

**Public Defense Services Commission Service Delivery Plan for
Judicial District No. 14 – Josephine County
October 17, 2008**

Introduction

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

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004 to 2007, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Coos, Curry, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Washington, Yamhill, Hood River, Wasco, Wheeler, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of the public defense systems in Josephine County, a summary of the testimony presented to PDSC at its April 10, 2008 meeting in Medford and at its September 11, 2008 meeting in Salem and a service delivery plan for the county.

PDSC's Service Delivery Planning Process

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

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

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

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

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

Background and Context to the Service Delivery Planning Process

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

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

public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

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

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

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

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

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

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

approved by the Commission in June of 2007.

In February of 2008 the Commission began a review of the delivery of public defense services in post-conviction relief cases. That review is ongoing.

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

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

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

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

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

through the Commission's deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

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

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

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

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

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense

services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

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

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

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

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of

² Spangenberg and Beeman, *supra* note 2, at 36.

effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

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

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

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

Consortia offer the advantage of access to experienced attorneys, who

³ Id.

prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms, but in which they no longer wish to practice law.

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

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

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

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually

well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

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

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

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

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

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

for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigation in Judicial District 14 – Josephine County

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

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

On February 20 Commissioner John Potter, OPDS public defense analyst Billy Strehlow and Executive Director Ingrid Swenson visited with stakeholders in Josephine County. In addition to meeting with PDSC's contractors in the district, they also talked with judges, the trial court administrator, the District Attorney, juvenile department staff, representatives of the Citizen Review Board, the Department of Human Services and the Court Appointed Special Advocates. Written responses to questionnaires were also received from the two contractors in the district. Copies of these responses are attached as Exhibits A and B.

The preliminary draft of this report is intended to provide a framework to guide the Commission's discussions about the condition of Josephine County's public defense system and services, and the range of policy options available to the Commission – from concluding that no changes are needed in this county to significantly restructuring the delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Judicial District 14's justice systems could turn out to be the single most important factor contributing to the quality of the final version of

OPDS's report to the Commission and its Service Delivery Plan for Josephine County.

OPDS's Preliminary Findings in Josephine County

The population of Josephine County is 82,390⁴. Grants Pass is the county seat and the largest city in the county. Since 62.4 percent of the land in the county is owned by the federal government the county has relied for seventy years on O&C⁵ funds to offset the lack of local tax revenue from this land.⁶ When federal O&C funds were terminated the county lost \$12 million, or more than 60% of its general fund dollars. After a Criminal Justice Systems Local Option Levy failed in May of 2007 Congress extended O&C funding for an additional year. Unlike Jackson County, which did not restore cut services when O&C funding was restored, Josephine County did restore public safety services. No local option levy has been placed on the May, 2008 ballot and it appears unlikely that O&C funding will be extended again. If additional funds are not forthcoming before July 1, 2008 it may again be necessary for the county to make significant cuts in its public safety budget. Among the proposals that came to OPDS's attention were closing the juvenile detention facility and limiting prosecution to major crimes.

The Circuit Court

There are four circuit court judges in Josephine County and a part time pro tem judge. Judge Lindi Baker is the presiding judge. Most of the judges and the trial court administrator are relatively new to their positions. The court uses a central docketing system for scheduling all matters except for criminal arraignments.⁷

Criminal Court Proceedings

Criminal arraignments are held daily at 1:00 p.m. for both in and out-of-custody defendants. In-custody arraignments are conducted by video. An attorney from either the public defender's office or the consortium is present at arraignments. Status hearings are scheduled for Monday three weeks after arraignment for in-custody cases and four for out-of-custody cases. In the past If cases were resolved at the status hearing they were then scheduled at a later date for sentencing, necessitating another appearance. The court is now attempting to impose the sentence at the time of the plea. Only complex cases are being set over for sentencing at a later date. Matters that are not resolved at the status

⁴ Source: Portland State University, 12/15/07 as reported by the Association of Oregon Counties.

⁵ The Oregon and California Lands Act, 43 USC 1181(f).

⁶ The county's permanent property tax rate as fixed by Measure 50 is .5867%, the lowest in the state.

⁷ District Attorney Stephen Campbell credits the central docketing system with eliminating a previous backlog of cases.

hearing are either set for trial or continued. Trials for out-of-custody matters are set for three to four months later.

