom. The seal is semi-transparent and serves as a background for the text.

Office of Public Defense Services

Best Practices for Oregon Public Defense Providers

Revised March 16, 2010

Preface

The Quality Assurance Task Force (QATF), an advisory group formed to assist the Executive Director of the Office of Public Defense Services (OPDS) in monitoring and improving the quality of public defense services in Oregon, has identified the policies and practices set forth below as a means to achieve excellence in public defense services. The recommended best practices are an outgrowth of the QATF's principal work of advising the Executive Director of OPDS on the conduct of peer evaluations of public defense providers. The recommendations, which evolve as the peer review process continues to identify policies and practices in use around the state that can be recommended to other providers, is neither a comprehensive description of a successful public defense provider management plan nor a recommendation for an inflexible "one-size-fits-all" plan. Rather, these are current practices that the QATF has identified as contributing to the achievement of excellence in public defense practice.

Unless specified, the practices identified below are recommended for all non-profit public defender offices, consortia and private law firms contracting with the Public Defense Services Commission. Following the summary of best practices below, each practice is set forth with recommendations for implementing the best practices, some of which may be applicable to only one type of provider. A brief commentary about each practice follows the implementation recommendations. While recommended for all providers, it is understood that some recommended practices may not be feasible for all contractors. Such providers should adopt alternative practices that accord with the spirit of the recommended practices.

As noted, the QATF will continue to revise this document as new information and insight is gained from the peer review process and other sources. If you have experience with public defense management and would like to comment on this document or make a recommendation concerning best practices for achieving excellence in public defense, please contact Paul Levy, OPDS General Counsel.

Summary of Best Practices

- I. Client-Centered Practice.** Public defense providers should formally recognize a paramount purpose to ensure zealous, high quality representation for each client. (See page 4 below.)
- II. Board of Directors.** The management of non-profit public defender offices and consortia should be directed and supervised by a board of directors. (See page 5 below.)
- III. Quality Assurance.** Public defense providers should establish practices, written protocols, policies and procedures, and other documents that assure high quality representation by provider attorneys. (See page 8 below.)
- IV. Case Assignment.** Providers should establish, in collaboration with the courts and others, a system for receiving court appointments and assigning counsel that assures high quality representation from a client's first appearance in court to the final disposition of the judicial proceeding. (See page 11 below.)
- V. Information Management.** Public defense providers should implement and manage information technology that effectively supports the mission of the provider. (See page 14 below.)
- VI. Facilities.** Public defense providers should work in office environments that safeguard the health, safety and comfort of attorneys, staff and clients. The environment should support efficient and productive legal work and instill pride and confidence in the work performed there. (See page 15 below.)
- VII. Collaborative Efforts.** Public defense providers should engage in collaborative efforts with judges, prosecutors, the Department of Human Services, community corrections, law enforcement, jail staff and others in the establishment of policies and procedures for local and statewide justice system operations. (See page 16 below.)
- VIII. Civic Engagement.** Public defense providers should recognize the value and support the engagement of public defense attorneys and staff in civic and other activities within the community. (See page 16 below.)

Implementation of Best Practices

I. Client-Centered Practice

Public defense providers should formally recognize a paramount purpose to ensure zealous, high quality representation for each client.

Recommendations for implementing this practice:

1. Public defense providers should adopt a mission statement that announces to attorneys and staff working with the provider, as well as to clients, justice system officials and others, that the provider will act with commitment and dedication to the interest of each client and will zealously advocate on the client's behalf.
2. Public defense providers that operate under articles of incorporation, by-laws or other fundamental documents describing the purpose of the provider, should identify as that purpose the provision of high-quality representation to those persons for whom the provider is appointed to provide representation.
3. Through training, supervision and other management practices, described in other best practices below, public defense providers should ensure that all attorneys and staff working with the provider understand and adhere to their professional and ethical responsibilities to pursue with knowledge and skill whatever lawful and ethical measures are required to vindicate a client's cause.
4. Public Defense providers who represent clients in juvenile court proceedings should recognize the unique challenges of this work, which requires specialized skills and knowledge concerning complex state, federal and international statutory and regulatory schemes, specialized age-appropriate interview skills, familiarity with treatment and placement resources for children and families, awareness of research concerning childhood and adolescent development, and a host of other areas not commonly encountered by attorneys who are trained and practice primarily in criminal law cases. These factors will ordinarily require that those entities providing representation in juvenile court cases develop a specialized focus on these cases and the issues they present in the recruitment, hiring, training and supervision of attorneys and staff.

Commentary for this practice:

A lawyer's most fundamental obligation is to advocate for a client's cause with zeal, skill and devotion.¹ Many values and practical skills are required to fulfill this obligation, but foremost among them are a determined loyalty to the client, timely and effective communication with the client, and the exercise of knowledge and skill on behalf of the client. While the QATF has identified public defense providers across Oregon who seek to fulfill these obvious obligations, it remains a challenge for many and for some providers it is unclear whether the obligations are well understood. Too often, peer review teams are told of attorneys who fail to advocate for a client's cause. The explanations for unsatisfactory attorney performance are varied, but most frequently cited are the desires to please local judges or other officials who insist upon a particular style or method of practice, the acceptance of workloads that interfere with effective representation, and the lack of specialized knowledge and skill required for a particular type or area of practice. In some instances, public defense provider administrators are well aware of these shortcomings and have failed to undertake remedial measures. The Best Practice recommended above should serve as a guidepost for public defense administrators and others for measuring the success of the provider in meeting its most basic obligations.

II. Board of Directors

The management of non-profit public defender offices and consortia should be directed and supervised by a board of directors.

¹ This obligation derives from both the standards of the profession for public defense providers and the ethical responsibilities of all attorneys. As a matter of practice, "[t]he basic duty defense counsel owes to the administration of justice and as an officer of the court is to serve as the [client's] counselor and advocate with courage and devotion and to render effective, quality representation." *ABA Standards for Criminal Justice, Standard 4-1.2 The Function of Defense Counsel* (3d ed. 1993). The "overarching duty" of counsel is a "vigorous advocacy of the client's cause," guided by "a duty of loyalty" and the employment of the skill and knowledge necessary for a reliable adversarial system of justice. *Strickland v. Washington*, 466 US 668, 688, 104 S. Ct. 2052 (1984). As a matter of professional responsibility applicable to all lawyers, "[a] lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." *ABA Model Rules of Professional Conduct, Commentary to Rule 1.3*, ABA Center for Professional Responsibility (2007).

