Members

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

Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, September 17, 2015
10:00 a.m. – 2:00 p.m.
Hillsboro Civic Center
150 East Main St.
Hillsboro, OR 97123

MEETING AGENDA

1. **Action Item:** Approval of minutes - PDSC meeting held on July 30, 2015 (*Attachment 1*)	Chair Ellis
2. Washington County Service Delivery Review (*Attachment 2*)	Commission Invited Guests
3. **Action Item:** PDSC Compliance with Best Practices (*Attachment 3*)	Commission
4. Annual Performance Progress Report (Attachment 4)	Nancy Cozine
5. OPDS Monthly Report	OPDS Staff
6. Executive Session* - Commission Review of Contracting Plan for Capital Contracts	OPDS Staff Commission

The Executive Session will be held at approximately 12:30 pm. Pursuant to ORS 192.660(2)(f), the Commission will review contract proposals to provide public defense legal services beginning on January 1, 2016. The Commission will also receive an update concerning ongoing union contract negotiations, pursuant to ORS 192.660(2)(d). The Executive Session and close of the public meeting be held at: 102 SW Washington St., Hillsboro, OR 97123.

Please note: The meeting location is accessible to persons with disabilities. Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting, to Cecily Warren at (503) 378-2165.

Next meeting: October 23, 2015, 1:00 p.m. – 4:00 p.m., at the Sunriver Resort, 17600 Center Drive, Sunriver, Oregon, 97707. Meeting dates, times, and locations are subject to change; future meetings dates are posted at: http://www.oregon.gov/OPDS/PDSCagendas.page

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, July 30, 2015
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St NE
Salem, Oregon 97301

MEMBERS PRESENT:	Barnes Ellis Shaun McCrea John Potter Janet Stevens Hon. Elizabeth Welch
STAFF PRESENT:	Nancy Cozine Paul Levy Amy Miller Caroline Meyer Billy Strehlow Angelique Bowers Ernest Lannet Tyson McLean Shannon Storey Amy Jackson Cynthia Gregory

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

Agenda Item No. 1 **Approval of minutes—PDSC meeting held on June 18, 2015**

Chair Barnes Ellis submitted a number of minor edits. **MOTION**: John Potter moved to approve the minutes; Shaun McCrea seconded the motion; hearing no objection the motion carried: **VOTE** 5-0

Agenda Item No. 2 **OPDS Budget Update**

Executive Director Nancy Cozine reported that in addition to approving the agency's request for current service level funding, the 2015 Oregon Legislature also approved $5.3 million of a Policy Option Package that sought to equalize case rates between public defender offices and consortia and law firm contractors. The legislature also approved funding of a little over $100,000 for mileage reimbursements in certain areas of the state. In addition, the legislature approved permanent funding for the Deputy General Counsel position. Chair Ellis congratulated Ms. Cozine and others involved in the legislative process.

Agenda Item No. 3 **Veteran Representation Program Concept – Contractor Feedback**

The chair invited input on the proposal concerning improvements to representation of veterans in Oregon criminal cases presented at the last commission meeting by Jesse Barton and Dr. Bud Brown, who could not attend this meeting. Ms. Cozine noted that Dan Bouck, from Douglas County, had submitted written commentary, which was made available to commission members and others present. Lane Borg, executive director of the Metropolitan Public Defender, described a program at his firm, funded by a grant from the Veterans Administration, to help remove legal barriers to housing and employment for veterans. Two firm attorneys provide services, in coordination with Transition Projects, that include recalling outstanding warrants but that cannot include, under the terms of the grant, direct representation in criminal cases. However, the relationships from the program have helped attorneys in other cases gain quicker access to military records when needed. He explained that Multnomah County has a "veterans docket" for low-level criminal cases that has not worked especially well since most such cases, for veterans and others, end up in community court, which does work well. He also said that he doesn't think veterans cases would support an attorney caseload. What is probably needed, he said, is a resource attorney, along the lines of the service that his firm provides statewide, called The Padilla Project, for immigration advice to attorneys representing immigrants. He made clear, though, that he wasn't necessarily advocating that a veterans resource attorney program be located at his firm.

Agenda Item No. 4 **Report: ABA Center on Children and The Law Summer Conference**

Amy Miller, Deputy General Counsel, reported on meetings at the ABA Center on Children and the Law, which included back-to-back conferences on representation of parents and representation of children. She said it was very helpful to meet people around the country doing the same type of representation improvement work she is doing in Oregon, and instructive see how Oregon compares to other states. Asked about that, she said Oregon is well ahead of some states that simply don't provide counsel to parents, but that the caseloads in some states are significantly more manageable than those in Oregon. Generally, it was interesting, she said, that parents attorneys around the country are having best results in system improvements through collaborative efforts with courts and other stakeholders. She said that a number of workshops at the program focused on prepetition representation, which is something she wants to explore further in Oregon. She mentioned that there were presentations on a number of topics commonly encountered by Oregon attorneys, including allegations of medical child abuse, which used to be called Munchausen by Proxy. Asked about this, she explained that the cases involve allegations of parents seeking unnecessary medical treatment for their children, but it is not always clear that the children aren't in fact in need of medical care. Ms. Cozine said she would provide commission members with a recent article on the topic. Ms. Miller said she intended to share what she gained from the conferences through various CLEs and other avenues.

Agenda Item No. 5 **Presence of Counsel at First Appearances**

Paul Levy, General Counsel, introduced a paper he wrote, included in the meeting materials, that summarizes empirical research demonstrating the importance of having counsel present at first appearances in criminal cases, which is also called for by both state and national performance standards for defense counsel in criminal cases and by the general terms of the PDSC contract with public defense providers. He noted, though, that there remain some counties in Oregon where this is not occurring, but reported that in Linn County, where the commission learned about this problem several years ago, the provider and court were working on ensuring that counsel is present at first appearances.

Commissioner Welch noted that part of the solution to addressing this issue is educating judges, who can be isolated from what is happening in other jurisdictions and may not be aware of the best practices. She said there is a limit to what defense attorneys can do on their

own to change court practices. Commissioner Potter suggested that publishing the paper in the monthly newsletter of the Oregon Criminal Defense Lawyers Association might make it more widely available to defense attorneys, who can use it to influence courts on this issue.

Mr. Levy said he could not provide an exact account of those counties where counsel is not present at first appearances since the last agency survey was done a number of years ago, but said that as part of the upcoming contracting process the agency would be learning about the status of representation at first appearances in all counties. For instance, he said, Benton County was a place where the agency learned years ago that counsel was not routinely present at all arraignments, and he noted that Jennifer Nash, the administrator of the contract provider there, was present at the meeting and could provide an update. Vice-Chair McCrea asked if she would like to comment.

Jennifer Nash said this is a very timely topic. She explained that until just two weeks earlier the consortium in Benton County did not have an attorney present at out-of-custody arraignments, although they do always have a legal assistant there. She said the attitude was that things were fine the way they were so why change. There had been some effort to change over the years but the court resisted it. But attorneys in her group saw things happening without lawyers present, like college students pleading guilty without full knowledge of the consequences just to get a case resolved, or the imposition of unworkable release conditions, or incorrectly completed release paperwork. So the attorneys decided to just start showing up for arraignments, even though it was a significant time burden for a group of only seven attorneys. And very quickly, she said, judges were saying, "this is great, we really like having a lawyer here." Rather than take longer, as the court had feared, arraignments went more quickly, and the court began talking about working with the attorneys to make it even more efficient. The District Attorney liked it too, since they were having a problem with defendants waiving counsel and proceeding *pro se*, which is happening less often now. The representation of a client improves as well, she said, when the lawyer is present at the very beginning of the case.

Jack Morris, who contracts to provide public defense services in the Gorge as both the administrator of his own firm, which is the primary contractor there, and as the administrator of the conflicts consortium, told the commission that this is a very important issue for him. When he first began work in the Seventh Judicial District there were no lawyers at first appearances, in part because there was no set time for the hearings, which happened whenever convenient to the court. It was a struggle to change that, but for the past 20 years his firm has had attorneys present at all arraignments. He feels so strongly about the need for this that when the consortium began operating several years ago he insisted that an attorney be present from that group as well, even though it can be a hardship given how few attorneys are in the group and the relative infrequency in which conflict cases arise. He is also a strong believer in having the attorney who will actually represent a client be the one present at the first appearance. In addition to other benefits, this motivates the lawyer to pursue the release of the client from custody, since that makes the lawyer's job easier.

Lane Borg commented that his firm has been covering arraignments for all contractors for years in Multnomah County, and that has worked well. It's been only a few years, though, that attorneys have been present at arraignments in Washington County. Recently, the court there insisted that the firm, when covering arraignments for other providers, not warn newly arraigned defendants that jail telephone calls are recorded. The court claimed that lawyers covering arraignments for other firms could not actually provide legal assistance to clients of those firms. The Oregon State Bar disagreed, stating in an informal ethics opinion that providing coverage at arraignments was a type of court-annexed limited legal services program, under Rule of Professional Conduct 6.5, that allows for the provision of short-term legal services without the encumbrance of most conflict of interest rules.

Vice-Chair McCrea expressed frustration that the state court in Lane County had ceded most custody release decisions to its pretrial release office, which was applying release criteria in such a way that persons who would ordinarily be released in federal court are being held in state court, requiring the posting of inordinate amounts of bail to secure release. Jennifer Nash noted that a recent *New York Times* article reported that some commonly used release criteria bear no correlation to whether a person is likely to fail to appear in court or be a risk to the community. Ms. Cozine reported that Multnomah County was experimenting with a new evidence-based risk assessment tool, and that she would look into scheduling a presentation on that topic for a later commission meeting.

Agenda Item No. 6 **OPDS Monthly Report**

Ms. Cozine reported that she has been working with Geoff Guilfoy, who will be at the October management conference and commission meeting to assist with agency strategic planning. She reported on her visit, along with Commissioner Potter and Caroline Meyer, Contracts Manager, to Washington County, in preparation for the upcoming Commission service delivery review there. She said planning is underway for the next peer review, which will be in Clackamas County. She reported that she had a good conversation with the Chief Justice on the topic of waiver of counsel in delinquency cases. And she said that the agency was getting a new phone system to replace a very old and out-of-date system that cannot be repaired or expanded. She also said work was progressing on a new case management system for the agency that will also be implemented in the Parent Child Representation Program counties.

Ernest Lannet, Chief Defender, reported on the many Criminal Appellate Section cases in which review had been granted by the Oregon Supreme Court, which was keeping the lawyers there very busy through the summer months. Shannon Storey reported that the Juvenile Appellate Section had been very busy as well, and described an important recent case from the Court of Appeals that held that a parent's substance abuse problem, without evidence of harm to the child, is not sufficient to establish jurisdiction over the child. She said the section was also finalizing a brief to be filed in the Oregon Supreme Court.

Nancy Cozine concluded by mentioning some significant personnel changes with the departure of Anna Joyce from the position of Solicitor General, and Erinn Kelly-Siel from the position of director of the Department of Human Services. She also thanked both the employees of the Office of Public Defense Services and the members of the commission for all their very hard work.

Agenda Item No. 7 **Executive Session**

The commission then went into executive session for the purpose of reviewing contract proposal to provide public defense services, and to receive an update on union contract negotiations. The chair read the statutorily prescribed notice stating the purposes for the executive session, citing the statutory provisions that allow it.

Return to Public Meeting

After the executive session the commission returned to its public meeting.

Vice-Chair McCrea noted the unfortunate and untimely death of Bill Dials, a long-time public defense attorney who made an "incredible contribution to criminal defense" in Oregon.

Commission Welch expressed concern that the commission's policy concerning composition of provider boards of directors was not being enforced. Chair Ellis said reports of a contractor executive director picking his own successor raises a concern over board functioning.

The commission then voted unanimously to adjourn.

Meeting Adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, July 30, 2015
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St NE
Salem, Oregon 97301

MEMBERS PRESENT:	Barnes Ellis Shaun McCrea John Potter Janet Stevens Hon. Elizabeth Welch
STAFF PRESENT:	Nancy Cozine Paul Levy Amy Miller Caroline Meyer Billy Strehlow Angelique Bowers Ernest Lannet Tyson McLean Shannon Storey Amy Jackson Cynthia Gregory

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

Agenda Item No. 1 **Approval of June 18 Minutes**

0:00 Chair Ellis — We will call the meeting to order. I had three or four small edits. I don't want to burden the record with telling everyone what they are but I would hand them to you and everybody else trusting that they are okay.

0:21 N. Cozine — Let the record reflect that I have received the small edits. Thank you.

0:30 Chair Ellis — Assuming you would trust my edits to be okay, is there a motion to approve? **MOTION**: John Potter moved to approve the minutes; Shaun McCrea seconded the motion; hearing no objection the motion carried: **VOTE** 5-0

0:41 Chair Ellis — Budget Update.

Agenda Item No. 2 **OPDS Budget Update**

0:52 N. Cozine — Good morning Chair Ellis, members of the Commission. The legislature finally did a budget and we were left right where we were left at the end of our budget bill passing through. We

were fortunate in that we did receive our complete CSL amount and we also received about 5.3 million in Policy Option Package funding that is specifically for getting our consortia and law firms to the place where our PD rates are now and a little over 100,000 for mileage reimbursement.

1:30 Chair Ellis — So that kind of addresses the imbalance we had before where only one group of providers got the benefit?

1:38 N. Cozine — That is correct.

1:40 Chair Ellis — Thank you and congratulations. I think you and all of the people that were involved did a really good job.

1:48 N. Cozine — Thank you. We're excited about the outcome. Really it's a good place to be. And we also received permanent funding for our Deputy General Counsel position which is remarkably exciting and you'll be hearing from Amy Miller later today. She attended a conference at the ABA Center on Children and the Law and she met her counterparts from across the country. We are now in step with other states that have General Counsel positions that focus on the improvement of juvenile law.

2:14 Chair Ellis — Excellent.

2:15 N. Cozine — Yes, it's very exciting. I did want to mention that in the budget bill there was a budget note on the 5.1 dedicated to raising consortia rates and that budget note indicated that we were to disperse that funding in a way that got them up over the course of the biennium. What I am saying is that we asked for a little over 7 million in funds to make them whole immediately. They said we don't have quite that much for you, here's 5.1, stagger your disbursement of this between the two years to get everybody to the same place at the end of the biennium at the second year. We've talked about it internally and I'd like to just say it on the public record so that people know what we're thinking and our thought is that it's really best if we use a combination of CSL and Policy Option Package money to make sure we get our consortium and law firms up to the point where our public defender providers are as quickly as possible , so doing it staged for all of our providers so everybody gets improved rates in year one and in year two but we get everyone to the same place as quickly as possible. We will talk more about that but that budget note is there and we are working with LFO on that. That's the news.

Agenda Item No. 3 — **Veteran Representation Program Concept – Contractor Feedback**

3:48 Chair Ellis — Veteran's representation program concept. Many of you know we had Jess Barton and Dr. Brown here at our last gathering. They made, I thought, a really interesting presentation which you can read in the transcript and they also spoke to the ODCLA conference and many of you attended that. We're scheduled to have staff propose an approach to the issues they raised in October but as part of that we wanted any of the contractors and providers who had comments or observations share them with us today and that will be part of the mix of information that the staff has. Both Dr. Brown and Jess Barton let us know that they would not be able to attend today and that's fine because this is really a day for anyone else who wants to speak on the subject so we would invite anybody who has something they want to contribute to that.

5:09 N. Cozine — Chair Ellis if I may, I just wanted to comment that Mr. Barton did submit written commentary and Mr. Bouck from Douglas County and those are both available to everyone around here, I've routed them to Commission members and it will be a part of the record as well.

5:26 Chair Ellis — Lane?

5:33 L. Borg — For the record, Lane Borg, Metropolitan Public Defenders. Thank you Chair Ellis for this opportunity. One thing I want to preface with, because I was not able to be at the presentation

that Jess had given at the Bend meeting, however I have heard him talk before so I am familiar with what his issues and concepts are and I think that I share those. I think that it's a really critical concern. When I was being briefed by my predecessor Jim Hennings about it, it became apparent to me in talking to him that he was even unaware of what we were doing. So, I'd want to take just a moment to tell you what is currently happening at Metropolitan Public Defenders vis-à-vis veterans and veteran outreach. We have a grant that we are the legal services provider for through Transitions Project Housing in Portland on a rather significant grant, I think they are getting a billion dollars or something like that. It's a very significant amount of money. We get, no I'm sorry it's about five million. TPI gets five million. We get about $230,000 a year to provide legal services to veterans and its two attorneys and a support staff. But, because the way the VA has structured that money it is limited to eliminating barriers to employment and housing for veterans. They have to be identified as eligible through the grant process. There's an acronym the Department of Defense uses about A2 dependent families and servicemen. That person identifies them and then we can provide services then but we may not do criminal representation of them. We have gotten, we have pushed the interpretation…

7:41 Chair Ellis — You are using that money?

7:43 L. Borg — Right, for those two staff attorneys and legal assistant, they can't directly represent a veteran on criminal matters. We have gotten at least somewhat nodding permission and the closest we get to it is we will do expungements and we will do bench warrant recalls, arrange for bench warrants…

8:01 Chair Ellis — You're really focused on diversion?

8:04 L. Borg — No, we are really focused on finding housing and the two big areas are employment and housing, but the third one we've come into is family law because a lot of veterans have issues around restraining orders or around trying to reengage with visitation rights. So, our lawyers in that group, not only because the way the VA is structured, not only do work in Multnomah County and Washington County and Clackamas County, but in Clark County also. So we've been waived into the Washington bar and so we represent veterans in the metropolitan area on this issue.

8:39 Chair Ellis — Jess and Dr. Brown's principal point was that there are a lot of psychiatric issues that are relevant to the people who have had the experience that veterans have had and that those issues may well have significance in defense. I guess my question to you is does MPD either have lawyers who seem to be particularly into that or do you have access to resources on that or what's your status?

9:15 L. Borg — What we have gotten by having Daniel Crowe and Leslie Nelson as the lawyers on the veterans project, and I don't disagree with what was being presented about the potential issues in criminal defense, but when you start talking about VA and veterans issues one of the things you quickly get into is who's really a veteran and what access do they have, what service records do they have? So through the VA project, our lawyers are able to get access to records much faster than usually happens in the criminal arena. You'll hear stories about how it might take weeks or months to get the records. With our relationship with the VA we are getting them within days. We can call up and determine what is the real service record of this individual, what is the DD213, what does that really show and demonstrate about what that person's service record was and that gets into when they may have been in combat or other theaters or assignments that they have.

10:20 Chair Ellis — Do you have any data on how many veterans you end up defending during the course of the year?

10:29 L. Borg — I don't have that here and we have just started keeping that within the last year or two years, to have an intake ask the question 'are you a veteran.' We did have Gary Gedrose before he retired he was trying to gather up as many of those as possible, many of the veteran felony cases and handle those or negotiate on them and they are not insignificant but our records have demonstrated that it would not be a caseload, there hasn't been enough that we've said we should dedicate one or two attorneys to just doing that because it doesn't come in in that way. In reality when you are talking about veteran's courts, in Multnomah County we have a thing called a veterans docket that has not really been that successful, there has been only a couple of people in it because the reality is we, as I have tried to tell the commissioners in Multnomah County, we have a veterans court it's called community court. If you look at the cases that other veterans courts around the country deal with with veterans, we do those in community court. There are very few places other than I think Minneapolis that are doing major felonies on veterans courts. If you are committing a major felony, if you are prison bound, it might go into mitigation consideration but it is not some special docket or court that you are put into. So you are dealing with misdemeanors.

11:54 Chair Ellis — They've presented us with data and I think they would acknowledge it was somewhat informal. They did telephone interviews for I think 19 states and the data they had showed Oregon has a much higher incarceration rate for veterans who went into the criminal justice system than any of the other 18 states. Do you have any thoughts?

12:22 L. Borg — I have heard his presentation on that before and I trust his numbers on that, I think that's probably correct because we know that Oregon during the Afghan and Iraq wars has had a much higher deployments. We've had higher deployments since, we haven't had such high deployments since World War II. So we have a lot of Oregonians that are going into the service, National Guard Deployments and Oregonians then going into the regular service. You have those on top of the National Guard I think we do have a fairly high percentage of veterans and people who have experience, combat veterans from Oregon. What I would say though in my comment as a contractor is that I think that you can address the concerns that Jess has, which are legitimate, much like you have addressed through my office the Padilla Project of having a resource attorney, have somebody that can be that conduit of information because most of the time it's going to be making sure you can get information relatively quickly in a relevant time period to a person about whether or not they really are a veteran, because that's going to be the first question the DA has is 'well is this person just saying this or what's the real,' because we know it can be documented now. It's a fairly easy thing, show me when they were in theater, show me what their military record says about this and then secondly trying to educate the attorney about what the options are so that they can, like they do with everything else, present their options to the client.

14:08 Chair Ellis — On the Padilla case, my memory was that you had already developed lawyers within MPD.

14:14 L. Borg — We did have some lawyers that were doing that and we've continued it but what we've also discovered is that they had needed to keep their education up. Stephanie Engelsman who is doing that now, or is coming back from maternity leave shortly to do that again, she has gone to much more education and she is a different lawyer now than she was when we put her into the project even though she had done some work around that. It's just that she has learned a lot more since that.

14:42 Chair Ellis — Sure, but that was the whole concept to get someone who is really knowledgeable. I take it from what you said you probably don't have someone like that now.

14:51 L. Borg — The closest person we have would be the person who is working on the VA project, Daniel Crowe, who is a retired JAG officer.

14:59 Chair Ellis — Are you aware of any lawyers in the state that would fit that description?

15:06 L. Borg

Not by name off the top of my head but what I would say on that is I don't think you have to find someone necessarily, we were fortunate enough to get Daniel Crowe in the area that we are doing because he is doing essentially the same thing he was doing the last five years in JAG which is assistance to families and soldiers about civil issues. I think this is learnable stuff. I think it helps to have the resource center model, the Padilla Center model, simply because it's the concentration. If you said to everybody 'we are going to do a CLE to train all lawyers to be experts on VA law' what the problem is going to be is they are not going to get a case for two months, three months, four months and then it isn't really relevant for them to do it. What you need is to have somebody that commits to saying, 'I am going to go learn the stuff, I'm going to make the contacts, get the resources' and then we can use that Padilla model to say as we have done, it doesn't have to be us it can be other contractors that can do that, to say it's a consultation by the lawyer rather than direct representation of the person who is the veteran.

16:14 Chair Ellis

But what you can do through CLE's and other ways of informing lawyers is get lawyers to think about the issue and know where the resource is.

16:27 L. Borg

Oh yeah, raising awareness, absolutely.

16:32 Chair Ellis

Anything else?

16:33 L. Borg

No.

16:34 Chair Ellis

Any other questions? Thank you, Lane. Are there any other contractors or providers that want to weigh in on this topic? Okay thank you. Okay, Amy, report on the ABA's Center on Children and Law Summer Conference.

Agenda Item No. 4

Report: ABA Center on Children and The Law Summer Conference

16:58 A. Miller

Good morning Chair Ellis, Vice Chair McCrea, members of the Commission. Amy Miller. I just wanted to give you a quick update on my trip to Washington D. C. last week.

17:07 Chair Ellis

Now that you're paid?

