

Public Defense Services Commission's Strategic Plan for 2007-09

August 10, 2007

Vision

- An integrated state public defense system that is a leader in the delivery of quality, cost-efficient legal services and that is designed to ensure the continuing availability of competent and dedicated public defense counsel.
- A Public Defense Services Commission (PDSC) that serves as a (a) visionary planner for the effective delivery of public defense services and administration of justice, (b) responsive and cooperative policy maker in the state's justice system, (c) responsible steward of taxpayer dollars devoted to public defense, and, (d) through its Appellate Division attorneys and the private providers who represent public defense clients, a vigilant guardian of the legal rights and interests of public defense clients and the public's interest in equal justice and the due process of law.
- An Office of Public Defense Services (OPDS) that is a model for other Oregon state agencies in terms of (a) efficiency in the delivery of quality public services, (b) effectiveness of financial management standards and practices, (c) responsiveness to clients, customers and stakeholders and (d) accountability to itself, PDSC, the Oregon Legislature and the public through innovations in performance measurement and evaluation.

Mission

Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible and with support sufficient to enable competent and dedicated attorneys to provide those services. (See ORS 151.216)

Values

- **Quality** - PDSC is committed to providing quality public defense services consistent with the state and federal constitutions and Oregon and national standards of justice. PDSC strives to provide direct and contract legal services that meet prevailing standards of professional competence and promote the sound administration of justice in Oregon, while seeking opportunities for its capable and diverse employees and contractors to experience fulfilling careers and engagements in public defense service.
- **Cost-Efficiency** - PDSC is a responsible steward of taxpayer dollars and constantly seeks the most cost-efficient methods to deliver and administer

public defense services. PDSC's commitment to providing quality public defense services also promotes cost-efficiency by reducing the chances of legal error and the need for appeals, post conviction proceedings, retrials, and other costly remedial actions.

- **Leadership** - PDSC is a responsible leader and cooperative partner with other state and local agencies in the development of justice policy and the administration of justice in Oregon. PDSC is a vigorous advocate for adequate public funding to support Oregon's public defense system. PDSC and OPDS are credible sources of information and expertise about public defense and justice policies, practices and their implications, for the benefit of the public, the Oregon Legislature, the media and other justice agencies and professionals.
- **Accountability** - PDSC is a results-based organization with employees and managers who hold themselves accountable by establishing performance standards and outcome-based benchmarks and who implement those measures through regular performance evaluations and day-to-day best practices. PDSC and OPDS administer public defense services contracts in an open, even-handed and business-like manner ensuring fair and rational treatment of all affected parties and interests.

Organization and Decision Making

PDSC serves as a board of directors for the administration of Oregon's public defense system, providing policy direction, guidance and oversight to its operating agency, OPDS. As chief executive officer of OPDS, its Executive Director reports to PDSC and serves at its pleasure.

OPDS is comprised of two divisions: the Appellate Division (AD), which provides (a) appellate legal services to financially eligible criminal defendants, (b) appellate legal services in juvenile dependency and termination appeals, and (c) training and support to public defense attorneys at the trial level in criminal and juvenile matters; and the Contracts and Business Services Division (CBS), which administers the state's public defense contracting and payment systems and manages the operations of OPDS. Each division is headed by a chief operating officer—the Chief Defender at AD and the Contracts and Business Services Director at CBS—both of whom report to OPDS's Executive Director.

ORS 151.216 sets forth the policy and decision-making responsibilities of PDSC, including the responsibilities to:

- establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the state and federal constitutions and state and national standards of justice;

- establish OPDS and appoint its Executive Director, who serves at the pleasure of PDSC;
- review and approve the Executive Director's budget proposals, and submit the final budget proposals of PDSC and OPDS to the Legislature, with budget presentations by the Chief Justice and PDSC's Chair;
- review and approve any public defense services contract negotiated by the Executive Director;
- adopt compensation and personnel plans and an employee classification system for OPDS that are commensurate with other state agencies; and
- adopt policies, procedures, standards, and guidelines regarding
 - determination of financial eligibility for public defense services,
 - appointment of legal counsel,
 - fair compensation for appointed counsel,
 - disputes over compensation for appointed counsel,
 - any other costs associated with public defense representation,
 - professional qualifications for appointed counsel,
 - performance of appointed counsel,
 - contracting of public defense services, and
 - any other matters necessary to carry out the duties of PDSC.

