

**Public Defense Services Commission  
Service Delivery Plan for Judicial District No. 10  
Union and Wallowa Counties  
(May 8, 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 to 2007, the Commission completed investigations of the local public defense systems in Benton, Coos, Clatsop, Curry, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Washington, 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 Union and Wallowa Counties' public defense system undertaken in preparation for the PDSC's public meeting in Pendleton on November 7, 2007, a summary of the testimony provided at that meeting and a proposed service delivery plan for Judicial District No. 10.

**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 the criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole criminal and juvenile contractors in Benton and Columbia Counties.

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 has undertaken 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 developed a statewide Service Delivery Plan for juvenile representation.

In 2007 PDSC undertook to review the delivery of public defense services in

death penalty cases. A final plan for providing services in these 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

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<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).

assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

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 task 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 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 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

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

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 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

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<sup>3</sup> Id.

prefer the independence and flexibility associated with practicing law in a consortium in which they still represent public defense clients under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger 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, in post-conviction relief 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 No. 10**

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 November 7, 2007 from 9:00 a.m. to 1:00 p.m., PDSC held a public meeting in Room 316 of the Umatilla County Courthouse in Pendleton, Oregon. The purpose of that meeting was to (a) consider the results of OPDS's investigation in the district as reported in the preliminary draft report, (b) receive testimony and comments from judges, the Commission's local contractors, prosecutors and other justice officials and interested citizens regarding the quality of the county's public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Judicial District No. 10.

The initial draft of this report was intended to offer guidance to PDSC's invited guests at its November 7, 2007 meeting, as well as the Commission's contractors, public officials, justice professionals and other citizens who might be interested in this planning process, about the kind of information and comments that would assist the Commission in improving Judicial District No. 10's public defense delivery system. This final draft report and proposed service delivery plan is intended to provide the Commission with a summary of the testimony taken at the November 7, 2007 meeting and information about any changes that have occurred since that time, as well as to propose a final service delivery plan for the district.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in the justice systems in these two counties is 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 Judicial District No. 10.

## **OPDS's Findings in Judicial District No. 10**

### **Circuit Court**

Judicial District No. 10 is comprised of Union and Wallowa Counties. There are two courthouses in the district, one in La Grande and one in Enterprise. The distance between the two courts is 65 miles and the travel time, in good weather, is approximately 1½ hours.

There are two judges in the Tenth Judicial District,<sup>4</sup> Presiding Judge Phillip Mendiguren and Judge Russell West. Both have courtrooms in the Union County Courthouse and both hear cases at the Wallowa County Courthouse as well.

### **Public Defense Providers**

At the time of the hearing on November 7, 2007, there were two consortia providing representation in criminal and juvenile cases in the Tenth Judicial District – the Union/Wallowa Indigent Defense Consortium (UWIDC) - “the men’s consortium” - and the Union/Wallowa Women’s Consortium (UWWC). The men’s consortium included five attorneys (two of whom were women) and handled all case types except murder and aggravated murder. It contracted to provide representation in a total of 1,470 cases over the two year period ending December 31, 2007. In addition it received \$1,000 per month to cover drug court and \$1,000 a month to cover the early disposition program.

The women’s consortium was comprised of three attorneys, one of whom was also a part of the men’s consortium. It contracted for a mixed caseload of 384 cases for the two-year period ending December 31, 2007.

All of the attorneys are experienced and handle all case types. They all practice in both counties and many of them also appear in cases in neighboring counties when needed. The court sometimes requests that a particular attorney be assigned to a case based on the attorney’s special expertise.

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<sup>4</sup> In an effort to describe the workload in the district, it was reported by the Judicial Department that there were 1,395 cases of all types including violations filed per each judicial position during the period of January 1 to June 30, 2007. There were 649 cases per judicial position if violations are excluded. The statewide average without violations for this period was 1,008. During the same period one felony and 3 misdemeanors were tried in Wallowa County, and 12 felonies and 20 misdemeanors in Union.)