Trials are generally scheduled for Tuesdays through Thursdays. Docket call for all matters scheduled for trial the following week is held on Wednesday. Two judges are generally assigned to handle trials. Multiple trials are often scheduled for the same time since many are settled on the day of trial. The other two judges hear motions, arraignments and other matters. Status hearings and sentencings occur on Mondays, except for in-custody sentencings, which occur on Thursdays. Although in-custody arraignments are conducted by video, in-custody sentencings are held in a courtroom in the jail. Jury trials may continue into Friday. In addition the drug court and court trials are scheduled for Fridays.

Josephine County Drug Court Program

Josephine County has a well-established drug court program⁸ that had graduated 203 clients as of January 1, 2007. The program lasts a minimum of one year, but graduation often does not occur until 15 to 17 months after enrollment. The court recently added a new family treatment component called the PRO team which is directed at families with children and which provides resources such as mentoring, parenting classes, family activities, education and counseling to participants. This new component is funded with a 2006 Byrne Grant and an Enhancement Grant from the Oregon Criminal Justice Commission. Josephine County's presiding judge serves as the drug court judge.

Mental Health Court

A mental health court is currently in the planning stage. Judge Pat Wolke is overseeing planning for the court. There is a large group of interested individuals and agencies who participate in the Oversight Committee. Representatives of both public defense contractors are involved in committees that will be designing and overseeing the work of the new court.

Juvenile Court System

Judge Michael Newman is the designated juvenile court judge. Shelter hearings in in-custody juvenile delinquency matters and in dependency cases are held at 11:30 every day. Attorneys are not present for these initial hearings. Youth who are detained appear with counsel within a day or two following the initial appearance. Out-of-custody youth make their initial appearance on Mondays. "Admit or deny" hearings in dependency cases are set within 30 days after the shelter hearing and trials within 60 days, with a status call hearing before the trial

⁸ Although Jackson County is nearly three times the size of Josephine County and at least some Josephine County officials look to the Jackson County court system as a model, it was the Josephine County drug court which served as a model for the more recently created Jackson County drug court.

date. Review hearings are generally heard at 9:00 am and are scheduled with the individual attorney. The court staff has available the vacation and court schedules for each attorney and contacts them by email when there are scheduling choices.⁹

There is an active CASA program in the county.¹⁰

The county detention center has a capacity of 14 but only six or seven of the beds are usually occupied. The facility does not provide an appropriate meeting space for attorneys and clients. There is a small room with no table that is available.

District Attorney

Stephen Campbell is the District Attorney for Josephine County. Prior to becoming the county's district attorney he served as a deputy district attorney in both Coos and Josephine Counties for more than twenty years. He currently has eight deputies but has found it difficult to retain experienced lawyers, requiring the regular training of new deputies. One deputy district attorney recently resigned to accept other employment in the area. Currently one deputy is assigned to the juvenile court. The office stopped filing misdemeanors in May of 2007 for a period of two weeks when it appeared that funding cuts were imminent. It is not clear what the staffing level will be after June 30, 2008. One option being considered is for the City of Grants Pass to fund a prosecutor position in the district attorneys' office since a high percentage of the cases processed arise within the city and are investigated by the Grants Pass Police Department.

Public Defense Providers

1. Josephine County Defense Lawyers, Inc. (JC DL)

This nine member consortium handles criminal, juvenile and civil commitment cases. Holly Preslar is the president of the board and the administrator of the consortium. The consortium's board of directors is comprised exclusively of member attorneys. The board meets often to talk about issues such as attorney performance, attorney compensation, case assignment, caseloads and continuing legal education.

⁹ Court staff indicate that this scheduling system is working well. Attorneys are very responsive to email communications, often responding on the weekends.

¹⁰ OPDS was advised of friction between some CASA volunteers and some consortium attorneys. The CASA volunteers may need additional training in the role of attorneys but some of the attorneys may act unprofessionally towards CASAs who disagree with the attorney's position. Attorneys don't always return phone calls from CASA volunteers but CASAs are learning that it is best to leave detailed voice messages for attorneys rather than requests for return phone calls. One veteran CASA indicated that most of the attorneys do a good job representing their clients.

Quality assurance is dealt with both in the members' participation agreement and in the bylaws of the corporation. Attorneys agree to provide legal services under the agreement "with the same care as would be provided if the client had been able to privately retain Attorney." The organization's bylaws permit suspension or termination if a member's conduct is not in the best interests of the corporation.

