

**OPDS's Draft Report to the Public Defense Services  
Commission on Service Delivery in Judicial District No. 15  
(February 2008)**

**Introduction**

Since developing its first Strategic Plan in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission to deliver quality, cost-efficient public defense services in Oregon. Recognizing that increasing the quality of legal services also increases their cost-efficiency by reducing risks of error and the delay and expense associated with remedying errors, the Commission has developed strategies designed to improve the quality of public defense services and the systems across the state for delivering those services.

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004, 2005 and 2006, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Washington, Yamhill, Hood River, Wasco, Wheeler, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of the public defense systems in Coos and Curry Counties, a summary of the testimony presented to PDSC at its August 9, 2007 meeting in Coos Bay and recommendations regarding a service delivery plan for these counties.

**PDSC's Service Delivery Planning Process**

There are four steps to PDSC's service delivery planning process. First, the Commission has identified regions in the state for the purposes of reviewing local public defense delivery systems and services, and addressing significant issues of quality and cost-efficiency in those systems and services.

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

Third, after considering OPDS's preliminary draft report and public comments

during the Commission's meetings in a county or region, PDSC develops a "service delivery plan," which is set forth in the final version of OPDS's report. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's service delivery plans (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing other best practices in public defense management.

Any service delivery plan that PDSC develops will not be the last word on a local service delivery system, or on the quality and cost-efficiency of the county's public defense services. The limitations of PDSC's budget, the existing personnel, level of resources and unique conditions in each county, the current contractual relationships between PDSC and its contractors, and the wisdom of not trying to do everything at once, place constraints on the Commission's initial planning process in any region. PDSC's service delivery planning process is an ongoing one, calling for the Commission to return to each region of the state over time in order to develop new service delivery plans or revise old ones. The Commission may also return to some counties in the state on an expedited basis in order to address pressing problems in those counties.

### Background and Context to the Service Delivery Planning Process

The 2001 legislation establishing PDSC was based upon an approach to public defense management, widely supported by the state's judges and public defense attorneys, which separates Oregon's public defense function from the state's judicial function. Considered by most commentators and authorities across the country as a "best practice," this approach avoids the inherent conflict in roles when judges serve as neutral arbiters of legal disputes and also select and evaluate the advocates in those disputes. As a result, while judges remain responsible for appointing attorneys to represent eligible clients, the Commission is now responsible for the provision of competent public defense attorneys.

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The

Commission has undertaken a range of strategies to accomplish this mission.

Service delivery planning is one of the most important strategies PDSC has undertaken to promote quality and cost-efficiency in the delivery of public defense services. However, it is not the only one.

In December 2003, the Commission directed OPDS to form a Contractor Advisory Group, made up of experienced public defense contractors from across the state. That group advises OPDS on the development of standards and methods to ensure the quality and cost-efficiency of the services and operations of public defense contractors, including the establishment of a peer review process and technical assistance projects for contractors and new standards to qualify individual attorneys across the state to provide public defense services.

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams visited all of the juvenile contractors in Multnomah and Lane Counties and criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole juvenile and criminal providers in Benton County and Columbia County.

In accordance with its Strategic Plan, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC undertook a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers. In 2006, the Commission devoted two of its meetings to investigating the condition of juvenile law practice across the state and to develop a statewide Service Delivery Plan for juvenile law representation.

In 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in those cases was approved by the Commission in June of 2007.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services.

Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission’s service delivery planning process. That process is aimed primarily at reviewing and improving the “structure” for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into “best practices,” recognize that careful attention to the structure of service delivery systems contributes significantly to the ultimate quality and effectiveness of public defense services.<sup>1</sup> A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC’s other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the “performance” of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time to time in the course of the Commission’s service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed through the Commission’s deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

---

<sup>1</sup> Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g., Spangenberg and Beeman, “Indigent Defense Systems in the United States,” 58 Law and Contemporary Problems 31-49 (1995).

In light of the distinction between structure and performance in the delivery of public defense services and the relative capacities of PDSC and OPDS to address these issues, this report will generally recommend that, in the course of this service delivery planning process, PDSC should reserve to itself the responsibility of addressing structural issues with policy implications and assign to OPDS the tasks of addressing performance issues with operational implications.

Organizations currently operating within the structure of Oregon's public defense delivery systems. The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for "public" defenders and the advocates for "private" defenders. PDSC has repeatedly declared its lack of interest in joining this debate. Instead, the Commission intends to concentrate on a search for the most effective kinds and combinations of organizations in each region of the state from among those types of organizations that have already been established and tested over decades in Oregon.

The Commission also has no interest in developing a one-size-fits-all model or template for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to those proposals. As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide quality services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their

organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

The following discussion outlines the prominent features of each type of public defense organization in Oregon, along with some of their relative advantages and disadvantages. This discussion is by no means exhaustive. It is intended to highlight the kinds of considerations the Commission is likely to make in reviewing the structure of any local service delivery system.

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys and the offices in which they work operate under contracts with PDSC and have organized themselves in the following ways:

1. Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the attributes one normally thinks of as a government-run "public defender office," most notably, an employment relationship between the attorneys and the office.<sup>2</sup> Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender

---

<sup>2</sup> Spangenberg and Beeman, *supra* note 2, at 36.

offices tend to have more office “infrastructure” than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

Because of the professional management structure and staff in most public defender offices, PDSC looks to the administrators of these offices, in particular, to advise and assist the Commission and OPDS. Boards of directors of public defender offices, with management responsibilities and fiduciary duties required by Oregon law, also offer PDSC an effective means to (a) communicate with local communities, (b) enhance the Commission’s policy development and administrative processes through the expertise on the boards and (c) ensure the professional quality and cost-efficiency of the services provided by their offices.

Due to the frequency of cases in which public defender offices have conflicts of interest due primarily to cases involving multiple defendants or former clients, no county can operate with a public defender office alone.<sup>3</sup> As a result, PDSC expects public defender offices to share their management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

2. Consortia. A “consortium” refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC’s RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for “succession” in the event that some of the consortium’s lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

Consortia offer the advantage of access to experienced attorneys, who prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger

---

<sup>3</sup> Id.

law firms, but in which they no longer wish to practice law.

