

**Public Defense Services Commission  
Service Delivery Plan for Linn County  
Draft Final Report  
(March 2013)**

**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.

The service delivery planning process is a multi-step endeavor, which begins with an investigation of the jurisdiction selected by the PDSC. The investigation is completed by the Office of Public Defense Services (OPDS). 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 regarding the initial findings within a particular area.

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve another important function. 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.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in a particular judicial district is the single most important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for a particular area.

This report includes the results of OPDS's preliminary investigation into the

conditions of the public defense system in Linn 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 a preliminary draft report, 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 the 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, now called the Public Defense 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.

The Public Defense Advisory Group is also responsible for planning and implementing "peer reviews," an evaluation or assessment process for all public defense contractors. This process is aimed at improving the internal operations and management practices of offices that provide public defense, and to improving the quality of the legal services they provide. Since 2004 site teams of volunteer public defense managers and attorneys have visited contractors in Benton, Clackamas, Columbia, Crook, Deschutes, Douglas, Jackson, Jefferson, Klamath, Lake, Lane, Lincoln, Linn, Multnomah, Umatilla, Washington, Yamhill, and Clatsop counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. 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 the creation of a Juvenile Law Training Academy for public defense attorneys. In 2006, the Commission devoted two of its meetings to investigating the condition of juvenile law practice across the state and to developing a statewide Service Delivery Plan for representation in juvenile dependency cases.

Another area of practice in which significant concerns about quality of representation have been raised by the Oregon State Bar and others is post conviction relief cases. In March 2008 PDSC heard from judges, the Department of Justice and a number of attorneys whose practice includes post conviction relief about the need for improvement in the quality of representation being provided by public defense attorneys. A work group was convened by the bar at the request of the PDSC to create performance standards for attorneys in these cases. Those standards have now been approved by the bar's Board of Governors and adopted by the PDSC as the standards to be observed by court-appointed attorneys. The work group also made additional recommendations to the PDSC for improving services in this area of practice. Those recommendations were presented to the PDSC at its March 2009 meeting. The PDSC reviewed a service delivery plan for post conviction relief cases at the April 16, 2009, and June 18, 2009, PDSC meetings.

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 2012, the PDSC again began a review of death penalty providers, beginning with five providers. The process developed during that review will be applied to the remaining death penalty providers as part of the evaluation of the qualifications of each individual seeking a death penalty contract for the 2014 contracting cycle.

#### "Structure" versus "performance" in the delivery of public defense services

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

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<sup>1</sup> Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g.,

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 the 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 attorneys and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed through the Commission's deliberative processes. OPDS, with advice and assistance from its Public Defense 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.

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Spangenberg and Beeman, "Indigent Defense Systems in the United States," 58 Law and Contemporary Problems 31-49 (1995).

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 attorneys 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 ten counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the

attributes one normally thinks of as a government-run “public defender office,” most notably, an employment relationship between the attorneys and the office.<sup>2</sup> Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

While some of Oregon’s public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission’s expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office “infrastructure” than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

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

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

2. Consortia. A “consortium” refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to

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

<sup>3</sup> *Id.*

PDSC's RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few attorneys 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 attorneys and legal programs, (c) internal training and quality assurance programs, and (d) plans for "succession" in the event that some of the consortium's attorneys retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

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

In addition to the access to experienced public defense attorneys, 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 Oregon 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

attorneys 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 Oregon 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 of 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.

### **PDSC’s Preliminary Investigation in Linn County**

In November 2012 Public Defense Services Commissioner, John Potter, OPDS Executive Director, Nancy Cozine, and OPDS Analyst, Shelley Winn, visited Linn County and met with the following stakeholders:

- Presiding Judge Daniel R. Murphy, Judge Carol R. Bispham, Judge James C. Egan, Judge Thomas A. McHill, and Judge DeAnn L. Novotny, and court staff
- Representative Andy Olson
- Senator Betsy Close
- District Attorney Jason Carlile
- Sheriff Tim Mueller, and his deputies and staff
- Ric Bergey, Director, Adult Parole and Probation, & probation staff
- Lisa Robinson, Supervisor, Probation Services, Juvenile Department
- Marco Benavides, DHS District Manager, and John Meade DHS/Child Welfare Program Manager
- Lene Garret, Executive Director, CASA
- Roger Reid, Administrator, Linn County Legal Defense Corporation, and all members of the consortium
- Melissa Riddell, Administrator, Linn County Juvenile Defense Corporation, and all members of the consortium

In addition, Nancy Cozine later met in person with Ryan Phillips and Kristen Williams, Assistant Attorneys General, Oregon Department of Justice, Child

Advocacy Section (assigned to Linn County), and with Erin White, with the Citizen Review Board.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in a particular judicial district turns 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 a particular area and OPDS is grateful to the stakeholders in Linn County for their contributions to this report.

### **OPDS's Initial Findings in Linn County**

#### The Circuit Court

There are five judges in Linn County: Presiding Judge Daniel R. Murphy, Judge Carol R. Bispham, Judge James C. Egan, Judge Thomas A. McHill, and Judge DeAnn L. Novotny. The court had a pro tem judge, but the position was cut during the February 2012 budget reductions.

Linn County Circuit Court uses a centralized docketing system, but each judge has some time in the day to schedule specific matters on their own dockets. The judges hear a mix of cases, though some dockets are assigned to specific judges. Judge Egan hears delinquency hearings, and Judges Murphy and Novotny hear juvenile dependency hearings. All of the judges hear delinquency detention hearings and dependency shelter hearings. Other dockets rotate between the judges. Linn County Circuit Court employs a "one family, one judge" rule, assigning family members to the same judge whenever possible.

There is a criminal drug court in Linn County. Judge McCormick (now retired) was the judge when it started, Judge Murphy presided over the drug court when Judge McCormick left; Judge McHill is the current drug court judge. The drug court has a combined population of "traditional" participants, who have simple possession of a controlled substance (PCS) charges, and "Measure 57" property offenders, who have much more extensive criminal histories. Measure 57 participants are sent to prison if they are not successful in drug court. All parties report that the mix of these two populations has made it more challenging to get people interested in participating in drug court, especially those with PCS charges. The participant population has therefore shifted, with the majority of participants facing Measure 57 sentences. Potential Measure 57 participants are initially identified by the District Attorney's Office. The probation officer, treatment representative, and defense attorney discuss the candidate and then vote on whether to accept the candidate. Warrants are issued within 15 minutes of a missed treatment appointment. The court employs swift and certain sanctions, utilizing many non-jail sanctions. Alternative sanctions include work crew, community service, journals (homework), support groups, day reporting center, drug tests, and job searches. Participants are offered assistance with housing, dental care, mental health counseling, treatment, food, clothes, GED,

and rent subsidies. The drug court team would like to start including a medication component, but they need additional funding. The drug court team had a retreat in October, and will need to address alternative funding options for the next biennium.

Linn County has three additional treatment or accountability courts. The Juvenile Accountability Court (JAC Court) is designed for high risk kids. It is considered a last step before commitment to OYA. This program has improved over the years, and is seen as a success. There is also a Family Treatment Court (FTC) which meets every Friday. This is for the parents of children who have been removed by DHS for abuse or neglect allegations. All defense attorneys appear for these FTC appearances. The FTC has no funding and relies on existing funding for treatment through DHS. Another key element of the FTC is the outreach workers, who are paid for by Linn County Drug and Alcohol and DHS. The FTC has been in existence since 2008 and has demonstrated remarkable success. The recidivism rate for those completing the program is less than ten percent. Finally, there is a domestic violence court in which defendants are ordered to participate. This program is reported to have declining participation, and is defined by the court as an accountability court and not a treatment court. It offers batterer intervention services but there is no probation officer involvement in the court, and very few victim services. It is also reported that because there isn't a competitive market for batterer's intervention services, there is no alternative if the provider isn't a good fit.