For the current contract cycle, both groups decided to form a single consortium that includes all of the members of the previous consortia. Differences between consortium members in the past caused the attorneys to reorganize periodically. Those currently working under contract believe they can be more effective and efficient as a single consortium. Rick Dall was the administrator of the men's consortium and has been selected as the administrator of the joint consortium in the contract approved by the Commission in December, 2007.

### Union County

The population of Union County in 2006 was 25,110. La Grande is the county seat. Union County has not experienced the kind of dramatic shifts in general fund dollars available for county services that other rural counties in Oregon have.

Union County District Attorney Timothy Thompson was appointed to his position in October of 2006. Prior to that appointment he had worked as a deputy district attorney in Josephine County for a number of years and at the Department of Justice for eight years. He currently has two deputies although the office previously had three and may add a third in the future. The County recently received a grant for a half-time prosecutor to specialize in domestic violence cases. The three-county region of Union, Baker and Wallowa received a five-year grant for \$250,000 per year.

Mr. Thompson said that criminal filings were down in Union County at the end of 2007 but he believed they would increase as soon as the cases currently in the system have been cleared and he recommended that the Commission not see this temporary reduction as a long-term development.

Mr. Thompson said that all of the members of the consortium are competent and experienced and he hopes that PDSC will take the necessary steps to allow these attorneys to continue handling public defense cases. He said that Rick Dall is well suited to the administrator role.

### Criminal Cases

In criminal cases, attorneys are present for arraignments. Out of custody arraignments occur on Tuesdays. The district attorney selects some cases for early plea offers. Mr. Dall, the contract administrator meets with the defendants in these "rocket docket" cases and discusses the district attorney's offer with them. If a defendant decides to accept the offer he or she generally waives counsel and proceeds to entry of plea and sentencing<sup>5</sup>. Those who are uncertain

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<sup>5</sup> A copy of PDSC's Guidelines for Participation of Public Defense Attorneys in Early Disposition Programs is attached as Exhibit A. The guidelines contemplate that counsel will establish an attorney/client relationship with the defendant in an early disposition proceeding and that the

can have additional time to consider the offer. Offers are extended in approximately 95% of misdemeanor cases and only occasionally in felony cases.

Cases that don't settle at arraignment are set for pretrial conferences. Only those cases that are not resolved at the pretrial conference are set for trial.

The judges reported that there is an active motion practice in the county.

### Drug court

There has been a drug court in Union County for seven years. The court meets weekly. As of mid-September, 2007 the drug court had graduated 35 clients, terminated 16, and was currently serving 19. The District Attorney would like to see the number increased to 40. The program is currently open to applicants charged with drug possession but not manufacture. It is also open to clients charged with property offenses. Mr. Dall is the attorney who represents defendants at drug court hearings. In Union County, (unlike Umatilla County, for example), applicants for drug court generally negotiate with the District Attorney over which charge or charges will be admitted and discharged upon successful completion of drug court.<sup>6</sup> No plea or stipulation is required in order to apply for admission to the program.

### Comments on the criminal system

The District Attorney has been meeting with the judges on a regular basis to discuss procedure in criminal cases. Beginning late last year the defense bar has been included in the meeting. One of the issues that Mr. Thompson believes should be addressed at a future meeting is the number of many mandatory appearances in criminal cases. Written pleas are accepted in misdemeanor cases but parties are required to appear in person in felony cases and the District Attorney believes there may not need to be as many appearances as are currently scheduled.

### Comments on the quality of representation in criminal cases

It was reported that there was a period when attorneys were doing most of their own investigation. They now appear to be hiring investigators more often.<sup>7</sup>

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court will allow the attorney to continue the matter, if necessary, to perform an investigation before advising the defendant how to proceed. It is not clear whether the Union County EDP includes legal representation in this sense.

<sup>6</sup> The PDSC will be reviewing the representation of drug court clients at one of its monthly meetings in 2008.

<sup>7</sup> OPDS's records confirm that Union County attorneys are now requesting approval for investigation expenses on a regular basis.