In addition to the access to experienced public defense lawyers they offer, consortia offer several administrative advantages to PDSC. If the consortium is reasonably well-organized and managed, PDSC has fewer contractors or attorneys to deal with and, therefore, OPDS can more efficiently administer the many tasks associated with negotiating and administering contracts. Furthermore, because a consortium is not considered a law firm for the purpose of determining conflicts of interest under the State Bar's "firm unit" rule, conflict cases can be cost-efficiently distributed internally among consortium members by the consortium's administrator. Otherwise, OPDS is required to conduct a search for individual attorneys to handle such cases and, frequently, to pay both the original attorney with the conflict and the subsequent attorney for duplicative work on the same case. Finally, if a consortium has a board of directors, particularly with members who possess the same degree of independence and expertise as directors of not-for-profit public defenders, then PDSC can benefit from the same opportunities to communicate with local communities and gain access to additional management expertise.

Some consortia are made up of law firms, as well as individual attorneys. Participation of law firms in a consortium may make it more difficult for the consortium's administrator to manage and OPDS to monitor the assignment and handling of individual cases and the performance of lawyers in the consortium. These potential difficulties stem from the fact that internal assignments of a law firm's portion of the consortium's workload among attorneys in a law firm may not be evident to the consortium's administrator and OPDS or within their ability to track and influence.

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) a special qualification process to receive court appointments.

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus,

PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

The foregoing observations are not meant to suggest that law firms cannot provide quality, cost-efficient public defense services under contract with PDSC. Those observations simply suggest that PDSC may have less influence on the organization and structure of this type of contractor and, therefore, on the quality and cost-efficiency of its services in comparison with public defender offices or well-organized consortia.

Finally, due to the Oregon State Bar's "firm unit" rule, when one attorney in a law firm has a conflict of interest, all of the attorneys in that firm have a conflict. Thus, unlike consortia, law firms offer no administrative efficiencies to OPDS in handling conflicts of interest.

4. Individual attorneys under contract. Individual attorneys provide a variety of public defense services under contract with PDSC, including in specialty areas of practice like the defense in aggravated murder cases and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

This type of contractor offers an important though limited capacity to handle certain kinds of public defense caseloads or deliver services in particular areas of the state. It offers none of the administrative advantages of economies of scale, centralized administration or ability to handle conflicts of interest associated with other types of organizations.

5. Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

## **OPDS's Preliminary Investigation in Judicial District 15**

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

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

On July 18 – 20 Commissioner John Potter, OPDS public defense analyst Billy Strehlow and Executive Director Ingrid Swenson visited with stakeholders in both Coos and Curry Counties. In addition to talking to PDSC's contractors in the district, they also met with the judges, the trial court administrator, district attorneys, juvenile department directors, the DHS Child Welfare Program Manager and members of her staff and representatives of the Sheriff's Office in both counties. Written responses to questionnaires were also received from the three contractors in the district. Copies of these responses are attached as Exhibits A, B and C.

As summarized below, at its meeting in Coos Bay on August 9<sup>th</sup>, PDSC heard directly from invited guests and others about the delivery of public defense services in the district and some of the challenges facing the public safety systems in Coos and Curry Counties.

The preliminary draft of this report is intended to provide a framework to guide the Commission's discussions about the condition of Coos and Curry Counties' public defense systems and services, and the range of policy options available to the Commission – from concluding that no changes are needed in these counties to significantly restructuring their delivery systems.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Judicial District 15's justice systems could turn out to be the single most important factor contributing to the quality of the final version of

OPDS's report to the Commission and its Service Delivery Plan for Coos and Curry Counties.

## **OPDS's Preliminary Findings in Judicial District 15**

### **A. Overview of Funding Crisis in Coos and Curry Counties**

While the funding crisis in Oregon's "timber counties" has been well documented, the extent of the impact on county services in Coos and Curry Counties can hardly be overstated. OPDS staff was advised that 68% of the general fund in Curry County and 50% in Coos County had come from the federal government. When the Congress eventually approved a one- year extension of funding under the Secure Rural Schools and Community Self Determination Act, both counties had already determined that they would need to make significant cuts in public safety spending. When funding for the additional year was ultimately provided, the counties took different approaches to use of the funds. Curry County rehired some of its public safety personnel. The Coos County Commission decided against restoring positions, however. Among the impacts in Coos County that were described to OPDS staff were the laying off of 85 county employees, the closing of nearly half of the jail beds, and the loss of half of the Sheriff's patrol deputies. Cuts in these and other county programs are discussed below in connection with particular agencies and functions.

### **B. The Court**

There are six judges in Judicial District 15 who preside over proceedings in three separate court facilities – the Coos County Courthouse in Coquille, the Coos County Courthouse annex in North Bend and the Curry County Courthouse in Gold Beach. Judge Richard Barron is the presiding judge and Ed Jones is the Trial Court Administrator. The two newest circuit court judges - Jesse Margolis and Cynthia Beaman - have been assigned to the Curry County Courthouse. Judges Barron, Michael Gillespie and Martin Stone are located in Coquille and Judge Paula Bechtold is assigned to the North Bend Annex. The courts in both counties are working toward using the same model for processing cases. Some hearings have different names in the two counties and some court related functions are performed by different agencies in each county.

### **C. Coos County**

#### **(a) Judicial Assignments**

Presiding Judge Barron handles juvenile cases, domestic relations cases that include children, and criminal cases that are tied to the family court process. Judge Bechtold handles non-jury cases, violations, small claims matters, FEDs, probate, domestic relations cases not involving children, mental health court and

civil commitment hearings. Judges Stone and Gillespie are the principle trial judges for civil and criminal cases.

(b) Special Courts

Drug Court - Coos County initiated its drug court program in February of 2005. It has processed approximately 300 Possession of Controlled Substance cases to date. The court meets once a month. Challenges to the ultimate success of the court include the lack of adequate funding for community corrections and the lack of a sufficient number of qualified treatment providers at low or no cost to participants.

Mental Health Court – This court was initiated a year ago. It is a post plea program that currently has six to eight persons enrolled. It meets once a month.

Family Court - The county is in the process of creating a court for families with 0-3 year olds in protective custody. Mental health, drug and alcohol, and parenting services will be included. The court will start with five families. On August 24, 2007 there was to have been a meeting with the attorneys to discuss the potential benefits of the program to their clients. One of the goals of the court is to limit the number of times children in care are moved. Representatives of a number of different agencies including mental health, DHS, the trial court administrator, juvenile and adult probation staff all contributed a significant amount of time to planning the new court.

Coos County also has a deferred sentencing program for domestic violence cases which was started in approximately 2000. It is available to both male and female offenders. It requires completion of a one-year education program. The county also offers a voluntary twelve-week education program for victims of domestic violence.

Both the drug court and the domestic violence deferred sentencing program are early disposition programs which defendants must elect within seven days of arraignment.