Recommendations for implementing this practice:

1. An active and informed board of directors with independent members should oversee the management of public defense providers.
2. At least twenty percent of any board of directors (or at least one member of a five-member board) should be members unaffiliated with the provider and not engaged in providing public defense services.
3. A board should include some members selected to serve by persons unaffiliated with the provider, such as the chair of the local county commissioners and/or the president of the local or state bar association.
4. A board of directors should conduct an annual review of the effectiveness of the public defense provider in achieving its mission of ensuring zealous, high quality representation to each client, by:
 - a. Assessing the performance of the provider's administrator or executive director;
 - b. Gathering information from judges, prosecutors, representatives of other justice system partners and other constituencies that are served or represented by the provider concerning the effectiveness of the provider in achieving its mission; and
 - c. Requiring that specific measures be taken to address any identified deficiencies in the effectiveness of the provider in achieving its mission.
5. A board of directors should be responsible for ensuring the transparency and accuracy of provider financial statements, whether audited or not, and direct any changes in management practices that are necessary for the responsible fiscal management of the provider.
6. Working with the provider administrator or executive director, a board of directors should adopt a fair, rational and responsible compensation plan for those persons providing services for the provider, by:
 - a. For non-profit public defender offices and other law firms, establishing a transparent and fair salary plan that recognizes and rewards meritorious service and additional responsibilities for management or supervisory duties, and that accounts for increases in the cost of living.
 - b. For consortia, fairly apportioning the proceeds from the provider's contract with the PDSC to member attorneys for work actually performed, reserving an agreed upon portion for payment of salaries and other expenses for those employed or serving the consortium in the conduct of its work.

7. Working with the provider administrator or executive director, a board of directors should develop and periodically update an effective strategic plan to identify strategies, goals and objectives for accomplishing the following elements:
 - a. The effective articulation and achievement of the provider's mission;
 - b. Improving the provider's organization;
 - c. Recruiting new attorneys and support staff;
 - d. Achieving a diverse and culturally competent organization that meets the needs of the community in which it operates;
 - e. A plan for the development of skilled administrators and a succession plan for those persons;
 - f. Written policies and procedures for achieving the provider's mission; and
 - g. A protocol for the orientation, training, supervision and evaluation of the attorneys and staff working for or with the provider.
8. A board of directors should provide leadership for policy-makers, media, legislators and other members of the public within the provider's community to articulate the mission of the provider and enhance better understanding and appreciation for the essential role of public defense services.

Commentary for this practice:

Even where a board of directors is not a legal requirement for the business structure of a provider, they have provided invaluable assistance to some Oregon public defense providers. Board members who are not directly affiliated with the provider they serve have included bankers and other leaders of the local business community, public relations consultants, civil rights advocates, and attorneys who manage their own civil or criminal defense firms. Members of board of directors can bring to public defense management a wealth of experience in organizational structure and management, and often have expertise in responsible financial management and the effective operation of non-profit and for-profit entities. The QATF has learned of instances where boards have provided valuable assistance in developing protocols for effective provider administration, for addressing conflicts and performance deficiencies within a provider, and for establishing responsible fiscal management of providers. Board members have also helped communicate with local communities and with state legislators concerning the essential service that providers perform and the need for adequate statewide funding for public defense services.

III. Quality Assurance

Public defense providers should establish practices, written protocols, policies and procedures, and other documents that assure high quality representation by provider attorneys.

Recommendations for implementing this practice:

1. Providers should establish written expectations for the performance of attorneys and others working with or for provider that require, among other things, adherence to applicable provisions of the provider's contract with the PDSC; to the applicable Oregon State Bar Performance Standards for Counsel in Criminal, Delinquency, Dependency, Civil Commitment and Post-Conviction Cases; to other applicable national standards of justice; and to the Oregon Rules of Professional Conduct.
2. Providers should recruit new attorneys by attending job fairs and similar events sponsored by Oregon law schools and, where appropriate, regional events in Washington, California, and Idaho.
3. Providers should establish protocols and documents for the orientation, training and mentoring of attorneys and others working for or with the provider, which would include the following elements:
 - a. For an orientation protocol, new attorneys and others should receive instruction on:
 - i. The procedures for working within the provider's office or consortium.
 - ii. The structure of the local criminal and/or juvenile justice system, including names and descriptions of the principle participants.
 - b. The training protocol for attorneys should include:
 - i. An overview of the legal and tactical issues that arise in the case types to be assigned to the attorney.
 - ii. A plan for new attorneys to observe more experienced attorneys in the conduct of client interviews, conferences with investigators and experts, negotiations with prosecutors, and in court proceedings, including trials and, where possible, to serve as co-counsel to more experienced attorneys.

- iii. Within the first six months of a new attorney's work with provider, participation in a practical skills training course covering the fundamentals of trial advocacy, including client interviews, working with investigators, identifying legal issues and preparing pretrial motions, jury selection, opening statements, direct and cross-examination, working with experts, closing argument, and sentence advocacy.
 - iv. Within the first year of a new attorney's work with provider, participation in the annual New Lawyers Seminar presented by the Oregon Criminal Defense Lawyers Association (OCDLA) or a similar program.
 - v. A plan for the assignment of cases of greater seriousness and complexity to attorneys as they gain the experience and qualification necessary for greater responsibilities.
 - vi. Support for attorney attendance at additional relevant OCDLA, Oregon State Bar, and other educational programs.
 - vii. Periodic presentation of continuing legal education programs, with attendance open to other local public defense providers, which address recent legal developments and issues of local concern.
- c. The mentoring protocol for attorneys should include:
- i. The designation of knowledgeable and experienced attorneys with an interest in assisting others who will consult with less experienced attorneys about the legal and tactical considerations in the cases assigned to the less experienced attorney.
 - ii. A plan for a knowledgeable and experienced attorney with an interest in assisting others to be available during a new attorney's first court appearances and trials for assistance and guidance, if needed, and to provide constructive feedback.
4. Providers should establish effective supervision of the work performed by attorneys and staff, by:
- a. Designating an experienced and knowledgeable attorney who is responsible for ensuring that the attorney(s) or staff member under supervision perform satisfactorily. A supervisor:
 - i. Acts with the authority of provider management to achieve the mission of the provider to ensure zealous, high quality representation for each client.
 - ii. May receive specialized training in the conduct of effective supervision.

- iii. May receive additional compensation and/or a reduced caseload in recognition of the additional workload involved in providing supervision.
 - b. Providing that a supervisor, who may also be the mentor working with a less experienced attorney, should monitor the performance of those under supervision and have the authority to direct changes or improvement in the performance of those under supervision.
- 5. Providers should perform regular performance reviews of the attorneys and other staff performing work for provider.
 - a. The provider executive director or administrator should be responsible for ensuring fair and equitable evaluations, which may be conducted by designated supervisors.
 - b. Performance reviews should measure performance against organizational and professional standards, and incorporate a self-evaluation and input from colleagues, judges and other appropriate justice system participants.
 - c. Performance reviews should support improved performance, identify objectives and goals for future performance and, where necessary, establish an action plan with specific outcomes.
- 6. Providers should have written policies and procedures establishing a method to remedy performance deficiencies by attorneys and others performing work for provider, which includes the right of provider to end its relationship with attorneys and others who perform unsatisfactorily.
 - a. For non-profit public defender offices and law firms that do not operate under a collective bargaining agreement, providers should make available a method for corrective actions through progressive discipline.
 - b. For consortia, providers should utilize a membership agreement that, among other things, provides for the termination of members who fail to promptly address significant performance deficits.
- 7. Providers should establish a procedure for gathering and analyzing input from clients regarding the quality and responsiveness of the provider's legal services.
- 8. Providers should establish and share with local justice system stakeholders a procedure for receiving, investigating and resolving complaints about the quality of provider's legal services, and should review any complaints concerning provider attorneys received by the Oregon State Bar.