The length of time that each of the members has been part of the consortium ranges from more than twenty years for three members to only two months for the most recently admitted member. All of the members except one currently devote approximately 40-50% of their time to consortium cases. One member handles only public defense cases. Cases are distributed evenly among member attorneys, although the bylaws permit an attorney to deduce their participation under certain circumstances. The consortium provides continuity of representation to clients by assigning a client's new cases to the attorney who has already been appointed to represent the client on another matter or who has represented the client in the past.

Consortium members meet regularly and communicate frequently by email. The consortium maintains a library of CLE materials and state bar publications. It provides Westlaw to all its members as well as access to the Oregon State Bar's "BarBooks."

Consortium members participate in many committees, including the Bench-Bar Committee, the Juvenile Agency Committee, the Model Juvenile Court Committee, and the Mental Health Court Committee.

Comments regarding JCDL:

Comments received about the consortium from the persons interviewed indicated that in the past the consortium was not always responsive to complaints and concerns about the conduct of some members, reminding those who complained that each attorney was an independent contractor. Recently, however, the consortium has had to deal with some difficult personnel issues and appears to have managed them successfully, if not as promptly as some would have liked.

Some consortium attorneys were singled out as providing excellent representation and the group on average was said to provide good quality services. In juvenile cases, consortium attorneys were credited with providing very "active" representation and were said to

be better at maintaining contact with clients than their Jackson County counterparts. Although attorneys do not attend shelter hearings they contact clients promptly, especially in delinquency cases.¹¹ The juvenile system is said to be working smoothly. Attorneys do particularly good work on behalf of parents and youth, but somewhat less good work for children in juvenile dependency cases. Although they provide zealous representation for children, only a couple attorneys are said to meet often with their child clients. Others meet with them and their foster parents only rarely. Indian Child Welfare Act cases arise with some frequency and a DHS representative observed that in a recent case the attorney did an excellent job of holding the agency's "feet to the fire."

2. Southern Oregon Public Defender (SOPD) dba Josephine County Public Defender

SOPD is a private non-profit corporation established in Jackson County in 1985. Bert Putney organized the office and continues to serve as its administrator. Gary Berlant is the senior attorney and manager of the Josephine County office of SOPD. The office has seven attorney positions and five staff positions, including investigators, paralegals, a polygraph operator and a drug court coordinator who staffs the drug court. SOPD handles only criminal cases in Josephine County.

SOPD has a five-member Board of Directors that reviews major actions by the director, makes decisions not appropriate for the administrator to make, and oversees the office's functioning within the local criminal justice system. The office has a written policy manual which is distributed to all employees and which describes procedures for handling personnel matters. The office also provides attorneys with a manual outlining local procedures, forms and expectations. Although the office manager and the administrator oversee the work of the entire staff, training and supervision are principally provided by the attorney or staff person who is assigned to supervise each new employee.

SOPD conducts monthly in-house CLEs, sponsors CLE sessions for local attorneys emphasizing issues of particular significance to local practitioners, and sends its attorneys and staff to OCDLA and other

¹¹ One juvenile department representative said that attorneys do not challenge youths' ability to aid and assist even when they have well documented cognitive deficits. OPDS was told these youth need someone to fight for them. It was also said that attorneys may not meet with their clients until the day of their court hearing or the day before. It appears that lawyers for youth do provide the same kind of representation to juvenile clients as they do to criminal clients, however, not substituting their own judgment about what is in the youth's best interest, which has been an issue in some jurisdictions.

CLE trainings in areas of more general interest. SOPD uses an informal evaluation process for attorneys and staff that is based on open and regular communication and feedback. There are plans to initiate a formal evaluation process in the spring of 2008. Underperformance is addressed by consultation, mentoring, establishment of timelines, and when necessary, termination. Excellence is most often rewarded by acknowledgment in the presence of co-workers.

Caseloads of individual attorneys are monitored weekly and monthly.

By its own policy, as well as PDSC's SOPD requires that every in-custody client be seen within one working day.

SOPD has recently implemented a client feed-back process. Clients are given a form to complete at the conclusion of the case which is submitted to the court and then forwarded to SOPD.