(c) The District Attorney

Paul Burgett is the Coos County District Attorney. He will retire in December of 2007. His chief deputy, Paul Frasier, is expected to be appointed to fill the vacancy. The office recently lost one deputy district attorney position and will not fill the vacancy created by Mr. Burgett's retirement. After his retirement there will be one district attorney and five deputies. This loss of personnel will affect the volume and seriousness level of cases filed in the county. Mr. Frasier believes that each deputy can handle an annual caseload of 725 cases including all of the cases reviewed and not filed. This means that some categories of cases will have to be treated as violations. At this point the plan is to treat as violations all

Class B misdemeanors and below, all non-person A misdemeanors and some Assault 4 cases if there is no injury. DUIs, Reckless Driving cases, and Driving While Suspended felony cases will be treated as crimes. One deputy DA is assigned to juvenile court but this deputy is currently out on family leave. The office currently handles juvenile dependency cases only through disposition. In the past they were able to appear at post-dispositional review hearings as well.

#### (d) Public Safety Agencies

Prior to the budget cuts the sheriff's office initiated approximately twenty-five percent of the criminal cases in the county according to the district attorney. Now there are very few cases initiated by the six deputies assigned to patrol duty. In terms of other law enforcement agencies, there is an Oregon State Police Area Command office in Coos Bay. There are also seven small police departments in the county that are reportedly in good financial condition.

#### (e) Criminal Case Processing

Initially, all criminal cases are docketed centrally. Once set for trial, however, they remain on the assigned judge's docket. Up to six trials may be set for trial on a single day.

The docket moves quickly in Coos County. It is described as a county-wide "rocket docket." In 2006 cases going to trial in Coos County were about half the age of the average case statewide. Once a plea offer is declined a case may be reset if the request is made within two weeks of the initial setting or thereafter, only for good cause shown. The state, of course, has the option of dismissing<sup>4</sup> and refilling the case but the defendant who is denied a continuance must either plead to all counts or proceed to trial. There are no judicial settlement conferences in Coos County.<sup>5</sup> Trial rates, particularly jury trial rates, are significantly higher for felony cases in Coos County than for cases in rest of the state<sup>6</sup>. Whether or not the relatively high trial rate is related to the fast pace of the docket is unknown. The system works well in the opinion of the Chief Deputy District Attorney. His office has been able to provide deputies to try the cases and except on very rare occasions there have always been judges and courtrooms to accommodate all of the trials set on a particular day. One key player in the local court system said that the court is not very understanding of the parties' struggle to keep up. This individual feels that disregard for the interest of the litigants has led to a less than cordial relationship among the

---

<sup>4</sup> Statistics provided by the court indicate that the District Attorney's office dismisses about 32% of felonies and 37% of misdemeanors that are set for trial.

<sup>5</sup> Judge Barron reports that in a discussion that occurred several years ago both the prosecution and the defense advised the court that judicial settlement conferences would not be helpful.

<sup>6</sup> The average trial rate for felonies in Oregon in calendar year 2006 was 5% with approximately 8 court trials for every 10 jury trials. In Coos County 7.8 percent of felony cases went to trial and there were roughly six times as many jury trials as court trials.

members of the local criminal bar. Another member of the local bar expressed general approval of the speed with which cases are resolved in the county but noted that in individual cases some defendants are disadvantaged, especially when busy prosecutors do not have adequate time to thoroughly review the evidence prior to making a plea offer.

Presiding Judge Richard Barron testified that prior to implementation of the current system in the late 1980s, virtually all of the cases were set for trial even though the great majority of them were eventually settled, often on the eve of trial. He also noted that continuances are granted in approximately nine percent of the cases, which is within the range recommended for efficient court management.

Despite the loss of public safety personnel, the criminal caseload in Coos County showed an increase during the first six months of 2007. In January through June of 2006 there were 375 felonies and 536 misdemeanors filed. In January through June of 2007 there were 394 felonies and 800 misdemeanors. It is expected that a significant decline in cases will occur in the second half of 2007. OPDS staff would describe the caseload as essentially flat.

#### (f) Juvenile Dependency System

Initial juvenile court appearances occur every morning at 8:15. These cases are then heard the following judicial day at 8:15 with counsel present. Appearances in response to summonses in juvenile cases are scheduled for 9:00 a.m. every Monday with a further proceedings date two weeks later. Most cases settle within the two-week period but may be set over if more time is needed. Dispositions are scheduled for 3:00 p.m. on Mondays and trials are scheduled for two Thursdays of the month beginning at 9:00 a.m. Termination trials are set on the regular court docket.

Judge Barron has been the juvenile court judge for many years. He is described as the driving force in juvenile matters in the county. In addition to hearing the juvenile court docket, he is also the trial judge in most dependency and termination cases.<sup>7</sup> DHS staff say he is knowledgeable, concerned and caring. He has initiated a number of innovative programs and approaches to handling cases. He organized the family support team which accelerates access to services for parents and he initiated the Coos County Infant and Toddler Court Team which will start in September. Because so many of the children in care are under the age of five he has generally preferred to appoint CASAs for these

---

<sup>7</sup> In many counties, the judge who monitors the progress of the dependency case is not assigned to hear the termination of parental rights case. Attorneys who object to the termination case being heard by the same judge who has, in most cases, already approved the change of plan from return to parent to adoption, move for a change of judge. This practice appears to be rare in Coos County. It may be that in each termination case that is assigned to the judge who heard the dependency case the attorney has determined that it is in the clients' interest to have the case heard by the that judge instead of another judge.

children, rather than attorneys. About half of the children in care have court-appointed CASA's. A CASA volunteer said that CASAs are never appointed until after jurisdiction, however, so that children have no one, other than the other parties to the case, to advocate for their interests prior to jurisdiction. Recently the court has reportedly been appointing attorneys for children more frequently, however, especially for older children.<sup>8</sup>

The DA participates in dependency cases only until the initial disposition hearing. The Attorney General's office represents DHS in termination cases and usually gets involved as soon as the agency has decided to seek termination.

DHS has a staff of 50 in the county and as of mid-July there were 170 children in foster care. Half of these children are under the age of five. According to DHS, in the 2001-03 biennium Coos County had the highest child abuse rate in the state. It is now 14<sup>th</sup>.

The Citizen Review Board in Coos County is very active in the review of dependency cases, convening hearings every six months. Attorneys generally attend these hearings as well as family decision meetings, youth decision meetings, and the like.

Dependency cases, like criminal cases in Coos County, move fairly quickly with jurisdiction often being established within 45 days.

DHS anticipates that there will be fewer dependency cases in the County as long as the Sheriff's Office is operating at its current level. The Sheriff's Office had previously been involved in approximately 60% of the dependency referrals.