Commentary for this practice:

The Oregon statewide public defense system, with its state-funded, independent, non-partisan commission responsible for all components of public defense services, has been identified as a model for the delivery of cost-effective, quality public defense representation.² And, while the Public Defense Services Commission's qualification standards and performance expectations (incorporating the Oregon State Bar performance standards) are essential components of an effective statewide public defense delivery system, they do not, without more, guarantee quality.³ The Commission's choice of a contract system for fulfilling its statutory and constitutional obligations, as opposed to a statewide public defender agency, puts the principal burden of providing quality representation upon the entities that contract with the Commission to provide the representation.⁴ The Commission can attempt to assure quality through the terms of the contracts that it negotiates and through monitoring, oversight, and other enforcement measures, but achieving quality representation requires, in the first instance, that providers recognize and accept their own responsibility to undertake measures to assure it.

Public defender offices, with employees subject to direct supervision and with the potential capacity for comprehensive training programs, may be best positioned to implement and enforce quality assurance controls, and are especially well-suited to introduce new lawyers to public defense practice. The QATF peer reviews have found that most public defender offices recognize their quality assurance obligations and have attempted to implement many of the practices recommended above with varying degrees of success. The QATF has also found, however, that consortia are increasingly embracing quality assurance functions, and have effectively implemented enforceable standards of performance, mentorships, evaluations of members, protocols for taking corrective actions to improve performance, and complaint procedures. Models are available now of consortium membership agreements and other documents designed to assure quality representation. A QATF peer review identified one small consortium in a less populated area of Oregon that successfully integrated, through mentorship and oversight, new members with little prior experience in the work performed by the consortium. In short, providers across Oregon, whether they are public defender offices, consortia or law firms, appear to understand their essential role in assuring quality representation.

² *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, Report of the National Right to Counsel Committee, at 166 (April 2009), available at: www.constitutionproject.org.

³ *Id.*

⁴ There is no inherent incompatibility between quality representation and a statewide system that relies upon a contract model for delivery of public defense services. In fact, a National Legal Aid and Defender Association study cited the Oregon model as an example of a contract system with safeguards in place that can assure quality representation. *Evaluation of Trial-Level Indigent Defense Representation in Michigan*, National Legal Aid and Defender Association, at 55 (June 2008). The report is available at: http://www.mynlada.org/michigan/michigan_report.pdf.

IV. Case Assignment

Providers should establish, in collaboration with the courts and others, a system for receiving court appointments and assigning counsel that assures high-quality representation from a client's first appearance in court to the final disposition of the judicial proceeding.

Recommendations for implementing this practice:

1. Providers should ensure that an attorney is present at the first appearance in court of any person who may be entitled to representation by appointed counsel at state expense, including the initial arraignment in criminal cases, and shelter care or preliminary hearings in juvenile delinquency and dependency cases.
2. Providers should ensure that the attorney assigned to represent a client:
 - a. Possesses the qualifications for representation of the involved case-type, and has been approved for appointment, under the Public Defense Services Commission's *Qualification Standards*, by the Office of Public Defense Services.
 - b. Has a current workload that will not interfere with competent and diligent representation, as explained in Oregon State Bar Formal Ethics Opinion 2007-178, *Competence and Diligence: Excessive Workloads of Indigent Defense Providers*.
3. Providers should ensure that the attorney or firm assigned to represent a person is able to do so without conflict of interest, by:
 - a. Working with the courts, district attorney, the juvenile department, the Department of Human Services and others who may be necessary to identify, in advance of the appointment of counsel, the principle parties and witnesses in a case so that the provider may be able to make appropriate conflict-free assignments of counsel.
 - b. Ensuring that discovery is made available to assigned counsel expeditiously, so that assigned counsel can determine as soon as possible that he or she will be able to provide conflict-free representation.
4. Where the attorney present for a person's initial court appearance will not be the attorney assigned to represent that person, providers should ensure that:

- a. The person, whether in or out of custody, is provided with the name of the assigned attorney and a means of contacting the attorney within 24 hours of the first court appearance.
 - b. The assigned attorney is informed of the assignment as soon as practicable after the assignment.
 - c. The person's legal interests are represented, and other immediate questions and concerns appropriately addressed, until an assigned attorney is notified of his or her assignment and assumes responsibility for the person's case.
5. Providers should ensure that assigned counsel adheres to provider's contractual obligations for prompt contact with new clients, and fulfills professional and ethical responsibilities for timely communications and contact with clients who are adults, youth and children.
 6. Where appropriate, providers should ensure that representation is continuously provided by the same attorney initially assigned to represent a person until the final disposition of the judicial proceeding.

Commentary for this practice:

The practices recommended above implicate two related concerns: ensuring the presence of an attorney at all court appearances of a person eligible for court-appointed counsel, and ensuring that duties to existing clients will not interfere with appointed counsel's ability to provide quality representation to new clients (and *vice versa*). The presence of an attorney at a client's first court appearance has long been identified as an essential component of quality public defense services.⁵ And ordinarily, the same attorney should continuously represent a client from initial assignment through completion of trial level proceedings.⁶ Moreover, the managers and administrators of public defense providers who are responsible for making case assignments have a duty to determine that those attorneys assigned to new clients will not have workloads that improperly interfere with the attorney's ethical and professional obligations to provide quality representation to all clients.⁷

There is a record of mixed success with these principles, according to QATF reviews. While the norm in Oregon is to have public defense providers available at initial appearances in criminal cases, there remain some counties, including one with a large population, that are not complying with this essential practice. In juvenile court, especially with dependency cases,

⁵ Resolution concerning *Representation of Indigents at Initial Appearance*, American Bar Association (August 1998), available at: <http://www.abanet.org/legalservices/downloads/sclaid/112d.pdf>.

⁶ *The Ten Principles for a Public Defense Delivery System*, Principle 7, American Bar Association (February 2002), available at: <http://www.abanet.org/legalservices/downloads/sclaid/resolution107.pdf>.

⁷ Eight Guidelines of Public Defense Related to Excessive Workloads, American Bar Association (August 2009), available at: http://www.abanet.org/legalservices/sclaid/defender/downloads/eight_guidelines_of_public_defense.pdf.

many counties continue to lack the presence of attorneys at initial shelter hearings, despite the demonstrated benefit of counsel at those proceedings.⁸ However, the QATF has found that even in counties with very few public defense providers, arrangements can be made to have public defense providers present at initial appearances, in both criminal and juvenile cases, where the providers, courts, prosecutors and others work cooperatively toward that end.