System partners report that the trial rate seems low in Linn County. The 2011 statewide "cases tried analysis" reveals a felony case trial rate of 2.8 for Linn County, compared to 4.4 statewide. Linn County's misdemeanor trial rate of 3.5 is closer to the statewide rate of 3.8. Those interviewed speculated that the lower trial rate is a result of the court's policy against generous day of trial plea offers. The district attorney's office makes its best plea offer at the start of the case, and the offers get progressively worse unless new information is discovered. Parties also report that cases are dismissed at the pretrial phase, rather than on the day of trial, which also encourages settlement before the day of trial.

Linn County Cases Tried Analysis

TYPE OF CASE	JUL 01 TO DEC 31, 2011						JAN 01 TO DEC 31, 2011					
	Total Cases Term.	Total Trials	%Term by Trial	Court Trials	Jury Trials	Ave Age	Total Cases Term.	Total Trials	%Term by Trial	Court Trials	Jury Trials	Ave Age
Felony	519	17	3.3	5	12	232.1	1,053	30	2.8	13	17	225.5
Misdemeanor	513	16	3.1	9	7	136.8	1,136	40	3.5	16	24	184.7
Violation	2,437	219	9.0	219	0	134.0	4,986	404	8.1	404	0	118.8
<b>Subtotal</b>	<b>3,469</b>	<b>252</b>	<b>7.3</b>	<b>233</b>	<b>19</b>	<b>140.8</b>	<b>7,175</b>	<b>474</b>	<b>6.6</b>	<b>433</b>	<b>41</b>	<b>131.1</b>

Statewide Cases Tried Analysis

TYPE OF CASE	JUL 01 TO DEC 31, 2011						JAN 01 TO DEC 31, 2011					
	Total Cases Term.	Total Trials	%Term by Trial	Court Trials	Jury Trials	Ave Age	Total Cases Term.	Total Trials	%Term by Trial	Court Trials	Jury Trials	Ave Age
Felony	14,617	652	4.5	232	420	210.3	29,967	1,320	4.4	467	853	207.6
Misdemeanor	30,505	1,137	3.7	510	627	156.9	61,956	2,352	3.8	1,069	1,283	179.1
Violation	111,211	5,183	4.7	5,181	2	100.6	217,690	10,160	4.7	10,154	6	170.7
<b>Subtotal</b>	<b>156,333</b>	<b>6,972</b>	<b>4.5</b>	<b>5,923</b>	<b>1,049</b>	<b>120.0</b>	<b>309,613</b>	<b>13,832</b>	<b>4.5</b>	<b>11,690</b>	<b>2,142</b>	<b>175.6</b>

Linn County Circuit Court will be transitioning to the new Tyler Odyssey eCourt system in December of this year, days before the Commission's meeting in Albany. The new system will allow for electronic transfer of court documents, and system partners will be able to view case files electronically. New physical court files will not be created once the Odyssey program is installed; old files are already being scanned so that they can be stored in the new system. The court will be sharing Tyler Odyssey demonstration videos with court staff and system partners in preparation for the conversion.

### County Challenges

Most individuals interviewed indicated that there are not enough treatment resources in the county. Like other counties, the statewide economic circumstances have impacted Linn County's ability to establish and maintain a more expansive list of treatment program options. There is some lack of faith in the drug and alcohol assessments, and some preference for private providers, many of whom are not available to those who qualify for court appointed counsel. There are, however, more resources available to those who are participating in treatment courts, and the probation office is able to allocate some of its resources to support treatment programs. There are no residential treatment beds in Linn County.

The Sheriff's office was also affected by the economic downturn and reduced its staff through 13 layoffs in February 2012, resulting in a 25% reduction in available jail beds. Defense providers indicate that though jail staff works very hard to make clients available, it is difficult to see clients due to space constraints at the jail. There are three non-contact visit booths, but the conversations are not private, and the rooms are often in use by DHS caseworkers, attorneys, and others. Telephone contact is easier, but in person visits are often necessary. Contact visits must be reserved in advance, and are strongly discouraged, as inmates must have a full body search before and after the visit.

Availability of qualified interpreters is another challenge. One person interviewed indicated that there is a large Hispanic population in Linn County, and speculated that this population might be overrepresented in Linn County's criminal justice system. No statistics were found regarding the percent of cases in Linn County in which the defendant is Hispanic. According to the U.S. Census Bureau's "State and County QuickFacts",<sup>4</sup> approximately eight percent of the population in Linn County is of Hispanic or Latino origin. When interpreters aren't available, the court must use interpreters over the telephone, which can be very difficult.

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<sup>4</sup> <http://quickfacts.census.gov/qfd/states/41/41043.html>

## Collaborative Efforts in Criminal and Juvenile Justice

There is a Local Public Safety Coordinating Counsel, coordinated by Presiding Judge Murphy; it meets a few times each year. One County Commissioner, Will Tucker, is reported to observe court on a regular basis. Though Linn County does not have a parole and probation office that is county funded (it receives funding directly from the Department of Corrections), the LPSCC is still seen as a forum for addressing system resource issues, such as jail transports and visits, use of jail beds for inmates in state custody, and court docket issues.

Judges host regular meetings with system partners. Judge Murphy meets with the defense bar once each month, and also meets regularly with Melissa Riddell, the contract administrator for the juvenile consortium group. He facilitates two dependency work group meetings. Judge Egan facilitates a delinquency meeting approximately once each month and asks his judicial assistant to attend the meetings, which is reported as being very helpful. Judge Bispham hosts quarterly Domestic Violence Court meetings.

One notable comment made by almost everyone interviewed was that the court staff in Linn County is remarkably helpful, and that their efforts make a big difference in keeping the system working smoothly.

The Linn County justice system has a collegial prosecution and defense bar, members of which are able to socialize comfortably outside of the work environment. Both prosecutors and defense attorneys are reported as getting along well with each other and the court, and they regularly participate in community and Linn-Benton Bar Association activities together.

## Procedure in Criminal Cases

Arraignments are held at the same time each week. Litigants who qualify for court appointed counsel are assigned an attorney, but attorneys are not present at arraignment unless privately retained. Defendants are told to contact their attorney. The court tries to provide defendants who have a pending case and are being arraigned on new charges with the same attorney on both cases. Attorneys usually receive notice of the appointment within a day or two of arraignment.

As mentioned earlier, the court employs what they call “The No-Negotiation” rule, which discourages settlement after the trial date has been set. The pretrial conference is scheduled approximately 60 days after arraignment. Cases can be settled after the pretrial conference with a plea agreement that is better than the original plea offer only if new information justifies the change in position.

Linn County District Attorney Jason Carlile is retiring at the end of the year. Douglas Marteeny will start as the newly elected District Attorney in January 2013. Those who work with the District Attorney's (DA's) office expect it to be a smooth transition, as Mr. Marteeny has worked closely with District Attorney Carlile for many years and they have similar philosophies. The DA's Office uses a vertical prosecution model, meaning each deputy district attorney is able to decide what cases to charge, what charges to include, and the deputy district attorney keeps those cases throughout the life of the case. There are three small teams with a senior district attorney supervising each team. This model allows the deputy and senior district attorneys to make reasonable offers at the outset of each case, and helps parties resolve cases at the earliest opportunity. There is some specialization in the office, with a domestic violation deputy DA, and a few drug deputies. The District Attorney's office does not allow DA diversions or agree to deferred sentences.

The District Attorney reports that domestic violence charges are the most common charges issued, and sex offenses are the second most common. Domestic violence cases are one exception to the rule against day of trial settlement – they often settle on the day of trial, and usually settle within 28 days. There was concern expressed about the failure to appear rate being high, especially in Domestic Violence court. Possession of methamphetamine is also common in Linn County. DUI charges rarely go to trial because the BAC levels tend to be very high.