SOPD received a 13.48% increase for the 2008-2009 contract period. Recruitment and retention of attorneys has been a challenge for this office where attorney's starting salaries have been significantly lower than the starting salaries of their counterparts in the district attorney's office.¹² Under the new contract the entry level salaries were increased to \$45,000. Vacancies can now be filled in a more reasonable time although it has been more difficult to fill vacancies in the Josephine County office than in the Jackson County office. In the past it was not unusual for it to take two to three months to fill a vacancy in either office. Mr. Putney believes that it was equally important to increase salaries for mid-range attorneys in order to increase retention of attorneys with two to four years of experience.

Comments regarding SOPD: Specific comments about the public defender office were that the senior attorneys do really good work and that entry level attorneys get good if they stay. The staff person assigned to the drug court is rated as "fantastic" for her work in the court and for providing trainings to the whole legal community.

Caseloads

In FYE 2006 there were a total of 4,079 public defense cases¹³ in Josephine County. In FYE 2007 there were 4018 cases, which represented a 1.5%

¹² The current starting salary in the Josephine County District Attorney's Office is \$50,004.

¹³ A "case" is a unit for which OPDS awards a case credit and does not necessarily correspond to a case as defined by the court and other justice system agencies.

decrease. JCDL received a total of 1,778 case credits in FYE 2007, 914 of which were in juvenile cases and the balance, or 864, in civil commitment, criminal or quasi criminal cases. SOPD received 2,210 case credits, all for criminal or quasi-criminal cases. In the 2008-2009 contract, JCDL attorneys have agreed to handle an average of 367 cases per FTE attorney per year. SOPD's seven FTE attorneys have contracted for a caseload of 321 cases each.

OPDS's Recommendations for Further Inquiry at PDSC's April 10, 2008 Meeting in Medford

The public defense delivery system in Josephine County appears to be working well. Although it is a small county is has an established public defender office which is performing the role such an office is expected to perform. While recruitment and retention remain a challenge, experienced attorneys in the office are well regarded and provide mentoring and training to newer attorneys. In addition, the county has a well-established consortium with many very experienced attorneys. After encountering some significant performance issues, in one case due to serious illness, the consortium appears to have developed appropriate mechanisms for addressing such issues in the future.

Although OPDS was informed by more than one interviewee that the relationships within the court system are, and always have been, contentious and adversarial, OPDS did not observe any evidence of unusually adversarial relationships. The two contract offices appear to work effectively together and cases get resolved between the state and the defense.¹⁴ It may be that the adversarial relationships are more often displayed in the courtroom.

The overall quality of representation appears to be very good. There were six Josephine County respondents to OPDS's 2007 statewide survey. In criminal case both contractors were rated overall as providing "very good" representation. Consortium attorneys were described as "always" possessing the legal knowledge, skill and training necessary for effective representation and SOPD was described as possessing such attributes "most of the time." Caseload levels were not seen as preventing adequate representation by consortium attorneys and were seen as only "sometimes" preventing such representation by SOPD attorneys. In juvenile cases the consortium's representation was again rated as "very good" and lawyers were said to possess the legal knowledge, skill and training necessary for effective representation "most of the time" and for having adequate time, despite their caseloads, to devote appropriate time and resources to each of their clients "in most cases." A number of the specific comments noted that the caseloads are high and the pay low and that attorneys cannot afford to work in public defense.

¹⁴ The trial rate in Josephine County is only slightly above average for both misdemeanor and felony cases.

Testimony Received at PDSC's April 10, 2008 Meeting in Medford

Bert Putney is the Administrator of Southern Oregon Public Defender, Inc. SOPD was founded in 1985 in Jackson County and began providing services in Josephine County in 1991. Seven attorneys are currently assigned to the Josephine County office. SOPD provides representation only in criminal cases in the county. Mr. Putney believes that the office is able to achieve administrative efficiencies by providing services in more than one county. Currently a Jackson County attorney is handling a murder case in Josephine County because there are too many murder cases for the Josephine County lawyers to handle. There is a core group of three experienced attorneys in the Josephine County office. It has been difficult to recruit and retain additional attorneys there.

Mr. Putney said that the court system in Josephine County is antiquated, that a costly computer update is needed, and that the trial court administrator has not been given the necessary authority to put the system in order. There has been a history of conflict in relationships between members of the bar in the county and the county's population is generally more litigious.