17:09 A. Miller

Now that I am paid, I am no longer a LD which apparently is the abbreviation for limited duration. When I went back and looked at some of the prior agendas from the Commission meetings, I noticed that Paul when he had attended a national conference had come back and shared information about the conference with you. So, following his footsteps I wanted to share a little bit. Last week I was at the ABA Center on Children and the Law. They had the fourth national Parent and Attorney conference and the 16th one for attorneys representing children and they happen every two years at the same time so it was an entire week back in Washington D.C. and it was about 100 degrees. My experience was informative, I learned from experts from across the country and also from my counter parts. It was surprising, people would come up to me and say 'I'm the you from Louisiana' and it was neat to meet all the different people working in agencies similar to ours trying to do this function. A couple of the highlights. Judge Welch asked me, "did you learn anything new or innovative?" I think the message from the Parent Attorney conference which may be slightly disheartening was that we can't change the system alone as parent attorneys, that we really need to partner with courts, with social services, with the community as a whole, that we can't stand on our morals as parent attorneys. But, I learned a lot about some unique partnerships like parent attorneys working with court improvement programs, with law schools, with judges, with social work schools and with non-profits. One thing I did want to mention and I mentioned to Judge Welch just before the meeting started was the concept of prepetition representation. This is the representation that I learned about of parents prior to the filing of a dependency petition. When I spoke with you last month about some of the changes regarding the Department of Human Services and their policies I mentioned differential response which is the work by the

agency to try and handle cases informally outside of the court system whenever possible with the idea of keeping families together and keeping kids in the community and out of foster care. The ABA standards for lawyers representing parents indicate that where a jurisdiction permits it the parents' attorney should actively represent a parent in the prepetition phase of the case. There were a number of workshops and conversations around what this looks like, how is this working across the country. I took some notes because I wanted to share with you. Why is it needed? To influence initial investigations, help prepare parents for questions, sit with them during the interview, help them reframe the narrative of the case, to protect the rights of parents. We know in Oregon parents are often asked to complete evaluations, even psychosexual evaluations as part of this informal process and parents have expressed that at times their consent is perhaps less than voluntary. To prevent the filing of petitions and court involvement, support families case for in home and community based services. So, as I said this is happening around the country in different places and in different ways and some of the data is exciting and encouraging so I am going to take more of a look at that and see if it's something that we can apply here. The Child Attorney conference which was the next couple of days, their theme was working on family well-being so not just representing children but looking at families as a whole and then system reform. I went to a number of presentations which I think address issues that Oregon providers struggle with and see all the time including things like medical child abuse, immigration and customs enforcement, working with immigrant families, and best practices in representing children. I coordinate some of the training conferences and coordinate training for some of our providers and there are a couple of topics I am hoping to bring to Oregon, one in particular is around immigration and customs enforcement and some of the parental interest directives that they received and how they are supposed to accommodate the parents and families involved in our cases. That's about it. It was an exciting week; it was an overwhelming week, there is much that we can be doing here but I am coming back renewed and full of energy to move forward.

21:32 Chair Ellis — Did you get any sense on how Oregon is approaching these issues relevant to others? Do you feel good about what we are doing? Are we behind the curve or ahead of the curve?

21:46 A. Miller — Chair Ellis, members of the Commission, that's a good question. I think in some ways we are so far ahead of the curve. We are talking about things like some of our appellate case law, it seems to be so far ahead of where other states are and the fact that we appoint lawyers for parents and children in every case. In Mississippi parents don't have counsel, so in some ways we are far ahead. In other ways, caseloads are a problem here compared to some other jurisdictions like in I think it was New Hampshire or Massachusetts had caseloads of 40. So I think there are some things that we are doing excellent on and there are opportunities for improvement as well.

22:31 Chair Ellis — Do you have any thoughts about sharing what you learned more broadly than in just this meeting, in other words reaching out to lawyers that are in this field?

22:42 A. Miller — I do, I have a whole lot of thoughts about it although I haven't crafted the best way to do that. I think there are topics that are so essential for those of us doing this work to learn and those would probably need to be included in CLE's and seminars and some of that I will work with the OCDLA Juvenile Law Committee on. I think there are others I can disseminate through webinars or via email and so I am going to try to figure out the best way to get as much information out there as I can.

23:13 Chair Ellis — Great. Other questions for Amy?

23:15 J. Potter — Did I hear you say medical child abuse?

23:19 A. Miller — Yes, it used to be called Munchausen by Proxy.

23:26 J. Welch — Is there a lot of that?

23:29 A. Miller — I don't know if there is a lot but what the presentation was on was how to figure out when representing a parent or child whether these are parents of medically fragile kids who are just involved in their children's treatment and that's totally normal or whether it's something worthy of a diagnosis and state intervention.

23:03 N. Cozine — Members of the Commission, if I may comment, there was actually just an article on this topic in, I can't remember if it was *The Atlantic*, but it was some relatively major publication but I will find it and forward it to you, but it evidently is a big topic of conversation because more and more parents who have children with diseases that are difficult to diagnose are accused of attention seeking through their attempts to get treatment for their children. There was also a really interesting article yesterday on free range parenting and the idea that parents who let their kids walk to school unaccompanied by an adult are being called in for not adequately supervising their children and there is now a backlash or pendulum swing. I will forward both of those articles to you.

25:02 A. Miller — Last I wanted to mention that I was a presenter at the conference and so it helped with the budget as well.

25:07 Chair Ellis — What was your topic?

25:09 A. Miller — Initially I had proposed a presentation on collaboration from start to finish, collaboration trial counsel all the way through the appellate process and they sort of took my proposal and chunked it up with a couple of others to make it sort of a longer session and so I talked about collaboration between trial and appellate counsel and how that results in strategic litigation.

25:33 Chair Ellis — How many attended?

25:35 A. Miller — There were about 400 at the Child Law Conference and about 350 at the Parent Law Conference.

25:40 Chair Ellis — Well that's good. Thank You.

25:42 A. Miller — Thank You.

25:48 Chair Ellis — Paul, presence of counsel at first appearances.

Agenda Item No. 5 — **Presence of Counsel at First Appearances**

25:53 P. Levy — Thank you, and this is I suppose you can call an occasional series on updating the Commission on the convergence of national developments and local concerns. I reported to you at the last meeting about developments nationwide on concerns with caseloads and the development of jurisdiction-specific caseload standards and what we are doing and intend to do here. This essay is about national concerns that are developing and evolving around the issue of having lawyers present and effective at first appearances and the importance of that. It is something the Commission has recognized as a significant issue and you've talked about it because we still do have providers who do not have lawyers present at the first appearance in criminal and delinquency cases. In Oregon we are rededicating ourselves to working on this issue. The general terms of the contract that will become effective in the beginning of January have more explicit terms in connection with this issue. There is good news. The last jurisdiction that you visited where this was an issue, Linn County, is working on it and making progress and we have the commitment of our provider there to find a way to provide representation at arraignments which is good news. They haven't quite dotted the I's and crossed the T's on how that is going to happen but they are getting there. We just wanted you to have this information and sort of memorialize what's going on nationwide around it.

28:09 Chair Ellis What distribution are you making of your essay?

28: 14 P. Levy It's in the Commission materials and its handy to have it if we need to share it with providers and courts.

28:25 Chair Ellis It goes on our website so people can access it?

28:27 P. Levy It's on our website, yes. If you haven't read it, I think one of the first sources I site there is a link to a *New Yorker* article that sort of sums up what is going on around the country with criminal justice reform with a focus on the impetus from conservatives and Republicans where this movement is getting a lot of strength nationwide and you probably have read very recently in Congress a bipartisan effort to reform federal sentencing law and I think it may have been mentioned in that article in Nebraska a Republican legislature voted to abolish the death penalty in that state.

29:28 Chair Ellis I thought it hadn't gotten that far. I thought the legislature passed it, the governor had threatened veto and I never heard what happened after that.

29:40 P. Levy Well, it was either veto proof or he vetoed in and they overrode it.

29:47 Chair Ellis So, you're adamant that the process has run its course then there is some talk about an initiative petition and all that so the issue isn't gone but it was a significant and interesting step.

30:07 J. Welch Thinking about prior issues where judges needed to know what was going on, I read with some dismay, I don't know much about the adult criminal process, but there are counties in the state that still rely entirely on a bail schedule?

30:31 P. Levy No, not in Oregon.

30:33 J. Welch Oh, I got that impression from your…

30:35 P. Levy No, we are, no I am sorry if I left that. There certainly are many states where that's the case, or some states at least. Oregon's statutory scheme is different from that and I thought I had distinguished that but what distinguishes us is a statutory scheme that involves an individualized judicial assessment of the risk of flight and the risk of reoffending. If a criminal defendant is not represented in that assessment, perhaps that is as good as simply having a bail scheme because that defendant is unlikely to be able to put before the judge the relevant considerations and to object to irrelevant considerations. The point was that we're not really improved over those other jurisdictions unless we have a lawyer there helping the defendant.

31:53 J. Welch Can you give us a round number of the number of courts that do not have counsel at that stage in criminal matters?

32:06 P. Levy I can't. We surveyed on this a number of years ago and I think that information is a little out of date. I'd say it's probably a handful but that depends on how big your hand is I suppose. The last we checked for instance I don't know what's going on in Benton County, Jennifer Nash can tell us and some time ago there wasn't routinely always a lawyer present at first appearances there but it has been a while since we surveyed and part of what we are doing now in our contracting process is we will be going jurisdiction by jurisdiction as we talk with our providers to find out what the status is, what are the plans and what steps can be taken to ensure that there are lawyers present at first appearances.

32:03 J. Welch I just wonder sometimes, as I have a different perspective than I think most of the people here, if judges knew that they weren't doing something that other judges do or that other

jurisdictions do. It might be useful and I think we have seen some examples maybe a little on the isolated side but nevertheless, that when people become aware that that might help a little bit. And, putting so much of the onus on defense lawyers when in small towns there's only so hard you can push or so much fuss you can make before you are in trouble.

33:48 P. Levy — I think that's a good point and there's often a fear that 'well if we changed the way we're doing it now which works just fine, it's all going to fall apart' and the experience has been in other jurisdictions is no, it actually works better. That's been the experience in representation at shelter hearings when that change has occurred. No, things didn't grind to a halt, they worked better and we can help get that message out there.

34:23 Chair Ellis — Another question for Paul?

34:24 J. Potter — When I read this Paul, it struck me that with a little bit of tweaking to this article, this paper could be used for the Oregon Defense Attorney journal and that the tweaking might be, to take off on Judge Welch's theme, is make this sort of an empowering article for the defense. I'm not saying its accusatory now, but to give the defense some momentum to help change the system and I agree that judges when they see other people and other judges doing something that's good they might be willing to help; but, even with the defense bar, might be willing to help move in a direction that you want to move.

35:09 P. Levy — I'd be happy to tweak it.

35:12 J. Potter — We'll shorten the title.

35:14 Chair Ellis — Or make it cute and funny.

35:19 S. McCrea — Mr. Chair, Jennifer did you want to comment on this?

35:25 J. Nash — I would love to. It's a good timely question actually. Jennifer Nash, Benton County Defense Consortium administrator. Until two weeks ago we did not have attorneys at first appearances and there were a number of systemic reasons why that was the case. Really, it was that we're doing it fine the way we have been and we don't need to do it any differently. The process wasn't in place to do it and over the years we had tried to change that process and had been met with some resistance mostly from court staff and the judges that we had at the time sort of deferred to that and said 'well this will be just too difficult' and the other problem with that was with the way the arraignments were set up. Its four hour blocks of time twice a week. So, in order to have a defense lawyer there it would require one afternoon a week, well two afternoons a week but per lawyer. Ultimately, we decided that even though that is what the system was we needed to do something different because we had noticed a number of problems, of course that are very obvious and that is as Paul laid out in his article, I mean there are pretrial release decisions that are being made that there is no attorney there for. The other thing that happened frequently was the state was making offers to defendants who are coming into court, mostly college students, saying 'I just want to get this case resolved, whatever the offer is I'll just take it' without any understanding of the collateral consequences of some of the offers that they were accepting. Where we would have difficulty is in cases where we were appointed there were release condition issues that came up with no contact orders, with court staff that were filling out paperwork incorrectly so there would be release conditions that had nothing to do with cases but there was nobody checking that, and there were just a number of issues that really needed to be addressed. So, we just decided on our own to just start showing up and that's what we started doing two weeks ago or the middle of the month. We developed a duty calendar where we are showing up one afternoon a week but surprise, it doesn't turn into one afternoon a week when there's a defense lawyer there it turns into much shorter than that. Very quickly, the judges were saying 'this is great, we really like having a lawyer here, and this is working out really well for us. Maybe we need to change the system so that it's even easier for you to be here.' To which I said 'well how about

making arraignments one day a week' which is what they used to be and surprise surprise, the response I got back was 'well maybe we can do that.' As a practical matter we have more people that are appointed and have defendants who aren't waiving counsel who shouldn't have been waiving counsel in the first place because there is a lawyer there and the judge is saying 'look, there's a lawyer sitting right there, are you really sure you don't want to have a lawyer because there is one sitting right next to you.' So, that issue has also been very helpful for the defendants. I think one of the other things that really changed is that there was a significant turnover in the District Attorney's office and the elected DA started carrying a caseload for a short period of time and he had to deal with unrepresented defendants and he said 'this is crazy, I don't want these people not to have lawyers. What can we do to help?' So, they stopped giving on many occasions offers to defendants who were wavering about waiving counsel whereas they were pretty aggressive about that prior to that. There has been some systemic changes that have really helped with the process too, but from our experience it has been very beneficial, the judges really like it, we like it even though we knew upfront that it was going to be a pretty significant time commitment because right now there are eight of us on paper but we have one who is out on medical leave. So, there are seven of us and you can do the math if there are two arraignments a week, how often are we showing up one afternoon a week. We think in the long run it is really going to pay off and it has been so far especially for the quality of representation. I mean, you make contact with your client's immediately. We've always had a staff person there from my office and that is not going to change because we don't want lawyers having to deal with paperwork but now we will still have a staff person and an attorney as well.

40:27 P. Levy — I can see Commissioner Potter going 'hmmm an article tweaked by Paul with a testimonial…'

40:37 J. Nash — Sure.

40:41 Chair Ellis — Which fits into Judge Welch's comment of this may influence some of the other judges to follow suit.

40:47 J. Nash — And that's what happened, they were saying 'this is great, we like this, what can we do to help?' So, it has been very very good.

40:54 Chair Ellis — Good, Thanks Jennifer.

40:55 J. Nash — Thank You.

40:56 J. Morris — Chair Ellis, I have a few comments I'd like to make.

40:58 Chair Ellis — Jack, step forward.

41:01 J. Morris — I am really glad to see the Commission addressing this because this has been an issue near and dear to my heart for about 30 years now.

41:10 Chair Ellis — State your name and title.

41:12 J. Morris — I'm sorry, Jack Morris, my firm is the primary contractor in the Gorge and I am also as of last year the administrator of the Conflicts Consortium. So, when I was at Metro in the late 80's we picked up our own cases and I will return to that in a moment but when I went to the Gorge in the early 90's my predecessors didn't go to first appearances and the reason for that was that there was no way for them to do that. The judge who did arraignments did them at the time when he felt like doing them which you never knew when it was. So, in 1991 one of my first priorities in taking over that firm was to try to fix that and it took me about six years. So, we initially got them to compromise and the court staff was supposed to notify us when they were doing arraignments. Well, they did that about half the time and when they did do it if they had five arraignments they usually called us after about the third so we would have

somebody run up there. For the last 20 years our firm has always had someone there every single day for in-custodies and once a week for out of custodies.

42: 09 Chair Ellis — So, you get notice then?

42:11 J. Morris — Well, we finally got them after about half a decade to do arraignments at the same time every day so that was one of the crowning successes I had in the early years. So, fast forward a few years, as you know last contract you were I'll say kind enough to give me a second contract and now I am the administrator of a small consortium and my priority in dealing with that consortium is the same exact thing. In spite of the fact that we have individual attorneys, we have about eight attorneys and really four main ones, the biggest part of administering that consortium is finding out every morning if there are going to be conflicts and if so getting an attorney there. We could skip having attorneys at first arraignments and it would reduce my workload and my office manager's workload in administering the consortium by about 75%, but that's what occupies our time every morning because I feel that strongly that we have to have people there and I think it helps. I want to commend the Commission for paying attention to this and I want to ask the Commission to consider taking it one step further which is probably going to make me unpopular with some of my colleagues and that is encouraging contractors... With respect to the consortium my feeling is that if we can do it in the counties that we are spread over with the number of people that we have then pretty much anybody can do it, but I would like to see the Commission encourage contractors to not only have attorneys at first appearances but to have the attorney there who is actually going to be assigned the case.

43:41 Chair Ellis — Now that I do see a problem…

43:43 J. Morris — I think there is going to be some blow back from that but too bad. I just think it's really important. It's just like when you are trying to negotiate a criminal case, if you're negotiating the case with a DA who is not going to be trying the case, threatening to go to trial doesn't get you anywhere because they don't care. It's the same thing in first appearances with defense lawyers. The defense lawyer who is going to have that client needs to be the one there because he or she is really going to be pressing for release because custody or a caseload of fifty people who are in custody is a lot harder to deal with than fifty people who aren't. So, that attorney really has a vested interest in really pushing the issue, trying to get those people out, really pushing the issue with the judges about having contact by the phone in those jurisdictions where you have video appearances and that is always an issue. It just works a lot better. So, I would ask the Commission to really consider taking it one step further even though some of my colleges are going to think it's pretty burdensome. I really think that when everything is said and done if you have a defense lawyer who wins three or four jury trials over the course of the year versus a defense lawyer who saves maybe twenty people their job by being at the first appearance, there's no question in my mind who the better lawyer is.

45:04 Chair Ellis — Questions for Jack?

45:06 J. Welch — Just sort of a question, did you keep track of the impact on jail populations and jail crowding and all of that and I was wondering if the nice lady from Benton County might consider doing some data collection? I think that would be, you know when push comes to shove saving money is always attractive.

45:34 J. Morris — You know I think we play a role in getting more people out. Judges often times want to delay the release decision because it takes too much time and that's just something we have to contend with all the time.

45:48 J. Nash — I guess the other thing, Jennifer Nash, that I would say is that my mind was focused on one particular thing. We've been having lawyers at in-custody arraignments for a long time so what I was talking about was out-of-custody arraignments and I didn't make myself clear

because that has really been the big push for us is that we haven't been able to have that happen in our county. But, we've been having lawyers at first appearances in-custody and when I say we have a duty lawyer, that lawyer takes all of the cases that are assigned unless there are conflicts. So, you are there with your client. It's not like you are passing off necessarily although, in our county we have a system where we keep our clients for life and so if you have a client who appears who has been previously appointed to another lawyer, that client is going back to the other lawyer and there is already an established relationship with that lawyer and we cover the arraignments but the case gets reassigned to the other lawyer. So, the new people who have not previously had an attorney get assigned to the lawyer who is there on that duty day. In terms of the impact on our jail, we have a bad jail situation; in fact I just got an email that our jail is full. Our jail is full all the time. We have a very small jail and there has been a push for years and there is another push now this year to build a new jail and the perception of the voters in Benton County is that there is not a problem with crime sufficient to build a jail. They would much rather spend money on schools and libraries and a public safety levy which lets us rent beds from other jails rather than build a new jail so I think we are going to continue to have this situation with a full jail for a while, although that makes our advocacy more important in many ways. Really it is the population of the jail that drives for these decisions.

47:44 Chair Ellis Any other questions?

47:46 J. Potter Well, I think Jennifer may have answered it but, is there a predictive system in your county of knowing which lawyer is going to be assigned to which client at first appearance which you are not there at?

48:07 Chair Ellis Not to me.

48:16 J. Potter You had said that at the first appearance the lawyer there should be the one that's going to get the client. What system is in place in your county to ensure that that's the case?

48:31 J. Morris Well, with respect to the consortium we identify conflicts ahead of time and we assign lawyers and the lawyer that is there, they are picking up that case. With respect to my firm, it's whether it's that lawyer's week or whatever and often times frankly, because we have some lawyers who can't pick up felonies, more often than not we have more than one lawyer at arraignments. That's the majority of the time. We spend a lot of time at arraignments because I think it's that important.

49:03 P. Levy It is a best practice to have the same lawyer from the beginning of the case all the way to the end.

49:12 J. Nash We've done it the same way forever.

49:16 Chair Ellis Lane you had a comment.

49:17 L. Borg Yeah, I just wanted to make a brief comment again, Lane Borg for the record. We do arraignments as you know. Metro has been doing it in Multnomah County for quite some time and we have an assignment system and there is a lot of communication that occurs starting at 6:30 or 7:00 in the morning when the crews get in there from the various offices to sort out conflicts and it actually, I can say this from personal experience because in June I covered a lot of arraignments during the ODCLA conference, there is a lot of information that is shared that even though we have an assigned counsel there that can effectively present information because people get notice that this person has an appearance here or they have something else going on. So, that seems to be helpful and effective. In Washington County we've more recently started doing representation at first appearance and two comments I wanted to make on that really goes with something that Judge Welch was saying is that our biggest resistance frankly was from the judges not from the DA's or other participants and there was even an

attempt earlier this year to limit the script to prohibit our lawyer from advising in-custody inmates that their telephone calls were being recorded because that was limiting the amount of confessions the DA was getting in telephone calls to people. We went to the Bar on that and got an advisory opinion that said that their, and I think its supportive and it should encourage this process for this Commission, the Bar's position is that these are like court annex non-profit programs so that the representation from their perspective comes under 1.18 as a perspective client and it's not that the judges analysis in Washington County was that 'well you're not really their lawyer' or 'you're covering for somebody else so that is unethical for you to advise them on the fact that their phone calls are being recorded.' The Bar's position was just the opposite. They said 'you are their lawyer.' It may not create a conflict for you down the line, it may not create something that then prohibits you from other representation but you have all the same duties of advice and competence and attempt to get them out. Now I understand, I don't disagree with what Jack is saying about that being the preferred, but I think for some of the larger jurisdictions there is an alternative which is to focus on best practices, have real delineated expectations about what you are going to be doing at that representation and then it is an educational process with the judges to say 'this is real representation and it is going to be backed up by the bar and there is an expectation of competency and diligence and you are going to do something, it's not just a matter of standing there and saying hi.'

52:08 S. McCrea

I have a comment. I've thought about whether I wanted to say something and I need to. I want to address the question that Judge Welch had and let me betray my bias right now because way back in 1980 when I started law school the idea of pretrial detention was an idea whose time had not come. I really have a problem with the way I see it administered in the state court system because I do a lot of federal court cases and they are generally bigger cases. But, at this point in history the ramifications if someone is convicted really aren't that different anymore. But, every client I have in the federal system goes through an interview with a pretrial services officer and there is an individualized determination as to whether that person is a danger or a flight risk or both and whether there is no combination of conditions that will ensure the safety of the community. I am just going to flat out say it, it drives me nuts with what happens in Lane County, my home county, and I have circled all of this Paul and I have highlighted it because I want to go look at this stuff to see if there is a 14th amendment equal protection clause challenge because in Lane County what happens is the judges have delegated their authority to the pretrial services office and the pretrial services office has this schedule that they utilize in determining whether somebody is going to be released. Basically I have to parlay with pretrial services to try to convince them to reduce the bail or to change the conditions from what they've got on their schedule. And okay, it may be that there is an opportunity for individualized judicial assessments of risk of flight or danger but in Lane County we've got an uphill battle. So, I am just mentioning that because that is a different dimension to the problem obviously than having attorneys at first appearances. This is not just me, there was an article in the Register Guard I believe in the past year, although you know how quickly time goes these days, and other attorneys were complaining about this procedure. If we ask for a judicial review, if you try to ask for it at in-custody arraignments the judge just deflects you and says 'we've delegated that authority to pretrial services.' You file a motion and then it gets set for either a Tuesday or a Friday and I know it's not a popular offense when someone is accused of child pornography but I've got to say on the record that I don't understand. I represent people in the federal system, the same sort of people charged with the same things, the same type of citizens without prior convictions and in the federal system they get released on their promise to appear and in the state court system I have to go in and fight to have the bail reduced to a posting of $35,000 in order for that person to be released pending trial. I'm sorry I didn't mean to get totally on my soap box but I think it is an important issue Paul and it is a dimension that you raise in your essay and I think that it is something that we on the Commission need to also consider because it goes back to the idea of judges being educated and maybe seeing there are different ways to do it.

55:56 J. Nash — Jennifer Nash again, there was also an article in the Ney York Times about two months ago about how the release criteria that we use has absolutely no correlation with whether or not a person is going to appear again and whether or not they are a safety risk to the community. And, there are different release criteria that are much more indicative of those things than the release criterion that's in the statutory scheme in Oregon.

56:20 N. Cozine — It's probably also worth mentioning, Nancy Cozine for the record, that there are a number of states that are actually starting to rely upon more of an evidence-based risk assessment, and actually I don't want to put you on the spot Tyson, but our new analyst Tyson Mclean worked on some of that in the Juvenile realm. But, Portland is actually and I don't know, Lane do you know about it?

56:44 L. Borg — We are two months into the Virginia risk assessment tool for release and they're tracking that even against the judicial overrides and trying to show where they can get evidence that that's a better tool.

56:56 N. Cozine — And that tool, as I understand it, was specifically engineered to assess likelihood to return to court and dangerousness. So, something that I would be happy to actually get on the Commission's agenda so we can learn more about it and how it's being used in different jurisdictions and maybe that is something that can help educate people around the state if it turns out to be a good tool.