#### (g) The Juvenile Delinquency System

The Coos County Juvenile Department lost one third of its staff in the recent budget cuts. Rather than leaving the decision about which positions to cut to the Juvenile Department, the County Commissioners made the decision. The fewest cuts were made to detention center staff. The facility holds twelve youth and includes a treatment center. Two beds are rented to Curry County. Most of the cuts were made to the probation staff, which declined from six to two and three/fifths FTEs. The Juvenile Department Director reported that youth are now exhausting local options sooner and more youth are being committed to the training school. The county routinely exceeds its cap at the training school and consequently pushes for adjudication on Class A felonies<sup>9</sup> since commitments on

---

<sup>8</sup> Judge Barron said that with only six law offices taking appointments in juvenile cases, appointing attorneys for children in all cases would probably lead to more conflicts and the need for additional out-of-county attorneys. These attorneys often appear for court hearings by telephone, which is satisfactory, but it appears that they may also be meeting with their clients only by telephone.

<sup>9</sup> Youth committed on these offenses occupy Public Safety Reserve beds that do not count against the county's cap.

these offenses do not count against its cap. Although youth may initially receive probation on Class A felony offenses, with few community resources available they are less likely to succeed and more likely to be committed on probation violations.

The juvenile department director would like to see fewer cases reduced from felonies to misdemeanors because she believes many of the youth who need felony level services are not receiving them.

She said that alternative treatment in juvenile sex offense cases is not available in the county.<sup>10</sup>

#### (h) Coos County Public Defense Providers

There are two contract providers in Coos County, Southwestern Oregon Public Defender Services, Inc. and the Coos County Indigent Defense Consortium. The consortium handles only conflict cases<sup>11</sup>.

#### **Southwestern Oregon Public Defender Services, Inc.**

This non-profit public defender office currently provides services only in Coos County although it previously served both Coos and Curry Counties<sup>12</sup>. The firm has a Board of Directors comprised of three outside members, one selected by the president of the county bar association, one appointed by the presiding judge and one selected by the other two members.

There are currently six full time attorneys at SWOPDS. There had been seven until one attorney resigned in February of 2007. Carole Hamilton, the administrator of the office, believes that the appropriate caseload for each full time attorney is approximately 25 to 27 new cases per month. To maintain that

---

<sup>10</sup> Alternative treatment in sex offense cases generally involves an amendment or postponement of proceedings on the delinquency petition to allow a youth to engage in treatment services. If such services are successful the petition may be dismissed or treated as a dependency petition preventing the youth from having a non-expungible record or having to register as a sex offender. There is a significant disparity between counties as to whether juvenile departments, prosecutors and judges are willing to consider supporting such treatment. Attorneys for youth have been successful in a number of counties at persuading the court, sometimes over the objection of the juvenile department and the district attorney's office, to grant alternative treatment. While appellate case law has limited the circumstances under which the court may grant relief, the appellate courts have not determined that alternative treatment is beyond the discretion of the juvenile court to allow. Efforts in two legislative sessions to prohibit the practice were rejected. The effort of defense attorneys in all of the contract offices which have been evaluated by site visit teams of OPDS's Quality Assurance Task Force, to advocate for clients in a variety of circumstances, including representation of youth in delinquency cases involving allegations of sexual abuse, is an important component of every quality assessment. It is, therefore, one of the issues generally covered in OPDS's preliminary investigation.

<sup>11</sup> A spreadsheet setting forth the caseloads of both Coos County providers and the Curry County consortium is attached as Exhibit D.

<sup>12</sup> The office ceased providing services in Curry County in 2001.

ratio the office will probably need one more attorney but Ms. Hamilton has decided not to fill the vacancy until she has more information about caseload trends in the county. Recruiting and retaining attorneys is difficult. New attorneys in the DA's office receive \$3577 per month. Starting pay at SWOPDS is \$3087. Ms. Hamilton would like to increase the compensation paid to attorneys in her office.

SWOPDS has a written personnel policy manual and performs written evaluations of its employees. New attorneys are assigned experienced mentors. The administrator meets regularly with the judges in the county to inquire about attorney performance and sometimes listens to audio tapes of their trials. Financial support is provided for attendance at CLE sessions but additional funding would be needed to allow attorneys to take advantage of national training seminars, which Ms. Hamilton believes her attorneys should attend.

### **Coos County Indigent Defense Consortium**

This consortium is comprised of five attorneys who devote varying percentages of their professional time to public defense representation. Sharon Mitchell is the administrator of the consortium. Each member of the consortium receives an equal share of contract funds (except that the administrator receives an additional amount for performing her administrative duties.)

The consortium does not have a board and does not include any quality assurance processes.

As noted above, the consortium is appointed only to those cases in which the public defender's office has a conflict preventing representation. The court assigns cases to individual consortium attorneys on a random basis. Separate appointment lists for Measure 11 and termination of parental rights cases prevent individual attorneys from receiving a disproportionate number of these cases.

### **Hourly rate providers**

There are several attorneys from the Eugene and Roseburg area who appear regularly in Coos County cases. OPDS records indicate that there are only 1.2 cases per month that are assigned to the private bar.

#### (i) Comments regarding the quality of representation

### **SWOPDS**

The following comments were provided regarding the quality of representation provided by SWOPDS attorneys.

Complaints about public defenders not seeing their in-custody clients are “rare.” Attorneys seem to have a lot of clients but appear to be prepared. One SWOPDS attorney in particular is seen by the sheriff’s office as going the extra mile for his clients and really caring about inmates.

Most attorneys work cooperatively with DHS in dependency cases. Some parents complain that the attorneys who represent them in dependency cases see them only outside the courtroom for five minutes prior to court hearings<sup>13</sup>. One CASA volunteer said that some attorneys don’t read the file until they get to court and don’t seem to know where their clients are. Some attorneys do excellent work. All of them seem overworked. Two public defenders were identified as being particularly good at getting things done for their dependency clients between hearings.

With respect to delinquency cases it was reported that Coos County defense attorneys are doing good work. They are looking for the best outcome for kids<sup>14</sup>. They see their juvenile delinquency in-custody clients regularly. The two attorneys who handle these cases spend a lot of time with their in-custody clients. Over time, representation in juvenile delinquency cases has improved in Coos County. There used to be an attorney who just didn’t care, but the new lawyers are doing very good work.

The chief deputy district attorney and others indicated that if they observed a problem with the conduct of an attorney with the public defender’s office they would bring it to the attention of Ms. Hamilton who would deal with it.