PDSC has approved the Executive Director's delegation of authority to negotiate contracts to OPDS's Director of Contract and Business Services. PDSC has delegated to the Executive Director its authority to execute public defense services contracts that it has reviewed and approved.

PDSC will continue to devote most of its time and energy to developing policies that will guide the shape and direction of the state's public defense system and will improve the overall quality and cost-effectiveness of public defense services in Oregon, and to overseeing implementation of the strategies set forth in this Strategic Plan. Accordingly, PDSC will undertake a detailed, in-depth review of the terms and conditions of an individual public defense contract at a regular monthly meeting only if (a) requested to do so by the Executive Director or (b) requested to do so in writing by a contractor or prospective contractor and, in the opinion of a majority of PDSC members in attendance, the request justifies such a review.

ORS 151.216 also directs PDSC not to

- make any decision regarding the handling of an individual public defense case;

- have access to any case file; or
- interfere with the Executive Director or staff in carrying out professional duties involving the legal representation of public defense clients.

Accordingly, public defense contractors under contract with PDSC act as independent contractors in the operation of their law offices and practices and in the representation of their public defense clients. However, contractors are subject to the terms and conditions of their contracts with PDSC, which will include overall management, performance and quality assurance requirements and standards designed to ensure the provision of high quality, cost-efficient public defense services.

PDSC has approved the Executive Director's delegation to the Chief Defender of the authority to directly manage AD and directly supervise its attorneys and staff.

Standards of Service

The statute establishing PDSC (ORS 151.216) and the state and federal constitutions require PDSC to serve the interests of public defense clients by ensuring the provision of constitutionally mandated legal services. Besides public defense clients, PDSC serves:

- the community of public defense contractors, attorneys and allied professionals through its professional and contracting services, legislative advocacy and policy making,
- the public and Oregon taxpayers, primarily through their elected representatives in the Oregon Legislature and secondarily by responding to direct inquiries and through the media, and
- criminal justice agencies and other justice stakeholders through interagency collaboration, planning and policy making.

All of PDSC's representatives and OPDS's employees will:

- deliver directly or contract for professional services in a manner that meets the highest applicable legal and ethical standards;
- engage in open, rational and fair dealing with regard to all legal, contracting, and business services;
- address all requests for information and inquiries in a timely, professional, and courteous manner;
- implement policies and best practices that serve as models for the cost-efficient delivery of public services and the effective administration of government;
- utilize results-based standards and performance measures that promote quality, cost-efficiency, and accountability.

Legislative Advocacy

PDSC views its role in appearing before the Oregon Legislative Assembly and committees of the Assembly to be limited to:

- providing information in response to requests from legislators or legislative staff;
- advocating for a state budget sufficient to ensure (a) the delivery of quality public defense services in a manner consistent with the state and federal constitutions and state and national standards of justice and (b) the continuing availability of competent and dedicated public defense counsel; and
- informing legislators of (a) the fiscal impact on the public defense system of proposed legislation relevant to public defense and (b) any potential constitutional or other problems that might occur as the result of the enactment or implementation of such legislation.

As a general matter, PDSC does not view its role before the Legislative Assembly to include advocacy for changes in criminal, juvenile, mental health or other areas of substantive law or procedure. The Commission may decide to take a position before the Legislative Assembly with regard to particular legislation proposing changes in substantive law or procedure only if such legislation is likely to jeopardize the quality of public defense services in the state, the cost-efficient operation of the state's public defense system, the continuing availability of competent and dedicated public defense counsel or the fundamental fairness of Oregon's justice system.

PDSC does not intend this policy to affect the ability of OPDS's Appellate Division (AD) or its attorneys to advocate positions before the Legislative Assembly that are designed to protect or promote the legal rights and interests of AD's clients.

Goals and Strategies for 2007-09

Goal I: Secure A Budget Sufficient to Accomplish PDSC's Mission.