57:26 J. Welch — I am going to widen this even more than anybody even intended this discussion to go I guess. I've said this to Nancy and other people that work here that having lawyers at shelter hearings is a nice step but if they don't say anything it really doesn't mean anything and I'm sorry but they don't and that's not just Multnomah County, it's not just Clackamas County, it's not just Marion County.

58:01 J. Nash — Well I would disagree with you in Benton County, it is not the usual. We usually have contested shelter hearings so we will show up at 1:00 and we have a trial that day because we have a very litigious defense bar in terms of the dependency arena and we have regular contested shelter hearings which DHS hates us for.

58:21 J. Welch — My point is not that there aren't lawyers doing their job, my point is that just having the body there doesn't solve the problem. There are some things that have to happen.

58:35 Chair Ellis — Okay, Paul you have brought up a pretty hot topic apparently.

58:40 J. Potter — It's going to be a great article, Paul.

58:45 Chair Ellis — Paul, do you happen to have the matching language on this?

58:49 P. Levy — I do, I'm going to give it to you right now.

58:57 N. Cozine — We are going to need a minute to do some furniture moving in between.

59:05 Chair Ellis — Okay, we are on the OPDS monthly report.

Agenda Item No. 6 **OPDS Monthly Report**

59:09 N. Cozine — Thank you Chair Ellis, Members of the Commission. We have a brief update for you on office wide updates. I have been working with Geoff Guilfoy and he is prepared to join us at the management conference to work with us on some strategic planning so I will be in touch with you on how we will be approaching that, but it is pretty exciting and I think it will be a great process. We've also been spending some time in Washington County on our service delivery review. Commission member Potter and Caroline and I were there last week for three days

and I am going there again tomorrow. It has been a very enlightening process. We've had many good interviews there. Paul is launching a peer review in Clackamas County, so that will be our next service delivery review but it will be about a year out from the peer review.

1:00:05 Chair Ellis We did that last about seven years ago?

1:00:10 P. Levy Well, it was one of the longest running service delivery reviews. I think it may have been finalized in 2010.

1:00:21 Chair Ellis So, I'm not too far off. Good. That being, I think, the largest county with a single dominant provider I think it's important to stay in touch.

1:00:34 N. Cozine Yeah, so we are excited about that. We are continuing to work on the delinquency waiver of counsel issues and I wanted to just mention that so you didn't think we were dropping the ball on that one. I met with the Chief Justice. We had a very good conversation. We are continuing to explore options and I am hoping that by the next meeting I will have something concrete to present to you in terms of a plan of moving forward. We in the office have been working on updating our technology. Our phones system was outdated. We could no longer get any equipment replacement parts, new voicemail boxes…

1:01:10 Chair Ellis You know its outdated when you can't repair it.

1:01:13 N. Cozine Right, there was nothing left. Everybody is getting a new phone which is well-needed and we also have a signed contract for a new case management system. We're starting in our juvenile unit. We have relied, since we went paperless, on just an Access program which is wonderful if you have four or five users but over the years it's become so laden with documents and multiple users that it's very slow and it crashes and so we are moving forward with an electronic case management system which is a really wonderful piece of advancement for our office. We will also be working with our pilot counties in the juvenile arena to have them use an electronic system so we can capture data and start actually evaluating outcomes at some point and time.

1:02:08 J. Potter Is it Defender?

1:02:10 N. Cozine It's Defender, and we will have a little update at the management conference for those people who are interested, contractors who are interested. Now that we have a signed contract it will be a little easier to move forward. I don't know what their bandwidth is statewide, its one installation at a time. Appellate?

1:02:30 Chair Ellis Ernie?

1:02:31 N. Cozine And we have Juvenile Appellate too.

1:02:34 E. Lannet Good morning, Chair Ellis, members of the Commission. Ernie Lannet, Chief Defender for the Criminal Appellate section. I think last time I updated you we had nine Oregon Supreme Court cases in the works with seven attorneys working on them in those six short weeks. Since then, they have allowed review in five more cases, and we have five other attorneys working on them so the summer lull has not hit this year and I think we are going to miss that completely.

1:03:02 Chair Ellis Is that really unusual to have twelve cases in process?

1:03:07 E. Lannet It seems a little high, yes. Just to key you in on some of the issues that they are looking at: one of them is if you have probable cause and someone is in their house and they have alcohol in their system and they have committed DUII, can you enter the house to then get testing of blood? This is an exigency type situation that we're saying they are really pushing things to

whether you can get into a home to get that breath test. Another one, restitution, seems to be a hot topic for the court right now. We had someone who stole fifteen pairs of Levi's from Macy's and restitution was imposed on the retail value rather than the wholesale value, so the question is about what objective monetary loss Macy's might've had, so kind of a narrow statutory construction issue but it will be a lot of fun for one of our Deputy I's to work on. We have a case on the bar of a witness commenting on the credibility of another witness. This variation is that there was an interrogation tape of detective with defendant where detective was repeatedly telling the defendant that he was lying and that the victim was being truthful and defendant tried to get that redacted before it was entered into evidence and wasn't able to do so, so the question is whether that kind of evidence should be in front of the jury. We have a brand new issue and that one is a bit about re-initiation when someone is in custody. Basically, a defendant asked 'why am I here, I'd like to use the telephone' and the detective said something along the lines of 'well don't you remember your girlfriend is dead and that is why you are here' and then started talking to him about it. An additional issue in that case is the statements the defendant made he also used for defense of extreme emotional disturbance, so whether that precludes the issue of getting these statements out. Finally, we have another great case for one of our newer deputies, it's if you get stopped for an investigatory stop and the cop says 'I'd like to talk to you, hold on' and you run away, whether that is committing escape in the second degree. So, some fun issues for people to work on here and it's taking up a lot of our time right now and I am doing a lot of editing.

1:05:49 Chair Ellis Sounds good, any questions on that?

1:05:54 S. Storey Chair Ellis, members of the Commission, the Juvenile Appellate section has also escaped the summer lull. We've been very busy. We have had several nice wins. Most recently in two Court of Appeals cases, two per curiam opinions saying that parent substance abuse alone is not jurisdictional which is so lovely because years ago there was no uniform rules in juvenile dependency and everything seemed like there were a lot of differences being drawn about particular conduct being harmful to children and the Court of Appeals has been very consistent in applying a rule that the department must present evidence of conduct actually creating a risk to a particular child at issue. Most recently, I think I mentioned last time that we have one Supreme Court case that we're working on briefing and editing. We are finalizing that today and we will be filing the brief.

1:06:51 Chair Ellis Okay, Thank you.

1:06:55 N. Cozine I have three concluding remarks. Two status updates at the state level; one is that Anna Joyce is leaving the Department of Justice and she was in the Solicitor General position so there will be some changes happening there. I don't think we have any information yet on exactly how that is going to unfold. Then Erinn Kelley-Siel, you may have read it in a paper, is leaving the Department of Human Services. So, these are two relatively influential positions, obviously one is huge. It will yield changes at the state level that we will work with.

1:07:37 Chair Ellis We're in touch with the decision-makers and we get some input on that?

1:07:42 N. Cozine You know, it's interesting. I haven't touched bases with the Governor's office about the Department of Human Services. With regard to Anna Joyce's position, I am sure the Department of Justice will make their decision. No one has contacted our office as far as I know for input, but if they do we will be happy to give it. We may well reach out to the Governor, I don't know we have not yet but we can. The other comment I wanted to make was that Shannon referenced in her comments to the Commission that her unit, in addition to the criminal appellate unit, has not escaped the summer lull and I just wanted to note that no one in this office has had a summer lull. Everyone has been working so hard and I just want all of you to know that this office is running well because of the hard work of everyone here and it's really just that everyone has been putting in tremendous effort. So, I appreciate all of

your volunteer hours just as much as I appreciate the work of everyone here but I just wanted you to know because it has been a great push and people have been great about it.

1:08:51 Chair Ellis So you have found that the practice is seasonal and the season is summer.

1:09:00 N. Cozine The season seems to be all year long.

1:09:04 Chair Ellis Anything else?

1:09:08 N. Cozine That is it. We will just need about ten or fifteen minutes to organize the room for executive session.

Agenda Item No. 7 Executive Session

1:09:14 Chair Ellis Before I read my prepared statement on that, is there any other issue of business somebody wants to talk about? Okay. The Public Defense Services Commission will now meet in executive session for the purpose of reviewing contract proposals to provide public defense legal services beginning on January 1, 2016. The executive session is being held pursuant to ORS 192.660(2)(f), which permits the Commission to meet in executive session to consider information and records that are exempt by law from public inspection. Under the terms of the PDSC Request for Proposals, contract proposals will remain confidential and thus exempt from public inspection until a decision is made to award a contract. The Commission will also meet in executive session to receive an update concerning ongoing union contract negotiations pursuant to ORS 192.660 (2)(d). Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room. And on designated staff, who do you suggest we include?

1:11:22 N. Cozine Well, we have two executive session topics so I think everyone in the room is needed for at least one of the two, all of the staff in the room that is.

1:11:34 Chair Ellis And you know who you are.

1:11:35 N. Cozine They know who they are.

1:11:40 Chair Ellis So we are ready to go into executive session. We will take about a five minute recess. Is five enough or do you want more?

1:11:47 N. Cozine You might want ten.

1:11:48 Chair Ellis Ten minute recess.

Return to Public Meeting.

0:03 Chair Ellis Alright, we are back on the public record and is there any additional business anyone wants to bring forward?

0:15 S. McCrea I just wanted to make a statement and that is I just want to make an observation of the unfortunate and unexpected passing of Bill Dials who has been a defender of public defendants for many many years and apparently he died unexpectedly on Saturday and I just want to recognize his incredible contributions to criminal defense.

0:43 Chair Ellis	Good, thank you.
0:45 J. Welch	Just a quick comment. We struggled, everybody, for a long time on this issue on what to do about the board of directors. I think we talked about this briefly a year or two ago, we are not enforcing our own rule it appears.
1:07 Chair Ellis	Well, in one county.
1:09 J. Welch	No, I think the issue is that it's not anybody's job and I'm not being critical I am just saying it's easy to put the window dressing out in lots of contexts. There was a purpose behind that so somewhere on some list maybe.
1:32 Chair Ellis	Why don't we ask our contract people to look at that and when we get to the next report let us know how that is going.
1:41 C. Meyer	We have a short list of things we are going to be talking to contractors about as we call them about proposals this time and we can certainly add that.
1:49 J. Welch	The point is, I mean you don't have to answer a rhetorical question, how do you find out that there's anything really happening?
1:57 Chair Ellis	You talk to the Chair of the Board. You don't talk to the ED; you talk to the board.
2:06 N. Cozine	Actually, I think it's worth mentioning that Amy has for a long time struggled in Lincoln County. Anyone who presented to their board, two months ago, it's an active board, an engaged board. I think that we have an outlier and I think that all of our analysts check in with their contract providers and their boards on a relatively regular basis and I may be wrong and please correct me if I am.
2:29 B. Strehlow	Not with boards.
2:32 P. Levy	My observation is that the board, the commission's desire for a non-provider board complaint was heard and many boards have expanded to reflect that. The Commission's policy statement actually said that an 'outside member or', you had an alternative or sufficient assurances of oversight.
3:07 Chair Ellis	I would consider it a red flag that if a current ED reports to be picking his or her successor, that is a sign to me that the board structure is not working. So, hypothetically if that is going on anywhere that's not a good sign. Anything else? Is there a motion? **MOTION**: Judge Welch moved to adjourn the meeting; Shaun McCrea seconded the motion; hearing no objection the motion carried: **VOTE: 5-0**
	Meeting Adjourned

Attachment 2

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Public Defense Services Commission

Washington County Service Delivery Review
Preliminary Report
September 2015

I. INTRODUCTION

Background. The Public Defense Services Commission (PDSC) regularly holds public meetings in counties throughout the state as part of its effort to evaluate the effectiveness and efficiency of public defense services. The reports from these evaluations, called Service Delivery Reviews, are based upon interviews and public testimony from dozens of local justice system stakeholders, and focus on the structure of public defense services. The goal has been to ensure that the best type and number of public defense organizations are serving each county.

Parallel with the Commission's Service Delivery Review process, the Office of Public Defense Services (OPDS) has facilitated nearly 50 peer reviews of individual public defense providers since 2004. For each peer review, teams of public defense leaders from around the state spend several days in a county conducting interviews with justice system stakeholders in the course of examining the quality of representation provided by the entity under review. Among the primary aims of these reviews are identifying successful local policies and procedures that might be recommended to other public defense providers, and making recommendations for improvement where needed. The overarching purpose of each review is to assist public defense providers in pursuing excellence. Until recently, peer review teams produced confidential reports provided only to contract administrators and managers at OPDS.

In 2013, OPDS merged the two review processes while preserving the core purposes of each review. With the revised process, peer review teams examine providers in a county much as it would in the past, except interviewees are no longer promised confidentiality and providers and other system stakeholders are informed that the Commission will visit the county approximately one year after the peer review report issues in an effort to follow-up on the findings and recommendations of the peer review team. Prior to the Commission's public meeting in the county under review, at which it receives testimony from stakeholders, OPDS staff issue a new report based on interviews with public defense providers and county officials. After the Commission's hearing, a draft final report is prepared for Commission deliberation and approval.

Washington County Peer Review. The Washington County peer review team looked at the six public defense contractors providing representation in adult criminal and juvenile court cases. Those contractors included the following: Brindle McCaslin & Lee, PC (Juvenile); Hillsboro Law Group, PC (Criminal, Juvenile); Karpstein & Verhulst, PC (Criminal, Juvenile); Metropolitan Public Defender, Inc. (Criminal, Juvenile, Civil Commitment, specialty courts); Oregon Defense Attorney Consortium (Criminal, specialty courts); and, Ridehalgh & Associates, LLC (Criminal, Juvenile, specialty courts).

The OPDS Executive Director asked James Arneson to chair the evaluation team, and asked attorneys Karen Stenard, Tom Crabtree, Sarah Peterson, the Honorable Robert Selander, and Amy Miller to serve as team members. Paul Levy served as staff for the team.[1] The team's site visit was conducted in June, 2014, and contractors received final reports in November 2014.

Prior to the site visit, the administrator for each contractor completed a questionnaire about the operation of their entity. In addition, attorneys working with the Oregon Defense Attorney Consortium, and the attorneys and staff employed by each of the other contractors received a survey asking about their experiences working with the contractor.

Historically, peer reviews have also employed an online survey of justice system stakeholders who are familiar with the work of a contractor. However, OPDS had asked all Washington County judges, the District Attorney, and others, for comments about the contractors as part of its annual statewide public defense performance review conducted earlier in 2014. The peer review team reviewed results of that survey prior to the site visit.

The peer review team received extraordinary assistance from the Washington County courts, in particular, then Presiding Judge Kirsten Thompson, and Trial Court Administrator, Richard Moellmer, and his staff. Dee Ann Meharry, the docketing specialist with MPD, also provided invaluable assistance in scheduling interviews for the site visit.

[1] James Arneson is the head of a law firm in Roseburg that contracts with PDSC to provide representation in criminal and juvenile cases. He is a past-President of the Oregon Criminal Defense Lawyers Association (OCDLA), and also served as a lobbyist for that organization. He was the first chair of the Quality Assurance Task Force, which helped develop the protocols for peer reviews, and has served on other peer review teams. Karen Stenard is the administrator of the consortium that contracts to provide representation in juvenile cases in Lane County. She has served on past peer reviews. The Honorable Robert Selander is a senior judge who previously served as Presiding Judge in Clackamas County. He is the administrator of the consortium in Yamhill County that contracts to provide representation in criminal and juvenile cases**.** Tom Crabtree is the administrator of Crabtree and Rahmsdorff, a public defender office providing representation in criminal and juvenile cases in Deschutes and Crook counties. Sarah Peterson is an attorney in the Juvenile Appellate Section of the Office of Public Defense Services. Prior to working at OPDS, she was in private practice in Eugene handling appeals in domestic relations, juvenile dependency and criminal cases. Amy Miller is Deputy General Counsel at OPDS, and focuses on matters concerning juvenile dependency and delinquency representation. Previously, she was a staff attorney handling juvenile cases with Youth, Rights & Justice, and with Multnomah Defenders, Inc. Paul Levy is General Counsel at OPDS in Salem.

The Washington County peer review site visit took place on June 11, 12 and 13, 2014. Over the course of those three days, team members interviewed nearly 50 people including judges, court staff, prosecutors, Sheriff's staff, provider administrators, attorneys and staff, Juvenile Department personnel, representatives of the Probation and Parole Division, case workers with the Department of Human Services, a Court-Appointed Special Advocate (CASA) supervisor and others. Other telephone interviews were conducted after the visit.

At the conclusion of interviews, the team met to discuss preliminary findings and conclusions, and then met separately with the administrator of each contractor to provide initial feedback on the information it had received and some of the recommendations it was considering. A draft report was provided to each administrator, and after receiving comments and corrections, the team approved final reports.

Service Delivery Review Procedure. Over the course of three days - July 20 to July 22, 2015, OPDS Executive Director Nancy Cozine, PDSC member John Potter, and OPDS Contracts Manager Caroline Meyer, conducted follow-up interviews with Washington County justice system stakeholders and contractors to determine what developments had occurred in the county since the peer review. Nancy Cozine and Caroline Meyer held additional interviews, both by telephone and in person, on July 31t, August 13t, and August 14, 2015. All contract providers were interviewed, as well as Presiding Judge Bailey, former Presiding Judge Thompson, Chief Criminal Judge Knapp, Judge Menchaca, Trial Court Administrator Moellmer, court verification staff, District Attorney Hermann and his deputies, Sheriff Garrett and his jail commander, Juvenile Department Senior Juvenile Counselor Penny Belt and Drug Court Counselor Racheal Holley, Community Corrections Director Steve Berger and senior staff, CASA Director Lynn Travis and CASA supervisors, AAG Marcia Lance-Bump, DHS Program Managers Tom Vlahos and Shirley Vollmuller and Supervisor Katy Payne, and CRB Coordinator Sandy Berger.

The key findings and recommendations of the peer review reports, and the information gained from the follow-up interviews and meetings are related in the balance of this report. This report will be amended further following the PDSC meeting in Washington County on September 17, 2015. The report will be finalized following a subsequent PDSC meeting after deliberations on any specific findings and recommendations arising from the July meeting.

II. WASHINGTON COUNTY

Demographics. Washington County has a population of about 554,996, making it the second most populous Oregon county after Multnomah (766,135). The total estimated population for Oregon in 2013 was 3,930,065.[2] The population of Washington County has increased about 19% between 2000 and 2010.[3] The county includes 15

[2] U.S. Census Bureau, State & County QuickFacts, 2013 Estimates. http://quickfacts.census.gov/qfd/states/41/41067.html

[3] Portland State University, College of Urban & Public Affairs: Population Research Center, http://www.pdx.edu/prc/census-data-for-oregon.

incorporated cities, including Beaverton, Hillsboro, Sherwood, Tigard, Tualatin, Wilsonville, and a portion of Portland.

According to U.S. Census data, the county is somewhat more diverse than the entire state population, with 68.9% identifying as white persons not of Hispanic or Latino origin (78.1% statewide); 2.1% identifying as black persons (2.0% statewide); 1.2% identifying as American Indian or Alaska Native (1.8% statewide); 9.3% identifying as Asian persons (4.0% statewide); and 16.0% identifying as persons of Hispanic or Latino origin (12.0% statewide). Census data also show the county has a slightly higher than statewide percent per capita of high school graduates (90.7%; 89.2% statewide), and a somewhat higher percent of college graduates (39.5%; 29.2% statewide). Nearly a quarter of persons over the age of five in the county speak a language other than English at home (14.7% statewide). [4]

Geographically, Washington County includes vast tracks of fertile farmland, where agriculture remains a major component of the county's economy. Elsewhere, the high-tech electronics industry is another major part of the county's economy, including the Intel Corporation, which is the largest for-profit employer in the county. Nike, Inc. is also headquartered in Washington County.

Oregon State Police profiles of index crimes for Washington County show a fairly consistent number of reported crimes over the five year period ending in 2012, with a high of 12,835 in 2008 and a low of 10,936 in 2011. Total reported crime for the county has also remained fairly constant over the same period.[5]

Justice System. With the exception of the Hillsboro and Beaverton branch offices of the Department of Human Services, and the juvenile detention facility in Portland where the county places youth in delinquency cases, the main places of business for the Washington County justice system are located close together in downtown Hillsboro. For the most part, lawyers are also within the downtown core. The Washington County Circuit Court includes 15 judges and one Juvenile Court Pro Tem Judge. Though there is a need for additional judges, space constraints in the courthouse resulted in a request for only one new judgeship, which was not funded in the 2015 legislative session.

Due to the significant demands on its limited judicial resources, the court sought and received grant funding from the State Justice Institute to engage the National Center for State Courts (NCSC)[6] in a "reengineering" effort. Following a 2013 site visit and report from NCSC, the Washington County Circuit Court adopted a set of guiding principles and a governance plan that set out the structure of an Executive Committee to provide input and advice to the Presiding Judge. The Executive Committee consists of the

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[4] U.S. Census Bureau*, supra.*

[5] Oregon State Police, 2010 Annual Uniform Crime Report, http://www.oregon.gov/osp/CJIS/Pages/annual_reports.aspx. The "Crime Index" was developed to measure crime on a national scale by choosing eight offenses that are generally defined the same by each state, which are: Willful Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny (Theft), Motor Vehicle Theft, and Arson. Total reported crime was 40,942 in 2006 and 33,270 in 2010, the last year for which data are available and a low for the five-year period.

[6] The State Justice Institute was created by Congress in 1984 to award grants for state court improvement projects. www.sji.gov. The National Center for State Courts provides court improvement services. www.ncsc.org.

Presiding Judge, the Immediate Past Presiding Judge, the three Chief Judges of the Criminal, Civil and Family Law teams, and a new position of Assistant Presiding Judge.

On June 12, 2014, during the site visit for the peer review, the Washington County Circuit Court released the results of a major NCSC review of court docket management which included numerous findings and recommendations. Among other things, the report noted that the court "falls short of the state's ambitious felony and misdemeanor case processing time standards," although the report observed that most Oregon courts fall short and that the court generally met the NCSC's own case time standards. More significantly, the report noted that jury trial rates for both felony and misdemeanor cases were dramatically higher than nationally and elsewhere in Oregon. The report suggested a combination of factors contributed to the high rate, including ineffective pretrial conferences where deputy district attorneys lacked authority to engage in meaningful negotiations and defense attorneys were not sufficiently prepared; lack of meaningful judicial involvement in pretrial settlement discussions; the siphoning of easily resolved cases onto an Early Case Resolution docket; and prosecutorial overcharging. The report also noted that a significant number of cases that resolve short of trial do so only on the day of trial.

The NCSC report included a number of recommendations aimed largely at promoting timely case dispositions. These included, generally, an effort to reduce unnecessary delay by creating the expectation that case events—most importantly trials—will proceed as scheduled. Specifically, the report recommended the creation of a criminal caseflow management plan with the expectation this would ensure that scheduled events occur in a predictable fashion and that those events are meaningful. The report also recommended that system stakeholders study further how to make pretrial conferences more meaningful and increase the success of resolving cases prior to the day of trial. Overall, the report emphasized the need to include representative from stakeholder groups in discussions about improving court processes.

Criminal Cases. All criminal cases in Washington County Circuit Court begin with a first appearance at the Law Enforcement Center, commonly called "LEC" (pronounced like "*lec*ture") which is two blocks from the main Courthouse. The LEC opened in 1998 and includes the county jail and Sheriff's offices, along with two courtrooms.

Arraignments take place each day at 8:30 am for out-of-custody cases, and 3:00 pm for in-custody. Metropolitan Public Defender (MPD) covers the arraignment docket for all providers, except for Early Case Resolution (ECR) matters, which are addressed further below. Prior to morning arraignments, MPD's docketing specialist will have spoken with the court verifiers, who make tentative assignments of new cases to contractors based upon a rotation schedule established with OPDS. The MPD arraignment attorney and legal assistant arrive prior to out-of-custody arraignments and speak briefly with clients likely to be assigned to MPD. Obvious conflicts of interest are avoided in the pre-arraignment assignment process, but neither MPD nor the verifiers have detailed information about names of complainants and likely witnesses. When cases will not be assigned to MPD, the attorney acquires basic contact and case information but does not inquire into matters that might touch on confidential information. Working relationships among the MPD attorneys, the court, and Sheriff are described as positive, with regular communication, including both formal and informal.