Another deputy district attorney indicated that there is an institutional rivalry between the DA’s office and the public defender’s office. Attorneys there sometimes decline reasonable offers. Some of the motions they file are not well founded.

Ms. Hamilton is described by opposing counsel as always willing to “work outside the box” when it comes to creating specialty courts and other non-routine approaches to handling cases. She is also felt to be a good spokesperson for the defense.

Ms. Hamilton has served on several OPDS site teams. During site visits she not only provided valuable advice to the contractors being evaluated but also used the opportunity to identify best practices that she could use in her own office. Ms. Hamilton is a member of the Local Public Safety Coordinating Council. Two

---

<sup>13</sup> DHS staff and others noted that clients can be hard to reach and the lack of an adequate public transportation system is a major problem in the county.

<sup>14</sup> Of course attorneys for youth in delinquency cases are required to advocate for the client’s expressed wishes, not for what the attorney may believe to be in the client’s best interest. Nevertheless, in support of the client’s expressed wishes it is important for the attorney to help identify outcomes and services that will serve their clients well.

attorneys in her office are also actively engaged in community organizations supporting young people.

### **Coos County Indigent Defense Consortium**

Comments about the quality of representation provided by the consortium included the following.

One prosecutor indicated that if a relative of the prosecutor were charged with a crime the prosecutor would recommend that the relative seek representation by a consortium attorney.

When the sheriff was able to retain more defendants in custody there were complaints about consortium attorneys not seeing their clients regularly.

Most attorneys work cooperatively with DHS in dependency cases<sup>15</sup>. Some parents complain that the attorneys who represent them in dependency cases see them only outside the courtroom for five minutes prior to court hearings. A CASA volunteer said that some attorneys don't read the file until they get to court and don't seem to know where their clients are. Some attorneys do excellent work. All of them seem overworked. Consortium attorneys sometimes fail to request discovery in dependency cases as required by a standing local court order. If they do not request it, it is not provided and attorneys have to appear in court without having reviewed the case developments. Three consortium attorneys were identified as being particularly good at getting things done for their clients between hearings.

With respect to delinquency cases it was reported that Coos County defense attorneys are doing good work. They are looking for the best outcome for kids. They see their custody clients regularly. Over time, representation in juvenile delinquency cases has improved in Coos County. Most of the consortium attorneys are good. Some are temperamental.

Consortium attorneys are always ready to work outside the box.

### **Hourly attorneys**

These attorneys were generally described as providing good representation. Some concern was voiced about the cost to public defense of having attorneys come from outside the county.

---

<sup>15</sup> Some of the comments made with respect to consortium attorneys were also made regarding attorneys with the public defender's office and therefore appear twice in this report.

### (k) Issues for Consideration

At its August 9, 2007 meeting in Coos Bay it was recommended to the Commission that it consider how best to address the following needs articulated by members of the criminal and juvenile justice systems in the county:

- (1) A number of those interviewed indicated that there is a need for at least one additional attorney to handle the public defense caseload in the county. DHS believes that more attorneys would help to reduce caseloads and this would allow attorneys to spend more time with their clients and do more preparation for hearings. They could also have more direct contact with service providers<sup>16</sup>
- (2) The Trial Court Administrator noted that one obstacle to recruiting attorneys to Coos and Curry Counties is that spouses and partners of attorneys have difficulty finding employment in the area. Mr. Jones thought that a loan forgiveness program might be a very positive incentive for attorneys to relocate to the area.
- (3) Since the volume of some case types is relatively small, attorneys may not develop expertise in all areas of practice. Attorneys with expertise in specific areas of practice could be made available as “resource attorneys” on complex sentencing guidelines issues and Indian Child Welfare Act cases, for example.
- (4) Recruitment and retention: One of the judges recommended that public defenders, who seem to have heavier caseloads and receive less compensation than consortium attorneys, be paid the same amount as the DAs.
- (5) One judge recommended that all of the attorneys obtain additional training on the rules of evidence.

### D. Curry County

#### (a) Judicial Assignments

Jesse Margolis, a former attorney with the SWOPDS office and Cynthia Beaman a former member of the Curry County Consortium, are the two Circuit Court Judges assigned to Curry County Courthouse in Gold Beach. Judge Beaman had only recently been appointed to the bench at the time of the OPDS visit to the county and Judge Margolis had been there for only a few months.

---

<sup>16</sup> Public defender offices and some consortia, such as Klamath Defender Services use paralegals to assist their attorneys in performing some of the functions that can be performed by non-attorneys, such as visiting with child clients and contacting service providers.

(b) The District Attorney

Everett Dial is the District Attorney for Curry County. When initial budget cuts were made he lost both of his deputies. One deputy position was added back after funds were restored. When eliminating one deputy position, the County Commission decided that the office could no longer prosecute support enforcement cases, and these prosecutions were returned to the Department of Justice for prosecution. The District Attorney's office will also have less involvement in juvenile cases than it has had in the past.

(c) The Sheriff's Office

In addition to the financial crisis faced by the Sheriff's Office, the former Sheriff was recalled from office on June 13, 2007 after being indicted for sexual harassment and other misdemeanor charges. He has since been convicted of all the charges. Allen Boice was named the new sheriff.

(d) Criminal Caseload

Although the proportion of cases charged as felonies in Curry County decreased in the first six months of 2007 as compared with the first six months of 2006, the total number of criminal cases filed in Curry County has actually exceeded the number of cases filed in the first six months of 2006<sup>17</sup>.

Some of the position cuts did not take effect until July 1 of 2007 so the full impact will not be known for at least several months.

(e) Juvenile Dependency System

There are 8 DHS staff persons in Curry County and forty children in foster care. All services within the county are located in Gold Beach which means that parties from other parts of the county must find transportation to the county seat for all required services<sup>18</sup> or travel to Coos Bay or Crescent City, California for services. District Attorneys appear only for contested hearings in dependency cases so DHS must prepare its own petitions and represent itself at all other hearings. The Attorney General's office has counsel present for permanency hearings, however. The Citizen Review Board conducts reviews every six months and attorneys are reported to be present for these hearings most of the time. Attorneys are rarely appointed for children in dependency cases and currently, due to an upheaval in the Curry County CASA program, there are only three

---

<sup>17</sup> According to the Trial Court Administrator in the first six months of 2006 there were 108 felonies, 282 misdemeanors and 1636 violations filed. In the first six months of 2007 there were 98 felonies, 326 misdemeanors and 1833 violations filed. OPDS would describe this caseload, as well as the caseload in Coos County, as flat.