The District Attorney's office is in the process of moving to an electronic discovery system. The process is expected to be completed by the time of the Commission's visit in December. Discovery will be available to defense attorneys through a website where they will be able to "harvest" the materials. The District Attorney's office says they will keep discovery charges the same at the beginning, but will reconsider later.

## Procedure in Juvenile Cases

### Dependency Cases

As in all other case types, attorneys are not present at shelter hearings unless privately retained or the attorney is already representing the client on a prior petition. The court assigns the attorney based upon a list provided to the court. During the shelter hearing, the court requests that the clerk have the parents sworn under oath, advises that they should not speak about the incidents that brought their child or children into care, and then asks for their positions regarding placement of the child or children. The parents are also asked about Indian heritage. A settlement conference is typically scheduled two to four weeks after the shelter hearing, though at the time of the preliminary visit they were being set approximately six to seven weeks after the initial appearance.

The attorney usually receives notice of the appointment within a day or two after the shelter hearing. Consortium members adjust assignments as needed to address conflict issues. Attorneys rarely receive discovery before the attorney's first meeting with the client, and sometimes not until a day or two before the settlement conference. In most cases, children are in substitute care during this time. The Department of Human Services (DHS) indicates that they are unable to provide discovery earlier due to work load issues, and this has reportedly been a problem for many years. DHS is moving to an electronic discovery model in December and is hopeful that this will improve their ability to share discovery at an earlier date.

Linn County has an active CASA Program, with 85 volunteer CASAs. All CASA staff members have prior CASA experience. The program is widely viewed as having made significant improvements during the last two years under the leadership of Lene Garrett.

The county does rely on Citizen Review Board (CRB) hearings, and juvenile consortium attorneys regularly attend, though there are scheduling conflicts for the attorneys. Attorneys also attend family decision meetings (FDMs) unless they already have a court appearance. Attorneys routinely ask that FDMs be rescheduled when this happens, so that they can be with their client during the meeting.

DHS reports that the number of cases in which the court takes jurisdiction is actually lower in Linn County than in other jurisdictions. Linn County DHS has five mental health workers on staff, as well as a domestic violence coordinator, and has offered wrap around services for three to four years. System partners seem to agree that the county would benefit from an increased focus on preventing removal, as once a child is removed, it can be very difficult to get the child (or children) returned home. Getting parents into substance abuse treatment is difficult. It is offered at the shelter hearing, but if it doesn't happen right away, it often doesn't happen until late in the case. Participation in family court does help parents gain access to services.

Parties report that parents and children need more visitation, and that there is very limited visitation early in the case. As in other counties, transportation resources are a barrier. Attorneys are requesting alternative visitation utilizing non-DHS transportation and supervision. DHS has visitation guidelines that require more visit hours for children under the age of five, and less for those over the age of five, but recent budget cuts have curtailed the agency's visitation resources, and hampered its ability to meet their own requirements.

There is also a need for improved transition services. Families have little support when children return home, and there are limited supportive services for parents in recovery during the time children are returned to their parent's care.

The county is also reportedly seeing an increase in “crossover kids” – kids who are in the dependency system and end up in the delinquency system. The CASA program is seeing this so frequently that they are now asking the juvenile department to help train CASAs. Some speculate that this is due to a lack of quality, appropriate foster care placements, a lack of training and supportive services for foster care providers, and a lack of services for children in the dependency system.

### Delinquency Cases

Judge Egan has been the juvenile delinquency judge for eighteen months, but will soon be leaving for a position on the Oregon Court of Appeals. As in adult criminal cases, attorneys are not present at the first appearance. The Juvenile Department discusses the right to counsel with kids before court starts, and then advises the court if the child wishes to have an attorney appointed. Judge Egan makes a statement at start of court about the right to counsel, and tells kids to request that an attorney be appointed if they wish to be represented. Generally, attorneys are appointed in felony cases, but in probation violation proceedings attorneys are appointed only if there is a likelihood of an out of home placement or commitment to the Oregon Youth Authority (OYA).

Torri Lynn is the Director of the Linn County Juvenile Department, which has nine juvenile court counselors (JCCs) on staff. Two counselors are assigned to work with kids with sex abuse adjudications, as there are a high number of referrals for sex offenses; the youngest child referred was 11 years old. Treatment resources are also limited in this area. Unless kids are on the Oregon Health Plan, there is no outpatient sex offender treatment available in Linn County. The Juvenile Department must refer kids to outpatient in Benton County, and it can be very difficult for families to get their kids to treatment without impacting employment or other responsibilities. The Juvenile Department has a good working relationship with defense providers and others in the delinquency system, views its role as helping youth and families achieve positive change, and uses a risk-based model of service to focus available resources on those youth who are most likely to recidivate. The Juvenile Department also operates a twenty bed juvenile detention facility.

The court does allow alternative dispositions, and the Juvenile Department is often able to support motions for alternative disposition. Attorneys are litigating motions when the juvenile department is not in support. The Juvenile Department indicates that Linn County is leading the state in competency evaluations. When a child is unable to aid and assist, the case is sometimes dismissed, and other times there is a state evaluation and a special placement. The Juvenile Department is concerned about the possibility of dismissal followed by future criminal conduct, so prefers to find a way to offer services if possible.

The District Attorney's office does provide a deputy for juvenile delinquency proceedings. This assignment rotates on a regular basis. Parties report that it is helpful to have consistency in representation from the DA's office, as the learning curve is steep and frequent changes make it difficult to achieve consistent resolutions.

Kids appearing before the court are not shackled unless there is a documented reason to do so. Very few juveniles are held in adult facilities, but that trend was reported as changing recently, with one sixteen year old developmentally disabled girl reportedly being held in an adult facility.

### Civil Commitment Cases

There are very few civil commitment cases in Linn County. People who are undergoing a civil commitment proceeding are housed at the Good Samaritan facility in Corvallis.

### Public Defense Providers in Linn County

PDSC contracts with two providers for non-death penalty cases in Linn County: the Linn County Legal Defense Corporation (LCLDC), and the Linn County Juvenile Defense Corporation. PDSC does not have a provider in Linn County to provide representation in capital cases.

LCLDC has ten members. The contract administrator, Roger Reid, does not accept appointments, but remains available to the court and others when issues need to be addressed. The consortium began establishing a board in 2011, but is still in the process of adding members, and continues to work out other details. Mr. Reid indicates that board insurance has been a barrier, and that the consortium will request additional funds to cover this expense during the next contract cycle. Tim Felling, one of the consortium members, has been drafting a best practices manual and a client feedback form. Consortium members have a "split the check" model; they strongly prefer this, as each member can count on a consistent monthly income. LCLDC added a new member this year, and assigned mentors (see Attachment A) from the consortium to help with training. The consortium hopes to increase its focus on succession planning, and to address concerns regarding a lack of diversity within its consortium as part of that process.

The Linn County Juvenile Defense Corporation has six members. Melissa Riddell is the contract administrator. Ms. Riddell began as contract administrator in 2011, taking the reins from Jody Meeker, who had been the administrator for the previous eleven years. Reports from system partners indicate that the transition has gone smoothly, and that the consortium is functioning well.

Linn County Juvenile Defense Corporation does have a Board of Directors with two outside board members, one of whom is a municipal court judge. The board meets annually, at a minimum, but more often when necessary. The board is reported to be very engaged and supportive. Ms. Riddell meets with consortium board members, consortium attorneys, and the Presiding Judge, on a regular basis, and fully addresses any complaints raised regarding the representation provided by consortium members.