SOPD has an active board of directors with a very stable membership. Mr. Putney keeps the board informed about developments in the office at meetings that occur at least quarterly.

Mr. Putney has an investigator who is trained to administer polygraph examinations. He would recommend that other offices consider having a staff polygrapher as well.

Mr. Putney also recommended that the Commission consider having a single organization provide services in all of the southwestern counties in the state in order to create administrative efficiencies and improve quality. He described some recent quality control issues in the Medford office and how they were handled and said that he solicits information from the judges about the work of his attorneys on a routine basis.

Presiding Circuit Court Judge Lindi Baker testified that she and the other judges see the public defense attorneys in court regularly and their experience with both defender groups has been very positive. The consortium attorneys are more experienced but the public defender group, although younger and less experienced, brings a lot of energy and commitment into their representation. In addition, the public defender office has some very experienced lawyers who act as mentors and leaders to help the newer attorneys. If judges had a concern about an attorney they would know to whom to go to with that concern. Holly Preslar would be the contact for the consortium. She believes there is good communication between the parties in criminal cases. Generally speaking the defense bar and the prosecution seem to work together and they are resolving

more cases than they did in the past. Despite the uncertainties in county revenue, the district attorney may not need to reduce the number of deputies this year. But, in the long term, if funding issues are not resolved it could be a very different story. The sheriff's patrol might have to be discontinued and it might be necessary to close the jail. Judge Baker described the Josephine County Drug Court, which has been operating for 13 years and is expecting to have its 230th graduate in the near future. She noted that the public defender's office had been a partner in the program since its inception and that a member of the public defender's staff is the coordinator for the court. The three year recidivism rate for graduates is 9.7 percent. Statewide, the recidivism rate for non-drug court clients is 38% and for non-drug court clients in Josephine County, 47%.

Dan Simcoe testified on behalf of the Josephine County Defense Lawyers, Inc. He said the consortium currently has nine members. One attorney recently resigned and another was removed from the group. The group is open to accepting new members and would like to have a total of ten to 12. Consortium members, on average, devote approximately 40-50% of their practice to public defense cases. He explained how the consortium manages performance issues. There is a participation agreement that permits the consortium to suspend and remove members for non-compliance with expectations. The organization has a board of directors comprised of consortium members but may consider adding outside members in the future. Consortium members as well as attorneys with the public defender's office participate in monthly bench/bar meetings. Although the public defender's office may believe it should receive a higher percentage of the cases, Mr. Simcoe thinks the current distribution is working well.

PDSC is grateful for the cooperation and hospitality extended to its staff and its members during its visit to Josephine County and the initial investigations made in preparation for that visit. PDSC expresses its sincere appreciation to all the members of the Josephine County criminal and juvenile justice communities for their assistance in informing the commission and helping to guide the creation of this service delivery plan for the County.

PDSC Discussion at September 11, 2008 Commission Meeting

Ingrid Swenson summarized reports and testimony previously received regarding service delivery in Josephine County. She said that the two principal providers were both functioning well - the Southern Oregon Public Defender office and the Josephine County Defense Lawyers, Inc. consortium.

Chair Ellis noted a statement in the report by Bert Putney recommending that the commission consider having a single organization provide services in each region of the state. At the chair's request Mr. Putney explained that he believed there were efficiencies in operation that could be achieved by having a single entity manage a number of offices in a particular region of the state. There would be savings in the cost of providing payroll services and CLE sessions, and a

larger entity could probably negotiate better rates on employee health insurance for defender offices. The new entity would be a private non-profit that would act in an administrative capacity over the delivery of legal services but the existing public defender offices would continue to provide the legal services. Mr. Putney had not discussed the proposal with other public defense offices. Commissioners decided not to pursue a regional provider system at this time.

A Service Delivery Plan for Josephine County

The combination in Josephine County of a public defender office and a single consortium which handles criminal, juvenile and civil commitment cases, appears to be the appropriate service delivery model for this jurisdiction. It is believed that the county is receiving the benefit of a public defense office whose senior attorneys are available to train new attorneys, which provides staff for the operation of the drug court, sponsors continuing education sessions for attorneys, and participates in justice planning and policy development groups. The county benefits as well from the quality of legal skills and the flexibility provided by the consortium.

In light of all the reports and information provided, PDSC approves a plan of continuing the service delivery system currently in place in Josephine County.