<sup>18</sup> There is a "bus loop" on Mondays, Wednesdays and Fridays.

available CASAs. New CASA volunteers have been recruited, however, and should be available soon.

(f) Juvenile Delinquency System

There are currently 74 youth on probation in Curry County, 26 of whom are on formal probation.

The Curry County Juvenile Department has laid off 9 staff members since February of 2007. Consequently, minor cases are not filed and are closed with a warning or a letter to a parent.

(g) Defense Providers

**Curry County Consortium**

This small consortium has undergone a number of recent changes. John Spicer remains the contract administrator but the other two members of the consortium have left – one to fill a vacancy on the circuit court bench. Two new attorneys have recently been added - Jim Gardner, who has been practicing criminal and juvenile defense in Curry County for a number of years and Rick Inokuchi who is also a member of the Coos County Indigent Defense Consortium. Both Mr. Spicer and Mr. Gardner are considering adding associates to their firms but need a third consortium member to handle conflicts.

The consortium does not have a board of directors and operates under the terms of a written Operating Agreement among consortium members. There are no evaluations of consortium members but input is sought from the judiciary and the consortium is one of the few contractors in the state that provides clients with the opportunity to evaluate the representation they receive.

**Hourly Rate Attorneys**

Two Coos County attorneys are often appointed in public defense cases in Curry County. These appointments have generally been on an hourly basis although it appears that Mr. Inokuchi is currently receiving cases directly from the consortium. OPDS records indicate that only .7 cases per month are assigned to the private bar.

(h) Quality of Representation

OPDS staff received the following comments regarding the quality of representation provide by the Curry County Consortium.

The Sheriff's Office noted that there aren't as many complaints from inmates as there used to be. John Spicer must be overwhelmed with the number of clients

he has but he does a good job. He seems to assess cases well, files motions and goes to trial.

Mr. Spicer handles most of the delinquency cases. He is described as being very good with kids. He sees them often. He is reasonable and doesn't ask for "outlandish" things. Jim Gardner is said to definitely be an advocate for his kids. Both attorneys file motions on behalf of their clients and try a lot of the delinquency cases.

In dependency cases it was reported that one attorney is only sometimes prepared for hearings and must sometimes be called and reminded to come to court. There have been no termination of parental rights trials in a number of years. Attorneys do appear for CRB hearings and attend family meetings. The attorneys here don't handle a high volume of juvenile dependency cases so they lack experience. In juvenile cases there are areas of practice in which attorneys do not seem well versed.

#### (i) Issues for Consideration

At its August 9, 2007 meeting in Coos Bay it was recommended to the Commission that it consider how best to address the following needs articulated by members of the criminal and juvenile justice systems in the county:

- (1) Both Curry County judges, the trial court administrator and a representative of DHS indicated that there is a need for more attorneys in the county, although OPDS records indicate that only .7 cases per month are being assigned to the private bar. Although Mr. Inokuchi is apparently a third attorney handling cases assigned to the consortium It is not clear that he is able to handle a sufficient number of cases because his office is located in Coos County and he has a large caseload there. In addition, both of the principle attorneys in the consortium are approaching retirement age and need to have succession plans in place.
- (2) Judge Margolis indicated that he believes that a public defender office would be the preferred model for service delivery in the county but understands that the conflict problem may not make that feasible<sup>19</sup>.
- (3) Although the caseload may decline due to shrinking public safety resources, consortium attorneys will need to be compensated sufficiently to make their practice in the county viable. Current rates for appointed counsel are simply not adequate to attract participation by private attorneys in the county. The billing rates for these attorneys is in the \$200-250/hour range. The district attorney's higher salary range has also been insufficient to retain experienced lawyers.

---

<sup>19</sup> As noted above, SWOPDS previously had an office in the county but ceased providing services there in 2001.

- (4) The Trial Court Administrator noted that one obstacle to recruiting attorneys to the county is that spouses and partners of attorneys have difficulty finding employment in the area. Mr. Jones thought that a loan forgiveness program might be a very positive incentive for attorneys to relocate.

Since the volume of some case types is relatively small, attorneys may not develop expertise in all areas of practice. Attorneys with expertise in specific areas of practice could be made available as “resource attorneys” on complex sentencing guidelines issues and Indian Child Welfare Act

### **PDSC’s August 9, 2007 Meeting in Coos County**

Judge Michael Gillespie was invited to make the initial presentation since Presiding Judge Richard Barron was unable to appear until later in the morning. Judge Gillespie said that although the district was a desirable place to live and work, recruiting new attorneys to come to the area and remain there had been difficult. He indicated that SWOPDS would need more financial support in order to compete for attorneys. Attorneys in the office are paid significantly less than attorneys in the private sector but are also paid less than attorneys in other parts of the public sector. SWOPDS is a critical resource. That office does a great job of training new lawyers and provides support for other public defense lawyers in the area. In order to perform these functions the office incurs overhead costs beyond those incurred by other contractors. Once attorneys are trained by SWOPDS and gain experience they either fill vacancies in the consortium or go elsewhere. New deputy district attorneys are not well paid but, at minimum, SWOPDS needs to be able to match DA starting salaries in order to be competitive locally.

Judge Gillespie said that SWOPDS appears to be handling conflicts appropriately. Some attorneys in the area have been relieved from representation for incompatibility with the client. This has not been necessary with any of SWOPDS’s attorneys.

There are two attorneys from other areas who often accept public defense cases in the county when local attorneys have conflicts or are unavailable. Both of them have been very cooperative and handle the cases adequately.

The Chair then welcomed Judge Barron. He told the commission that lawyers from other parts of the state have been asked to handle cases in Coos and Curry County, especially juvenile cases. This practice is likely to increase if the number of consortium attorneys gets smaller. When attorneys leave the consortium for private practice there is not usually anyone ready to take the departing attorney’s place. The consortium decides who can become a member and they do not appear ready to add any new attorneys. In Curry County there is

even more of a problem. There needs to be a system for getting people to come to Coos and Curry Counties and to stay. Judge Barron came to Coos County in 1971 to accept a position in the district attorney's office. It is a great community, a great place to live and raise children.

Before the current case management system was put in place in Coos County, almost every case was assigned a trial date at arraignment. Cases went away late but they went away and that did not seem like the most productive way to run the system. After obtaining input from both the prosecution and the defense, the court decided to implement its current system. Under that system, a plea date is set three, five, or seven weeks after arraignment depending on whether the defendant is in custody and whether it is a felony or a misdemeanor. The average age of cases going to trial in Coos County is half of the statewide average. Although the preliminary report indicated that resets were rarely granted, in approximately nine to eleven percent of the cases over the years, postponements have been approved. The public's interest in speedy resolution of cases has to be balanced against the interests of the litigants in the particular case. If a request for postponement is made within fourteen days of receiving notice of the trial date, the request is automatically granted. The thirty-five percent dismissal rate includes cases that are permanently dismissed and some that are refilled. In a few of the cases that are refilled a request to postpone has been denied.