The consortium sends all clients (kids age 12 and up) an evaluation form with a self-addressed, stamped envelope, when the case closes. The responses are sent to Ms. Riddell, then scanned and sent to the attorney. The return rate is 10-20%. Consortium members meet at least quarterly, but were meeting monthly during the transition from the previous to current contract administrator. The consortium does offer training to its members. They recently provided a two day training for all members, and they provide new members with training, four to five months of observation, and informal feedback from other consortium members. All members are expected to meet OPDS CLE requirements. The group plans to continue development and documentation of the training and mentoring process. The Linn County Juvenile Defense Corporation Board of Directors, By-Laws, Independent Contractor Agreement, Client Evaluation Form, and Complaint Form, are included as Attachment B.

## Comments from Linn County Stakeholders Regarding Providers

### Criminal Cases

Overall, LCLDC is described as providing competent representation. Attorneys are reported as regularly calling and visiting in-custody clients on weekends and in the evenings, communicating with each other and the Presiding Judge regarding case distribution so that assignments can be adjusted if necessary, behaving in a professional manner and avoiding interpersonal conflicts that would interfere with resolving cases, and requesting and receiving authorization for investigation and other professional services. LCLDC attorneys are considered trustworthy by the court and their adversaries.

Some providers are described as doing a “very good job,” but there are inconsistencies. Though there is no systematic way of measuring quality of services, there are attorneys who tend to meet and consult with clients for the first time in the courtroom or courthouse hallways on the day of the settlement conference. Others in the system express some concern about this. They recognize that there are times when it is difficult for attorneys to contact clients, but their observation is that there are certain attorneys who are more proactive, and work harder to meet their clients in advance of court. Those attorneys tend to be prepared for court on the day of the settlement conference, have excellent

client management skills, and their clients rarely request a new attorney. There are also attorneys who need to improve their client communication skills. Many clients are observed as having limited verbal skills, and their attorneys forget to modify the language they are using so that clients can understand.

LCLDC attorneys are described as being available for court hearings, though it is more difficult when providers have a significant number of privately retained cases.

### Representation of Parents

The Linn County Juvenile Defense Corporation attorneys are described as being very competent, having made significant improvements in the last few years. Some of the members are described as providing representation that is superior to what is found in many other Oregon counties. Attorneys in the consortium are described as being proactive, advocating well, and cooperating with other system partners to avoid unnecessary delays. For example, when the CRB is scheduling a hearing, the attorneys are regularly contacting the CRB when an interpreter is required. This is something done by DHS in other counties, but has become routine for Linn County attorneys because they want to avoid having the reviews rescheduled. Though a few attorneys are described as not being the strongest advocates for their clients, the majority of consortium members are described as being among the best at representing children and parents.

The consortium is still adjusting to the membership and contract administration changes, but the changes are viewed very positively. The attorneys are described by everyone as being very committed, rarely taking vacation, and constantly striving to make improvements. Attorneys are also described as being more settlement oriented than in the past, but this is not viewed as a negative – just something to monitor. Others describe parents' attorneys as zealous advocates who sometimes let their advocacy get in the way of DHS or CASA access to parents or parents' treatment records. All parties note an appreciation for discussion around these topics, with mutual respect for the roles that each other play in the dependency system.

While the Linn County Juvenile Defense Corporation attorneys are described as being very committed and rarely taking vacations, they are also described as having limited availability. The court and others report that it is difficult to work around attorney schedule conflicts, which makes it difficult to schedule court hearings, FDMs, CRBs, and meetings with DHS and CASA. Some participants in the system feel that the scheduling conflicts can extend the length of time a child spends in care simply because critical meetings happen later than they should due to attorneys' unavailability. Consortium members agree that scheduling is difficult, but note that this is also a result of adjusting to the changes within the consortium, scheduling around court closures (holidays and

furlough days), limited docket time for juvenile matters, and natural challenges associated with scheduling when there are multiple parties in a case.

### Representation of Children

The Linn County Juvenile Defense Corporation is also providing competent representation for child clients. There were concerns about specific attorneys not visiting child clients, but those concerns have been and are being addressed by the contract administrator. The board was made aware of the concerns, and was supportive of the contract administrator's efforts to rectify the situation. Some parties suspect that there are still attorneys who are not seeing their child clients, but they seem to have confidence that the issue is being addressed within the consortium. Linn County Juvenile Defense Corporation attorneys were specifically commended by some as taking strong positions when representing children, and being leaders in the case planning.

### Delinquency Cases

Linn County Juvenile Defense Corporation attorneys are reported to be very strong advocates for their juvenile delinquency clients, providing zealous representation, with significant improvement over the last five years. The attorneys have very good working relationships with the court and others in the delinquency system. They meet with clients, and work well with them in all case types. Attorneys regularly request alternative dispositions in sex abuse and other case types, and also provide favorable mitigation information.

## **OPDS's recommendations for further inquiry at the PDSC Meeting on December 14, 2012**

Based on the information provided to OPDS during meetings and telephone conversations with justice system stakeholders, OPDS recommends that the Commission consider the following in developing a service delivery plan for Linn County.

### Structure

The current structure, with one consortium providing representation in criminal cases, and another providing representation in juvenile cases, appears to be working satisfactorily. The Commission may wish to hear more from LCLDC regarding its board, and succession planning. Although the Linn County Juvenile Defense Corporation is reported to be doing very good work, there may be a need for additional funding to allow them to hire more attorneys so that attorneys have more time to attend shelter hearings, detention hearings, CRB reviews, and meetings.

## Criminal Representation

LCLDC attorneys are reported to be providing competent representation, with some inconsistency in the quality of representation. Concerns expressed related to a perceived high failure to appear rate, particularly in domestic violence cases, a low trial rate in felony cases, lack of client contact prior to the pretrial conference, a lack of training with regard to the use of “plain language,” and a lack of availability among attorneys with a high volume of privately retained work. Some of these factors may be resolved, at least partially, by having attorneys available at arraignments, where they can make initial contact and schedule a time to meet with the client. The lack of a strong board and formalized structure could make it more difficult for the consortium to maintain quality representation as time passes and current consortium members retire.

## Juvenile Representation

As noted above, on the whole, the Linn County Juvenile Defense Corporation provides excellent representation. The consortium would benefit from adding an attorney or two if that is what is necessary to provide representation at shelter and detention hearings. The consortium also noted interest in having a social worker as part of the consortium. While the stresses of high caseloads are understood, the consortium should be raising these issues with PDSC to secure the funding necessary to provide representation at all critical meetings and court hearings, including shelter hearings.

## Attorney Advocacy at Initial Court Appearance

There are many standards of representation available to guide practitioners regarding the timing of appointment of counsel. Compliance with these standards requires that the attorney be present at initial court appearances.<sup>5</sup>

The Office of Public Defense Services, *Best Practices for Oregon Public Defense Providers*, includes Best Practice IV, which addresses case assignment, says: *Providers should establish, in collaboration with the courts and others, a system for receiving court appointments and assigning counsel that assures high quality representation from a client's first appearance in court to the final disposition of the judicial proceeding.*

The Oregon State Bar's Specific Standards for Representation in Criminal and Juvenile Delinquency Cases includes Standard 2.6 - Initial Court Appearances: *A lawyer should make a statement on the record or request that the statement be*

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<sup>5</sup> The best practices and standard outlined here are Oregon-specific. Similar standards have also been adopted by the American Bar Association and other entities.

*contained in the order to preserve all of the client's constitutional and statutory rights at initial court appearances.*

### **Implementation**

A lawyer should:

1. Promptly advise the client of, and take action to preserve, all constitutional and statutory rights of the client, including the right to remain silent, to file motions challenging the charging instrument, and to enter a plea of not guilty or deny the allegations contained in a delinquency petition and to request a jury trial, when failure to do so may result in the client being precluded from later obtaining such rights.
2. Request a timely preliminary hearing as provided by law or the rules of the court, unless there is a sound tactical reason not to do so.
3. If a preliminary hearing is held, review the allegations, marshal the evidence, and prepare to challenge the state's evidence and arguments.
4. Review probable cause documents and any probable cause arguments, and, if no probable cause is established, move for release of the client or dismissal of the charges if appropriate.
5. Ensure that bail has been set, seek reductions in bail if appropriate, and seek alternative release options.