QATF reviews regularly receive reports that high caseloads appear to interfere with the ability of public defense providers to devote adequate time to client contact and to be properly prepared for all court proceedings. Where appropriate, peer evaluations have reminded public defense administrators of their ethical and contractual obligations to ensure that attorneys providing public defense services are not required to handle excessive workloads. Those obligations are now detailed in the American Bar Association's *Eight Guidelines of Public Defense Related to Excessive Workloads* (August 2009).⁹

V. Information Management

Public defense providers should implement and manage information technology that effectively supports the mission of the provider.

Recommendations for implementing this practice:

Effective information technology should support the mission of the provider by:

1. Monitoring the number, type and current status of cases assigned to provider attorneys.
2. Supporting the identification of conflicts of interest so that provider may make appropriate case assignments and attorneys can identify those cases that they may not accept or from which they must withdraw.
3. Creating and maintaining calendars.
4. Documenting and evaluating case outcomes.
5. Collecting and reporting case information for satisfaction of contractual obligations with the Office of Public Defense Services.
6. Supporting responsible fiscal management.

⁸ See, *Zealous Advocacy: Shelter Hearings*, Juvenile Rights Project Juvenile Law Reader (December 2007/January 2008), available at: <http://www.jrplaw.org/Documents/JRPReaderV4I56.pdf>.

⁹ See *supra* note 6.

Commentary for this practice:

Fulfilling many of the best practices recommended in this document requires the collection and management of qualitative and quantitative statistical information. The available technology for accomplishing this purpose varies greatly in cost and sophistication, and changes often. Thus, no recommendations are made here for specific products or services. The QATF has found that public defense providers of all variety and size have experienced varying levels of success in purchasing “off-the-shelf” products or in custom-designed management information systems. OPDS staff can refer interested providers to those providers who appear to be pleased with the technology and systems they employ. Whatever products and systems are adopted, however, public defense administrators should have access to reliable and current information to make informed decisions on the assignment of cases and to aid in the evaluation of work performed by provider attorneys, in addition to performing other administrative functions that rely upon accurate information about provider activity.

VI. Facilities

Public defense providers should work in office environments that safeguard the health, safety and comfort of attorneys, staff and clients, support efficient and productive legal work, and instill pride and confidence in the work performed there.

Recommendations for implementing this practice:

1. Attorney law offices should allow for confidential conferences with clients and those working on behalf of clients.
2. For attorneys working in consortia who share office space, facilities and support staff should be managed to avoid conflicts of interest, as described in Oregon State Bar Formal Ethics Opinion 2005-50, *Conflicts of Interest, Current Clients: Office Sharers Representing Opposing Parties*.
3. Offices should be equipped with current reference manuals, practice guides and online services necessary to support representation in the types of cases handled by attorneys working there.

Commentary for this practice:

QATF peer review teams have visited attorney offices in both large and small communities in every region of the state. In every community the teams found offices that were comfortable

and appeared appropriate to the work to be performed there and others that were less so. The reality of law practice in many communities, especially in smaller communities where public defense providers may not have the time or opportunity to also engage in the private practice of law, is that attorneys must spend as little as possible on rent and equipment for their offices or meeting places, often sharing space with other attorneys and finding offices in older properties. There is no need or expectation that offices be opulent, but they should be comfortable and safe places for attorneys and their clients and staff. Where attorneys share office space, they must make clear to clients that they maintain separate law practices and take other steps to safeguard client communications, as outlined in the Formal Ethics Opinion referenced above.

VII. Collaborative Efforts

Public defense providers should engage in collaborative efforts with judges, prosecutors, the Department of Human Services, community corrections, law enforcement, jail staff and others in the establishment of policies and procedures for local and statewide justice system operations.

Commentary for this practice:

Regular contacts between public defense providers and other justice system stakeholders, outside the context of individual cases, can benefit the provider, its clients and the justice system as policies and procedures evolve with the information and expertise of respected public defense leaders. These contacts also benefit public defense as system partners gain a better appreciation of the work of public defense providers, and become a valuable source of input for performance assessments of the provider and its attorneys and staff.

VIII. Civic Engagement

Public defense providers should recognize the value and support the engagement of public defense attorneys and staff in civic and other activities within the community

Commentary for this practice:

Peer reviews of public defense providers have confirmed that those providing public defense services are real people with everyday lives that reach beyond the office and courtroom.

Providers of public defense services make time in their busy lives to serve in elected positions in their communities, on the boards and as officers of local charitable causes, as teachers in local schools, and in a myriad of other positions that form the fabric of community life. To the extent that associates in these various ventures come to understand the work of public defense providers and “how you can defend those people” and why, the overall cause of public defense and civic understanding is advanced.

VIII. Other Online Resources

A wealth of information about public defense in Oregon can be found on the website of the Office of Public Defense Services at www.oregon.gov/OPDS. Commissioners are urged to explore this website, especially since it includes the policies and procedures adopted by the PDSC pursuant to the directives of ORS Chapter 151. A summary of the information, as organized on the website is as follows:

General Information

Mission Statement
Public Records Procedure
Complaint Policy
Staff Roster
Positions Available
Affirmative Action Plan

The Commission

Members

Agendas (includes agendas, materials, transcripts, and minutes of all past meetings)

PDSC Legal Representation Plan for Death Penalty Cases

Reports and Publications

- Annual Performance Progress Reports
- Biennial Strategic Plans
- Executive Director's Annual Reports
- Executive Director's Biennial Report to the Legislative
- Service Delivery Reports
- Other Reports and Information

For Public Defense Providers

PDSC Qualification Standards for Appointed Counsel

Best Practices for Oregon Public Defense Providers

Accounts Payable Contact Information

Current Requests for Proposals

Current and Past General Contract Terms

PDSC Payment Policies and Procedures

Forms

Attorney Certifications

Billing Forms

Forms and Tips for Seeking Nonroutine Expenses

The **Oregon Criminal Defense Lawyers Association** website also contains valuable historical documents related to public defense in Oregon, including a comprehensive 2002 operational review of the state's public defense system and a 2003 report on

recommendations for improving contracting for public defense services. The documents are available on the “Public Defense” tab under “Resources,” at <http://www.ocdla.org/resources-pd.shtml>.

IX. Logistics

The purpose of this portion of the handbook is to inform Commissioners about the basic logistics of Commission meetings including the structure of the meeting, and when you will be contacted for attendance, parking, lodging, and lunch matters.