For non-ECR cases, as would be expected in a high volume court, arraignments move along quickly after the persons cited to appear[7] have all viewed a video explaining their rights. Defendants leave court with the next court date, the name of the appointed contract entity, and instructions to contact the provider.

Prior to the 3:00 pm in-custody arraignments, MPD tries to contact likely clients, though transport and holding processes make it difficult and infrequent. During arraignment, defendants are brought to an enclosed, windowed area where they may speak with the arraignment attorney, although the setting does not permit confidential conversations. The court will not entertain release motions at arraignment, allowing release only if recommended by the release officer. Though community corrections secured grand funding to hire a second release officer[8], the hiring process has been very slow, and Washington County continues to function with only one release officer. Consequently, only a limited number of individuals are interviewed by the release officer prior to arraignment. The jail population is approximately 572, and while there used to be no forced releases, the county had already processed 200 forced releases by July 2015, primarily due to a larger than anticipated female population. Defendants typically receive a preliminary hearing date about five days after arraignment, and if the attorney wishes to request release for a client, a motion must be filed and a hearing scheduled.

In 2005, Washington County implemented an Early Case Resolution program as a way to alleviate significant jail overcrowding. The PDSC described it as a model early resolution program in its 2007 Washington County Service Delivery Review report.[9] Approximately 33% of the county's criminal case filings are processed (although not necessarily resolved) through the ECR program.[10] MPD and the Oregon Defense Attorney Consortium (ODAC) cover the ECR cases, and each entity has an attorney present for ECR dockets, which are called either before or after the regular morning and afternoon arraignment dockets. Defense attorneys review the available discovery prior to arraignments, and share this and a written plea offer with the defendant. For in-custody defendants, there are two secure rooms to conduct these conferences. Some negotiation is permitted, and attorneys can request additional time to investigate. Otherwise, the options for ECR cases are to proceed to plea and sentencing on the day of arraignment or to reject the ECR offer, which results in the case being set in the normal course for either misdemeanors or felonies. Some concern was expressed during interviews regarding the inclusion of prison-bound cases in the ECR program, but interviews suggest that these cases are resolved through ECR only when particular circumstances make it the best option (such as when a defendant has an existing prison

[7] There are numerous law enforcement agencies for the various cities in Washington County, each of which will cite persons to appear for arraignment. There have been efforts to coordinate days on which particular agencies will cite persons to appear to avoid congestion on some days, but those efforts have not been especially successful.

[8] Greg Scholl, director of the Washington County MPD office, chaired a stakeholder group to develop the new pretrial services office.

[9] The Commission's report is available here: http://www.oregon.gov/OPDS/docs/Reports/washcoservdelplan.pdf.

[10] The DA's office controls who is given an ECR offer, which is based entirely upon the nature of the charge. The offer will take into account a defendant's record and may, in the case of felonies, call for a prison sentence.

sentence and wishes to have case resolved with an agreement for concurrent time without disruption of existing prison programming opportunities).

The court also recently added the Diversion Early Case Resolution (DECR, referred to by many as “decker”) program. Through this program, defendants can enter a plea and agree to completion of certain conditions, with disposition scheduled one year later. If the defendant has completed all conditions, the case is dismissed. The DECR program was established at the suggestion of an MPD attorney, and with the cooperation of the District Attorney’s office and Chief Criminal Court Judge Knapp. All appearances in these cases are heard by Judge Knapp. There is a 50% failure rate, but it is still seen as an effective way to resolve cases and achieve an appropriate outcome.

When they happen, preliminary hearings in felony cases, which are usually set at 11 am, 3 pm, or 4 pm, are hearings where the state calls witnesses, subject to cross examination, in order to establish probable cause. Occasionally, the state will present a plea offer in return for a waiver of the preliminary hearing. A defendant may accept the plea at the preliminary hearing or the state will leave the offer open for a time, in which case the matter proceeds to arraignment at LEC on the DA information. Discovery in felony cases is generally received prior to the preliminary hearing, though lawyers report that there is often significant delay in receiving video and other non-paper discovery. A limited number of more serious cases proceed by way of grand jury indictment.

As part of its reengineering effort, the court recently discontinued its use of pretrial conferences and now holds a Case Management Conference (CMC) three weeks after the case arraignment. CMCs are held throughout the week and are scheduled based upon each judge’s preferred times. This means that scheduled CMCs can conflict with attorneys’ other regularly scheduled court matters. If the case does not resolve at the CMC, it is assigned a trial date and a Final Resolution hearing, which takes place on Friday two weeks before the scheduled trial date. Cases can be resolved at the Final Resolution hearing. Felony cases also receive a Case Assignment Day on the Friday before the assigned trial date, at which time a trial judge is assigned.

The new CMC model is reported by most as an improvement over the old pretrial conference system, but it is somewhat dependent upon the judge’s willingness to actively participate and explore obstacles to settlement. When the court is willing to get involved in order to address issues of delayed discovery and to have realistic discussions about whether charges are likely to be proved at trial, more cases are resolved earlier. While it is still too early to determine whether the new system has decreased the number of cases proceeding to trial, interviewees did describe some improvement. The state’s trial win rate is still low relative to other jurisdictions - reportedly around 50% - suggesting that perhaps more cases could be dismissed or settled earlier in the process.

Cases that proceed to trial are assigned by the Presiding Judge on the Friday morning prior to the week in which the trial is scheduled. Trials take place each week day except Monday. Most pretrial motions are heard on the day of trial, although occasionally some are heard earlier in the process. Continuance motions are generally not entertained at case assignment and must be made earlier by written motion supported by an affidavit that includes the opposing party’s position and a waiver of the 60-day speedy trial right

for in-custody defendants. At case assignment, lawyers sign in on a docket indicating the expected length of trial, whether it will be jury or court, and whether there will be any motions for change of judge ("affidavits"), or whether the case will settle. The Presiding Judge will then make assignments, including "call backs" for cases on standby and resets when there are not enough judges available.

Probation Violations and Special Courts.

Most probation violation hearings are held at the LEC where one probation officer handles court duties. While some attorneys are reported to be more prepared than others, the court indicates that most public defense attorneys handling these cases appear to meet with clients before the day of court and have contacted the court prior to hearings, when necessary, to discuss proposed resolution of cases.

Washington County has a variety of special court dockets. In addition to the ECR docket described above, it has a long-standing drug court, a DV deferred sentencing program, a DUII diversion program, a Justice Reinvestment grant program (originally part of HB 3194) called the Integrated Reentry Intensive Services and Supervision, or IRISS, program, and a mental health court.

Drug Court involves a team including the probation and parole division, a treatment provider, a deputy district attorney and a defense attorney, who is normally Greg Scholl, with MPD. The team is described as working well together with a focus on healing the client. Mr. Scholl gets very high marks for his involvement in the program. The clientele are generally high risk offenders who might otherwise be sentenced to jail or prison time.

In both the domestic violence deferred sentencing program and the DUII diversion program, defendants who are identified as eligible by the DA's office may enter a plea of guilty and agree to successfully complete a treatment program, after which charges will ordinarily by dismissed. Failure to successfully complete treatment will result in sentencing on the charges. For both the DV and DUII programs, PDSC contracts with the Ridehalgh firm to "staff" the programs. Typically, Mr. Ridehalgh, who ordinarily handles these duties, will advise eligible program participants in a group setting prior to court. Neither the court nor Mr. Ridehalgh consider him to "represent" any individual defendants. There remains some concern regarding the extent to which defendants have an opportunity for private, confidential case-specific consultations about the advantages or disadvantages of entry into one of these programs.

The county's IRISS program is aimed at diverting offenders from likely prison sentences into intensive probation supervision, where resources are available to assist with housing, employment, treatment and other rehabilitation services. The program is described as dependent upon good working relationships among the court, prosecutors, defense attorneys, the probation and parole division and treatment providers. A screening evaluation and comprehensive, evidence-based case plan are prerequisites for participation in the program. Defendants in pending new cases may be referred for IRISS consideration either by agreement of the defense and prosecution. Probation officers can also make referrals for current probationers who face the possibility of a prison sentence in revocation proceedings.

The county has a robust mental health court managed by Judge James Fun and a team that includes a prosecutor, a defense attorney, a probation officer with mental health training, and representatives from the jail, the Sherriff's office, and social service providers. Jennifer Harrington, an attorney with MPD who is also a Qualified Mental Health Professional, is the defense attorney for the program. Ms. Harrington consistently receives very high marks for her contribution to the program. Persons are referred to the court after having been placed on probation following conviction, or as a result of a negotiated agreement between the state and defense following "prescreening" for the program, or by agreement to divert the case. The program seeks to coordinate and facilitate the provision of a variety of services to participants who also meet frequently with the probation officer assigned to the program and with the court. A person generally must have a diagnosed mental illness to participate. Other than treatment obligations, conditions of probation are kept to a minimum with fines and fees usually converted to community services, although any restitution obligations will continue to be enforced. Although the program is structured to last one year, some participants remain in it much longer if they have difficulty stabilizing and meeting the minimum program obligations. With successful completion, probation is terminated or, for those who entered the court on diverted offenses, the charges are dismissed.

Juvenile Cases. All juvenile delinquency and dependency cases in Washington County Circuit Court are handled by the juvenile court. The juvenile court is located in the Juvenile Services Building, across the street from the main courthouse, and has two judges, Judge Ricardo J. Menchaca and Judge Pro Tem Michele C. Rini. Limited space at the juvenile court makes confidential attorney-client conversations, which are often necessary in a court setting, virtually impossible.

Delinquency. Washington County does not have a detention facility. Instead, the county contracts with Multnomah County for 14 beds in the Donald E. Long Detention Facility (DEL) on the east side of Portland.[11] Youth are transported from DEL to Washington County for court appearances and are placed in a holding area behind one of the courtrooms. In-custody court appearances occur every day at 1:00 p.m., immediately followed by the 1:15 p.m. "cite-in" docket, which includes out-of-custody preliminary hearings on new charges, as well as probation violations and violations of conditions of release. Other types of out-of-custody cases are then heard throughout the afternoon.

New charges are initiated by petition. Probation violations (PVs) and violations of conditions of release are initiated by affidavits to show cause. Each youth is assigned a juvenile court counselor (JCC).[12] The Washington County District Attorney's Office has

[11] The beds are often filled mostly by youth prosecuted in adult court on Measure 11 offenses. The only other detention facility is the Harkins House (HH), which is a juvenile shelter program located three blocks from the courthouse. HH is for youth (boys and girls, maximum capacity 14, almost always full with a two-week waiting list) who would qualify to be detained under ORS 419C.145(1) but stay at HH to stabilize while the case is pending. It is designed to be a 45-60 day program; it is level based, with school and family components. The goal of the HH program is for the youth to return home at the end of the stay there.

[12] Typically, the JCC decides to handle a PV or violation of conditions of release out of custody. Those appearances ("cite ins") are also included on the 1:15 docket.

two assigned juvenile court deputy DAs, who may also have certified law students assisting them.[13]

Some cases are resolved either informally, where a youth will never see a courtroom, or through Formal Accountability Agreements (FAAs). The JCCs advise youth of their right to counsel in connection with FAAs, and some youth request a lawyer. If a youth expresses uncertainty about whether he or she should have a lawyer, the court typically appoints counsel.

Either Judge Rini or Judge Menchaca preside at initial appearances ("prelims"). Attorneys are appointed in all delinquency cases unless a youth appears with retained counsel. On the morning of the prelim, public defense providers receive an email referral requesting confirmation that they will accept appointment to new cases. The attorneys are then present for the prelim hearing. If the youth is in custody, topics at the prelim include release and setting dates for both the pretrial conference and trial ("CJ" for contested jurisdiction) to comply with the statutory 28-day deadline. If the youth is out of custody, the court sets only the pretrial conference at the prelim (usually within 30 days); a CJ will be set, often significantly later, only if the case does not settle at the pretrial conference.

The DDA makes a settlement offer at the pretrial conference. Discovery is fairly forthcoming, and the DDA usually provides complete discovery by the time of making the offer at the pretrial conference. Sometimes the police reports are the only discovery, and they are usually attached to the petition.

The court does allow and sometimes grants motions for alternative disposition (including conversion of the petition to a dependency petition), but the court will not allow conditional postponements. In comparison, Multnomah County continues to utilize conditional postponements. Significant concern was expressed regarding pretrial advocacy for youth, particularly those charged with sex offenses. Several people suggested that lawyers may not be filing motions for alternative disposition or motions to find the youth unable to aid and assist, even when such motions are entirely appropriate.

If a youth is adjudicated, either by an admission or after CJ, there are three possible dispositions: discharge (no consequence), probation (bench, which is rare, or supervised by a Juvenile Department JCC), or commitment to the Oregon Youth Authority (OYA). An OYA commitment is either correctional (incarceration at MacLaren, etc.) or noncorrectional (in the custody of a treatment facility). As the result of a recent change by the Juvenile Department, in most cases a youth's pre-adjudication JCC becomes his or her post-adjudication probation officer.[14]

Youth appearing in court while in custody are generally shackled in the courtroom, including during the hearings on their cases. The shackles consist of both leg irons and handcuffs attached to belly chains. For a time, according to the peer review, a risk assessment was employed to limit shackling to only those instances warranting

[13] The same two DDAs represent DHS in dependency matters through the jurisdictional stage.
[14] "PO" is sometimes used, but "JCC" is more correct.

heightened security precautions. But attorneys have become complacent, failing to challenge routine shackling, and it has once again become ubiquitous.

Washington County has a juvenile drug court program called Keys to Success. Typically, the JCC identifies whether a case qualifies for drug court and does so early on. Judge Raines runs the program out of his courtroom in the main courthouse. The program is very structured; if a youth meets certain criteria and completes certain phases, his or her case is dismissed. The drug court program has existed in some form for more than 10 years, and the more structured program has existed for approximately three to four years.

Within the year prior to the peer review, the juvenile court created the PHASE Program for gang-involved youth. Judge Menchaca runs that docket on Tuesday afternoons. The program is two and a half years into development, and lawyers at the Karpstein and Verhulst firm indicate that improvements are still being made, including the recent introduction of weekly meetings with the PHASE team. The team is described as being very committed to the program, and there is a strong desire to build its number of successful graduations.

Overall, representation in juvenile court, in both delinquency and dependency cases, is said to be good. Still, attorneys should consider continuing to pursue conditional postponements, and administrators should ensure that lawyers are filing motions seeking alternative dispositions, inability to aid and assist, and unshackling. They should also be sure that attorneys are having sufficient contact with clients. At the time of the peer review, there was significant concern about the frequency of visits to detained youth. Interviewees suggest that there has been improvement, and the Juvenile Department indicates that youth are transitioned out of detention to electronic monitoring or to a placement in Washington County as quickly as possible, reducing the need for lawyers to visit the DEL facility.

Dependency and Termination of Parental Rights. In Washington County, when DHS files a dependency petition, it also seeks a shelter order. Shelter hearings occur every day, in the afternoon, and Judge Rini presides over most of them. The court notifies the attorneys to be appointed by approximately 11:00 a.m., and parents are told to arrive 30 minutes before the shelter hearing to meet their attorneys. By the time of the shelter hearing, parents have received a copy of the petition. During the hearing, DHS serves parents with a summons that includes dates for the status hearing (approximately 45 days later) and "CJ" (approximately 60 days later, to meet the statutory deadline[15]). Issues litigated or discussed at shelter hearings include return home, other placement, visitation, and continuing jurisdiction, though fully contested hearings on the latter are infrequent. The court dismisses very few petitions at shelter hearings.

[15] 419B.305 requires, absent a good cause finding, that the court shall hold a hearing and enter a dispositional order on a petition within 60 days after the filing of the petition. In Washington County, for petitions filed between 10.1.12 and 9.30.13, 73% of petitions filed reach jurisdiction within 60 days or less of filing which is consistent with the state average of 73.18%. 17% of petitions filed do not reach jurisdiction until over 90 days which exceeds the state average of 14.94%.

According to peer review team interviews, the number of petitions filed has declined within the past year, largely because of Department of Human Services renewed emphases on their Oregon Safety Model which requires evidence of an immediate threat of harm to a child before DHS will file a petition. Even with the reduced filings, the county is very dependent upon use of a private bar list in order to provide representation for every party. Because all juvenile providers are firm providers, conflicts are common to the members of each firm. Court staff reportedly spends significant time calling lawyers on the private bar list before shelter hearings in order to find sufficient coverage. The use of private bar attorneys also makes it more challenging for system partners to distribute information to all lawyers providing court appointed representation in juvenile cases in the county, as it is an ever-changing mix of lawyers.

Admissions to allegations contained within dependency petitions most often occur at the status hearing, which occurs two weeks before the scheduled CJ.[16] The department provides most discovery prior to the status hearing and is seeking to routinely provide discovery, via electronic transmission, within 10 days of it becoming available.[17] A deputy DA represents DHS in the dependency proceeding through CJ.[18] Most commonly, if the court asserts jurisdiction at CJ, the court will proceed immediately to disposition. At disposition, the court sets dates for the six-month review hearing[19] and a later permanency hearing. At the time of the peer review, it was not uncommon for the court to enter a judgment asserting jurisdiction and ordering disposition as to one parent based on that parent's admissions, with the understanding that the judgment may have to be vacated if the other parent prevails at CJ. However, subsequent to the recent *W.A.C.* case,[20] this practice has all but ceased. The current procedure for handling cases in which one parent makes an admission and the other seeks CJ is slightly different depending on the judicial officer. However, both Judges advise the admitting parent that, until jurisdiction is established as to the other parent, services ordered by the court are voluntary but recommended.

The court typically reviews cases every six months, with Citizens Review Board hearings held before the first six-month court review. According to interviews, some attorneys consistently attend CRB hearings while others rarely or never do so. Many times an attorney's legal assistant will attend a hearing but not participate in any

[16] Around the time of the shelter hearing, the case is transitioned to a different DHS caseworker, the "permanency caseworker." The parties participate in a "child safety meeting" (CSM) within 30 days (that is, before the status hearing) to develop an ongoing safety plan. At the CSM, the parties are introduced to the permanency caseworker.

[17] Unlike delinquency cases where all discovery comes from the DDA, discovery in dependency cases appears to be compiled and distributed primarily by the assigned caseworker, which results in some significant inconsistency across cases.

[18] Even if the court rules to assert jurisdiction, the department is not represented by an attorney until an AAG is assigned to the case shortly before the permanency hearing.

[19] The court will schedule more frequent review hearings in cases that require greater oversight and attention, including when the court has made a certain order and wants to ensure that the parties comply.

[20] In *Dept. of Human Services v W.A.C.*, 263 Or App 382 (2014), the Court held that jurisdiction over a child may not be based on the admissions of one parent when the other parent properly contests the allegations in the petition.

meaningful way. Several people interviewed cited recent and specific instances in which a parent needed advocacy during a CRB or other non-court setting, but was accompanied by a legal assistant who said nothing. DHS court reports are generally provided at least three days in advance of the review hearing, in compliance with the requirements of ORS 419B.881(2)(a)(B). Attorneys were described as being more effective at review hearings when they had personally met with clients in advance of the hearing. Several interviewees indicated that lawyers who have their staff visit with child clients prior to the court hearing often do not have the level of detail needed to effectively represent their clients. Several interviewees suggested that while a few attorneys are effective when representing a child or parent, others seem to confuse these roles, and would do better if they represented only children or only parents.

If the department intends to seek a change in the permanency plan at the permanency hearing, the assigned AAG provides such notice approximately 30 days before the scheduled hearing. This allows the other parties time to consult with their clients and, if needed, request time for a contested permanency hearing. Prior to the AAG getting involved, discovery is inconsistent and depends on the particular caseworker. If the department does not intend to seek a change in plan, the court generally does not change the plan and, instead, schedules the next permanency hearing in approximately 90 days. In some cases, the court will continue jurisdiction until a parent obtains a custody order in a domestic relations proceeding.

If the case proceeds toward termination of parental rights (TPR), DHS includes a first appearance date on the TPR petition. At the first appearance, the court appoints counsel, schedules dates for a pretrial conference, a best-interest settlement conference ("BI/SC") (basically, a second status hearing), calendar call (the Friday before the trial date), and trial.[21] If a parent fails to appear at the first appearance, the court schedules a termination-without-parent ("TWOP") hearing about a month later, at which point, if the parent still does not appear, DHS can proceed with a "prima facie" termination case. Relinquishment of parental rights is not an option in most cases. In lieu of relinquishment, a parent stipulates to termination in a non-contested court proceeding. Stipulation to a termination of parental rights is considered by DHS to be "voluntary" and, as a result, parents are more likely to be offered mediation services with the selected adoptive resource.

About 25 to 30 percent of cases in Washington County involve a Court Appointed Special Advocate (CASA). The CASAs are regarded as well-trained, engaged in case planning and strong advocates for children. There were mixed reviews, however, regarding the effectiveness of lawyers appointed to represent children. While some attorneys are said to communicate appropriately and effectively with children, there is also a sentiment that more training is needed in how to talk to kids about legal issues in age appropriate terms. As noted above, there is also criticism of using legal assistants, rather than attorneys, for home visits with child clients, especially with teens or where a child's capacity to make informed decisions is in question.

There is a concern, according to interviews, that attorneys in juvenile cases lack cultural competence, especially regarding Latinos. According to one person, attorneys need to

[21] The court addresses any evidentiary issues on the morning of trial.

better understand acculturation and how it affects the lives of their clients. They also need to know that even though parents may speak some limited English, an interpreter may be necessary for effective communication. Attorneys would also benefit, according to information received by the peer review team, from a better understanding of the Mexican child welfare system. Concerns were expressed that there is reluctance to place children with relatives in Mexico, which can leave children in substitute care longer than necessary. This reluctance was attributed to a lack of understanding about resources in Mexico and how to access them.

III. PUBLIC DEFENSE CONTRACTORS

Detailed findings and recommendations specific to particular providers will be made in the sections pertaining to those providers. Overall, though, the peer review team found general satisfaction with the public defense providers in the county.[22] Some attorneys, especially those practicing as part of ODAC, are highly regarded, with appreciation for their years of service to public defense, and for their skill and professionalism in criminal cases. MPD was commended for recent improvements in its training of new attorneys and overall professionalism, though one interviewee noted that their certified law students need additional oversight. ODAC and MPD handle the vast majority of criminal cases, with the other four contractors handling some misdemeanor and minor felony criminal cases and a substantial number of juvenile cases.

There were a number of concerns about defense providers heard consistently during the peer review interviews. There was an impression among many system stakeholders that high caseloads (one judge called them “obscenely high”) are interfering with adequate client contact and case preparation. There is also concern about the turnover of attorneys, which delays case resolution (even serious in-custody cases) as they are reassigned to new lawyers. It also means that there is a regular influx of new or less experienced defense attorneys who require intensive training and supervision to achieve proficiency in their work. Further, there were concerns that some new lawyers weren’t getting adequate training and supervision.

Public defense contractors have been active participants in local justice system workgroups that pertain to both ongoing planning and consultation efforts, such as regular bench-bar meetings, or project-based efforts, such as exploration of a new pretrial services office or the court’s current reengineering effort. Typically, these efforts involve participation by a representative from MPD and/or ODAC, although other providers are involved in other justice system workgroups. Some concern was expressed, though, that information provided or received by contractor attorneys at these meetings was not always widely shared with the rest of the public defense provider community. More generally, some people, especially those working on juvenile law cases where five of the six contractors handle cases, expressed a desire for a better mechanism to easily and reliably disseminate information to all attorneys providing public defense services in the county. Currently, defense providers gather

[22] However, the Washington County results on the annual OPDS statewide public defense performance survey are less favorable than overall statewide results. On the question concerning rating of performance in criminal cases, for instance, 90% of respondents statewide said it was either excellent or good, whereas only 50% said so for Washington County. Most respondents for Washington County rated the performance good (37.5%) or fair (37.5%).

once a month at MPD to discuss issues of common concern, but the topics are generally focused on criminal cases.

IV. REVIEW FINDINGS

1. THE METROPOLITAN PUBLIC DEFENDER (MPD)

OVERVIEW: Founded in 1970, MPD is the oldest and largest of the not-for-profit public defender offices in Oregon. It began accepting cases in Multnomah County in 1971 and in Washington County in 1973. Although there is an office director, currently Greg Scholl, in the Washington County office, much of the MPD administrative staff, including the Executive Director, Human Resources Director, Director of Attorney Training, and IT support staff, are located in the Portland office. MPD is governed by a seven-member board of directors, four of whom are appointed by outside authorities, including the Washington County Board of Commissioners. The board meets approximately quarterly.