The Oregon State Bar's Specific Standards of Representation in Juvenile Dependency Cases are similarly instructive. Standard 3.5 contains the obligations of a lawyer regarding shelter hearings and pretrial placements: *When a child has been removed from the parent's home and placed in shelter care, a lawyer should advocate for the placement order and other temporary orders the client desires, unless the client is a child incapable of considered judgment, in which case a lawyer should advocate for the placement order and other temporary orders that are in the best interests of the child.*

### **Implementation**

1. A lawyer should be familiar with statutory and case law that requires DHS-CW to make reasonable efforts or active efforts to prevent removal of a child.
2. A lawyer should be familiar with the types of placements available to children and placement issues, including:
  - a. the impact of removal and placement on the child;
  - b. the necessity of placement;
  - c. specially certified placements for the client;
  - d. relative placement;
  - e. the importance of placing siblings together when appropriate;
  - f. alternatives to placement;
  - g. the appropriateness of the placement;
  - h. the efforts that can be made to ensure a smooth transition to a new placement;
  - i. the effect of the placement on visitation;
  - j. the effect of the placement on service needs of the child or family;

- k. the transracial, transcultural, and language aspects of the placement; and
  - l. placement preferences under the Indian Child Welfare Act.
3. At the shelter care hearing, a lawyer should:
- a. obtain copies of all relevant documents;
  - b. take time to talk to the client, caution the client about self incrimination, and ask for a recess or continuance if necessary;
  - c. if appropriate, assert client's Fifth Amendment and other constitutional rights; and
  - d. assist the client in exercising his or her right to an evidentiary hearing to demonstrate to the court that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process before adjudication;
  - e. when appropriate, present facts and arguments regarding:
    - (1) jurisdictional sufficiency of the petition;
    - (2) appropriateness of venue;
    - (3) adequacy of notice provided to parties, and tribes if applicable, particularly if they are not present;
    - (4) the necessity of shelter care;
    - (5) why continuation of the child in the home would or would not be contrary to the child's welfare or why it is or is not in the best interests and for the welfare of the child that the child be removed from home or continued in care;
    - (6) whether reasonable or active efforts were made to prevent removal;
    - (7) whether reasonable and available services can prevent or eliminate the need to separate the family;
    - (8) whether the placement proposed by DHS-CW is the least disruptive and most family-like setting that meets the needs of the child;
    - (9) the possibility of placement with appropriate noncustodial parents and relatives;
    - (10) a plan for release of the child prior to the jurisdictional hearing;
    - (11) if the child remains in shelter care, arrangements for visits and alternatives to shelter care to be explored such as relative placement, intensive in-home services, and mediation; and
    - (12) applicability of the Indian Child Welfare Act and appropriate parties and tribes to receive notice.
  - f. propose return to parents or placement that is the least restrictive with regard to the client.
4. If a child is returned to parents or placed in shelter care or other state placement, a lawyer for the child should ensure that the child's needs for safety and right to receive treatment are met by the child's caretakers or agencies responsible for the child's care. A lawyer should inform the court,

- DHS-CW, and the caretakers for the child about any medical, psychiatric, or security needs of the client, if directed by the client.
5. A lawyer should request any temporary orders that the client directs or, if representing a child not capable of considered judgment, that are in the best interests of the child, including:
    - a. temporary restraining orders, including orders expelling an allegedly abusive parent from the home;
    - b. orders governing future conduct of the parties, i.e., remaining clean and sober while the child is present, etc.;
    - c. orders for any services agreed-on before adjudication;
    - d. visitation orders that are reasonable and flexible and take into consideration the parties' work and counseling schedules and available transportation and that specify the terms and conditions of visitation;
    - e. orders for the parent or parents to pay child support if appropriate;
    - f. orders for DHS-CW to investigate relatives and friends of the family as potential placements, or to place sibling groups together; and
    - g. orders for the agency to provide appropriate treatment for the child.
  6. A lawyer should consult with the client about transfer of the case to tribal court and take appropriate action as directed by the client.
  7. A lawyer should inform the client of the possibility of a review of the referee's or court's order at the shelter care hearing and the possibility of pursuing a writ of habeas corpus.
  8. If the court sets conditions of the child's placement, a lawyer should explain to the client and any third party the conditions and potential consequences of violating those conditions. A lawyer should seek review of shelter care decisions as appropriate and advise clients or any third parties of changes in conditions for pretrial placement that would be likely to get the court to agree with the client's plan.
  9. A lawyer should ask the court to inquire of parties concerning the paternity of the child and the applicability of the Indian Child Welfare Act.

#### Testimony at December 14, 2012, PDSC Meeting in Albany, Oregon

Chair Ellis then invited Linn County District Attorney Jason Carlile to share his thoughts. Mr. Carlile started by explaining that he has supported the rule prohibiting negotiations after the trial setting, noting the importance of making decisions early in the life of a case. Mr. Carlile says that he encourages his eleven deputy district attorneys to be realistic with their negotiations in order to be efficient, and that the defense bar seems in general agreement. Mr. Carlile's attorneys engage in a vertical model of prosecution, meaning that the deputy DA assigned to the case handles it from the very beginning to the very end; they know if they don't give a reasonable offer, they will have to try the case. Mr. Carlile has one deputy assigned to juvenile court work, both delinquency and dependency, and two deputy DAs assigned to domestic violence cases, but the rest are generalists.

Mr. Carlile explained that the DV Court started with a federal grant, and that though federal funding stopped, through the courtesy of the defense bar and the court, they have been able to maintain two elements. First, the court has cooperated in getting trials set and tries to close cases within 45 days. The sheriff holds the defendant in jail. Defendants can bail out, but most are conditionally released when they see the judge the next day. This delay eliminates the revolving door of getting out of jail and returning to the house to fight.

Chair Ellis asked Mr. Carlile about the felony trial rate in Linn County. Mr. Carlile explained that the vertical representation model, with early, reasonable offers, and the no-settlement rule help. He also noted that there is open file discovery early in the case, and that there is a high level of trust between the defense bar and his office. Commissioner Ramfjord asked whether other district attorneys around the state employ the same rule. Mr. Carlile indicated that it varies statewide, but his impression is that many counties do not.

Chair Ellis asked Mr. Carlile about his thoughts regarding defense representation in Linn County, and he said that many of the attorneys are of his generation, are colleagues and friends, and that the trust level is very high. The recent addition of a new attorney has been a good thing, because transitions need to happen. Chair Ellis asked about recruitment on the prosecution side, and Mr. Carlile said he has hired people with experience from other counties, noting that the current market is good for hiring. Mr. Carlile indicated that the appointment information goes quickly to the defense bar, the discovery goes out, and in most cases, the plea offer goes out right away. Mr. Carlile also pointed out that the report says the pretrial conferences are 60 days out, but in custody cases are scheduled about two weeks after arraignment, and out of custody cases are about four weeks after arraignment. Commissioner Potter asked whether the District Attorney's office implemented its new electronic discovery system. Mr. Carlile said that it has been implemented and is working pretty well, but that there is still some work to do.

Captain Todd Vian, the Linn County Sheriff Commander, provided information regarding the jail. He indicated that there are two "non-contact" attorney visiting rooms that allow communication through glass, over telephones. These are as private as the Sheriff's office can make it; it is not monitored by cameras or audio recordings. Attorneys are also allowed to use the video courtroom as a meeting space, which is within the secure perimeter of the jail. If an attorney needs to have physical contact with the client, that room can be used. It isn't monitored with any recording equipment, but deputies can visually watch and make sure that the inmate doesn't do anything he is not supposed to do. There are three additional contact visiting areas, but they try very hard not to use those because there is absolutely no monitoring in them - they cannot see into those rooms - there are no windows, so it is a security and safety risk to use them.