One court representative said that defense attorneys don't always assess their cases early enough in the process.<sup>8</sup> While the attorneys generally do a good job for their clients, one attorney is sometimes not prepared to proceed.

The court said it would be beneficial to their clients if attorneys were able to get them involved in treatment before sentencing or at least come to court with a plan for the client. These issues were scheduled for discussion at one of the monthly meetings of the court, the district attorney and the defense bar.

### Juvenile Cases

Juvenile cases are heard by both of the Circuit Court judges. Court staff tries to ensure that each case is consistently assigned to the same judge.

#### Delinquency cases

The juvenile director estimated that attorneys are appointed in approximately 70% of the delinquency cases in Union County. In the remaining 30% the youth generally make an admission without requesting counsel. The court regularly schedules reviews in juvenile delinquency cases and appoints the same attorney who represented the youth in the original case upon request.

The county expects to open a juvenile drug court in the near future.

#### Comments on quality of representation in delinquency cases

The juvenile director said that the lawyers in Union County seem to be in good contact with their juvenile clients. He said it is unusual for delinquency cases to go to trial. Defense attorneys have not often challenged their client's competency but youth under twelve are rarely prosecuted in the county. He also said that private attorneys seem to obtain psychological evaluations of their clients in sex offense cases more often than public defense attorneys.

#### Dependency cases

DHS files its own petitions in Union County with assistance from the district attorney's office, which appears in all dependency cases.

The court has recently begun appointing attorneys at the initial shelter hearing in dependency cases. Some attorneys are concerned about their ability to be prepared for these hearings since they generally receive less than complete discovery at this stage of the proceedings.

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<sup>8</sup> This representative also said that the district attorney's office doesn't always make offers in a timely manner.

## Comments on quality of representation in dependency cases

One local juvenile system representative said that the general quality of representation provided by consortia attorneys is good. They attend Citizen Review Board hearings as well as court reviews and present useful information. There is one attorney who does not appear to be meeting with her child clients, however. A second attorney is reported to regularly raise issues involving legal technicalities that do not appear to be in his client's interest.

### **Wallowa County**

Wallowa County had a population of 7,140 in 2006.

Both criminal court and juvenile court proceedings are held on Wednesdays in Enterprise, including drug courts for adults and juveniles. Pleas and pretrials in adult criminal cases are heard at 10:00 a.m. and juvenile cases at 2:00 p.m. In addition, one of the judges sits in Enterprise four to five days per month to hear trials. Each of the consortium attorneys appears in Enterprise at least once a month. Attorneys are required to be in court and are not permitted to participate from remote locations. Appearances in misdemeanor cases (in which clients are not required to be present), however, may be handled in writing.

In-custody criminal arraignments are conducted via video connection with the judge in his chambers in La Grande, the District attorney at the courthouse in Enterprise, and the defendant at the jail. Defense attorneys are not present for arraignments because appointment of counsel does not occur until a request is made at arraignment. The attorney is notified promptly, by fax, of the appointment. A release hearing can be scheduled as soon as the following judicial day.

With respect to shelter hearings in dependency cases, because they generally have up to twenty-four hours notice the attorneys are generally able to be present in the courtroom with the parents, DHS and the District Attorney. The judge ordinarily appears by video connection from his chambers in La Grande. The District Attorney's office is appearing in all juvenile dependency cases at this time.

Mona Williams, the District Attorney for Union County, took office in January of 2007. She had no prosecutorial experience at the time. She said that the county budget is stretched tight. The sheriff's office is short-handed and her office could use another deputy or at least an investigator. The loss of timber revenue has had a big impact on the county. The last mill in the area closed recently and there was only a one-year extension of funding under the Secure Rural Schools and Community Self Determination Act.

Ms. Williams said that the number of criminal filings had increased somewhat in the past year, although the number of methamphetamine cases declined during the same period.

She indicated that consortium attorneys appear to be good advocates for their clients and are willing to try cases. She had a lot of trials when she first took office, presumably because the defense attorneys were testing her. There is not a lot of motion practice in the county, however.