- A. **Before the Meeting:** About one month before each meeting, you will receive an email to confirm your attendance and determine whether you need lodging. Both of these are important. Four members are needed to form a quorum, and meetings must be rescheduled if there will not be sufficient attendance.
 - 1. **Lodging:** Please immediately alert us to your need for hotel accommodations (reservations can usually be cancelled if your plans change).
 - 2. **Meeting Materials:** Materials are sent one week before the meeting date, in both electronic and paper formats.
 - 3. **Parking:** Most meetings are at OPDS. Your meeting materials will include a slip of colored paper with your parking space number. That number corresponds to a parking space in front of our building. If you intend to carpool, please let us know. For meetings outside of OPDS you will be given a map with parking structures or lots near the location of the meeting.

- B. **Meeting Format:** Meetings generally begin at 10:00 am and are recorded and transcribed; you may move the recording device to appropriately capture the meeting's contents. The Chair controls the flow of the agenda items, which may be taken out of order to accommodate schedules or other matters. Lunch is offered during the meeting or at the conclusion if it is a short agenda.

- C. **Mileage Reimbursement:** Hard copy meeting materials are sent with a travel reimbursement form. OPDS already has your work address on file; if you are leaving from elsewhere, you may note that on the form. Just sign the form and submit it to an OPDS staff member; it will be processed within the next three business days.

Attachment 3

Public Defense Contracts (Parent Child Representation Program Case Manager) Recommended
for Approval by the Public Defense Services Commission at its
March 17, 2016 Meeting

COUNTY	PROPOSED CONTRACTOR	CASE TYPE	SERVICE PROVIDED	VALUE (up to)	EXPIRATION DATE
Columbia	Jillian Rivas-Davila	juvenile	case management	\$114,103	12.31.2017
Columbia	Tracy Adavai	juvenile	case management	\$42,789	12.31.2017
TOTAL				\$156,892	

Attachment 4

Public Defense Services Commission
Guideline Maximum Contribution Amount Schedule

Highest Charge	Guideline Maximum Contribution Amount
Murder, Aggravated Murder	\$20,862
Jessica's Law	\$10,084
Measure 11 felony	\$2,353
Non-M11 A felony	\$870
Non-M11 B felony	\$638
C felony	\$381
Misdemeanor, contempt, extradition	\$215
FAPA/Support	\$318
Probation violation	\$119
Habeas corpus	\$1,494
Post-conviction relief	\$2,587
Civil commitment	\$213
Juvenile felony	\$765
Juvenile misdemeanor	\$246
Juvenile probation violation	\$127
Juvenile dependency	\$491
Termination of parental rights	\$1,562

Effective April 1, 2016

Attachment 5

Public Defense Services Commission

The Executive Director's 2015 Annual Report (February 2016)

Introduction

The Public Defense Services Commission, with the help of the Oregon State Legislature and system partners at both the state and local levels, achieved some incremental improvement in client representation across the state in 2015. Of particular note are four accomplishments. First, the Parent Child Representation Program (PCRP) entered its second year of service in Yamhill and Linn Counties, and in addition to improving representation in those counties, the Program generated enough savings throughout the previous biennium to allow expansion of the Program into a third small county – Columbia County – in January 2016. Second, plans for a Public Defense Resource Center in the Multnomah County Courthouse, focused on improving clients' access to justice, were more fully developed and continue to move forward. Third, the office took steps toward improving its ability to make data-driven decisions by beginning development of a case management system for use in the juvenile appellate division (JAS) and PCRP counties. Finally, the 2015 legislative session ended with approval for permanent funding for administration of the PCRP, and additional funding to permit consistent case rates for different types of public defense providers (non-profit public defender, law firm, and consortium).

The PDSC also moved through change within Office of Public Defense Services' Appellate Division. Peter Gartlan, Chief Defender and a public defender in Oregon for over 25 years, retired in April 2015. With Mr. Gartlan's retirement came the need to select a successor. Ernest Lannet assumed the role of Chief Defender of the Criminal Appellate Section in April 2015. Shannon Storey continued in her leadership of the Juvenile Appellate Section, a separate section of the Appellate Division. Both Mr. Lannet and Ms. Storey are responsible for the day-to-day management of their sections, and report directly to the Executive Director. They bring tremendous experience, dedication, and expertise to their sections, and have continued the excellent leadership demonstrated by their predecessor.

In the final quarter of the year, the PDSC launched the start of a strategic-planning process to help build a strategy for continued achievements through 2020. The Commission also saw the retirement of long-time PDSC Chair and public defense advocate, Barnes Ellis, who dedicated over 50 years to the advancement of legal services for those who could not afford representation. Mr. Ellis was honored by the Oregon State Bar on December 10, 2015, for his countless hours of volunteer and public service work.

PDSC's Accomplishments in 2015

1. The Commission

The PDSC held eight meetings in 2015, including two meetings in central Oregon, two in Portland, one in Hillsboro, and three in Salem. The January 2015 meeting, included a Service Delivery Review in Marion County. The Commission was pleased with the level of service provided by practitioners there, and applauded providers for working well together to meet the needs of clients and system partners. The Commission held a second Service Delivery Review, in Washington County, during its September meeting. Again, the Commission was pleased with the work of the majority of providers and the overall functioning of the public defense system in that county.

The February meeting, held in Portland, allowed Commission members to get detailed information regarding the planned Multnomah County Courthouse with a co-located Public Defense Resource Center. Commission members passed a resolution in support of the project, and later in the year, submitted a letter of interest for a similar project in Lane County.

During the course of the year, Commission agendas included information on a variety of topics. Some of the subjects were continued throughout the year, including representation of veterans, national trends in public defense, Parent Child Representation Program updates, legislative updates, government ethics, workload standards, and representation trends in Oregon delinquency cases.

The Commission Chair and OPDS staff also focused on the budget and the 2015 legislative session. There were three days of budget hearings before the Joint Committee on Ways and Means Public Safety Subcommittee of the Oregon State Legislature during its regular session, which ended in July 2015. The hearings were launched by Chief Justice Balmer and Commission Chair Barnes Ellis, as required by ORS 151.216(1)(e), and included letters of support and testimony from the Oregon State Bar, judges, public defense providers, District Attorney Walt Beglau, the Attorney General's office, CASA, and individuals who had been represented by a court appointed attorneys. These hearings demonstrated, once again, that public defense is a critical component of Oregon's justice system.

With the budget established in early July, the Commission began evaluating contract proposals. In October the Commission completed the process and approved a statewide contracting plan to begin January 2016.

The Commission's December meeting focused on strategic planning and, as noted above, the retirement of longtime PDSC Chair, Barnes Ellis.

2. Statewide Contract and Financial Services

A. Contracts

In 2015, OPDS analysts managed 107 statewide contracts. Total contract payments for 2015 were approximately \$92,257,000, with representation provided in approximately 167,581 criminal and juvenile case proceedings; approximately \$550 per case for lawyer services. In 2015 there were 11 new death penalty cases filed, adding to the number already in the system pending resolution in the trial courts, in post-conviction proceedings, and in the state appellate courts.