Commissioner Potter asked whether there is any potential solution to the limited number of attorney visit rooms. Captain Vian said that they could possibly add one or two rooms in the general vicinity of the inmate visitation area, where family members come in and visit, but that money is the problem. Captain Vian added that he could understand the concern because he often sees one, two or sometimes three attorneys waiting. Commissioner Ramfjord asked whether there is a system for scheduling interviews, and Captain Vian said no. The jail is open 24 hours a day, seven days a week, and rooms are available on a first come, first served basis. Commissioner Lazenby asked whether there are overcrowding problems in the jail. Captain Vian indicated that they routinely release people through a matrix system. In March, 48 of 230 jail beds were eliminated, and Captain Vian personally laid off 11 staff members. The Sheriff's office has been working with the courts, and the district attorney, to manage.

Chair Ellis invited Roger Reid, administrator for the Linn County Legal Defense Corporation, and Paul Kuebrich, a member of the consortium, to share their thoughts. Mr. Reid explained that he and Paul have been practicing together for more than 30 years. They started together in private practice, and about 25 years ago the two of them formed a Linn County consortium of attorneys, and handled district court misdemeanors. When the circuit court criminal case attorneys disbanded, they took over that work, and have been contracting with the state for more than 25 years. During that 25 years there have only been three who have withdrawn from the consortium. One of them was killed in an automobile accident. Janet Botano left last year to join the juvenile consortium, and Mr. Reid semi-retired several years ago. Mr. Felling took over Mr. Reid's cases. The consortium currently has nine attorneys. Tyler Reid is the newest; he joined in October. He graduated from Willamette University, and the consortium has assigned two mentors for him - Paul Kuebrich and Tim Felling.

Chair Ellis asked about consortium members' percent of the practice in criminal versus other case types. Mr. Reid indicated that it varies among all of them, with 70-85% of them practicing criminal law fulltime. Chair Ellis asked about members with significant retained work. Mr. Reid said that one attorney has about 35% retained cases and 65% court appointed cases, but other consortium members have less retained work.

Chair Ellis asked about the consortium's structure, noting that it appears to be fairly informal. Mr. Reid agreed that it has always been informal, but explained that the nine attorneys want to be independent contractors, and that they have a corporation that was formed in 1998. There are four members on the board: Mr. Reid, Mr. Felling, and two outside members, an accountant and Derek Hews, an attorney with the juvenile consortium. Mr. Reid clarified that the two new board members were just added in response to the Commission's requirements. Mr. Reid indicated that board insurance is expensive, and that he will be asking for funds to cover that expense during the next contract cycle.

Chair Ellis asked about the consortium's "split the check" model. Mr. Reid explained that each member of the consortium receives the same, equal amount each month, which works well for the consortium members. Mr. Kuebrich explained that by the end of the month and end of the year, each of the nine attorneys should have been appointed to a relatively equal number of cases. The attorneys who choose to do retained cases work longer hours to cover the larger caseload. Chair Ellis asked whether Mr. Reid took an equal amount of the funding; Mr. Reid said he takes very little - just for administration.

Chair Ellis asked about the experience level of participants in the consortium. Mr. Reid said that seven out of nine of them have over 25 years of experience. Mr. Felling has about 10 years of criminal experience. The newest member has only two months. Chair Ellis asked about the consortium's quality assurance mechanism. Mr. Reid said that he handles any complaints about the attorneys, and explained that the court sends him notifications of any client or any defendant who is dissatisfied. Mr. Reid contacts the defense attorney and inquires about the matter. Mr. Reid also receives complaints from the Oregon State Bar, and contacts the attorney immediately. He asks the lawyer to provide him with a copy of the attorney's response letter to the Bar. Since June of '08, the consortium has handled about 15,000 cases, and they have had 29 complaints. All 29 of those were resolved, and he believes that they were resolved favorably. He said it is very important to him and to the members of the consortium that clients be treated fairly, and that they get the best defense possible. He also noted that some defendants are unreasonable. Chair Ellis asked whether they ever had to let someone leave the consortium because quality was inadequate, and Mr. Reid indicated that they have not, but that there are a couple they are watching now.

Chair Ellis asked about the process for adding members. Mr. Kuebrich responded by explaining that he has known Tyler Reid since he was a young boy, that he knew his academic record - he graduated magna cum laude - and knew of his passion. Though there was not a formal structure in place, the members came to consensus and brought him on board. Most consortium members feel that a more formal process needs to be developed, and that now it is just a question of taking what has worked extremely well for 25 years as an informal relationship among eight or nine people that care very deeply about the work they do, and feel very deeply about each other. Chair Ellis asked whether other lawyers in the community have ever had an interest in becoming part of the consortium. Mr. Kuebrich said they have never been made aware of it, and that they hadn't had a new, young lawyer come to town, with the exception of Tyler, in recent memory. He believes the reason is that the economics of law have changed drastically, and it is virtually impossible to establish a practice in a town where a person is not known. Mr. Kuebrich stated that when they do need to attract new lawyers, they will need to actively recruit from outside the area.

Chair Ellis asked whether consortium attorneys are compensated at the same level as district attorneys in Linn County. Mr. Kuebrich said that he doesn't believe they are - consortium lawyers don't have retirement or health insurance. They have to pay a secretary, phones, offices, equipment – it is all expensive.

Chair Ellis asked about the demographics of Linn County, and whether there is a significant minority population. Mr. Kuebrich said that there is a significant Hispanic population, and that they have very good interpreters who are available with very short notice.

Chair Ellis asked about the gender mix in the consortium. Mr. Reid said that the only female here left six months ago, that the juvenile consortium has women lawyers, and that in Linn County, women comprise about 30% of the Bar.

Commissioner Ramfjord asked about the best management practices manual and client survey that are being developed. Mr. Felling explained that their client survey is similar to the juvenile client survey, and covers topics like how quickly the attorney returns the client's call, how quickly they met with the client, how responsive they were, and how well they explained the law and the process. Mr. Felling described the best practices manual, saying they took the Public Defense Services best practices document and explained how the consortium is meeting those standards, or why a particular standard might not apply. If they aren't meeting a standard, Mr. Felling is reaching out to other consortium groups to determine how they might best meet the standard.

Mr. Felling shared that he feels very passionate about the work that he does, and he has absorbed that from every member in the consortium; everybody wants to provide high quality representation. He also expressed a desire to attract new lawyers, but explained that part of the problem is the compensation and high student loan debt, which Chair Ellis noted is around \$110,000 for law school graduates. Mr. Felling explained that for many, augmenting their income with private work is necessary. Commissioner Potter asked whether an attorney can make a living wage solely through the contract. Mr. Felling said that is a challenge, with the burden of law school debt.

Commissioner Welch asked about the rule regarding no negotiating after the trial date is set. Mr. Kuebrich said he was a vocal opponent when it was implemented by Judge McCormick, but that in fairness, with the current presiding judge, it is a rule, but there are exceptions to that rule, the exceptions are granted based upon the merit of the need, and that the presiding judge is likely to let parties settle notwithstanding the rule. Commissioner Welch asked what the rule accomplishes. Mr. Kuebrich shared his belief that its intended purpose is to send a message to defendants to quit wasting time, and another intended goal is to send a message to deputy district attorneys to look at the case early on. Commissioner Ramfjord asked whether the rule is imposing unfair consequences on defendants who take a little time to decide upon pleading guilty, and then

must plead guilty to something that is harsher than what they could have pleaded to earlier. Mr. Kuebrich replied that he believes the more serious consequence is not that they are being forced to plead guilty to something more serious, but that they are forced into a trial that has the potential to have an outcome that is far worse than what the attorneys could have negotiated. Mr. Felling added that one mitigating factor is that the DA's office is often willing to agree to a continuance when required by the circumstances of a particular case.