There are 21 attorneys in the Washington County office, supported by five investigators, 11 legal assistants, and several other clerical positions. The staff is divided among two groups of attorneys working in the criminal courts, one focused on felonies and the other on misdemeanors, a group of four lawyers working in the juvenile court, and a specialty court group that works in the ECR and arraignment courts, mental health court, LEC probation cases and a number of other matters. Each group is led by a Chief Attorney. The office director, in addition to administrative responsibilities, handles drug court and also serves as part of the MPD death penalty representation team.

Cases are assigned at MPD by their longtime docketing specialist who has information about current caseload numbers for each attorney, attorney leave schedules and major trial obligations when she distributes cases. She also works with the court to avoid appointment of cases to MPD where there will be a conflict and to quickly seek MPD withdrawal on appointed cases where conflicts become apparent during the case opening process. Once the case file reaches the assigned attorney, that person is responsible for further and ongoing analysis of possible conflicts, in consultation with his or her supervisor.

MPD frequently emphasizes its commitment to training. New lawyers participate in a multi-day in-house trial skills program. The firm provides financial support for attorneys to attend programs presented by the Oregon Criminal Defense Lawyers Association, the Oregon State Bar and other organizations. The firm employs a fulltime director of training, although this person's office is in Portland and generally visits Hillsboro only once a week for regular Tuesday one hour "brown bag" training meetings. The office also convenes an annual one-day diversity training for all staff. Most of the training that occurs, though, is "on the job" experience, with guidance and feedback from supervisors and other colleagues, and it is the quality of this mentoring that can be most critical to an attorney's development. The firm expects that supervisors will conduct annual formal evaluations of all employees, although it appears that this expectation is largely unfulfilled.

MPD attorneys and other staff have been represented by the American Federation of State, County and Municipal Employees (AFSCME) for many years. A central and controversial provision of the collective bargaining agreement between MPD and AFSCME has allowed attorneys to transfer from the Washington County office to the Portland office when openings become available only after 18 months of employment in Hillsboro. That provision had been dropped from the agreement, and lawyers began transferring to Portland even earlier. This contributed to an increase in turnover, and was noted by many as being a significant problem. Since the time of the peer review, the contract was renegotiated, and lawyers must now once again wait for at least 18 months before transferring out of Washington County. While there are still instances of turnover, it has diminished since the time of the peer review, and there is a sense of commitment to the Washington County office among many of the lawyers there.

MPD attorneys are involved in many Washington County justice system stakeholder meetings, including the Public Safety Coordinating Council, criminal and juvenile bench-bar committees, the Washington County Reentry Council, and the Drug Court Policy Committee. Firm attorneys have also participated on the OCDLA Board of Directors, the Oregon State Bar Criminal Law Section Executive Committee, and have served as faculty on numerous CLE programs pertaining to criminal and juvenile law.

FINDINGS. Overall, MPD and Greg Scholl, the director of MPD's Washington County office, received praise for recent improvements in professionalism and training, and for performance in some areas of representation, as well as for the abilities of specific attorneys. Of particular note, Jennifer Harrington in Mental Health Court, and Mary Bruington in juvenile court, were mentioned repeatedly as attorneys who provide valuable input in collaborative settings, zealous advocacy in the courtroom, and who demonstrate the highest level of professionalism. MPD's work in special courts, and especially in connection with drug court, mental health court and its handling of probation matters, was highly praised by judges, probation officers and others. The firm is said to work well in policy committees, in team staffings prior to court, and some commented on attorneys in the firm who are positive participants in efforts to fund raise for county programs that benefit their clients. With drug court and mental health court in particular, MPD is reported to embrace the mission and philosophy of the courts, work collaboratively with system partners, while maintaining a client-centered focus and advocacy.

The previously high rate of attorney turnover at MPD, mentioned above, was cited by many people as a factor that seriously affected the overall quality of the firm's representation. The regular departure of experienced attorneys and arrival of those with little or no experience is an obvious concern, as is the wholesale transfer of entire caseloads to new attorneys, which can cause significant delay in case resolution. While MPD has improved in this area during the last year, it is still a concern that should be consistently monitored and managed.

The MPD director seems to have responded well to the peer review team recommendation for better supervision of new lawyers. Several people interviewed noted the increased training provided to, and improved professionalism demonstrated by, MPD's newer lawyers. While there were very specific concerns about interactions between MPD lawyers and the bench at the time of the peer review, but those

interviewed were consistent in their praise for MPD's current attorney group and management team during the last year since the peer review.

2. OREGON DEFENSE ATTORNEY CONSORTIUM (ODAC)

OVERVIEW. ODAC was formed in 2006 by Robert Harris, who heads the Harris Law Firm. The consortium consists of ten members who maintain their own private practices and the Harris Law Firm (this firm was an individual contract provider prior to 2006), from which four associates handle consortium cases. Mr. Harris administers the consortium but does not handle consortium cases. An office assistant in the Harris Law Firm performs some ODAC administrative work under the contract. ODAC is organized as a Sec. 501(c)(3) non-profit corporation and is governed by a five-person board of directors, which at the time of the peer review consisted of Mr. Harris, two consortium member attorneys, one non-member attorney and another vacant non-member position.

ODAC handles only criminal cases, including the largest share of adult Measure 11 cases in the county (for 2014, ODAC is contracted to handle 120 adult Measure 11 cases; MPD is the only other contractor handling Measure 11 cases, contracting for 108 cases, including juvenile Measure 11 cases; ODAC, however, does not contract for any murder cases, whereas MPD is contracted for 8 in 2014). By contract, ODAC shares responsibility to cover the ECR court with MPD. The consortium receives appointments to cases each morning. After staff does a preliminary conflict check and determines if a client is being or has been represented by a consortium member, Mr. Harris and his staff make case assignments to consortium members. In the process, they review member totals for previous number and type of cases assigned, and the court and vacation schedules for members, seeking to make assignments that work best for member schedules and workload.

ODAC does not have any formalized processes for attorney training, oversight, evaluation or discipline. Instead, the group relies upon its selection of excellent, experienced criminal defense attorneys. Some of the Harris Law Firm attorneys handling ODAC cases have been newer and less experienced, but they do receive training and supervision through the law firm. The model ODAC member agreement also provides for the termination of membership, which would be by action of its board, if the member "is deemed to have failed in providing services according to the requirements" of the agreement, which incorporates by reference the ODAC contract with PDSC and its performance expectations. ODAC does not sponsor its own CLE programs, but was involved in the creation of the noontime training meetings held every other month at the MPD, and remains involved in the planning and coordination of those meetings. ODAC also has its own email list for announcements and other communications among its members, and Mr. Harris initiated a similar list for all criminal defense attorneys in Washington County.

ODAC attorneys are involved in a number of Washington County justice system stakeholder meetings, including the Public Safety Coordinating Council and the Washington County Bar Association. Firm attorneys have also participated on the OCDLA Board of Directors and have served as faculty on CLE programs pertaining to criminal law. Mr. Harris worked with the Presiding Judge to restart a bench-bar

committee, drafting the group's by-laws and eventually serving as its presiding officer. It now meets quarterly and includes the Presiding Judge, the Chief Judge of the Civil, Criminal and Family Courts, and representatives from the civil and criminal bar.

FINDINGS. ODAC consortium members are clearly viewed as premier public defense providers in Washington County, and they were praised for their experience and skill in both settling cases and in trial practice in both criminal and juvenile cases, which some members handle on a non-contract hourly basis. Mr. Harris was also praised for his effective administration of the consortium and for his involvement in justice system management issues. Interview comments also commended Mr. Harris and members of ODAC for their commitment to the community in Washington County, as evidenced by involvement in non-legal community affairs and through their long-term relationship with the legal community there. Finally, Mr. Harris and ODAC members receive praise for their involvement in court operation workgroups and committees. Their participation is clearly valued by system stakeholders and fulfils a best practice for Oregon public defense providers. This participation can benefit all public defense providers, their clients and the justice system generally as court policies and procedures evolve with the information and expertise of respected public defense leaders.

3. RIDEHALGH & ASSOCIATES, LLC (R&A)

OVERVIEW. The Ridehalgh law firm has contracted to provide public defense services since 2000. The firm is a limited liability company and does not have a board of directors. Ronald Ridehalgh manages the firm, which consists of himself, four other attorneys and three support staff. The firm contracts with PDSC to handle a caseload of dependency, misdemeanor, probation violation, and contempt cases, in addition to providing coverage for the DUII diversion program and the domestic violence deferred sentencing program. The firm does not handle juvenile delinquency cases.

As the "advice attorney" for both the DUII diversion and domestic violence deferred sentencing program, Ron Ridehalgh meets with persons determined by the DA's office to be eligible for participation, and provides both general information about the advantages and disadvantages of the programs and case-specific guidance about whether participation is advisable or not. In juvenile dependency cases, R&A attorneys are present in court for the initial court appearance of a new client and are appointed at that time. In criminal cases, where the initial arraignment is covered by MPD attorneys, a firm paralegal picks up notices of new appointments at least once each day at the LEC and then usually also visits those new clients who are in custody. Case assignments to firm attorneys are made according to a detailed flow chart that seeks, among other things, to make efficient use of attorney time by assigning particular court dockets (what the firm calls "zones") to specific attorneys, and then assigning other cases according to attorney workload and availability. Workload and case distribution information for each firm member is available in a database which is monitored by Mr. Ridehalgh but also accessible to all firm members.

Much of the firm's work processes, such as the flow chart for case assignment, are set out in a detailed employee manual. R&A relies upon the manual and mentoring by its more experienced attorneys for new attorney training, along with firm-paid attendance at outside CLE programs. There is also a weekly attorney meeting where cases are

discussed. The firm has both an intranet and a separate networked database where practice forms, manuals and other aids are available. The firm does not have a formal evaluation process. Mr. Ridehalgh is the direct supervisor of each attorney, and part of the firm's file closing protocol calls for him to personally review each file. The firm has a complaint procedure that involves a form to receive input about an attorney's performance and investigation by Mr. Ridehalgh.

R&A attorneys are involved in a number of Washington County justice system stakeholder committees, including an advisory group for the domestic violence deferred sentencing program, the local Domestic Violence Intervention Council, and the Juvenile Court Improvement Project. Mr. Ridehalgh is also a member of the county's Supplemental Local Rules committee.

FINDINGS. Attorneys with the Ridehalgh firm are said to be knowledgeable, prepared and committed to doing good work. Mr. Ridehalgh was specifically praised for his work with both the domestic violence deferred sentencing docket and the DUII diversion docket, and for his management of the firm. The firm's work in juvenile dependency cases was described overall as very good, and the firm was noted as one that provides excellent training and oversight. As with many of the contractor firms in Washington County, there was mention about what seemed to be high attorney turnover at the firm. This firm manages to mitigate some of the potential harm of turnover, largely because Mr. Ridehalgh is clearly committed to public defense work and has invested significant time and energy to create office systems that provide structure, training, and oversight to newer lawyers.

4. KARPSTEIN & VERHULST, PC (K&V)

OVERVIEW. The Karpstein & Verhulst law firm has contracted to provide public defense services since 1994. The firm does not have a board of directors. Greg Karpstein manages the firm, which consists of himself and four other attorneys and three support staff. In addition, the firm has two part-time positions called "home visitors," who maintain in-person contact with dependency clients on behalf of the assigned attorney. Mr. Karpstein has expressed his intent to transition firm leadership over the next five to seven years to two of his firms attorneys, Nathan Law and Jacob Griffith, who joined the firm in 2012,.

The firm contracts with PDSC to handle a caseload of largely juvenile delinquency and dependency cases, in which it represents mostly children. In addition, it contracts to handle some criminal Class C felony, misdemeanor and probation violation cases. In addition to its public defense work, the firm handles a variety of privately retained cases, advertising services in business and incorporation matters, domestic relations, estate planning, real estate, and landlord/tenant cases.

In juvenile delinquency and dependency cases, K&V attorneys are present in court for the initial court appearance of a new client and are appointed at that time. In criminal cases, where the initial arraignment is covered by MPD attorneys, a firm secretary picks up notice of new appointments each day at the LEC. Case assignments to firm attorneys are made on the basis of availability, case type and level of attorney qualification, and the workload of attorneys. The firm is able to avoid some conflicts of

interest by reviewing delinquency and dependency dockets prior to the initial hearings. Otherwise, a conflict check is conducted during the file opening process.

K&V does not have any formal processes for attorney training, oversight or discipline. Instead, the firm relies upon outside CLE seminars and mentoring by senior firm attorneys to train new attorneys, in addition to the weekly staff meetings, other special firm gatherings and an open-door policy that is in place for all firm attorneys and staff. There is a general orientation for new attorneys that involve introductions to key places and players in the criminal and juvenile justice system, as well as a period of shadowing more experienced attorneys. The firm has an employee handbook that includes an evaluation form, although it is unclear if it conducts regular evaluations. Regarding attorney oversight, the firm says, in responses to the questionnaire submitted in conjunction with the peer review, that there is no formal process to gather input on attorney performance but because it is a small entity "the supervising attorney knows immediately from either judges or court staff if there is a problem." As related below, however, this may not be a sufficient approach to quality assurance.

K&V attorneys are involved in a number of Washington County justice system stakeholder committees, in addition to participation in the Washington County Bar Association. Nate Law is the current private bar representative for the Washington County model court team, which involves regular monthly meetings, as well as attending the statewide JCIP conference. Mr. Karpstein has received professionalism awards from the Juvenile Law Section of the Oregon State Bar in 2010 and from the Washington County Bar Association in 2013.

FINDINGS. Overall, interviewees said that firm attorneys were generally prepared and provide good representation in public defense cases, and Mr. Karpstein has clearly earned the respect of system stakeholders. There is concern regarding the transition of the firm. Other attorneys in the firm are described as being very capable, but still in need of training in some areas, particularly around representation in juvenile delinquency cases, and especially serious case types. The firm has improved its client contact in both juvenile dependency and delinquency cases, but they can still improve in this area. Prior to the peer review team's site visit, the team reviewed a lengthy letter from the Executive Director and the Program Director of the CASA program for Multnomah and Washington counties that detailed numerous specific concerns about the performance of K&V attorneys, in addition to a concern about insufficient contact with child clients. The firm is reported to have responded appropriately, terminating one attorney who was not providing quality representation, hiring capable attorneys, and making some improvement regarding the frequency of visits to clients. This remains an area where the firm should continue to make improvements. Reports indicate that the firm's reliance on staff contact with clients make the lawyers less effective during court hearings, and there is very little advocacy on clients' behalf outside of court hearings. There was also concern about lawyers having staff attend CRB reviews because the staff who attend don't speak on the client's behalf (several people suggested that the staff appear to be there to take notes), even when the client is clearly in need of advocacy. Finally, while firm lawyers are visiting with in-custody delinquency clients more frequently, and always prior to the first preliminary hearing, the firm continue monitor and improve upon the frequency of visits to clients who remain housed at the DEL facility. With the transition of the firm's management responsibilities to the newer

management team, extra caution will have to be taken to ensure that attorneys receive necessary training and oversight, and that the firm's recent steps to improve representation are not lost in the transition process, but rather continually enhanced and monitored. Because the lawyers at the firm are said to be very capable and professional in their relationships with stakeholders in the county, as well as with their clients, they are in a good position to build upon their successes during the period of transition.

5. HILLSBORO LAW GROUP, PC (HLG)

OVERVIEW. The HLG is the current iteration of a law firm that has contracted to provide public defense services in Washington County since 1994. HLG is the assumed business name of Burton McCaffery Oregon Lawyers PC, an S Corporation with three shareholders who constitute the directors of the firm. Grant Burton is the firm's managing attorney and administrator of its public defense contract. In addition to himself and the two other shareholders, the firm employs two senior associate attorneys, one who leads a criminal team and the other the juvenile team, and three associate attorneys who work in part on one of those two teams. There are five support staff employees.

The firm contracts with PDSC to handle a caseload of juvenile dependency and delinquency, Class C felony and misdemeanor, probation violation, and contempt cases. The public defense contract, however, accounts for less than half of the annual revenue of the firm, which advertises services in bankruptcy, corporate, family law, immigration, personal injury, real estate, social security and estate planning matters. Some firm members do very little or no public defense representation. At the time of the peer review, Mr. Burton was administering the firm's public defense work, and though he was providing coverage for other attorneys in his firm and had handled court-appointed work in the past, he was not handling any public defense cases. Mr. Burton explained that the firm began expanding its retained work in 2006 in order to meet overhead expenses and accelerated that expansion in 2008 when its share of public defense work was significantly reduced.

HLG attorneys are present in court for the initial court appearance of a new client in juvenile dependency and delinquency cases. In criminal cases, where the initial arraignment is covered by MPD attorneys, a firm legal assistant receives notices of new appointments and then emails the assigned attorney about in-custody clients. Case assignments are rotated among firm attorneys according to the percentage of FTE they devote to the public defense contract and the particular team, juvenile or criminal, to which the attorneys are assigned. The intent is to achieve a fair distribution of the public defense work, whether the assigned cases are above or below the expected quota.

As with other firms, HLG relies largely upon mentoring and outside CLEs for training new attorneys. In addition, there are monthly attorney and support staff lunches with the supervising shareholders. The firm uses group emails to update its teams with announcements and other messages relevant to their practice. Mr. Burton conducts formal attorney performance reviews twice a year that consist of a meeting with him and a written evaluation. He obtains input for the review from senior firm employees, clients and judges.

Much of the firm's workflow is managed through a highly customized implementation of the Time Matters software, which manages and tracks work performed on cases, the associated documents, and case outcomes. The firm also uses Time Matters to organize various documents and resources concerning office procedures and practice forms and aids. Time Matters also automates the creations of basic letters and other case related documents. In conjunction with Time Matters, the firm had been a user of Demandforce, a service that automatically sends clients email and/or text message reminders about court and office appointments, and sends them a satisfaction survey at the conclusion of the case. Mr. Burton reported that this did reduce the number of failures to appear for his firm's clients. Unfortunately, the firm's ability to use Demandforce was lost due to an incompatibility issue created during a recent Time Matters upgrade. Mr. Burton is interested in finding a solution, and has agreed to speak at the 2015 OCDLA Management Conference regarding the benefit of automated client communications.

HLG attorneys are not active participants in Washington County justice system policy and planning efforts, but they are members of the Washington County Bar Association and attend a juvenile bench bar meeting and the monthly criminal defense bar meetings held at MPD.

FINDINGS. The firm was reported as providing somewhat inconsistent representation at the time of the peer review, with some very good attorneys and others in need of improvement. Additionally, the firm was asked to evaluate the extent to which it was committed to providing quality public defense services. The firm has taken steps to improve its services since that time. One particularly problematic attorney was let go, and the vacancy was filled with an experienced attorney from out-of-state. Mr. Burton reports that the firm now provides Oregon and Washington County-specific training to new attorneys. Additionally, Mr. Burton started personally representing public defense clients, primarily in a small number of Measure 11, felony PV, and juvenile delinquency cases, and he reports that the firm is winning more than 50 percent of the cases it takes to trial. Mr. Burton has asked senior attorney Peter Tovey to be co-administrator of their public defense contract going forward, as Mr. Tovey does a higher percentage of public defense work. Mr. Burton is also making good use of technology to measure results and keep clients engaged. The firm should continue its efforts to ensure quality representation provided to public defense clients.

6. BRINDLE MCCASLIN & LEE, PC (BML)

OVERVIEW. The Brindle McCaslin & Lee law firm has contracted to provide public defense services in Washington County since 1995. The firm does not have a board of directors. Louise Palmer is the contract administrator for the firm. In addition to its public defense work, the firm maintains a privately retained practice for which it advertises services in a broad range of civil and criminal matters including immigration, insurance, land use, personal injury, estate planning and real estate. Of the ten attorneys at the firm, three shareholders and three associates devote some portion of their practice to public defense cases.

The firm had contracted to provide representation in Washington County in some criminal Class C felony, misdemeanor and probation violation cases, in addition to a larger caseload of juvenile dependency and delinquency cases, but shortly before the peer review's site visit the firm agreed with OPDS that it would no longer take any criminal cases. This change was a result of serious concerns on the part of the court and others about the quality of the firm's representation in criminal cases.

Attorneys from BML are present at first appearances in juvenile dependency and delinquency cases when it is expected that they will receive an appointment by the court. According to the firm, cases are assigned to attorneys with the goal of matching both attorney interest and level of proficiency with case complexity and to achieve caseload balance among the attorneys. Since the firm's associates have relatively little experience with juvenile law, a more experienced attorney is reported to be available to assist with more complex cases.

The BML firm does not have a formal training program for new attorneys or sponsor its own CLE events. Its supervision appears to be largely an "open-door" policy where attorneys can seek guidance from other firm attorneys. The firm does have a bi-annual review for each attorney that includes completion of a self-evaluation and a "feedback session" with a firm partner.

FINDINGS. Interviewees consistently commented on the very high rate of turnover in this firm, the complete absence of training and supervision for new lawyers, and the continued practice of giving these new attorneys very high caseloads. Specific comments regarding the firm's representation in Washington County were uniformly negative. Even when the firm is able to recruit competent lawyers, those lawyers are overloaded with cases, receive no training, and leave in relatively short order. While Mr. McCaslin is described as being a capable lawyer, he handles public defense cases only when needed to provide coverage when attorneys leave the firm and everyone seems to be aware that he would prefer not to handle juvenile public defense cases. Louise Palmer, the contract administrator, spends her time on remaining Multnomah County cases. The firm did not provide any response to the peer review team recommendations and does not seem to have an awareness of what would be required to improve the situation.

V. SERVICE DELIVERY REVIEW – Recommended Areas of Inquiry

Based on the information gathered through the peer review and follow-up interviews, the Commission may wish to inquire further in the following areas.

Quality of Representation.

- **Contact with Juvenile Clients in Detention.** Public defense providers should ensure that they are visiting with their in-custody clients in delinquency cases within the requirements of the contract with PDSC (within 24 hours of appointment to the client) and as needed to fulfill their obligations under the Oregon State Bar *Standards of Representation for Criminal and Juvenile Delinquency Cases*, Standard 2.2, and Oregon Rule of Professional Conduct 1.4.

- **Professionalism.** ODAC was identified in the peer review and again in the service delivery review as being a provider who consistently demonstrates the highest level of professionalism. Almost all other providers, most notably MPD, made significant gains in this area between the time of the peer review and the service delivery review. All providers should be encouraged to document and adhere to the highest standards of professionalism, and the Commission may wish to inquire about each provider's commitment to this important element of representation.

- **Client-Centered Advocacy.** ODAC and MPD were consistently identified as firms that provide zealous, client-centered advocacy. As mentioned throughout this report and in the system issues section below, other firms could benefit from increased information-sharing to ensure that all entities have an opportunity to learn about recent system developments that impact clients, and to share ideas with each other about how to provide client-centered advocacy in light of those developments.

- **Advocacy for Juvenile Delinquency Clients.** Firms should ensure that their attorneys are filing motions for alternative disposition and motions to find unable to aid and assist, and exploring ways to challenge the denial of conditional postponements. Additionally, because this is an area of rapid development, attorneys handling juvenile delinquency cases should be seeking particularized training from organizations such as the National Juvenile Defense Center.

System Issues.

There are a number of other issues that are either common to all or most public defense providers in Washington County or pertain to them. Those issues are as follows:

- **Advocacy at Arraignment, specifically pretrial release.** The court's prohibition on attorneys advocating for release at the time of arraignment remains a significant concern in this county. The Commission may wish to discuss with providers whether they have considered any kind of group effort to address this issue. Clearly, it has a disproportionate impact on public defense clients (note that privately retained clients have more attorney contact prior to arraignment giving the attorney a better opportunity to work with the pretrial release officer). Studies consistently demonstrate that pretrial advocacy and the

opportunity to gain release at the first court appearance is critical to achieving procedural justice.[23]

- **Specialty dockets: ECR (ODAC & MPD), DUII and DV Diversion (Ridehalgh).** The Commission may wish to inquire further to determine whether clients in these programs are receiving thorough advice regarding options and collateral consequences prior to entering a plea, and whether the structure of these programs is consistent with the PDSC's *Guidelines For Participation of Public Defense Attorneys in Early Disposition Programs*.[24]

- **Information Sharing**. As the two largest public defense providers in Washington County, it is appropriate that MPD and ODAC be represented on major justice system workgroups pertaining to system wide policy and procedure. At the time of the peer review, there were complaints that MPD did not sufficiently share information about the proceedings of these workgroups with other public defense providers. The Commission may wish to inquire about the extent to which information is being shared with other providers.