OPDS received funds through two different policy option packages to improve public defense funding beyond the current service level. Policy Option Package 100 provided partial funding to increase consortia and law firm rates to public defender office rates. This package also allowed OPDS to direct \$161,700 toward mileage reimbursement for providers in rural counties. These packages were built as a direct result of input from contractors across the state, who indicated that their contract rates were insufficient to cover the high cost of mileage required to visit clients and court hearings.

A primary area of continued concern for most contractors is the lack of predictability in funding for public defense work, and the inability to be competitive with the DA's office. When fixed costs such as rent, technology, health insurance, and professional expenses continue to increase, compensation based exclusively on low case rates becomes a bigger challenge. Policy Option Package 101, requested by OPDS to address these further inequities in public defense funding, was not funded, but conversations around this topic continue, and the OPDS remains committed to pursuing improvements. Additionally, contractors are very concerned about their inability to recruit and retain qualified lawyers given the low rates, especially when coupled with the high loan debt new lawyers face upon graduation from law school.

OPDS is increasingly aware of lawyers challenged to meet professional obligations when faced with unanticipated family or medical incidents. In 2015, the agency observed a troubling increase in the number of complaints arising when contract lawyers experience a medical incident, and found that in most instances, the lawyers did not have adequate coverage to meet their professional obligations during their absence. While recruiting and retaining good lawyers to work in public defense continues to be a challenge because of low compensation compared to other areas of practice, OPDS is also increasingly informed of problems with lawyers continuing to take public defense cases largely because they cannot afford to retire.

B. Financial Services

Contract and hourly providers, as well as experts retained by counsel, must submit information to the Office of Public Defense Services in order to be paid for their work. The Financial Services unit processed 19,593 non-routine expense requests and 40,578 billings

in 2015. Each expense requested, and billing submitted, is reviewed before authorized to ensure that expenses are necessary and reasonable for defending the case.

3. Quality Assurance

OPDS General Counsel Paul Levy, in collaboration with Deputy General Counsel Amy Miller and others at OPDS, continued to pursue a number of quality assurance measures in 2015.

In 2015, General Counsel planned and staffed a peer review of the public defense provider in criminal cases in Clackamas County. The review team included administrators of four other public defense contractors, a senior judge, an attorney in private practice, and a lawyer handling criminal cases in the OPDS Appellate Division. OPDS intends to follow up on the review with a Commission service delivery review in Clackamas County in 2016.

In July 2015, the OPDS Executive Director, along with an OPDS analyst and PDSC Commissioner John Potter, conducted interviews with justice system stakeholders in Washington County as a follow-up to the 2014 peer review of providers in that county. The Commission conducted hearings and finalized that review during meetings in September, October, and December 2015.

As in preceding years, in early 2015 General Counsel conducted a statewide survey of public defense performance. He then participated in follow-up contacts, along with OPDS Analysts, to speak personally with survey respondents who provided their name and expressed specific concerns about public defense services in their counties. General Counsel reported to the Commission on survey results at its March 2015 meeting. For 2016, OPDS plans to launch a revised survey, which will seek more specific information about provider performance, and to do so later in the year after providers have worked for a number of months under new contract terms and conditions.

As in previous years, OPDS received complaints about public defense services from provider clients, judges, prosecutors, and others. In many instances, these complaints concern problems with attorneys not responding to requests for case information and assistance. General Counsel, or Deputy General Counsel if the complaint concerns a juvenile case, is able to quickly resolve these matters through telephone or email contact with the appointed attorney or the contract administrator. However, both General Counsel and Deputy General Counsel devoted significant time to several matters that required substantial investigation and other efforts to resolve the matter. General Counsel also continued to serve on the Oregon State Bar Disciplinary Board, actively participating on a trial panel in 2015.

General Counsel continued to work closely with the OPDS analyst for death penalty cases to identify the appropriate assignment of counsel for new capital cases. He also worked closely with assigned counsel and others to address specific challenges that arise in those cases.

General Counsel's office participated in multiple education efforts in 2015. General Counsel worked with the Oregon Criminal Defense Lawyers Association Education Committee and also participated, along with OPDS Executive Director and others, in the planning for the annual public defense management seminar. He worked closely with Norman Lefstein, who presented at the program and to the Commission on the subject of establishing jurisdiction-specific caseload standards. Work on creating such standards for Oregon will continue in 2016. General Counsel also planned and produced the 2015 OPDS Diversity Program, entitled *Our Evolving and Diverse Community: Understand the Role of Immigration Law and Policy*. Deputy General Counsel, Amy Miller, coordinated planning for the 2015 Juvenile Law Training Academy. She also serves on the OCDLA Juvenile Law Committee, the Oregon State Bar Juvenile Law Committee, and contributed articles for publication in the *Juvenile Law Reader*.

The primary work of Deputy General Counsel Amy Miller is management of the Parent Child Representation Program which, as noted above, is expanding to include Columbia County in 2016. This work requires frequent meetings, usually on site, with participating attorneys, the court, deputy district attorneys, DHS, CASAs, and case managers. She has other quality improvement responsibilities focused on monitoring and improving the quality of legal representation of parents and children in juvenile court cases statewide. She investigates and resolves complaints related to juvenile matters, handles all juvenile non-routine expenditure requests, and regularly consults with trial practitioners statewide.

Reviewing funding requests for non-routine expenses is an important component of monitoring attorney performance, and is a function shared by General Counsel, Deputy General Counsel, and the contract analysts. From this review, OPDS staff gain information about the quality of case investigation and preparation conducted by attorneys and can address specific concerns that come to light during the review of funding requests. The review also assists in cost containment efforts and in predicting cost trends related to the preparation of particular case types.

General Counsel continued his responsibility for reviewing certificates of attorney qualification submitted by lawyers wishing to provide public defense services. In conjunction with the Executive Directive, Deputy General Counsel, and OPDS analysts, General Counsel also led a review and revision of the General Terms of the PDSC Public Defense Legal Services Contract. The review included a major reorganization and revision of the quality assurance provisions. Prior to the Commission's adoption of contract revisions, the proposed changes were reviewed and discussed by the OPDS Public Defense Advisory Group, and were also discussed and commented upon by contract providers at PDSC meetings.

Finally, General Counsel tracked and reported to the Commission developments in litigation outside of Oregon concerning the responsibility of public bodies to provide constitutionally sound public defense services. Such information is important for OPDS staff and the Commission to understand the public defense challenges facing other jurisdictions, how those challenges are being met, and to measure our work in Oregon in light of those developments.

4. Appellate Division

The Appellate Division (AD) is comprised of the Criminal Appellate Section (CAS) and the Juvenile Appellate Section (JAS). The division provides legal representation in the state appellate courts on direct appeal in criminal cases, parole appeals, juvenile dependency appeals, and appeals from the termination of parental rights. Peter Gartlan was the Chief Defender and manager of the Appellate Division until his retirement on March 31, 2015. Ernest Lannet assumed the role of Chief Defender of the Criminal Appellate Section upon Mr. Gartlan's departure. Shannon Storey serves as Chief Defender of the Juvenile Appellate Section.