Carole Hamilton at SWOPDS is an effective administrator. Her office previously provided representation in Curry County and should consider doing so again. Curry County is fairly isolated and it can be difficult to get there at night or in bad weather. It was hard to keep people down there.

Funding cuts in Coos and Curry Counties may well affect how cases are negotiated and may increase the number of trials. A drop in cases may mean that lawyers actually have appropriate caseloads. They have had heavy caseloads at times in the past. Other times they have dropped off. The caseload has fluctuated. Instead of reducing payments if caseloads decline, people may be able to do a better job.

If a public defense attorney fails to perform adequately, both Judge Barron talks with the attorney and, sometime, if the attorney is a public defender, with Ms. Hamilton.

Despite a natural rivalry between the DA's office and the public defender's office and occasional personality clashes, the system works well. There is communication among the members of the criminal justice community. SWOPDS has been cooperative in the mental health court, the drug court, and the domestic violence deferred sentencing program. SWOPDS also agreed to have attorneys present for initial hearings in juvenile cases. The consortium also participated at first but no longer sends attorneys to these hearings. SWOPDS

handles about seventy-five percent of the caseload and has been extremely cooperative with the court.

The juvenile system used to be the poor stepchild of the system but it involves serious issues and the providers take it seriously. The law is complicated but SWOPDS and the consortium attorneys have learned how to handle these cases.

Chief Deputy District Attorney Paul Frasier testified that his office has had difficulty attracting and retaining attorneys. After new deputies are trained they go elsewhere. The Coos County District Attorney's starting salary for new attorneys is \$3,575 per month. It is not competitive with Clackamas, Clatsop or Deschutes Counties. The majority of deputies who leave go to work at other prosecutor's offices. Currently the Coos County District Attorney's office includes the elected DA, the chief Deputy and five other deputies. When the elected DA retires at the end of the year his position will not be filled. Mr. Frasier is not sure what is going to happen to the caseload. Decisions will need to be made when the seventh position is lost in December. In the short term one deputy recently resigned and needs to be replaced and one deputy is on long term medical leave. One effect of having fewer deputies is that more cases will be treated as violations. He said he hoped that trial rates would go down. If they went up, further adjustments would have to be made.

The docket in Coos County moves quickly and that means that if cases are not settled and are set for trial subpoenas need to be issued only once. For the most part defense attorneys are going to trial in the cases they should, although, of course, some clients may decide to go to trial when they shouldn't.

There is good communication between the prosecution and the defense in Coos County.

Nancy Lee Stewart, the Child Welfare Manager for Coos and Curry Counties thanked the commission for coming. She said that DHS has good working relationships with attorneys in both counties. They participate regularly at citizen review board hearings, family meetings and with child and family mental health teams. The attorneys seem to have to work very hard to keep up. The more support they have the more effective they can be for their clients. Juvenile dependency cases have gotten more complex over time. Interagency team meetings have been helpful, so have the Juvenile Court Improvement Project legislative updates. Clients often lack telephone service and transportation.

Nick Nylander, a member of the Board of Directors of SWOPDS and Carole Hamilton testified next. Mr. Nylander said that the three-member board meets once every couple of months. They have an "open door policy" with Carole Hamilton. The office has operated efficiently and smoothly since the fiscal crisis of 2002-03 ended.

Mr. Nylander said that SWOPDS is an indispensable service provider to PDSC and needs more funding in order to attract and retain an adequate supply of attorneys. The board's goal has been to match the DA's salary scale. It would also like to reach parity with other public defender offices. The entry level salary at SWOPDS is \$3,087 compared to \$3,575 for district attorneys. Salary increases would also help with retention. Experienced lawyers provide better representation and develop long term relationships with district attorneys. Currently there are six attorneys at SWOPDS, including Carole Hamilton who maintains half a caseload in addition to her administrative duties. Three of the attorneys have significant experience and three are in the one to two-and-a-half year range. Carole Hamilton said that two of the newer attorneys are the kind of lawyers they would like to retain but they have children, large student loans, mortgages and SWOPDS's salaries are not competitive. In addition there are not a lot of health care options and health care is expensive in the area. Ms. Hamilton said that her contract with OPDS currently limits the amount she can expend for each employee for health care to \$500 per month.<sup>20</sup> The office's internal reimbursement rate for mileage is only \$.30 per mile, well below the state and federal rates.

Carole Hamilton said that SWOPDS had ceased providing services in Curry County in December of 2001. Mr. Nylander said that the office had been asked to provide services there and did so but it was hard to recruit people to go there and difficult to train and mentor them. The lawyers down there were isolated and when the consortium offered to provide services at a lower cost, SWOPDS did not feel it could match the consortium's offer. There were other issues including conflict between the bar and some members of the bench who are no longer there. Carole said that since Gold Beach is not within commuting distance lawyers who do not live in Gold Beach must go down for weeks or months at a time.

Ms. Hamilton described some of the activities in which she and some of the other attorneys at SWOPDS have participated such as the special courts, OPDS's site evaluation teams, the Contractor Advisory Group, and various community projects to benefit clients.

The District Attorney's office is prosecuting fewer offenses as crimes so the caseload is declining. Ms. Hamilton does not believe that her office can handle a greater percentage of the cases than it now does because it is already assigned all cases other than those in which it has a conflict. She described the conflict identification system used by her office.

Matt Muenchrath and Megan Jacquot from the Coos County Indigent Defense Consortium testified next. Mr. Muenchrath grew up in the area and returned to Coos County in 2001 to fill a vacancy on the consortium. Ms. Jacquot initially

---

<sup>20</sup> The OPDS model contract for 2008-2009 deleted the cap on health care payments.

worked at SWOPDS but had a large family and needed more income than SWOPDS was able to provide. They talked about the advantages of being in the consortium. Mr. Muenchrath said that the per unit contract seemed to work well except in juvenile dependency cases where there has been a significant increase in the types of meetings and proceeding in which the lawyer needs to be involved.

Mr. Muenchrath said that young attorneys could be recruited to practice in Curry County assuming the position was well publicized and the pay was attractive.