### **Summary of Testimony at November 7, 2007 Meeting**

Judge Phillip Mendiguren, the presiding judge in Judicial District No. 10, discussed how both the two judges in the district and the defense attorneys must spend a significant amount of their time traveling between courts. He described the operation of the "rocket docket" in Union County, the drug courts in both counties and the recent addition of a juvenile drug court in Union County. He described a recent encounter with a drug court graduate which made him realize how worthwhile the time and effort invested in drug courts can be. He said that if he became aware that an attorney was not performing adequately he would notify Rick Dall, the new consortium administrator. But quality is a product of adequate compensation. Conflicts do arise between attorneys and their clients but when communication breaks down a motion for substitution is almost always granted. It is difficult for the court to rule on some of these motions because the attorneys do not provide any information about the substance of the conflict, which they say they cannot ethically reveal. On legal issues attorneys can be trusted to cite appropriate legal authorities.

Rick Dall described the history of the two public defense consortia in the district and their proposal in this contract cycle to form a single consortium - the Grand Ronde Defenders - comprised of all six members of the existing consortia. The group has already arranged with an independent attorney to handle drug court cases in Enterprise so that consortium members do not have to make that weekly appearance. In addition, this attorney has agreed to cover arraignments for consortium attorneys. The group intends to create a board of directors and a more structured organization that will have the capacity to remove members, if necessary, who are not performing adequately. Cases are currently distributed among members on a rotation basis although a single attorney will generally be assigned to all of the pending cases for a particular defendant. All of the member attorneys are qualified to handle all of the case types that the group contracts to handle. Caseloads have been down in Union County in the past year although both the district attorney and the defense lawyers expect that they will increase now that the new district attorney has been appointed. Under the circumstances, there has been no need for additional defense lawyers. Mr. Dall noted that attorneys in the consortium receive lower rates of compensation than attorneys in neighboring counties even though they do more traveling.

Anne Morrison and Victoria Moffet described their own backgrounds and the formation of the “women’s consortium.” Ms. Moffet has been a member of both consortia. They discussed in detail the difficulties involved in trying to visit with clients who may be located in distant parts of the state because of the lack of local treatment and placement services, about the lack of defense resources such as investigators, interpreters and mental health evaluators. They suggested that OPDS recruit investigators to the area and consider whether it would be possible to assign a “courtesy” attorney to juvenile clients who are located in distant areas, much like the “courtesy workers” assigned by DHS. Both attorneys noted that the court’s recent decision to appoint counsel at shelter hearings has had a significant impact. Some cases proceed no further than the shelter hearing when it becomes clear that there are no jurisdictional grounds. Ms. Moffet also said that the early disposition program is resolving some of the minor cases to the benefit of clients. She said that it has been difficult to communicate with the district attorney’s office in juvenile delinquency cases and that the juvenile department staff has not been adequately trained to draft petitions or determine whether the requisite elements of an offense are present before filing a petition. District Attorney Tim Thompson is working to improve this process.

### **Summary of Developments since November 2008**

Under its current contract the new consortium received a 44.08% increase in compensation which represents a 22.13 increase over the rates provided to the predecessor consortia.

Most of the persons interviewed in Judicial District 10 expressed appreciation for the quality of representation being provided by the experienced attorneys currently handling cases there. They asked that sufficient support be given to these attorneys to permit them to continue to do the job. It would probably be very difficult to replace any of these attorneys with attorneys having similar levels of experience. In addition, the lawyers are required to travel relatively long distances, sometimes in severe weather conditions, to meet with their clients and attend court hearings. The Commission’s funding priorities established at its August retreat<sup>9</sup> were applied by OPDS in its contract negotiations with this group of lawyers in the hope that they would be able to continue representing public defense clients and to attract additional attorneys as needed.