Chair Ellis asked about the system without lawyers at arraignment. Mr. Kuebrich indicated that the group has considered watching the arraignments to see if there is anything they could add to the process, noting that there is a push for early resolution through the courts. They've heard that the state would be making limited offers to the defendant that may or may not be available later down the road. These offers are made in minor cases, because nobody at the time of arraignment is going to take a deal if it means going to jail. The consortium has not wanted to be involved with this kind of situation. Mr. Kuebrich suggested that the DA has become aware that this is an issue. This week he received a call from the deputy district attorney who was going to do walk in arraignments; that district attorney said he was suspending that practice and was not going to make offers any longer. Mr. Kuebrich said that he doesn't see that there is a lot for lawyers to do at walk in arraignments, but that they are willing to be there.

Chair Ellis asked Mr. Kuebrich whether there is anything the Commission can do to improve. Mr. Kuebrich said that while he has not dealt with the Commission, he has dealt with the OPDS staff, and they have been wonderful when approving non-routine expense requests, explaining why a request is denied, and that the analyst has been great about keeping in contact and making sure that problems are resolved.

Chair Ellis asked for more information regarding the consortium's training and supervision program. Mr. Kuebrich indicated that Tyler Reid is shadowing Mr. Felling and Mr. Kuebrich. Tyler will sit through misdemeanor trials and felony trials, including Measure 11 trials, with Mr. Felling and Mr. Kuebrich. The goal is to have him start doing solo appearances on relatively routine misdemeanor probation violations and maybe even some routine non-serious felony probation violations, then work him into doing misdemeanor trials. Mr. Kuebrich added that Tyler came to the group with some experience - he clerked at the Marion County District Attorney's Office while he was in law school, and had some significant responsibilities in juvenile court, and tried juvenile cases on his own.

Chair Ellis asked whether all consortium members are independent practitioners, and Mr. Kuebrich indicated that they are; no law firms; all in separate offices. Chair Ellis asked about the consortium's experience working with the appellate division. Mr. Kuebrich said the system works well, and that there is very good communication.

Chair Ellis invited Lene Garrett, CASA Director, to share her thoughts. Ms. Garrett noted that the preliminary report was very accurate as it reflects the work of the juvenile consortium and the juvenile court process, but noted that CASA serves only about 40% of kids – around 90 to 95 cases - so the information that she has is based only on the kids they are serving, and not the other 200 who do not have a CASA. Ms. Garrett explained that a CASA attends every shelter hearing, and receives the petition and the affidavit. Cases are prioritized based on four criteria: (1) whether children are placed in non-relative foster care (2) whether there was a significant injury or the death of a child or a sibling in the case, (3) does the child have significant identified needs, and (4) age, with a focus on ages zero to three and 12 and over. Because data shows that once a child enters the dependency system at around age 12, they are likely to age out of the system, they want to ensure that there is a CASA in their life that is helping them navigate their way, particularly around educational needs and placement to ensure that they at least graduate from high school and have some connections when they leave the system.

The CASA program has grown in the last three years from 36 to 94 CASA volunteers, and as the program has grown, Ms. Garrett expressed her feeling that relationships with system partners have improved immensely. They have worked very hard to understand legal processes in Linn County, and to train CASA volunteers about processes, so there are clear expectations regarding the role of each party in the case. Ms. Garrett indicated that the consortium has also improved in a number of areas. Children are seeing, or at least hearing from, their attorneys more frequently than they did two and a half to three years ago. There is more open communication, when it is appropriate, between CASA volunteers and attorneys for parents. Ms. Garrett explained that contact between the CASA and the parent early in a case can help CASA volunteers get support to kids. She also pointed out that while children are in foster care, CASA volunteers are the connection that is pretty consistently involved, consistently seeing the child and consistently showing up at all meetings, making parents' relationships with the CASA volunteers that much more important. Ms. Garrett indicated that this is one area where there is still room for continued discussion within Linn County, so that in instances where the attorney for the parent is not comfortable with the CASA meeting with the parent, at least they can facilitate a meeting with the attorney present. Ms. Garrett expressed appreciation for the dependency work group, where there is open dialogue about what is working well and what isn't working well, and the open communication she is able to have with Melissa Riddell, the consortium administrator. Ms. Garrett said that while attorneys are having more face to face contact with clients now than in the past, there is still room for improvement, and she expressed support for the idea of having more lawyers in the consortium. She also shared support for the idea of having attorneys at shelter hearings, and more safety planning and exploration of options that would avoid removals. Ms. Garrett also noted the lack of visitation services, and the need for additional visitation options. She shared the plight of a 13 year old girl who has been in foster care for almost three years, who is to the

point where she may not want to visit her parents any longer because she misses half a day school and thinks it is affecting her grades. To be able to accommodate visits after school hours would be ideal, particularly for kids who are of school age and are missing school. If they live in the outer areas of the county and they have to come into Albany, they could miss almost an entire day depending on the time of the visit.

Ms. Garrett expressed confidence in Linn County's abilities to address families' needs, and the commitment level from the attorneys, the child welfare staff, and the judges, to ensure that they are providing services with the resources that they have available. Ms. Garrett also noted the increase in kids who are "crossing over," meaning they start in the dependency system and end up also in the delinquency system. CASA is providing training to advocates on the delinquency system and how to effectively advocate when kids start committing minor delinquency offenses. She explained that that is one of the reasons why teens also have a CASA, though it is not typically a priority – they tend to look at the zero to three or the zero to five - but with the studies of brain development, and knowing what happens, there is an opportunity to help in those teen years.

Commissioner Potter asked about the number of CASA volunteers in Linn County compared to other counties, and Ms. Garrett responded that Linn County has about the fifth highest number of volunteer advocates in the state. She noted that the average time of volunteerism with their group is almost three years, and that in Jackson County, where Ms. Garrett used to work, it was hovering around the five year mark. Commissioner Potter asked what should be done in Linn County that is not being done, as relates to public defense. Ms. Garrett said there is still room to continue to learn about each other, and to improve the communication avenues for CASA volunteers and the parents of the children they serve, so that parents are less suspicious of CASAs, and understand that the motivation of the CASA is to benefit children and not to ding a parent for doing something wrong. Commissioner Ramfjord asked whether there any efforts to try to have a more standardized process by which certain contacts are made to ensure both the opportunity for contact, and improved communication. Ms. Garrett said that they have not, but that it is a good idea and something to explore, and emphasized hope for such dialog based upon the relationship between defense providers and CASA, which has improved dramatically in the last few years.

Commissioner Lazenby asked about diversity within the pool of CASA volunteers, and within the population they are serving. Ms. Garrett said that they are very diverse. Linn County CASA applied for a national grant two years ago, and found that they match almost exactly between the diversity within kids and the CASA volunteers. CASA continues to work on it; they are up to nine volunteers who speak Spanish, a couple of others who speak another language, and they also have the ethnic component. Though they are not extremely

diverse in the county as a whole, the volunteer base is pretty reflective of the kids.

Chair Ellis invited Melissa Riddell to share information about the Linn County Juvenile Defense Corporation. Ms. Riddell said that there are six members, and she has been the administrator since January of 2011; the previous administrator, Jody Meeker, held the position for 10 years, and Ms. Riddell has been a member of the consortium since 2008. Ms. Riddell worked for Ms. Meeker while she was in law school, starting in about 2002, and continued as an associate when she passed the bar in 2004. Ms. Riddell explained that in addition to the administrator changes, the consortium has had a shift in its membership over the last few years, and that they do not suffer from the “graying of the defense bar” issues that are confronting other consortiums around the state; they also have a good gender balance within the consortium.

The consortium has a board of directors with six board members, and they have independent contractor agreements. The board includes a municipal court judge, Doug Moore and Mark Taleff who are both former members of the consortium, John Hawkins, who used to work for the Linn County Juvenile Department, and Mack Walls and Derek Hews who are attorney members. Chair Ellis requested clarification, and Ms. Riddell confirmed, that of the six board members, two are attorney and four are outside members. She indicated that there is some office sharing, but each attorney has their own staff.