Appellate Division managers meet regularly with the Chief Judge of the Court of Appeals and the Solicitor General of the Department of Justice to advance and promote practices that improve the appellate process without prejudicing the rights of clients. In addition, representatives from AD, the Attorney General's office, and appellate court operations meet quarterly to address operational issues that affect system efficiencies.

The division provides ongoing support to the trial level juvenile and criminal defense bar. AD lawyers sit on the executive committees of the Oregon State Bar's criminal law, juvenile law, constitutional law, and appellate law sections, as well as the executive and educational committees for the Oregon Criminal Defense Lawyers Association (OCDLA). AD lawyers regularly present at continuing legal education (CLE) seminars sponsored, for example, by the Oregon State Bar and the Oregon Criminal Defense Lawyers Association. The division's attorneys field email and telephone inquiries from the juvenile and criminal defense trial bar on a daily basis and provide briefing and memoranda to trial practitioners.

The Appellate Division produced its annual "Holidaze" half-day CLE program, which included a review of the new mandatory elder abuse reporting requirement for attorneys, an update on the 2015 legislative session, and practical and ethical considerations regarding responding to medial inquiries. The office also held several "PD Coffee, Pastry, and Chit-Chat" sessions featuring judges from the Court of Appeals and Supreme Court.

A. Criminal Appellate Section

The Criminal Appellate Section (with 37 attorneys) is significantly larger than JAS (5 attorneys). CAS represents individuals on direct appeal in misdemeanor and felony criminal cases (including capital cases), parole appeals, denial of applications for DNA testing, and victim's rights challenges, and acts as a resource for mandamus actions. All CAS attorneys work in one of six teams, led by a senior attorney. The teams meet weekly to review pending cases, discuss briefs, and prepare for oral argument.

Three Chief Deputy Defenders support the Chief Defender in the management of the section. Each Chief Deputy primary responsibilities fall into one of three areas: outreach, operations, and office development. The four managing attorneys meet at least weekly to address the section's needs and determine courses of action. They train, supervise, and

regularly evaluate the 34 non-management attorneys, set caseload expectations, allocate and redistribute manageable individual caseloads, and maintain documentation of workflow.

Filing Dates. The Criminal Appellate Section's Key Performance Measure (KPM) is the median age to file an opening brief past record settlement. In February 2014, at AD's request, the legislature reduced the KPM from 210 days to 180 days.

The median filing date during the fiscal year (FY) ending in June 2014 was 227 days. CAS attorneys reduced the median filing date during FY 2015 to 223 days. The median filing date for the first half of FY 2016 is 210 days. Two entry-level attorneys joined the section in 2015, replacing two of the section's most experienced attorneys. An additional 11 CAS attorneys have less than five years of experience in the section. CAS expects that the median filing date will continue to decrease as those newer attorneys gain experience.

Case Referrals. During 2015, CAS processed 1,482 incoming criminal case referrals (versus 1,574 in 2014) and filed 1,080 notices of appeal (versus 1,058 in 2014).

In 2015, the section filed 662 merit briefs in the Court of Appeals. By comparison, the section filed 779 merit briefs in 2014, 807 merit briefs in 2013, 720 merit briefs in 2012, and 654 merit briefs in 2011.

Supreme Court Practice. CAS has an active practice in the Oregon Supreme Court, with a record number of accepted cases in 2015. 16 CAS attorneys filed briefs in 23 cases in the Oregon Supreme Court (21 cases in which CAS represented a party and 2 cases in which AD appeared as amicus at the Court's request). During the same period, the Court issued 15 opinions in cases litigated by 11 different CAS attorneys (12 cases in which CAS represented a party and 3 cases in which AD appeared as amicus at the Court's request).

The Court's requests for AD to appear as amicus signal its recognition of AD's institutional role in the appellate system and the Court's confidence in AD's practice.

Practices and Procedures Manual. CAS management revised its Manual of Practice and Procedure and released it to the Criminal Section in November 2015. The 155-page manual is a desktop resource for CAS employees and management. It describes the office structure, provides the section's policies and procedures for routine issues confronting CAS attorneys, and identifies attorney performance expectations.

Outreach. CAS continued its current practice of contacting the trial attorney when a new case is assigned, a brief is filed, and a written opinion is released.

CAS attorneys have regular contact with the criminal defense bar and the public. A designated "officer of the day" is available to field inquiries from the trial bar and the public every business day; attorneys participate on OCDLA's "pond" listserv exchanges; several AD attorneys telecommute several days a month at Public Defender firms in Portland and Eugene and provide occasional noon-time "brown bag" CLE presentations at the firms; and

CAS considers whether the issuance of a media release is warranted when the Oregon Supreme Court announces its opinions.

Criminal Appellate Section attorneys present regularly at the annual Oregon State Bar (OSB) Criminal Law Section CLE, the OSB's Appellate Section CLE, the OCDLA annual conference, and at various OCDLA-sponsored CLE programs. CAS attorneys regularly submit an appellate perspective column for the OCDLA bimonthly journal, "The Oregon Defense Attorney."

In June, the section sent Chief Deputy Marc Brown to the 2015 National Forensic College at the Cardozo School of Law at Yeshiva University in New York City, a weeklong seminar cosponsored by the law school and the National Association of Criminal Defense Lawyers (NACDL).

Legislative Activity. Senior Deputy Shawn Wiley served as a resource to OCDLA's substantive lobbyist and stayed current with the Department of Justice's legislative agenda through meetings with DOJ's legislative director Aaron Knott.

B. Juvenile Appellate Section

The Juvenile Appellate Section consists of five attorneys and two support staff. JAS represents parents on direct appeal in juvenile dependency and termination of parental rights cases and serves as a resource for trial attorneys representing parents. Attorneys in this section work in a highly collaborative team environment led by the JAS Chief Defender. The team meets weekly to review pending cases, discuss briefs, and prepare for oral argument.

The JAS Chief Defender manages all areas of the JAS including outreach, operations, and office development. The Chief Defender trains, supervises, and regularly evaluates the JAS attorneys, sets caseload expectations, allocates and redistribute manageable individual caseloads, and maintain documentation of workflow.

Case Referrals and Briefing. During 2015, the JAS processed 376 referred cases (versus 312 in 2014), filed 300 notices of appeal (versus 258 in 2014), and filed 97 opening briefs (versus 102 in 2014). Due to the sharp increase in juvenile case referrals over the last five years, an additional attorney position will be assigned to the Juvenile Appellate Section in 2016.

Juvenile dependency cases are on an expedited appellate timeline. The Oregon Rules of Appellate Procedure allow a maximum 42-day limit per party for filing the appellate briefs. The expedited schedule produces a frenetic pace for the unit, particularly in those cases where the exhibits are not timely made available.