  A different but related concern is that stakeholders in the juvenile justice system, such as Juvenile Court Counsellors, CASAs, CRB, and DHS caseworkers, do not have a convenient mechanism to share information or developments concerning their agencies with the public defense community. Likewise, there appears to be some uncertainty in these agencies about whom to contact with specific concerns about the representation provided by public defense attorneys. The Commission may wish to inquire about steps providers have taken to communicate with juvenile court stakeholders and with other public defense providers to ensure there is a way for information to be easily shared when necessary, and whether stakeholders feel they have a way to provide feedback to each provider about the quality of representation in juvenile court. The Commission may also wish to consider whether the creation of a juvenile consortium, rather than the current consistent use of private bar lawyers for conflict cases, would provide a more efficient mechanism for distribution of information to juvenile providers.

- **Shackles in Juvenile Court.** Public defense providers handling juvenile delinquency cases should ensure that in-custody youth are transported to court and appear in court in shackles only when this extreme measure is required by a combination of heightened security concerns and no less onerous alternative. In light of evidence demonstrating the psychological harm that shackling can cause to youth, a growing number of jurisdictions, including in Oregon, have prohibited the indiscriminate use of shackles in juvenile court. Lawyers should contact Youth, Rights & Justice or OPDS for briefing and court orders from litigation in other counties if needed to challenge the practice in Washington County.

[23] See the latest report by the Constitution Project at: http://www.constitutionproject.org/wp-content/uploads/2015/03/RTC-DINAL_3.18.15.pdf
[24] The guidelines are available on the OPDS website here: http://www.oregon.gov/OPDS/pages/pdscreports.aspx.

Administrative Oversight.

- **Documentation & Efficiency.** Some contractors have well-documented systems to ensure adequate attorney training and oversight and sufficient client contact. The Commission may wish to speak with providers about any efforts underway to create, or for some providers preserve and enhance, existing practices.

- **Performance Reviews.** Some providers are reportedly very consistent in providing attorneys with performance reviews, and in checking with the court and other system stakeholders to ensure that public defense clients are receiving quality representation. The Commission may wish to ask stakeholders about contractor efforts to get feedback regarding lawyer performance.

WASHINGTON COUNTY CIRCUIT COURT
Judge Keith R. Raines

September 15, 2015

Ms Caroline Meyer
PDSC
Hand delivered on 09-17-15

Dear Ms. Meyer,

I am sorry to miss the PDSC meeting. I have asked Presiding Judge Bailey to deliver this letter in my stead.

I am the Chief Family Judge overseeing the family and juvenile court judges. I have consulted with my colleagues and we speak with one voice in this matter.

The private component of juvenile court representation is vital to our success in the juvenile court. Our private component provides more than just the conflict representation which is so regularly needed; our private members are some of the most experienced members of our Bar at large. They are able to provide effective and aggressive representation for their clients while bringing wisdom about children's developmental needs and the best way to support them to their clients. They seem to pull the most difficult of clients and manage them with, in Judge Thompson's words "aplomb".

We need to make sure that our private bar component stays vitally involved by expressing our appreciation for their representation and assuring that they will be adequately compensated and supported with services as needed.

Thank you for your consideration.

Very truly yours,

Keith R. Raines

cc: Washington County Family Court Team
Washington County Juvenile Bench Bar Committee

145 NE Second Avenue, Courtroom 206C, Hillsboro OR 97212
503-846-3457 fax 503-846-4801

Attachment 3

September 2015: PDSC Compliance with Commission Best Practices

1. Executive Director's performance expectations are current. **ED Position Description last updated April 2011; still current.**

2. Executive Director receives annual performance feedback. **Nancy Cozine evaluation began December 2014; completed January 2015.**

3. The agency's mission and high-level goals are current and applicable. **The mission and high-level goals are reviewed annually for the Annual Performance Progress Report; agency has been examining KPMs; Legislature approved new KPMs in July 2015 (these were included as part of the 2015-17 agency request budget). Commission members also received the Executive Director's Annual Report which addresses the current goals of the agency and includes a progress report on efforts to achieve those goals.**

4. The board reviews the *Annual Performance Progress Report.* **The Annual Performance Progress Report is due in September each year. The Commission reviewed the 2014 report in September 2014, and is reviewing the 2015 at the September 2015 PDSC meeting.**

5. The board is appropriately involved in review of agency's key communications. **The Commission is asked to review and approve key agency documents - the agency's biennial budget proposal, Emergency Board submissions, requests for proposals, proposed contracts, rule and policy changes.**

6. The board is appropriately involved in policy-making activities. **The Commission is the policy making body for the agency. Its policy making responsibilities are set forth in statute. Its strategic plan establishes the goals and strategies the agency follows in pursing its mission; the Commission is actively pursuing an updated strategic plan that should be complete in the spring of 2016.**

7. The agency's policy option packages are aligned with their mission and goals. **PDSC's mission is to establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice. All of the agency's policy option packages have been directed at achieving that mission.**

8. The board reviews all proposed budgets (likely occurs every other year). **The Commission reviewed the agency's proposed 2015-17 policy option packages at its June 19, 2014, meeting, and approved the 2015-17 agency request budget at its September 2014 meeting.**

9. The board periodically reviews key financial information and audit findings. **Throughout the course of the year the Commission receives periodic updates on budget developments and the agency's expenditure of funds. The results of all reviews are presented to the Commission when they occur.**

10. The board is appropriately accounting for resources. **The Commission approves a budget proposal for the agency that is then presented to the Legislative Assembly. The Legislative Assembly ultimately passes budgets for CBS, AD and the Public Defense Services Account. Funds are expended in accordance with budget requirements and in some biennia, interim reports are prepared for the Emergency Board and the Interim Ways and Means Committee. Copies of**

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

11. The agency adheres to accounting rules and other relevant financial controls. **The agency has been awarded the State Controller's Gold Star Certificate for achieving statewide accounting goals and excellence in financial reporting for each fiscal year since the agency was created.**

12. Board members act in accordance with their roles as public representatives. **The Commission meets 8-10 times a year. The attendance and involvement in Commission business demonstrated by the Commissioners shows their strong commitment to public service. Meetings held around the state in conjunction with service delivery reviews often provide stakeholders their first contact with the agency. Commission members are careful to make a distinction between their role as Commissioners and their other roles.**

13. The board coordinates with others where responsibilities and interests overlap. **The Chief Justice's role on the commission and in selecting other members of the commission permits coordination with the Oregon Judicial Department. Public defense providers are consulted on a regular basis through PDAG. The Commission has made them welcome at all of its meetings, has invited them to participate actively in those meetings and to provide input on a regular basis to the decisions made by PDSC. The Commission coordinates with OCDLA to provide training, to receive feedback, and to research insurance and health care coverage for providers.**

14. The board members identify and attend appropriate training sessions. **The agency's General Counsel provides periodic training sessions for Commission members, related to changes in criminal or juvenile law, public meetings laws, and public records laws.**

15. The board reviews its management practices to ensure best practices are utilized. **This self-assessment is the Commission's review of its practices.**

16. Others. **The Commission may wish to define additional best practices for itself but to date has not added any additional standards.**

Attachment 4

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

PUBLIC DEFENSE SERVICES COMMISSION

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

Contact: Nancy Cozine

Alternate: Angelique Bowers

1. SCOPE OF REPORT

Key performance measures address all agency programs.

2. THE OREGON CONTEXT

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

3. PERFORMANCE SUMMARY

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

4. CHALLENGES

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

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

5. RESOURCES AND EFFICIENCY

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

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

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

Oregon Context: Mission Statement

Data Source: Case Management Database Reports

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

1. OUR STRATEGY

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

2. ABOUT THE TARGET

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

3. HOW WE ARE DOING

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

4. HOW WE COMPARE

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

5. FACTORS AFFECTING RESULTS

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

6. WHAT NEEDS TO BE DONE

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

7. ABOUT THE DATA

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

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

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

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

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

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

1. OUR STRATEGY

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

2. ABOUT THE TARGETS

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

3. HOW WE ARE DOING

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

4. HOW WE COMPARE

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

5. FACTORS AFFECTING RESULTS

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

6. WHAT NEEDS TO BE DONE

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

7. ABOUT THE DATA

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

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

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

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

Data Source: Commission agendas and minutes.

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

1. OUR STRATEGY

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

2. ABOUT THE TARGETS

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

3. HOW WE ARE DOING

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

4. HOW WE COMPARE

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

5. FACTORS AFFECTING RESULTS

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

6. WHAT NEEDS TO BE DONE

No change is needed.

7. ABOUT THE DATA

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

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

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

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

Data Source: Contract compliance documentation.

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

1. OUR STRATEGY

2. ABOUT THE TARGETS

3. HOW WE ARE DOING

4. HOW WE COMPARE

5. FACTORS AFFECTING RESULTS

6. WHAT NEEDS TO BE DONE

7. ABOUT THE DATA

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

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

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

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

Data Source: Contract compliance documentation.

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

1. OUR STRATEGY

2. ABOUT THE TARGETS

3. HOW WE ARE DOING

4. HOW WE COMPARE

5. FACTORS AFFECTING RESULTS

6. WHAT NEEDS TO BE DONE

7. ABOUT THE DATA

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

1. **INCLUSIVITY**

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

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

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

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

2. **MANAGING FOR RESULTS**

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

3. **STAFF TRAINING**

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

4. **COMMUNICATING RESULTS**

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

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

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

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

Attachment 5

HARRIS COUNTY
MENTAL HEALTH ATTORNEY CERTIFICATION & TRAINING PROGRAM

A PROGRAM FOR PRIVATE APPOINTED COUNSEL SPONSORED BY THE

Public Defender's Office
Harris County, Texas

BENEFITS OF THE MENTAL HEALTH ATTORNEY CERTIFICATION & TRAINING PROGRAM

Attorneys who complete the Mental Health Attorney Certification Program will:

- Be eligible to receive appointments to represent indigent mentally ill defendants charged with misdemeanors.
- In the future, will be eligible to receive appointments in district courts to represent mentally ill defendants charged with felonies.
- Receive free MCLE that can be applied to annual State Bar MCLE requirements.

Attorneys who don't want certification but would like to earn free MCLE are welcome to attend any of the trainings as well.

For more information contact:

Mental Health Liaison Person

Harris County
Public Defender's Office

Phone | 713.368.0016
Fax | 713.XXX.XXXX

www.harriscountypublicdefender.org/mh

TRAINING TOPICS

Approximately once a month, free MCLE will be provided on such topics as:

- Diagnostic Terminology Related to Mental Illness
- Common Psychoactive Medications and Their Use
- Competency and Tex. Code Crim. Proc. art. 46B
- Standards of Evidence Relating to Competency
- Evaluating Competency Examinations
- Cross-Examination of Mental Health Experts
- Civil Commitment in Texas
- Forced Medication Proceedings
- Not Guilty By Reason of Insanity
- Landmark Cases in Mental Health Law
- Attitudinal Issues in Representing the Mentally Ill

Attendance for MCLE trainings will be required of persons seeking Mental Health Attorney Certification in order to accept appointments to represent mentally ill defendants.

Persons not seeking certification are welcome to attend any MCLE presentations of interest.

HARRIS COUNTY
MENTAL HEALTH ATTORNEY CERTIFICATION & TRAINING PROGRAM

www.harriscountypublicdefender.org/mh

LAW

SKILLS

SCIENCE

MEDICINE

Program Requirements

- Submit an application to join the certification program. DUE Month xx, 2014.
- Attend 12 monthly MCLE programs lasting 1-to-1.5 hours each.
- Pass a written test.

WANT TO HELP IMPROVE REPRESENTATION OF INDIGENT MENTALLY ILL DEFENDANTS IN HARRIS COUNTY?

Join Us – And Make a Difference.

The Harris County Jail is the largest mental health facility in the state of Texas. Approximately 25 percent of inmates in the jail are on some form of psychotropic medication. It's a complex problem that requires a multi-faceted solution.

One way in which Harris County is seeking to reduce the number of mentally ill persons in the jail is by ensuring that defense counsel representing these defendants is well-qualified.

The County recently received a grant from the Texas Indigent Defense Commission to establish a Mental Health Attorney Certification Program.

The program is designed to improve the representation of indigent mentally ill defendants by providing criminal defense attorneys with the legal knowledge and skills they need to represent these clients with special needs.

Who Should Get Certified?

Harris County's Criminal Courts at Law will soon require indigent defendants with mental illness to be represented by an attorney who has successfully completed this Mental Health Attorney Certification Program. The District Courts are considering doing the same thing.

We are looking for candidates who are:

- Criminal defense attorneys who are qualified to accept appointments in county courts for misdemeanors and who are interested in representing indigent mentally ill defendants should get certified.
- Attorneys who are qualified to accept appointments in district courts and who are interested in representing indigent mentally ill defendants charged with felonies.

REENTRY & MENTAL HEALTH
- ACTION TEAM -

ADVISORY GROUP
Teri Robinson
Lori Lane

September 8, 2015

Nancy Cozine, Executive Director
Public Defense Services Commission
1175 Court Street NE
Salem, OR 97301

Dear Ms Cozine:

We are a group of concerned citizens advocating for improved re-entry services for justice-involved persons with mental illness and their families. In November 2014, several Action Team members' loved ones with mental illness were incarcerated in county jails, all with horrific experiences. We wrote the enclosed letter dated 11/25/14 to Sheriff Pat Garrett, Washington County.

In January 2015, the Sheriff's Office scheduled a meeting with six Action Team members and Chief Deputy Bill Steele; Kristin Burke, Washington County Mental Health; and Sergeant Ron Medlock, Crisis Intervention Team. We discussed our concerns and presented the enclosed packet with statements by Action Team members.

By August 2015, as we continued to hear from concerned family members, the Action Team wrote the enclosed letter dated 8/10/15 to Judge D. Charles Bailey, the county's presiding judge. This letter to Judge Bailey includes a request for continued education for attorneys who represent persons with mental illness. The enclosed attachments, which were included with the letter to Judge Bailey, offer ideas for improvements that could be adopted in Oregon.

We respectfully ask that the Commission consider the information provided. We are available for further discussions.

Sincerely,

Karen James

Karen James
ReEntry & Mental Health Action Team

REENTRY & MENTAL HEALTH
- ACTION TEAM -

November 25, 2014

Pat Garrett, Sheriff
Washington County
215 SW Adams, MS 32
Hillsboro, OR 97123

Dear Sheriff Garrett:

As a group of concerned citizens advocating for improved services for persons with mental illness who are or have been incarcerated, one goal is to reduce recidivism and increase recovery by helping to ensure a seamless transition upon release, with treatment and services for continuum of care.

Recently several of our loved ones with mental illness were incarcerated in the Washington County jail. Our loved ones were clearly decompensating when arrested and, instead of receiving care necessary for someone experiencing a mental health crisis, they were incarcerated in the jail to linger for weeks without treatment, possibly causing irreparable brain damage.

This is unacceptable treatment for people whose 'criminal' acts are a direct result of their mental illness.

We understand HIPAA requirements and the importance of a signed release of information form (ROI); understand that medication is not given in the jail if a person was not taking prescription medication prior to incarceration; and understand the importance of protecting jail staff. However, opportunities to help our loved ones were grossly overlooked by the jail and the court.

As family members, we sought help for our loved ones, but instead experienced the following:

- we were not allowed access to our loved ones due to out-dated jail visitor's list; or because one parent was considered a 'victim', although the parent states categorically this is not the case;
- we could not obtain signed ROIs. Our loved ones were either catatonic, disengaged or delusional, and lacked capacity to comply or sign. Without a signed ROI, jail mental health and medical staff would not provide information about our loved ones to us and/or to their attorneys. However, at the request of one parent, jail mental health did obtain one signed ROI;
- for five years prior to incarceration, a loved one took prescribed medication, but because he stopped taking this medication three months prior to arrest and incarceration, the jail would not administer the medication; another loved one's medication was stopped without explanation, he was also charged for a doctor's visit when no doctor's visit took place;
- brutality and excessive use of force were used by officers during an arrest even when mental illness was known and reported;
- in one case, the judge ordered an *unable to aid and assist* only after a parent appeared at the third court hearing her loved one refused to attend and provided the court with his mental health history. The person in custody has a history with Washington County corrections, Oregon prison system, LukeDorf, and his parent provided his mental health history to the court within days of his arrest. The attorney blamed HIPAA and jail staff for her lack of information about her client.

We must find alternatives to incarcerating persons with mental illness. If our jails and prisons continue to incarcerate this population, we expect the jail to provide hospital-level care; an initial call from a parent or caretaker should automatically generate and obtain a signed ROI from the prisoner; when a person's mental health history deems psychiatric medications are necessary, the jail must have the authority to force medications that are previously known to be effective and have no serious adverse effects. Psychiatric medications can often save a person's brain from further decompensation and save jail staff from complications that arise from untreated severe psychosis due to mental illness.

HIPAA laws have become a convenient excuse. Yet, according to the U.S. Dept. of Health & Human Services, ***HIPAA allows a health care provider to communicate with a patient's family, friends, or other persons who are involved in the patient's care. And that in recognition of the integral role that family and friends play in a patient's health care, the HIPAA Privacy Rule allows these routine – and often critical – communications between health care providers and these persons. Where a patient is not present or is incapacitated, a health care provider may share the patient's information with family, friends, or others involved in the patient's care or payment for care, as long as the health care provider determines, based on professional judgment, that doing so is in the best interests of the patient.***

Our loved ones would have benefitted from simple communication.

We understand the daunting task before our jails and prisons as people with mental illness become involved with the criminal justice system. These cases demonstrate the need for a 24/7 community crisis center where people experiencing a mental health crisis can receive immediate care and diversion from incarceration. In past years, family members were well served by Jason Leinenbach, then jail-mental health liaison.

Thank you for your consideration.

Respectfully,

Advisory group for ReEntry & Mental Health Action Team

8525 SW Pfaffle Street, #11, Tigard, OR 97223 503.348.3002 remhaction@gmail.com

REENTRY & MENTAL HEALTH
Action Team

January 28, 2015

Meeting with
Washington County Sheriff's Office
Washington County Mental Health

TO: Washington County Sheriff's Office

FROM: Anonymous

DATE: January 28, 2015

My 32-year old son was recently in the Washington County jail. Prior to incarceration and believing he was in crisis, I sought help for my son including a request for hospitalization.

His crime was theft, although I am unaware of what was stolen. During the process to prosecute, his mental health was not considered and he was advised to plead guilty.

Instead of sending him to the hospital to receive mental health treatment, he was sent to jail. Now, because he was denied the help he needed, the problem continues, last week he walked out of the rehabilitation center and is missing. He is a black man who is diabetic and experiencing a mental health crisis. He has no medication with him. He said he does not want to go back to jail; there is a warrant out for his arrest. If my son dies, who is responsible?

His experience in the jail included:

- prescription medication, which successfully treated his mental illness, was not available on the jail formulary;
- I work in the medical field and, during our visits, checked his vital signs. His respiratory rate was abnormal and pressure caused his eyes to protrude. His heartbeat was excessively rapid at about 140 beats per minute. He said that jail medical staff began to monitor him including frequently testing his blood. When he questioned them, they said that he was overdosed;
- after finishing his shower, he pushed the button to alert the deputy. Because he pushed the button several times, he was placed in solitary confinement.

January 28, 2015

To Whom It May Concern:

I am the mother of a 32 year old man with schizophrenia. For 15 years, I have watched my son struggle with his illness, moving in and out of hospitals, transitional and group houses, adult foster care and various apartments, in effort to provide him stable, safe housing as he learned to live with and manage his illness. In recent years, this task has become increasingly difficult.

My son first had trouble with the law about four years ago, when he was arrested, in the throes of his psychosis, for an assault on a public safety officer. Since that time, our lives have been rife with managing his probation and navigating the regulations of mental health court. He has since been arrested on a few more occasions, each and every one the result of his psychosis and following weeks on end of my pleas to have him hospitalized so that he may be stabilized on his meds. I know when a flare up is coming, I can see when he is getting worse, but when I turn to the appropriate channels, I'm told he does not meet the criteria for hospitalization. Each time, I'm told that the law prohibits admittance into hospital unless he first proves a real danger to himself or others. Each time, I watch and wait in despair as his illness takes him over and he, inevitably, does something to warrant arrest.

My son has been lucky to have a team of individuals, including his social workers, probation officer, public defenders, mental health court judge and county mental health services liaison, who have each, over the years, gone above and beyond to ensure my son gets the care he needs. I, and my family, are extremely grateful for their kindness and their assistance through so many trying times. However, even with this support, I have watched my son hopelessly navigate a system ill prepared to service persons with mental health problems because we are operating within a broken system. My son, and many other mothers' sons, circulate in and out of protective custody for minor offenses: the jail is used to stabilize them after weeks of being off their medications, or even worse, to detox them after weeks of self-medicating. Sometimes, my son has been in jail for days, sometimes weeks, sometimes months. During these times, I've witnessed how the strict confines of jail often worsen his symptoms. His psychosis causes him to – in the terms of jail staff – "act out," and they report that he becomes increasingly loud, stubborn and at times argumentative. For this, he is classified as a high security inmate, and – he reports – endures punitive actions, such as removing his rights to visitation or is not permitted to leave his cell, all which further worsen his psychosis. He admits to his hallucinations, hearing voices and having suicidal thoughts, and further restrictions are applied.

It's a downward spiral we watch from the outside, the jail imposes further restrictions, to ensure the safety of inmates and officers, as we are told, and my son's mental health rapidly deteriorates as these actions exacerbate his triggers. In the past, I have begged and pleaded for his transfer out of jail to hospital, where he might get the care he needs. On one occasion, I discovered that the jail medical staff were overdosing my son to the point that I nearly lost him. Had I not alerted them to his condition, observed during one of my visits, he might have died. Another time, my son was in custody for a full week before receiving any of the medication that he is supposed to take regularly twice a day. Furthermore, the generic medication he receives there is not the same as what he's used to – and it sometimes doesn't work for him. As a result, I often fear for his wellbeing in jail.

The fact of the matter is that the criminal justice system is an inappropriate response to dealing with the mentally ill. Instead of hospitalizing, we send them to jail and begin what tends to be a never ending cycle of incarceration. Something needs to be done to allow mentally ill persons to be quickly admitted to the hospital when warning signs are present; to be provided a safe and warm place to rest and rehabilitate in the company of trained medical staff who are equipped to help them in the process of healing. Jail is not the answer. It perpetuates illness and begins building an irreparable cycle which mentality ill persons, like my son, may never get out of.

As his legal guardian, I don't know where I am supposed to turn to in order to get him hospitalized so that he receives proper treatment rather than a stay in jail. Please join me in beginning to investigate alternative solutions to treating and housing the mentally ill when they are in their greatest time of need.

Thank you.

Sincerely,
A concerned mother

TO: Washington County Sheriff's Office
Washington County Mental Health
FROM: Katherine Nelson rainbowcurio@hotmail.com 503 853-1963
DATE: January 27, 2015
Re: William Cardiff Nelson

The following is an account of the events that have affected my son William Cardiff Nelson and our entire family after reaching out in desperation to the Washington County Mental Health Crisis Team.

On June 9th 2014 I arranged to have the Washington County Mental Health Crisis Team come to our home to assist our family with hospitalization for my youngest son, William Cardiff Nelson, who was at the time just 18 years of age. He was experiencing severe mental health symptoms and associated behaviors.

He had been ill for 1-1.5 years and almost housebound during most of the school year. Previous attempts to hospitalize him had failed despite severe symptoms because our HMO, Kaiser Permanente, claimed there were no beds available. We first tried to do so on January 1st 2013 when he was 16, as he had become severely withdrawn, nearly catatonic, and had stopped eating and drinking and talking. Barriers to treatment were encountered at all junctures in Willie's illness until Kaiser referred (off-loaded) us to the Early Assessment and Support Alliance (EASA) program in August 2013. He became enrolled just as he was having an incapacitating episode of anxiety and paranoia. Since the workers for the most part would come to him at our home, the services were very welcome.

Through EASA he began to be treated with various psychiatric medications prescribed by a Lifeworks NW provider, the contracted agency for EASA, in Washington County. Several mental health professionals were seeing him regularly as part of the program. Additionally, teachers from the Beaverton School District were tutoring him daily as he could no longer attend classes out of our home. A psychologist from the school district also visited Willie regularly.