Mr. Dall reported that the consortium is working on an internal consortium agreement and is continuing to discuss particulars, including how best to address performance issues. Mr. Dall has been referred to administrators of other consortia who have developed agreements of the type that the Grand Ronde Defenders are exploring.

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<sup>9</sup> A copy of the minutes of the Commission retreat are attached as Exhibit C.

Testimony provided to the Commission at its meeting in November indicated that there is very limited access to interpreters, investigators and mental health evaluators in Judicial District 10.

Karla Young is a certified Spanish interpreter. She provides interpreter services in multiple eastern Oregon counties, including Union and Wallowa. She is the court interpreter but also works for other clients, including public defense attorneys<sup>10</sup>. She reports that there are very few interpreters available in the area. There is one other court certified interpreter but she works principally in Washington where the compensation is better. She said that court interpretation is more complex than interpretation in other types of proceedings and the certification examination is very difficult. She knows a number of highly educated bi-lingual individuals who have not been able to pass the exam. There is a larger pool of interpreters in Baker City and Ontario but many of them work principally in Idaho. Kelly Mills is the head of interpreter services for the Oregon Judicial Department. She reported that in the past the department had offered regional testing and that it may go back to that approach in an effort to develop larger pools of applicants. The state rate of \$32.50 per hour for certified interpreters has not been increased in ten years. The “master” interpreters in the state often end up working in the federal court where the compensation is significantly higher.

Mr. Dall reported that consortium members are satisfied with the Spanish language interpreter who is available. They have found her to be helpful and flexible. They encounter more difficulty finding interpreters in other languages. They often represent Pacific Islander clients and must rely on family and friends or AT&T to provide interpreter services.

From OPDS’s non-routine expense request database, staff was able to identify a number of investigators and mental health evaluators who have been approved for work on public defense cases in Judicial District 10. OPDS has also advised contractors that it is prepared to pay the expense, when necessary, to bring experts and investigators from other parts of the state to assist in their cases.

Mr. Dall believes that currently there is an adequate supply of investigators available. Mr. Dall said that obtaining psychological evaluations has also not been a real problem. There was a dependency case several months ago when there were conflict problems but attorneys are usually able to find someone in La Grande, Baker or Pendleton. They know that if they need to go outside the area, OPDS can cover travel expenses.

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<sup>10</sup> As indicated in the testimony in November 2007 she is the only interpreter currently being used by public defense providers in Umatilla, Morrow and Wallowa Counties, except for a death penalty case in which five interpreters from the Willamette Valley were used over the course of the proceedings.

## **A Service Delivery Plan for Judicial District 10**

PDSC expresses its sincere appreciation to all the members of the criminal and juvenile justice communities in Judicial District 10 for their assistance in informing the commission and helping to guide the creation of this service delivery plan for the district.

In light of all of the information received, PDSC approves the following service delivery plan for Judicial District 10.

A single consortium appears to be the appropriate type of provider for the district at this time. Experienced attorneys are relatively rare in this part of the state and a consortium structure provides members with flexibility in terms of the amount of time they devote to public defense cases and with the ability to add new members as needed, assuming they are available.

While the structure of the public defense system in Judicial District 10 appears to be sound, there is at least one area of concern that PDSC commends to further study and effort by consortium members. While the quality of representation provided in the district is generally regarded as very good, there are certainly some issues that need to be addressed. If lawyers are not meeting with their child clients, plans need to be made for them to do so.<sup>11</sup> If attorneys are coming to court unprepared, this information needs to be provided to the consortium administrator, and the consortium needs to have in place procedures for addressing issues of attorney underperformance, as well as the other policies and procedures outlined in OPDS's list of best practices. It is also hoped that in the future it will be possible for the consortium to become a more stable organization, even if the membership may change from time to time. Instead of restructuring periodically, the attorneys currently providing service in the area should be able to create an organizational structure that can meet their needs, the needs of their clients, and the needs of the court and OPDS over time.

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<sup>11</sup> All OPDS contractors received a statement from OPDS in 2007 regarding its understanding of the role of counsel for children. The statement is attached as Exhibit D.