John Spicer, the administrator of the Curry County Consortium, said that very few Coos County attorneys practice regularly in Curry County. Curry County is isolated and even if an attorney can find work there, there is generally no suitable employment available for the attorney's spouse. In addition, housing is very expensive in the area. The district attorney's office has had difficulty keeping people there. Currently, Mr. Spicer and another attorney, Jim Gardner, are the active members of the consortium. It is easier for them to survive in the area because their homes and offices are paid for. They are trying to add a third member. It is difficult to predict what will happen with the caseload since there have been significant cutbacks in law enforcement funding. Operating a public defender office in Curry County would be difficult to do. Gold Beach is eighty miles from Coquille.

Judge Paula Bechtold testified that attorneys with both of the Coos County public defense providers work many hours for which they are not compensated. If the caseloads decline they would have time to do better work for their clients and could have some time for their personal lives. As with the schools, in small communities there are economies of scale. The system must be maintained even though the number of people served may be small.

Judge Bechtold is the mental health court judge. The court has been operating for over a year and is staffed by SWOPDS. It is not unusual for an attorney in these cases to have to appear thirteen times or more throughout the course of the proceedings. Attorneys can't be compensated at the regular case rate for these cases.

In order to find lawyers to practice in Curry County there need to be bonuses such as a loan repayment program. The same problem must exist in eastern Oregon.

## **Updated Information regarding Contractors**

Since the Commission meeting in Coos Bay, all three of the Judicial District 15 contractors have signed contracts with PDSC for the two-year period beginning January 1, 2008.<sup>21</sup>

**SWOPDS.** Although one of the recommendations received from justice system officials in Coos County was that another attorney was needed in the county, the public defender office there takes all of the cases it can and only conflict cases go to the consortium. For this reason another attorney would be added to SWOPDS's staff only if the caseload justified it. Carole Hamilton is taking a "wait and see" attitude on the possible addition of another attorney. Attorneys have not reported that their current caseloads are excessive. The office currently has 5.5 FTE attorneys each of whom receive approximately 25-27 new cases per month. The caseload in the county is largely dependent on resources available to law enforcement, including the district attorney's office. With the uncertainty of county funding for these functions, SWOPDS and OPDS will be closely monitoring any changes in the caseload. The district attorney's office recently added a new deputy and a deputy who had been on family leave has now returned so that the caseload may well increase.

SWOPDS's new contract provides for fewer cases (approximately 6%) and greater compensation (a 15.20% rate increase) than the former contract. Consistent with the priorities established by the Commission in August 2007, OPDS was able to arrive at an agreement with this valuable public defender office that made it possible for it to continue to be the principal provider in the area and to assist it to retain and recruit attorneys as needed. Although the office lost one attorney to the consortium, with the increased compensation it was able to offer, it was able to persuade a very experienced attorney who had been with the office in the past, to return.

**The Coos County Indigent Defense Consortium (CCIDC).** CCIDC's caseload will increase under their new contract. They exceeded their quota in the previous biennium. The consortium has added another attorney, as recommended by the local justice system representatives and is currently at six. CCIDC received a 6.52% rate increase, which was significantly less than the increase received by SWOPDS. In attempting to meet the needs of each of its providers, OPDS did not find significant unmet needs in this consortium. Recruitment and retention had not been an issue. Although the caseload has increased under the new contract, the number of cases per attorney has not. The consortium has reorganized and has now entered into detailed agreements between member attorneys setting forth procedures for addressing performance issues. OPDS has recently received a complaint about a member attorney and, if the complaint is substantiated may be able to test the effectiveness of the new membership structure.

---

<sup>21</sup> These contracts were approved by the Commission at its December 13, 2007.

**Curry County Consortium.** The Curry County Consortium reports that it has added another attorney and that both of the senior members of the consortium will be adding associates, assuming that the caseload stabilizes in the near future. The consortium also plans to create a board of directors during this contract period. The consortium was over its quota under the last contract and its caseload has been increased for the next biennium. It received an 8.32% increase in rates.

### **A Service Delivery Plan for Judicial District 15**

Based on the decisions already made by the Commission at its August retreat regarding funding priorities and in view of the information received from Coos and Curry Counties, OPDS respectfully recommends that the Commission make the following findings in Judicial District 15.

#### **Coos County**

The structure of the public defense system in Coos County appears to be appropriate. The public defender's office handles approximately 75% of the caseload (all of the cases that it can handle without conflicts). It does a good job of training new attorneys, when necessary, and is a well-managed office that has adopted a number of best practices, including an active board of directors. Quality concerns raised during the Commission's review may be addressed in part by the increase in compensation and reduction in caseload. In the juvenile arena, SWOPDS has responded to the concerns expressed in the draft report and OPDS will be working with this office and others to promote a more proactive style of representation in juvenile cases.<sup>22</sup>

Among the other recommendations made to the Commission regarding the provision of public defense services in the county were that it consider a student loan repayment assistance program to serve as an incentive to attorneys to relocate to the area. Unfortunately, for a number of reasons, the Commission may decide that it cannot pursue the creation of such a program at this time. Fortunately, there are an increasing number of programs potentially available to lawyers with significant law school debts that are sponsored by the federal government, the state bar and local law schools.

It was also recommended to the commission that since the volume of some case types is relatively small in Coos County, attorneys might not be able to develop

---

<sup>22</sup> For example, best practices and performance standards for juvenile dependency lawyers recommend that contact with parent and child clients be initiated on a regular basis by the attorney. Some contractors take the position that they are only required to respond to contacts initiated by clients whose cases are in review status. This model of representation can result in significant delay in getting parents engaged in appropriate services and can seriously prejudice their ability to have their children returned to their care.

expertise in all areas of practice. Attorneys with expertise in specific areas of practice could be made available as “resource attorneys” on complex sentencing guidelines issues and Indian Child Welfare Act cases, for example. At its August retreat, the Commission determined that the use of resource attorneys was not among the priorities to be funded in this contract cycle.

The recommendation of one judge that all of the attorneys obtain additional training on the rules of evidence has been communicated to all of the contractors.

### Curry County

Although the Commission discussed the possibility of a public defender office in Curry County and reviewed the history of SWOPDS’s effort to provide services in that county, no proposals were received for the creation of such an office. In a county with a caseload of only 976 cases per year, it would be difficult to sustain an office that was attempting to perform all of the functions of a public defender office. And, assuming a relatively stable population within the county, a public defender office would also be unable to handle many cases because of conflicts. In juvenile cases with multiple parties, a public defender office can represent only one client while a consortium can represent as many parties as needed (assuming a sufficient number of members).

The discussion above regarding juvenile representation, loan repayment assistance and the creation of resource attorney positions in Coos County are equally applicable to Curry County.