In early spring 2014 he began taking a drug, Effexor, in the class SNRI, for his severe depression and anxiety. It was the sixth drug he had been prescribed through EASA. It is this drug, which was started in small doses and titrated slowly, that correlated with his agitated and aggressive behavior and increased suicidality. As the dosage increased his behavior became more and more bizarre and dangerous. Another drug, Seroquel, an anti-psychotic, was also prescribed to help with some of the distressing symptoms, especially what was referred to as "impulsivity". Even so his symptoms kept worsening. He became obsessed with "deleting his life" and did, in fact, delete his internet files, including photos and the many skateboarding related videos he had made before he became ill. He then wanted to burn almost all of his possessions. Acting upon advice from one of the mental health people my husband and I allowed him to burn some of his stuff as a symbolic purging so he could "start his new life". At some point this activity and others crossed over into absurdity, but we were trying to cope and were desperately trying to keep our son from killing himself. My husband and I took turns staying at the house as we were afraid to leave Willie alone. It is hard to convey the stress we all were experiencing. Despite this scenario we were advised by professionals multiple times that because of the way he presented himself Willie would not be considered "holdable" as he would deny he was going to hurt himself at any precise moment.

Though no one in either mental health or criminal justice has considered the mitigating factor of medication-induced aggression it is why I think William's symptoms escalated to mania. I was sure when I phoned that the crisis workers would finally take him to the hospital and it is devastating that they did not.

The action of calling the crisis team was taken because we were desperate for help. Instead of help and hospitalization my son was arrested and charged with two horrible felonies which have consequences for the rest of his life. He was taken off to jail and placed in the Medical Observation Unit (MOU), virtually solitary confinement. What a betrayal of trust! We called for help and this is how the system responds?????? The arresting deputy said he could not take the chance that a psychiatrist would let him go in three days! Also he said this was the best way for our son to get help! How could he know what a doctor would do? If this is the thinking in Washington County—that mentally ill people belong in jail-- why is this not on the mental health website in a kind of disclaimer or warning? It is very hard to listen to how wonderful the Washington County system is when our lived experienced is the polar opposite.

Once at the jail he was immediately off all his medications, in part because staff would not talk with those who knew what he had been taking. These drugs are powerful psychotropic agents, not jelly beans, and should be started and stopped slowly, gradually titrating or tapering on and off to avoid trauma. I think because of this shock to his system, along with the general stress of being arrested and jailed—in effect punished because he was sick-- he soon deteriorated back into an uncommunicative state. At a later date his public defender would have him assessed to determine competency and ultimately he was sent to Oregon State Hospital (OSH). Before this happened he languished in the MOU for almost seven weeks not eating much (his loved one's requests for familiar vegetarian meals fell on totally deaf ears) or communicating with anyone.

I kept thinking throughout this ordeal that someone would see just how ill he was and actually help him and our family out of this nightmare. The facts are that many things were done that just made everything worse for all of us. I was deemed a victim for some inexplicable reason and as such was immediately cut off from contact with him or any jail staff though I had been his primary caregiver. In his again near- catatonic state he did not have the mental or emotional stamina to fill out a form, and if not for the assistance of Robert Colpean, his father would never have been able to visit him either. As it was, several weeks went by before his father could successfully complete a visit. This was sheer torture for we, his parents, who had wanted treatment, not punishment for our child.

He spent five months and five days at OSH. It took months before he spoke in more than mono-syllables. He had stopped eating at the jail, and at the hospital this continued to the brink of his being force fed. Fortunately, he did finally start to eat again and with three medications, including high doses of an SSRI, he passed the bar of legal competency in December. His reward? Not life-enhancing treatment. Instead he was sent back to jail to continue his legal case. He was not restored to wellness, only legal competency. He is back—this time in the Special Needs Pod-- again unmedicated, barely eating and still after nearly eight months very sick. Recently, after Judge Bailey ordered it, I have been allowed to visit my son, and have seen him twice as of this writing. He is withdrawing again and not eating much. My husband and I regret so much of what has occurred, especially that we reached out for help in Washington County. We do not understand how this process of criminalizing mental illness, separating families and punishing people who are very sick serves anyone. It does not serve our son or our family and it certainly does not serve the cause of Justice.

TO: Washington County Sheriff's Office
Washington County Mental Health
FROM: Karen James, 503.348.3002, karen.james3@comcast.net
DATE: January 27, 2015
RE: Ryan N. James 1414244

Ryan N. James – history:

2002 – psychotic break; 8-day hold at Providence St. Vincent's Medical Center, Portland, OR
2006 – incarcerated Oregon prison.
2009 – decompensated in Eastern Oregon Correctional Institution, moved to Oregon State Penitentiary Mental Health Infirmary. Diagnosed by Dr. Ruthven, OSP psychiatrist; Involuntary treatment, Risperdal Consta.
2011 – released from OSP; mental health treatment is a condition of parole; continues 2-week injections of Risperdal Consta and receives Mental Health treatment through LukeDorf.
2012 – Fluvoxamine (Luvox®) prescribed for Obsessive-Compulsive Disorder. Discontinues medication soon after and claims behaviors have stopped (although OCD behaviors continue).
2014 June – incarcerated in Washington County jail. Jail fails to administer prescribed medication.
2014 July – 3-year parole ends; discontinues mental health treatment including medication.
2014 Oct 10 - incarcerated in Washington County jail.
2014 Oct 13 - arraignment, refuses to appear in court.
2014 Nov 3 - 1st hearing, refuses to appear in court.
2014 Nov 5 - 2nd hearing, refuses to appear in court.
2015 Jan 13 - 3rd hearing, appears in court; court approves unfit to proceed, transportation to hospital must occur in 7 days.
2015 Jan 27 - still remains in jail.

- June 2014, my son was incarcerated in the Washington County jail. He was not given his prescribed medication and was told by jail medical staff that his prescription had expired. LukeDorf said his prescription did not expire and that the jail should have administered the medication.
- The beginning of July 2014 and before he discontinued his mental health treatment, my son was psychotic. I alerted his psychiatrist, parole officer, LukeDorf case manager, Just Us Homes house manager, the Hillsboro police. Ryan's housemates at Just Us Homes monitored his behaviors. I met the Hillsboro police at the Just Us Homes house and was told Ryan was not a danger, so nothing could be done. On 7/27 Just Us Homes votes to remove him from the home, he leaves and spends the night on the streets; removal was due to not attending four meetings during the week—Ryan attended only two. I sought help from Ryan's psychiatrist who said she hardly knew my son because she had met with him only twice since he became her patient in November 2013.
- Ryan's 3-year parole ended in July 2014 and, since medication and mental health treatment was a condition of parole, he discontinued all treatment.
- My son was arrested and incarcerated in the jail on October 10, 2014. Crimes: urinating, defecating and masturbating in public; loitering; and failure to appear. In my opinion, these non-violent 'crimes' are a direct result of his mental state.
- On November 3rd, when Ryan James refused to appear in court, Judge Erwin stated in the courtroom that Ryan would rather fight than appear in court, behavior that he will not tolerate. No one I asked could substantiate Judge Erwin's comment that Ryan was fighting. *This is defamation of character in a supposedly impartial, fair, nonjudgmental court of law.*
- Ryan's attorney learned of his mental health history one month after incarceration and only due to my attendance at his November 3rd hearing when I informed the attorney of his history.
- When, at his 2nd hearing on November 5th, Ryan again refused to appear in court, Judge Thompson asked if anyone had any knowledge of Mr. James. His attorney presented information I submitted to her about my son. In early October 2014 I sent the District Attorney two emails about my son's mental health, which she chose to ignore. Why did no one know or seek to learn about my son? He had been incarcerated in the Oregon prison system and Washington County jail; he was engaged in treatment with LukeDorf.

  During this period, my son is psychotic and smearing feces in his jail cell. A simple inquiry or a court order could have helped to identify my son and learn of his mental health history.

- The jail proudly claims that my son is 8MAX which is the highest security. Security for whom? 8MAX secures protection for jail staff. It is restrictive, denies a person's right to healthcare and is tantamount to torture as a person who is obviously decompensating is restricted to a cell for the major part of each day. (United Nations article attached)
- I was not allowed to visit my son at the jail or receive medical/mental health information because a ROI form and visitor list was not updated. A simple review of records would have revealed previously signed Release of Information forms and a visitor list that included his mother. When a family member's history proves supportive, and especially when the person incarcerated has a history of mental illness and is clearly decompensating, communication with family members should be considered. Involvement by family members can provide current, crucial information that may be helpful in treatment.
- Instead of advocating on my son's behalf, his attorney's only concern is to prosecute him because he broke the law. His attorney did not take the initiative to learn about her client; she told me it was her understanding that they are medicating my son at the jail, then days later, informed me this was not the case; she met with her client for the first time when he appeared in court on January 13, 2015—3 months after incarceration--and blamed the jail, HIPAA, and her client's refusal to meet with her. Although this demonstrates callous disregard for someone experiencing a mental health crisis, it is this attorney who holds the fate of my son.
- If a person is in jail and found unfit to proceed, by law, they must be transferred to the state hospital within seven (7) days (ORS 161.370). The court ruled my son unfit to proceed on January 13, 2015. My son was not transported to the hospital within seven days. Why is the law not being followed? There are other hospitals in the state of Oregon to which my son can and should be admitted.
- Once my son is sent to the Oregon State Hospital, he will be treated only until able to proceed with prosecution. Treatment must not be limited to enable prosecution, but toward the person's recovery and wellbeing.
- I understand that my son was found unfit to proceed with prosecution because he does not fully appreciate the criminality of his conduct. This second charge of masturbating in public, if found guilty, will label him a SEX OFFENDER. This is inconceivable! A housemate lied and wanted my son out of their house (read the police reports) and now charges accumulate against my son. My son is dually diagnosed--having a mental illness and an addiction--he has been denied stable, adequate, structured housing, and now also faces being labeled with a sex offense. Where do you propose that he live?
- My son receives Social Security benefits, food stamps and public healthcare, all of which are suspended while incarcerated. He lost his housing due to his incarceration and SSA is requesting a refund of his SSI benefits that were used to secure his housing until his arraignment date. Incarcerating people enrolled in these assistance programs causes them much stress and anxiety.

Solitary confinement should be banned in most cases, UN expert says

18 October 2011 – A United Nations expert on torture today called on all countries to ban the solitary confinement of prisoners except in very exceptional circumstances and for as short a time as possible, with an absolute prohibition in the case of juveniles and people with mental disabilities.

"Segregation, isolation, separation, cellular, lockdown, Supermax, the hole, Secure Housing Unit… whatever the name, solitary confinement should be banned by States as a punishment or extortion technique," UN Special Rapporteur on torture Juan E. Méndez told the General Assembly's third committee, which deals with sociSegregation, isolation, separation, cellular, lockdown, Supermax, the hole, Secure Housing Unit… whatever the name, solitary confinement should be banned by States as a punishment or extortion techniqueal, humanitarian and cultural affairs, saying the practice could amount to torture.

"Solitary confinement is a harsh measure which is contrary to rehabilitation, the aim of the penitentiary system," he stressed in presenting his first interim report on the practice, calling it global in nature and subject to widespread abuse.

Indefinite and prolonged solitary confinement in excess of 15 days should also be subject to an absolute prohibition, he added, citing scientific studies that have established that some lasting mental damage is caused after a few days of social isolation.

"Considering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pre-trial detention, indefinitely or for a prolonged period, for persons with mental disabilities or juveniles," he warned.

The practice should be used only in very exceptional circumstances and for as short a time as possible, he stressed. "In the exceptional circumstances in which its use is legitimate, procedural safeguards must be followed. I urge States to apply a set of guiding principles when using solitary confinement," he said.

He told a later news conference these circumstances could include the protection of inmates in cases where they are gay, lesbian or bisexual or otherwise threatened by prison gangs.

There is no universal definition for solitary confinement since the degree of social isolation varies with different practices, but Mr. Méndez defined it as any regime where an inmate is held in isolation from others, except guards, for at least 22 hours a day.

In his report he noted that in the United States an estimated 20,000 to 25,000 individuals are being held in isolation, while in Argentina a prevention of violent behaviour programme consists of isolation for at least nine months and, according to prison monitors, is frequently extended.

He warned of an increased risk of torture in these cases because of the absence of witnesses and said some detainees have been held in solitary confinement facilities for years, without any charge and without trial, as well as in secret detention centres.

Mr. Méndez told the news conference that he had been following the case of US soldier Bradley Manning, detained in connection with his alleged leaking of secret cables to the WikiLeaks website. Mr. Manning was held in solitary confinement for eight months but has now been moved and is no longer subject to the same restrictions, he noted, adding that he would release a report on the issue in a few weeks.

Examples he cited in his report from around the world included Kazakhstan where solitary confinement can last for more than two months, and the US terrorist detention centre in Guantánamo Bay, where experts found that although 30 days of isolation was the maximum period permissible, some detainees were returned to isolation after very short breaks over a period of up to 18 months.

Elsewhere, two prisoners are reported to have been held in solitary confinement in Louisiana, US, for 40 years after attempts for a judicial appeal of their conditions failed, he noted. In China an individual sentenced for "unlawfully supplying State secrets or intelligence to entities outside China" was allegedly held in solitary confinement for two years of her eight-year sentence.

"Social isolation is one of the harmful elements of solitary confinement and its main objective. It reduces meaningful social contact to an absolute minimum," Mr. Méndez told the committee, noting that a significant number of individuals will experience serious health problems regardless of specific conditions of time, place, and pre-existing personal factors.

He called for an end to solitary confinement in pre-trial detention based solely on the seriousness of the alleged offence, as well as a complete ban on its use for juveniles and persons with mental disabilities.

Solitary confinement for shorter terms or for legitimate disciplinary reasons can amount to cruel, inhuman or degrading treatment or punishment in cases where the physical conditions of prisons, such as sanitation and access to food and water, violate the inherent dignity of the human person and cause severe mental and physical pain or suffering.

Today's news conference also heard from Claudio Grossman, chair of the UN Committee against Torture, and Malcolm Evans, chair of the UN Subcommittee on the Prevention of Torture.

https://www.un.org/apps/news/story.asp?NewsID=40097&;Cr=torture&Cr1=%20ForceRecrawl:%200

- Joseph told me that a chronic pain evaluation was scheduled at least 3 times and cancelled without explanation. This was confirmed with medical staff and I was promised a call from a doctor or nurse. No one called. I then called again and was told I needed to speak with Lindsey Huckett and, after 4-5 days, I called again. She stated that she had looked in Joseph's file several times and confirmed there was an authorization and a power of attorney in the file, but stated that, as I could be anyone, I needed to come into the jail in person. I felt this was ridiculous, but I made the trip. Then on 1/20/15 at the jail, Lindsey Huckett refused to see me saying, through Sgt Degman, that there was no evaluation scheduled and that "Joseph had mental illness". I pointed out that it had been confirmed through staff.

- I left a written request at the jail for a copy of Joseph's medical and mental health file, as well as an itemized list by date of all medical and mental health charges made to his account. During our visit on 1/25/2015, my son informed me that medical is trying to get out of honoring my request for the files. This is highly inappropriate. Joseph signed the authorization and granted me Power of Attorney. Corizon needs to be informed of the legalities involved.

- I must also object to two interactions with a psychologist in the jail:
  1. Joseph requested his narcolepsy medication for his trial, so that he could stay alert. The psychologist remarked: "you want speed?" This is very inappropriate.
  2. Joseph was asked by the psychologist, "you get into a lot of fights?"

  What is the purpose of these questions?

- After months of requests for Gabapentin for pain, Joseph was given Gabapentin starting the day of his trial. Gabapentin side effects include drowsiness, dizziness, loss of coordination, tiredness, blurred/double vision.

- Joseph had a blood pressure reading of 80 and was told by medical that he would be seen by the doctor. He had to wait 5 days until 12/30/14 which is when the doctor was expected.

- Joseph is currently on suicide watch in the medical unit.

- I would like to volunteer at the jail and have not received a reply from jail staff.

TO: Washington County Sheriff's Office

FROM: Constance Kosuda, ckosuda@yahoo.com

DATE: January 28, 2015

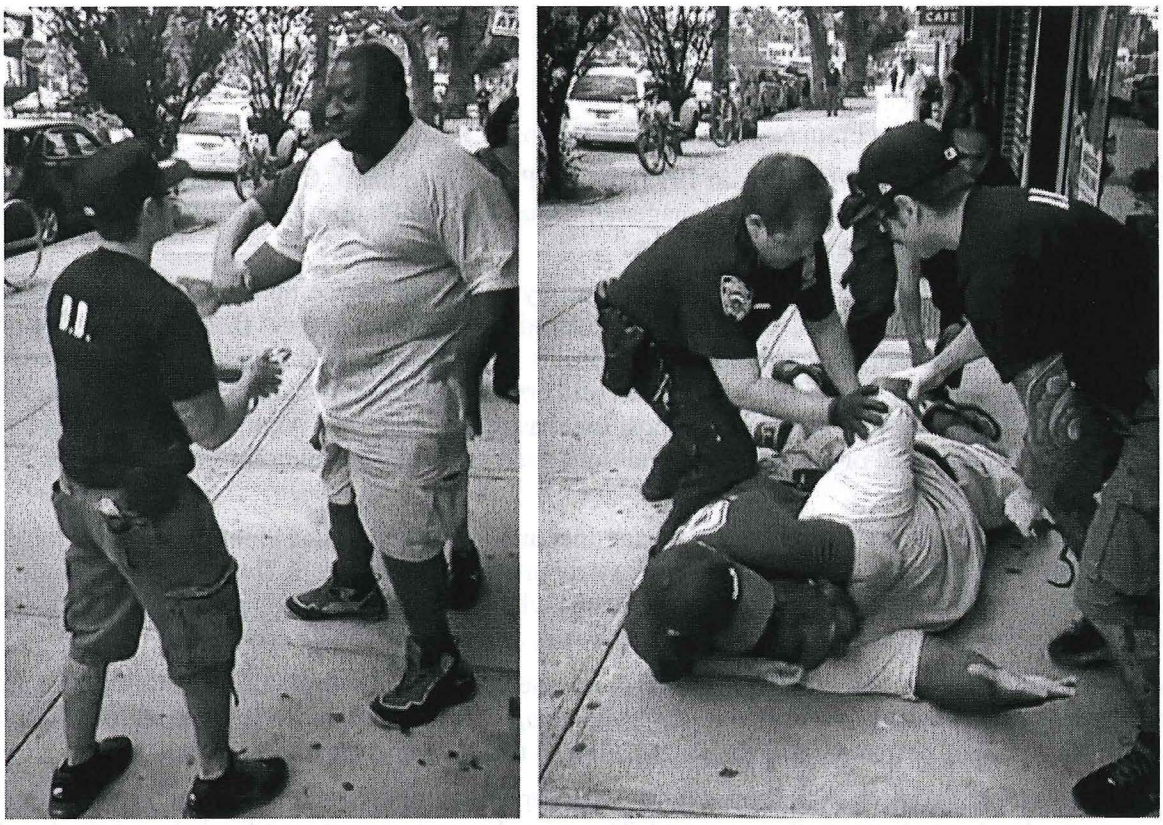
My son, Joseph John Kosuda, has been incarcerated in the Washington County jail since 9/8/2014.

- On 5/14/2014 during an arrest, my son experienced police brutality and excessive use of force. I witnessed his arrest standing only a few feet away. Although I requested Mental Health Crisis Team, the Hillsboro Police and Washington County Sheriff's officers arrived. I witnessed Joseph pinned face down on the hallway hard floor, with the officer's knee to Joseph's back, the officer punched Joseph hard in the back at least four times. The officer continues while Joseph is saying "I can't breathe" and has a grip on the shirt of one of the officers (I can demonstrate). I informed the officers of Joseph's mental health, yet their behavior was horrible and brutish. This behavior is inexcusable no matter what.

- Prior to the September arrest, he had a flurry of arrests, most of them resulting in immediate release or a short time in jail. For over a year I had requested "intensive case management" and received a written refusal from Mona Knapp of LukeDorf saying that 'he has a car". Well, my son 'lost' his car. I received no help for my son including the Crisis Teams brushing off his active hallucinations, and hospitals releasing him after a few hours because he refused to take medications. Once he was found lying on the ground and told the police he has "seizures". He became more and more manic and agitated.

- Jail meals are insufficient and my son is constantly hungry. Extra food was requested through a nurse who said she would take care of it, but my son did not receive extra food. Joseph is being given Effexor for depression, which also makes some folks extra hungry. Joseph took a pancake out of a garbage can and was confined to his cell for 3 days which is extremely counterproductive for mentally ill/severely depressed folks, who are often more hungry than usual. He is having one bowel movement every four days. A few days ago the inmates stated--as another inmate was taken away in handcuffs for taking extra food--"if you gave us enough food, this would not happen".

- People who are mentally ill need extra accommodations, including food, and extra clothing--a sweater or sweatshirt! For months Joseph has been complaining of being cold and hungry.



Video stills of police killing Eric Garner on July 17, 2014. (AFB/Getty Images)

IN THESE TIMES Features » January 15, 2015

Why Eric Garner Couldn't Breathe

The chokehold is only half the story of homicidal violence.

BY Terry J. Allen

Even when used alone, extended prone restraint—placing a suspect facedown, hogtied or with hands cuffed behind—has caused untold in-custody deaths by suffocation and is therefore prohibited by many police departments, including the NYPD.

When New York City police arrested and subdued Eric Garner, he fit a profile: an uncooperative black man committing a petty crime. But the profile that police should have recognized—and the one that Garner fit perfectly—was of someone vulnerable to a dangerous combination of banned law enforcement practices used routinely across the country with impunity, and sometimes fatal results.

Contrary to conventional wisdom, it was not the chokehold alone that killed Garner. And it was not solely Officer Daniel Pantaleo who was responsible for the homicide of the unarmed 43-year-old African-American man arrested for a "quality-of-life" offense under "broken windows policing" that encourages arrest for even the most trivial crimes—in Garner's case, selling "loosies," unpackaged cigarettes, on a Staten Island street.

The video of his death, which went viral and sparked protests, shows Pantaleo's arm tightened around Garner's neck. It also shows a cluster of officers, including Pantaleo, kneeling on Garner's back and pressing his face, mouth and nose to the pavement as he lay facedown, hands cuffed behind him, pleading— at least 11 times—"I can't breathe."

The Office of the City Medical Examiner ruled Garner's death a homicide, citing both "compression of neck (chokehold) [and] compression of chest and prone positioning during physical restraint by police."

First, about the chokehold: According to his lawyer, Pantaleo told the official inquiry he "never exerted any pressure on the windpipe."

His denial, even if true, is largely irrelevant. There are two main types of chokeholds, and during a struggle, one may easily slide into the other. Pressure to the windpipe—an air choke—directly cuts off the ability to breathe and can kill quickly. Pressure to the veins and arteries of the neck—a blood or carotid choke—stops

blood flowing to and from the brain and cuts off its oxygen.

Both holds can kill, and that is why, back in 1993, the NYPD banned them. Chief John F. Timoney, then commander of the department's Office of Management Analysis and Planning, said: "Basically, stay the hell away from the neck. That's what [the policy] says."

And then, Garner's second cause of death: positional asphyxia caused by "compression of chest and prone positioning." Even when used alone, extended prone restraint—placing a suspect facedown, hogtied or with hands cuffed behind—has caused untold in-custody deaths by suffocation and is therefore prohibited by many police departments, including the NYPD. But when officers also kneel or push on the restrained person's back or neck, as they did with Garner, the danger of positional asphyxia escalates. And when the suspect has been pepper sprayed, is intoxicated or has medical conditions such as Garner's—obesity, asthma and a weak heart—the danger skyrockets.

Dr. Michael Baden, former NYC chief medical examiner and later State Police chief forensic pathologist, who was hired by the Garner family to review the autopsy report, told the *New York Times*: "Obese people especially, lying face down, prone, are unable to breathe when enough pressure is put on their back. The pressure prevents the diaphragm from going up and down, and he can't inhale and exhale."

The cell phone video shows that even after Pantaleo released the chokehold, and Garner was cuffed, hundreds of pounds of cop flesh pushed down on him. His struggle against that weight was evidence not of vitality and aggression, but rather of desperation to change position so that he could breathe.

"The natural reaction to oxygen deficiency occurs—the person struggles more violently," a 1995 National Law Enforcement Technology Center bulletin warned. The struggle aggravates the asphyxia by increasing the heart rate and causing carbon dioxide to build up in the lungs.