Ms. Riddell noted challenges attorneys face regarding availability, noting that they must be available to the court a significant amount of time. She explained that consortium members are not opposed to adding members, but that the compensation would have to increase, as it is very hard for people to do this work on a part-time basis given the amount of time attorneys are expected to be certain places. Chair Ellis asked whether consortium members do this work on a full-time basis. Ms. Riddell said that some do some municipal court work and a little bit of retained work, but at least four members are exclusively dedicated to the juvenile contract. Ms. Riddell used to do some retained work, but she feels that representation for contract clients is very time intensive, and doing it well requires all of an attorney’s time.

Chair Ellis asked about appointment of counsel in delinquency cases. Ms. Riddell explained that in Linn County, the juvenile department explains the right to counsel, and that the court sometimes goes through the colloquy with kids. While she doesn’t believe that there is enough questioning of the youth, there have been times when judges appoint attorneys for kids even when they say they do not want counsel. Ms. Riddell expressed support for appointment of counsel in all juvenile delinquency cases. Ms. Riddell also addressed the matter of attorney appearances at shelter hearings, explaining that as a group, they are not opposed, but the court docket makes that challenging. Right now shelter hearings and delinquency hearings are held at 1:30 every day, but will be moving

to 2:30 every day. Consortium attorneys are in regular juvenile court appearances at that time on Thursdays and Fridays, and the court will not allow attorneys any time to be able to be present at shelter hearings. The court is concerned that proceedings will take more time if attorneys are present. The court has recently also canceled all dependency settlement conferences; they are all off the docket and will be set on a Friday afternoon for a pretrial conference. She noted that the court docket is a problem, and though statutorily juvenile dependency cases should be scheduled within 60 days, other cases get priority. Commissioner Welch expressed concern about the cancelation of settlement conferences, and asked Ms. Riddell about the plan. Ms. Riddell indicated that they just found out about the cancelations, and they are hopeful that they will be able to work things out with the assigned deputy district attorney and DHS, but there is no plan at this point, and she is also concerned.

Chair Ellis asked Ms. Riddell whether there is anything the PDSC could do better for providers. Ms. Riddell indicated that they get a lot of support from OPDS. Ms. Riddell indicated that the consortium has just gone through a period of transition, during which they were short at least one full position, which contributed to availability challenges. Now that they are back up to six attorneys, they have more time. She also confirmed Commissioner Potter's suspicion that it would help to have an increase in compensation. Ms. Riddell ended by introducing the other members of the consortium.

Chair Ellis invited John Meade from DHS to share his views with the Commission. Mr. Meade said he has 34 years of experience in ten different counties, and he was not accustomed to the level of advocacy that exists in Linn County. He explained that in his previous experiences, attorneys were more inclined to encourage their clients to cooperate with DHS, but he says they have worked through most of that, and he has been really pleased with the dialogue that has gone on, and the willingness of the defense bar to have discussions. He noted the Family Treatment Court as an example, as it requires parents to make an admission to participate. Everyone worked through that together as a group, which felt very cooperative, but he also expressed his wish that attorneys wouldn't feel the need to be at initial family decision meetings, where he wants to have his staff engage with families as soon as they can, in a spontaneous way, when the family needs help. From his viewpoint, having an attorney in that meeting is sometimes very cumbersome and also creates a level of distrust. He noted that this is probably a natural tension everywhere. Chair Ellis expressed support for a blend of the two styles – adversarial and cooperative. Mr. Meade said they have reached a very good balance, and that Judge Murphy does push everyone to work together to improve the system.

Commissioner Welch asked whether the resources available to DHS are at an all time low. Mr. Meade confirmed that this is the worst it has been in 34 years. Commissioner Welch asked whether, with the absence of treatment resources or the restriction of them, the defense bar is putting pressure on the agency to fulfill

fundamental federal and state legal obligations. Mr. Meade said that they do get challenged on reasonable efforts, but noted that despite the lack of resources statewide, Linn County does better than most. The Linn County Council is pulling system partners together to discuss coordinated services in order to avoid huge gaps. Linn County DHS is severely understaffed, which has brought constituent complaints when there used to be none, but they do have a staff that matches fairly well the ethnic makeup of the community, and they do the best they can.

Chair Ellis invited Torri Lynn and Lisa Robinson from the Linn County Juvenile Department, and asked about the practice of juveniles waiving the right to counsel, and the role the department plays in talking with the juvenile about the right to counsel. Mr. Lynn explained that the probation officer meets with the youth and family, reviews the police report, and asks them if they are going to be requesting an attorney. The probation officer advises them of their rights, but does not offer any legal advice. Chair Ellis expressed the concern that a young person might think, "if I waive counsel then they will think more favorably of me." Ms. Robinson explained that the initial conversations are done with families present, and parents who can help guide and direct the youth. If there is any indication that they are confused, don't understand, or need more time to think about it before they make an appearance before the court, if that is where they are headed, they revisit all of those rights again before any statement is made before the court. Mr. Lynn added that it is not unusual for a youth to request an attorney. Chair Ellis asked whether it would be a big wrench in the system if the rule prevented waiver without an attorney counseling on the issue of waiver. Mr. Lynn said that he didn't think it would be a big wrench, but that they have worked pretty hard as a system and with the defense consortium around timeliness of the system, and that usually, in more serious cases, the court is going to appoint an attorney whether the kids say they want to waive or not. Commissioner Ramfjord asked whether there is variation from judge to judge, in terms of the depth or nature of the inquiry. Mr. Lynn replied that there is a standard judge on the main dockets, where it is pretty consistent, but that in detention review hearings there might be some variety on how in-depth the judge goes, with some going a little more in-depth than others. Commissioner Welch noted that parents are part of the problem – they are often mad that the kid did something wrong, they have to miss work, etc., and that pressure alone is enough. Ms. Robinson noted that the department is not opposed to having defense attorneys at detention review hearings or the initial appearances.

Chair Ellis thanked everyone from Linn County for their comments, and invited them to come to the next meeting, on January 23, in Salem, when Commission members will talk about what they learned and whether there are areas of concern in the service delivery plan for Linn County. He explained that after that, the discussion will be incorporated into a revised draft of the report and circulated, and after comment on that, the Commission usually adopts the final report. Chair Ellis invited participants to send Nancy Cozine any additional

comments or thoughts so that those could be shared with Commission members in January.

### **Updates Following PDSC Meeting on December 14, 2013**

Judge Egan was elected to the Court of Appeals effective January 6, 2013. The Governor will appoint Judge Egan's successor, and has begun the selection and recruitment process.

### **A Service Delivery Plan for Linn County**

At the PDSC meeting held on January 23, 2013, Commission members discussed the current service delivery plan for Linn County. Commission members identified the strengths of the structure in Linn County, which include the strong working relationships within the consortium groups, as well as between the consortiums and the court and other members of the juvenile and criminal justice systems.

While the juvenile consortium group has worked through changes in its composition, the Commission noted the need for the criminal provider, Linn County Legal Defense Corporation, to plan for transitions within its member group. While the addition of one new member is encouraging, there is a clear need for this group to continue development of its structure and succession planning. The group must also implement a fiscal management system that holds in reserve compensation for case credits in excess of those actually received.

The consortium groups are also encouraged to pursue measures to ensure the appointment of counsel in juvenile delinquency and other cases where the client has a right to counsel. Additionally, they are encouraged to be present at the client's initial appearance in court.

The Commission does not see any need to make adjustments in the provision of services in Linn County as a result of this review, but will continue to monitor the quality of services provided by both consortium groups as well as efforts made by the Linn County Legal Defense Corporation to develop its structure and succession planning. The Commission will determine whether there is any need for adjustments during future contracting cycles.