Supreme Court Practice. In 2015, the JAS filed one brief in the Oregon Supreme Court.

Outreach and Legislative Activity. The juvenile section attorneys regularly serve as a resource to the trial bar, providing daily consultation and support. Because most dependency cases are ongoing at the trial and appellate levels, the JAS often consults with trial attorneys and, on occasion, drafts motions and memoranda for trial attorneys. The unit has worked successfully with trial counsel in several cases to obtain favorable outcomes in the trial courts that obviate the need for appeal.

JAS attorneys are recognized leaders in the juvenile dependency community. They presented at various CLE presentations in 2015, including the Oregon State Bar Juvenile Law CLE, the OCDLA annual juvenile conference, and the annual OCDLA Juvenile Law Training Academy.

In 2015 JAS Chief Defender, Shannon Storey, served on the Oregon Law Commission's Juvenile Records Task Force, the Executive Committee the Oregon State Bar's Juvenile Law Section, the Editorial Board of the Oregon State Bar's Juvenile Law Book, and the planning committee for the Juvenile Law Training Academy. JAS Deputy Defender, Sarah Peterson, served as the Chair and Conference Coordinator of OCDLA's Juvenile Law Section. Finally, in 2015, Governor Kate Brown appointed JAS Deputy Defender, Valerie Colas, to serve on the "Task Force on Legal Representation in Childhood Dependency."

Appellate Panel. By February 2014, OPDS established a panel of independent juvenile appellate practitioners to represent parents in overflow and conflict cases that did not remain in the JAS and to supplement Youth Rights and Justice's (YRJ's) representation of children. Like the criminal panel, the juvenile panel members are pre-approved to serve on the panel and are compensated pursuant to a prescriptive administrative model that reflects case type and transcript length. As an important quality control measure, every two years the juvenile panel members must obtain re-approval to serve on the juvenile appellate panel. The juvenile panel's first reapplication process concluded on December 31, 2015, with all of the original panel members having applied for re-approval.

5. Executive Director

The Executive Director's responsibilities are set forth in ORS 151.219. In addition to completing the tasks outlined there, the Executive Director coordinated meetings of the Public Defense Services Commission, participated in several work groups and conference planning committees, convened or participated in regular meetings at both state and local levels, and stayed in regular communication with Oregon Criminal Defense Lawyers Association, Oregon Youth Authority, Department of Justice, Criminal Justice Commission, CASA, Governor's office, courts and legislative leadership and members who had an interest or question about public defense services.

The Executive Director's committee work focused primarily on system improvements. She was part of two Oregon Law Commission projects - the Collateral Consequences Work Group, which drafted a legislative concept that did not pass during the 2015 session, and the Juvenile Records Work Group, which continues to improve the language around access

to juvenile court records in the new eCourt environment. That committee will have further recommendations ready for the short 2016 legislative session. The Executive Director also serves as an external member of the Oregon Judicial Department's Audit Committee, and is a member of the Oregon State Bar's Bar Press Broadcasters Council, the National Legal Aid and Defender's Systems Development and Reform Committee, and the Multnomah County Courthouse User Group planning committee. She also participated in regular meetings of the Governor's public safety team, All Agency Directors meetings, Juvenile Court Improvement Program meetings, and regular meetings with the Chief Justice. Finally, she attended two Justice Reinvestment Summits, and the office continues to work with providers to encourage use of the state's prison-diversion programs.

The Executive Director convened regular meetings within the Office of Public Defense Services, as well as with contract providers, in order to keep Oregon's public defense system running smoothly. The OPDS Executive Team met almost weekly, OPDS All Staff meetings were held every-other month, and the Public Defense Advisory Group met twice during the year to provide their perspectives on the provision of public defense services across the state and to help plan upcoming peer reviews. The Executive Director also participated in planning for the Juvenile Law Training Academy and the OCDLA Public Defense Management Conference.

6. Staff

In addition to ensuring excellent services to all of our clients and constituents, OPDS staff members continue to play an active role in supporting Oregon communities. Gracious and committed employee volunteers guide the agency's charitable fund drive, food drive, and toy drive. As noted in last year's report, these activities bring staff together in an effort to support Oregon's more vulnerable populations outside the legal context.

Challenges for 2016

As always, adequate funding remains a challenge at both the trial and appellate levels. With case rates drastically below market rates, and fewer attorneys willing or able to work at these rates, the Commission must adopt a strategy for improved funding over the next few biennia. Student debt hampers efforts to attract and retain new lawyers to the practice, and lawyers who entered public defense with high student debt are reporting an inability to pay down the debt at their current rate of compensation. For some, the debt is actually growing because the amount they can afford to pay does not cover the accruing interest. According to the New York Times, "In 2012, the average law graduate's debt was \$140,000, 59 percent higher than eight years earlier."¹ The Wall Street Journal reports that, for many, student debt is now much higher due to changes in federal lending policies,

¹ See The New York Times, October 25, 2015, Sunday Review, Editorial - The Law School Debt Crisis: http://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html?_r=0

resulting increases in tuition costs across the country.² Consistent with the Wall Street Journal report, several Oregon public defenders have reported debt exceeding \$240,000. The agency will continue to work with the Commission, the Legislature, and interested stakeholders to ensure continued support for improvements in public defense funding and compensation.

During the Commission's October meeting, providers from around the state shared their thoughts on challenges they expect to encounter over the next four years. The list included

- the need to reduce caseloads, as the amount of work necessary to resolve each case and meet professional standards of practice increases;
- additional training and oversight, especially for newer public defense lawyers;
- more staff support to manage large volumes of electronic discovery and sophisticated software systems necessary for efficient management of a law practice;
- adoption of new technologies to better manage cases, and assistance with implementation, efficient use, and on-going technology training;
- the need for increased OPDS visits to individual counties in order to increase understanding of contractor challenges, and assist contractors with system challenges in their communities;
- improved communication and transparency during the contracting process and an improved funding structure that accounts for increasing provider costs;
- improved community support through education and outreach; and
- funding to address recruitment, retention, and succession planning.

In addition to developing strategies to address these provider challenges, the agency must continue to develop specific performance indicators to help the agency quickly identify potential problem areas. It must also continue to develop evaluation and support tools for the Parent Child Representation Program, which continues to offer many lessons regarding strategies to improve public defense representation.

Conclusion

The Public Defense Services Commission and OPDS managers will be working to identify efficiencies and opportunities as it works toward a new strategic plan for the agency. While much has been accomplished, the agency recognizes that it must continually assess its strengths and weaknesses in order to preserve excellence and enhance its services each year.

² See The Wall Street Journal, August 18, 2015, Grad-School Loan Binge Fans Debt Worries, by Josh Mitchell <http://www.wsj.com/articles/loan-binge-by-graduate-students-fans-debt-worries-1439951900?alg=y>