Ill-trained or angry police who double down on restraint when a handcuffed captive thrashes are clearly violating procedure. "As soon as the suspect is handcuffed, get him off his stomach," the NYPD's Guidelines to Preventing Deaths in Custody state. "Turn him on his side or place him in a seated position. If he continues to struggle, do not sit on his back."

The fact that Garner had medical conditions increasing his vulnerability to positional asphyxia was not readily knowable. But that he was obese and struggling to breathe—even after the chokehold that compromised him was released—was obvious. That, once handcuffed and down, he was not immediately turned over or allowed to sit up was both a violation of long-standing policy and, ultimately, homicidal.

And by failing to act after Garner became comatose, police further violated policy—and possibly the law. The NYPD patrol guide warns that officers are required to "intervene if the use of force against a subject clearly becomes excessive. Failure to do so may result in both criminal and civil liability."

The FBI issues similar injunctions. To avoid in-custody injury or death, officers should "monitor subjects carefully for breathing difficulties/loss of consciousness. Be prepared to administer CPR. Obtain medical assistance immediately."

"He didn't die because he stopped breathing on his own," said his sister, Ellisha Flagg. "He died because someone took his breath away."

And the EMTs who arrived on the scene made no effort to give it back. Faced with the limp, unconscious man, they were bizarrely passive, failing to apply an oxygen mask, to ensure that Garner's airway was clear or to assess his condition in any way beyond seeking a pulse.

Prone restraint and resulting positional asphyxia have been implicated in numerous in-custody deaths on the street and in prisons. And if police departments are unmoved by compassion, they might consider liability. Even though officers escape criminal charges, civil courts have levied millions of dollars in settlements.

In 2013, Ethan Saylor, who had Down syndrome, refused to leave a Maryland movie theater because he wanted to see the film again. Three off-duty sheriff's deputies forcibly removed the 294-pound disabled man. "They placed him [facedown] on the ground," his mother Patti testified before a Senate committee, "prone restraint, put handcuffs on, and my son died of asphyxiation on that floor of that movie theater for that $10 movie ticket."

Twenty people selected to serve on Portland's new community panel to oversee police reforms

Maxine Bernstein | The Oregonian/OregonLive Jan 26 2015

Protesters chanted "No more killer cops" outside the Mark O. Hatfield U.S. District Court in downtown Portland in February 2014 as a federal judge took testimony from members of the public on the city's settlement agreement with the U.S. Department of Justice on a package of Portland police reforms. *(Maxine Bernstein/The Oregonian)*

A former state senator, a clinical psychologist, an emergency room doctor, an ER tech, a local rabbi and a civil rights lawyer are among a group of 25 people chosen to serve either as full members or alternates on a new community panel responsible for overseeing the progress of federally mandated Portland police reforms.

The new Community Oversight Advisory Board, led by **retired Oregon Chief Justice Paul DeMuniz**, will meet for the first time Feb. 9.

The 15 voting community members selected to serve on the board are: **Kristi Jamison**, a member of the city's Commission on Disability; **Emanuel Price**, a member of the city's Human Rights Commission; Myrlaviani River, a recent graduate of Portland State University with a bachelor's degree in peace/conflict studies who struggles with mental illness; Catherine Gardner, an ER tech who previously worked as a mental health therapy technician at the state hospital; **Bud Feuless**, a blind transgender person currently in transition; **Cory Murphy**, co-chair of the Alliance for Safer Communities and an LGBT advocate; Vanessa Gonzalez, who has lived with a diagnosed mental illness for 13 years and is active in Don't Shoot Portland; **Sharon Maxwell**, owner of Bratton Construction Co. and founder of Young/Youth Adults Being Connected; **Ime Kerlee**, a counselor and academic coach who works with trauma survivors; Roger 'Jimi' Johnson, who has worked for Multnomah County's Department of Juvenile Justice and Department of Human Services for 20 years; **Dr. Alisha Moreland-Capuia**, chief medical director for Volunteers of America (Mayor Charlie Hales' appointment); former **state Sen. Avel Gordly** (Commissioner Nick Fish's appointment); **Rochelle Silver**, a clinical psychologist and former member of the city's Citizen Review Committee (Commissioner Amanda Fritz's appointment); **Sharon E. Meieran**, an ER doctor who has been lobbying for the creation of a new psychiatric ER in Portland (Commissioner Steve Novick's appointment); and **Rabbi Michael Cahana**, senior rabbi at Portland's reform synagogue Congregation Beth Israel (Commissioner Dan Saltzman's appointment).

The five non-voting Police Bureau members include: Capt. Vince Elmore, a former vice president of the National Association of Black Law Enforcement Executives; Lt. Tashia Hager, of the bureau's new Behavioral Health Unit; Sgt. Michelle Hughes, a member of the bureau's crisis negotiation team; and Officers Jakhary Jackson, who works North Precinct patrol; and Paul Meyer, who returned to the bureau's training division after he was paralyzed from the waist down during an on-duty training accident.

Alternate members are: **Tom Steenson**, a retired Portland civil rights lawyer who has won million-dollar settlements in high-profile lawsuits against the city; **Philip Wolfe**, who sits on the city's Commission on Disability; Joshua Robinson, a military veteran and former military police officer; Laquida Landford, a Home Forward volunteer who works at Central City Concern; and **Mireaya Medina**, an African American community organizer and artist.

"The empaneling of this board is a tremendous next step in our ongoing effort in police reform," the mayor said in a prepared statement. "The advisory board, along with other steps, will further strengthen the relationship between this police department and the communities it serves."

The creation of a community board is required as part of the city's settlement with the U.S. Department of Justice. The settlement stemmed from a 2012 U.S. Justice Department investigation that found Portland police engaged in a pattern or practice of excessive force against people with mental illness or perceived to have mental illness. The investigation also found that stun gun use by officers was unjustified and excessive at times. The settlement, approved by a federal judge in late August, calls for changes to Portland policies, training and oversight.

The board's meeting and a training for its members will be open to the public.

The board's training will occur on Monday, Feb. 2, from 5 to 8 p.m. at the Midland Library, at 805 S.E. 122nd Ave.

The first board meeting will be Feb. 9, from 6 to 8 p.m. at Midland Library.

The board members were selected by city commissioners, members of the disability and human rights commissions, and from a selection committee chaired by state Rep. Lew Frederick.

Commissioner Amanda Fritz said she was pleased with the range of experience among community members selected for the board. "Now the hard work really begins," she said.

--Maxine Bernstein **mbernstein@oregonian.com** 503-221-8212; **@maxoregonian** © 2015 OregonLive.com. All rights reserved.

TO: Washington County Sheriff's Office
Washington County Mental Health
FROM: Teri Robinson, 503-556-9135, tvatsa@wildblue.net
DATE: January 28, 2015

Some people with a mental health disorder have anosognosia, more commonly known as an unawareness of their illness, lack of insight, or simply unaware or has no insight. You've likely heard them all. These people are out of touch with reality.

Anosognosia is not denial. It is a symptom that stops many from obtaining treatment. Without treatment for a severe mental disorder too many will commit crimes, become gravely disabled &/or a danger to self or others. These people need treatment if committing crimes. Without treatment for the mental illness brains can lose white matter. White matter helps messages get to where they are going in the brain in a timely manner. The longer a person is severely out of touch with reality the worse the damage to the brain. Please help them, they are so ill and not their normal selves. The quicker the treatment the better.

Out of touch with reality, also known as psychosis, can present as visual or auditory hallucinations (hearing voices), delusions (false beliefs). The voices can be very powerful and very mean without medication. Some people have horribly harmed themselves or others because a voice told them to. When some people hear voices they also get emotions that control them as well as the voice. Some can hide that they are hearing voices so watch them carefully.

These people have often lost their ability to think and reason. They need mental health medications as soon as possible! They also need help when they are transitioning into the community, someone to make sure they are taking their medication and getting cognitive behavior therapy.

If a person has committed crimes and they have a mental health disability please get a court order to attach their disability money to their medication – when they take their medication then they get some money. This can be done safely behind safety glass and with security guards.

Many Supplemental Security Income recipients with a mental health disability residing in Clackamas, Columbia, Multnomah, or Washington counties get **Supplemental Nutrition Assistance Program (SNAP)** benefits through the **SNAP "cash-out"** (FSCO) program, you will see it as the **Oregon** Trail Card (**EBT Card**). With this vulnerable group of people who sometimes have substance abuse disorders as well being able to get "cash out" instead of food only with the Oregon Trail Card is dangerous to them and to others at times too. We don't want them buying substances other than food, or being taken advantage of by those who try to get their cash.

Anosognosia http://mentalillnesspolicy.org/medical/anosognosia-studies.html
SNAP Cash Out http://www.dhs.state.or.us/policy/selfsufficiency/publications/fsm_62b.pdf

Thank you for taking the time to be at this meeting. You are appreciated! Please help where and how you can.

Sincerely,

Teri Robinson
Re-Entry and Mental Health Action Team
CIT International Member
NAMI Volunteer

REENTRY & MENTAL HEALTH
- ACTION TEAM -

ADVISORY GROUP
Teri Robinson
Lori Lane

August 10, 2015

The Honorable D. Charles Bailey
Washington County Courthouse
150 N. 1st Ave, MS 37
Hillsboro, OR 97124

Dear Judge Bailey:

On January 28, 2015, we met with representatives of Washington County Sheriff's Office and county Mental Health to discuss issues voiced in our enclosed November 2014 letter. Following the meeting, the Sheriff's Office planned to meet with various individuals and agencies, including the courts, to improve treatment of persons with mental health challenges who become involved with the criminal justice system.

At the January meeting, in addition to concerns about treatment while in custody, we raised issues with the legal representation received by our loved ones with mental health needs. Their attorneys lacked understanding of the special needs of their clients, provided less than zealous representation, took months to request competency evaluations, then inaccurately and inadequately interpreted these evaluations, and allowed their clients to remain stuck in the 'revolving door' of the jail and the criminal justice system. We questioned these failures that resulted in longer stays in jail, delays in competency restoration, and harsher sentences.

While the Oregon State Bar requires attorneys to continue legal education, we sought the availability of education specific to representing persons with mental illness who become criminally-involved. With increasing numbers of this population finding themselves involved with the criminal justice system, we feel continuing education specific to representing clients with mental health needs should be required by all attorneys.

We found information in other States including a Handbook for Attorneys Who Represent Persons With Mental Illness, created by Texas Appleseed. A Top Ten list from the handbook is enclosed. The 64-page handbook can be accessed at https://www.texasappleseed.org/mental-health

Harris County, Texas, offers a Mental Health Attorney Certification & Training Program designed to "improve the representation of indigent mentally ill defendants by providing criminal defense attorneys with the legal knowledge and skills they need to represent these clients with special needs." Contact person is Floyd L. Jennings, JD, PhD, Harris County Public Defender's Office, and can be reached at 713.274.6701, Floyd.Jennings@pdo.hctx.net

Other States have implemented laws that Oregon should adopt. Texas code §16.22, for instance, requires a sheriff to notify a magistrate not later than 72 hours after receiving evidence or a statement that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness. The magistrate then orders an examination to determine whether the defendant has a mental illness.

In Portland, the Metropolitan Public Defenders (MPD) offers support for attorneys who represent clients with special needs. Alex Bassos is the Training Director for MPD, has authored Mental Health and Criminal Defense, a manual for defense attorneys and he is a regular speaker on mental health issues.

It is our hope you will find this information helpful as you engage in discussions to improve services in the County. Our plans are to contact the county district attorneys regarding these issues. Hearing your thoughts on these matters would be greatly appreciated.

Respectfully,

Karen James Teri Robinson Lori Lane
Advisory group for ReEntry & Mental Health Action Team

enclosed:
-Harris County Mental Health Attorney Certification & Training Program brochure
-Top Ten Things to Keep In Mind as you Represent a Client with Mental Illness, Texas Appleseed
-Texas Code §16.22
-Action Team letter, 11/25/2014

cc: Pat Garrett, Sheriff; Bill Steele, Chief Deputy; Washington County Sheriff's Office
Oregon State Bar Board of Governors Kristin Burke, Washington County Mental Health
Bob Joondeph, Disability Rights Oregon
Jennifer Harrington, MPD
Cherryl Ramirez, Asso. of Oregon Community Mental Health Programs
Hon. Kirsten E. Thompson; Hon. James L. Fun, Mental Health Court

TOP TEN THINGS TO KEEP IN MIND AS YOU REPRESENT A CLIENT WITH MENTAL ILLNESS

Mental Illness, Your Client and The Criminal Law: A Handbook for Attorneys Who Represent Persons With Mental Illness
Texas Appleseed, February 2015

1. MENTAL ILLNESS AND INTELLECTUAL AND DEVELOPMENTAL DISABILITIES ARE NOT THE SAME: Intellectual or developmental disabilities are permanent conditions characterized by significantly below average intelligence accompanied by significant limitations in certain skill areas, with onset before age 18. Mental illness, on the other hand, usually involves disturbances in thought processes and emotions and may be temporary, cyclical, or episodic. Most people with mental illness do not have intellectual deficits; some, in fact, have high intelligence. It is possible for a person with an intellectual or developmental disability to also have a mental illness. Many of the Texas statutes that address mental illness also address intellectual and developmental disabilities, and you should look carefully at those statutes for the differences in how the two are addressed. This handbook does not address intellectual and developmental disabilities.

2. YOU OWE YOUR CLIENT A ZEALOUS REPRESENTATION: You have the ethical obligation to zealously represent your client, which may include exploring your client's case for mental health issues. It may also include bringing appropriate motions if your client's mental illness has affected his or her case in any of the ways discussed in Section 1 of this handbook.

3. IF YOUR CLIENT IS INCOMPETENT, STOP AND ORDER AN EVALUATION: If your client is incompetent, he or she may not be able to make informed decisions about fundamental issues, such as whether or not to enter into a plea bargain agreement or, instead, proceed to trial. Do not allow your client to accept a plea bargain, or make any other decisions regarding the case, when you have reason to believe that he or she is incompetent. Instead, immediately request a competency evaluation.

4. MENTAL ILLNESS AND INCOMPETENCE ARE NOT SYNONYMOUS, AND YOU SHOULD BE CONCERNED ABOUT BOTH: Keep in mind that competence to stand trial is distinct from mental illness. Some clients who are fit to proceed to trial may still have serious mental illness. Even if your client does not have a competence issue, there may still be significant mental health issues in the case that you should explore. Remember, however, that if your client is competent to stand trial, he or she makes the final decision about how to proceed with the case, whether or not to explore mental health issues, and whether treatment should be part of a disposition.

5. AN INSANITY DEFENSE MAY BE APPROPRIATE: By taking the time to properly inquire about your client's mental illness and to explore various legal and medical options, you may obtain information that will help you decide if you should explore an insanity defense. If your client receives a not guilty by reason of insanity verdict, he or she will avoid receiving an unjust conviction. However, as discussed further in Section 7 of this handbook, there may be disadvantages to pursuing the insanity defense, and you should discuss all of the pros and cons with your client.

6. MITIGATE, MITIGATE, MITIGATE: Mental conditions that inspire compassion, without justifying or excusing the crime, can be powerful mitigation evidence. Part of your job as an attorney is to present the judge or jury with evidence that reveals your client as someone with significant impairments and disabilities that limit his or her reasoning or judgment. Mitigation evidence can be used to argue for a shorter term of incarceration or for probation instead of

incarceration. In capital cases, mental illness and mental health testimony may mean the difference between life and death.

7. INEFFECTIVE ASSISTANCE OF COUNSEL AND REVERSIBLE ERROR: An attorney's failure to request the appointment or otherwise obtain the assistance of qualified mental health or mental rehabilitation professionals when indicated can be a violation of a defendant's Sixth Amendment right to effective assistance of counsel. This certainly applies to capital cases but also to other homicide cases and any alleged offense that suggests mental aberration. A defendant's prior history of mental impairment may indicate that you need the assistance of a professional evaluation. *Ake*3 *v. Oklahoma,* 470 U.S. 68 (1985). *Ake* also confirms the right of indigent, convicted defendants to the assistance of mental health professionals at sentencing proceedings. An appellate judge may find reversible error if a client is truly incompetent or insane and the issue is not raised in court.

8. OVERCOME YOUR OWN PREJUDICES BEFORE YOU HURT YOUR CLIENT AND HIS OR HER CASE: A popular misconception is that mental-state defenses are attempts by the defendant to "get off" or deny responsibility for their behavior. Many people are skeptical that persons with mental illness, in contrast to those with intellectual and developmental disabilities, are in some circumstances unable to fully appreciate the nature of their acts and control them. This denial of psychiatric disability can deeply influence the attitudes of both judges and juries toward expert witnesses and mental health defenses. Part of your job, if you are representing a person with mental illness, is to overcome cynicism toward mental health issues in criminal cases. Mental illnesses are neurobiological brain diseases. A mental illness is a medical illness, not "hocus pocus," and the people who experience it suffer profoundly. Mental illness can be diagnosed, treated, and sometimes even cured. You do your client a disservice by representing it any other way.

9. INCARCERATION IS PARTICULARLY HARMFUL TO PEOPLE WITH MENTAL ILLNESS: Jails can be very damaging to the stability, mental health, and physical health of individuals with mental illness. Numerous studies show that placing mentally ill persons in single cells, isolation, or "lock down" can worsen their schizophrenia, depression, and anxiety. Individuals with mental illnesses or intellectual and developmental disabilities are also more likely than others to be victimized by other inmates or jail staff. They are at high risk for suicide. They may get inadequate, if any, medication and treatment while in jail. As set out in Section 5 of this handbook, you should seek to get your client's case dismissed quickly and, if appropriate, try to get your client released on bond.

10. DO NOT LET YOUR CLIENT GET CAUGHT IN THE "REVOLVING DOOR": Many adults with mental illness are arrested for minor offenses that directly relate to their illness, poverty, or disturbed behavior. They cycle repeatedly through the courts and jails, charged with the same petty offenses. This "revolving door" is not only a burden to the courts and the criminal justice system, but it is also costly to society, to these individuals, and to their families. By quickly pleading your client to "time served" without exploring his or her mental illness, you may lose the opportunity to help your client get better so that he or she does not re-offend. Attorneys should do their best to link mentally ill defendants to appropriate treatment or services that will help them keep out of trouble. While it is important to get your client out of jail as soon as possible, it is equally important to keep him or her from returning to jail. Releasing persons with mental illness back into the community with no plan for treatment or aftercare is a recipe for revocation and recidivism. Don't set up your client to fail.

TEX CR. CODE ANN. § 16.22 :EXAMINATION AND TRANSFER OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DEVELOPMENTAL DISABILITY

(a)(1) Not later than 72 hours after receiving evidence or a statement that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with mental retardation, the sheriff shall notify a magistrate of that fact. A defendant's behavior or the result of a prior evaluation indicating a need for referral for further mental health or mental retardation assessment must be considered in determining whether reasonable cause exists to believe the defendant has a mental illness or is a person with mental retardation. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with mental retardation, the magistrate, except as provided by Subdivision

(2) shall order an examination of the defendant by the local mental health or mental retardation authority or another qualified mental health or mental retardation expert to determine whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with mental retardation as defined by Section 591.003, Health and Safety Code.(2) The magistrate is not required to order an examination described by Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been evaluated and determined to have a mental illness or to be a person with mental retardation by the local mental health or mental retardation authority or another mental health or mental retardation expert described by Subdivision (1). A court that elects to use the results of that evaluation may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to an examination required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or mental retardation authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Department of Aging and Disability Services for examination only on request of the local mental health or mental retardation authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Department of Aging and Disability Services for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written report of the examination shall be submitted to the magistrate not later than the 30th day after the date of any order of examination issued in a felony case and not later than the 10th day after the date of any order of examination issued in a misdemeanor case, and the magistrate shall provide copies of the report to the defense counsel and the prosecuting attorney. The report must include a description of the procedures used in the examination and the examiner's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with mental retardation;

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the court receives the examining expert's report relating to the defendant under Subsection (b) or elects to use the results of an evaluation described by Subsection (a)(2), the court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032; or

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or mental retardation services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code.

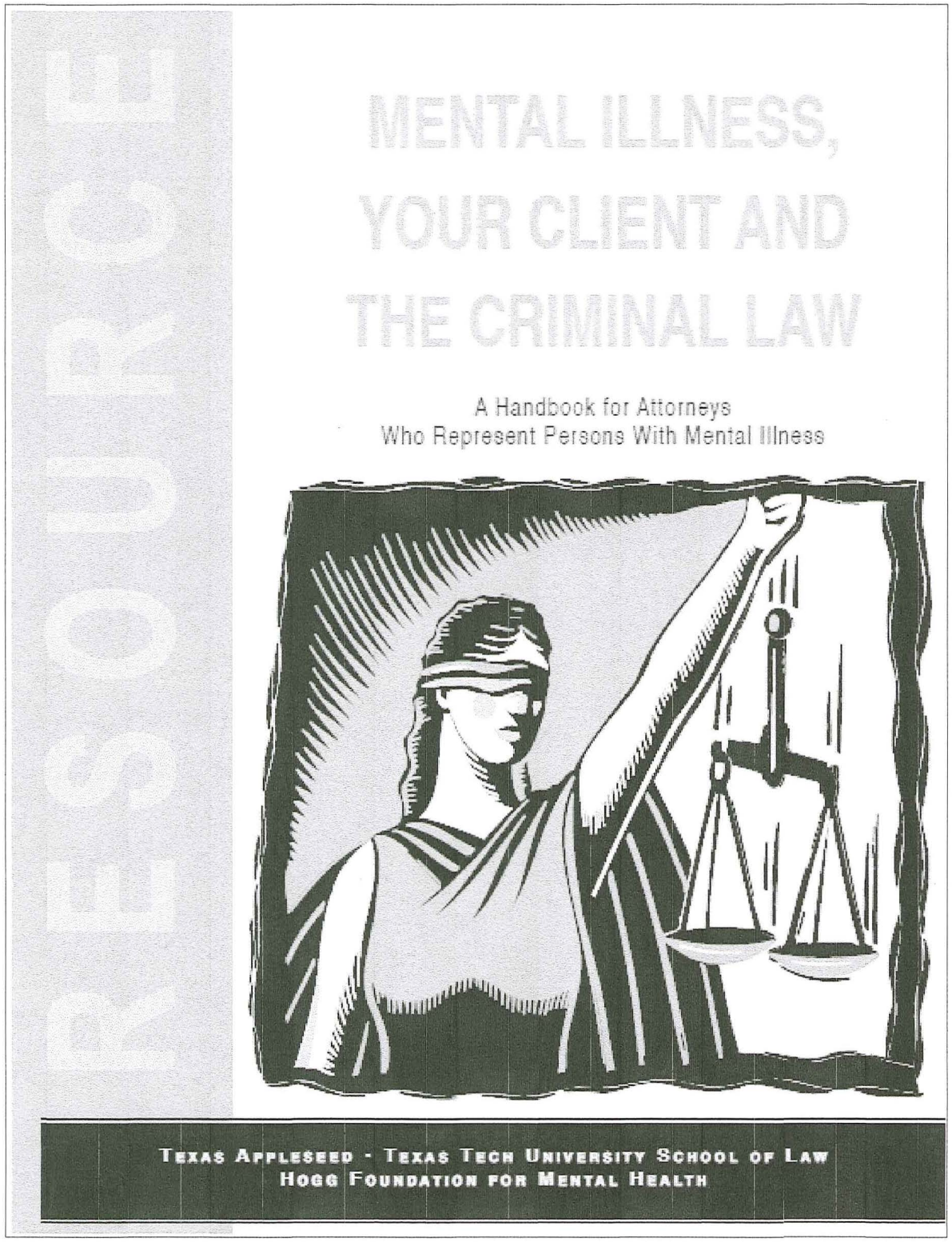
(d) Nothing in this article prevents the court from, pending an evaluation of the defendant as described by this article:

(1) releasing a mentally ill or mentally retarded defendant from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 3.05, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 312, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 828, Sec. 1, eff. Sept. 1, 2001; Subsec. (b) amended by Acts 2003, 78th Leg., ch. 35, Sec. 2, eff. Jan. 1, 2004; Subsec. (c)(2) amended by Acts 2003, 78th Leg., ch. 35, Sec. 2, eff. Jan. 1, 2004.

Amended by: Acts 2007, 80th Leg., R.S., Ch. 1307, Sec. 1, eff. September 1, 2007.



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