Strategy 1: In cooperation with the courts, criminal and juvenile justice agencies and state and local law enforcement authorities, and in collaboration with the Oregon State Bar, public defense attorneys and PDSC's contractors across the state, make budget presentations to the Legislative Assembly that communicate the need for adequate funding of public defense in the 2009-11 biennium and beyond.

- A. PDSC's informational and budget presentations before the 2005 Legislative Assembly emphasized two points: (1) Oregon's criminal and juvenile justice systems are made up of separate but interrelated

functions that are performed by interdependent agencies, including courts, prosecutors, police, corrections and public defenders. Legislators were advised of the importance of balanced funding for these functions and agencies (e.g., cuts to public defense budgets prevent police, prosecutors and corrections officials from carrying out their law enforcement functions); and (2) Reductions in PDSC's budget would have had their greatest impact on public safety in rural areas of the state, where the supply of attorneys was already extremely limited and the impact on public safety of further cutbacks in legal services would therefore have been most pronounced.

- B. PDSC's presentations to the 2007 Legislative Assembly included discussion of the critical role of public defense in the public safety system but emphasized the urgent need to increase funding for public defense in order to prevent the imminent loss of key providers. Members of the Public Safety Subcommittee of the Joint Ways and Means Committee were advised that the caseload statewide continued to increase, that real income for contractors and hourly rate attorneys continued to decline, and that, increasingly, attorneys were refusing to take public defense cases and contractors were reporting that recruitment and retention of public defense attorneys were at record lows. At its final budget presentation before the Public Safety Subcommittee in May, 2007, PDSC presented testimony in support of adequate funding for public defense from justice officials across the state, including the Chief Justice, the Chief Judge of the Court of Appeals, two district attorneys, the Oregon State Bar, the Eugene Chief of Police, a law professor, a number of PDSC's providers and contract administrators and others, all of whom spoke either about the importance to public safety of adequate funding for public defense or the worsening circumstances of public defense providers and the potential loss of their services. OPDS received the help and support of the Oregon State Bar in clarifying its message and in advocating for adequate funding throughout the 2007 legislative session.

Strategy 2: Develop interim strategy for continuing to build legislative support for adequate funding and notify legislative leadership of need for supplemental appropriation.

- A. OPDS will work with public defense attorneys, district attorneys, the courts and OCDLA to create a strategy for providing key legislators with the opportunity to observe the work of public defense lawyers, district attorneys and judges in their local court systems and to become aware of the limits on the ability of the court and advocates to perform key functions without adequate resources.

- B. OPDS will work with the group of legislators that sponsored SB 411 in the 2007 session to seek legislation requiring adequate compensation and manageable caseloads for attorneys in juvenile cases.
- C. OPDS's Executive Director will meet with legislators throughout the interim to keep them informed of the work of public defense providers and the need for adequate funding of public defense.
- D. OPDS will closely monitor caseload growth and any increases in contract or hourly rates in order to be able to advise legislative leadership as early as possible of any need for supplemental funding from the Emergency Board or from the legislature during the 2008 session.

Strategy 3: Develop a budget proposal for 2009-11 that builds on PDSC's six-year plan to ensure the long-term stability of the public defense system by addressing the three main challenges faced by the agency: (1) the need to attract and retain a well qualified group of public defense providers; (2) the need to improve the quality of representation, especially in juvenile and post-conviction relief cases; and (3) the need to reduce high caseloads.

- A. In the 2007 Legislature, PDSC sought increases in the hourly rate for attorneys and investigators and the salaries of not-for-profit public defenders. A small increase in the hourly rate for attorneys was approved. PDSC also sought funding for a juvenile appellate unit and a post-conviction relief trial unit. The juvenile appellate unit was approved, and an additional eight new positions were provided to the Appellate Division. A policy package that would have provided for parity between Appellate Division attorneys and their Department of Justice counterparts, however, was not approved. In establishing its legislative priorities for 2009-11, PDSC will consider whether to seek funding for the unfunded portions of its 2007-09 policy packages.
- B. In addition, in 2009-11 PDSC will need to seek funding to permit it to reduce public defense caseloads to the levels recommended in national standards, as required by ORS 151.216. Testimony on SB 411 in the Senate Judiciary Committee during the 2007 session highlighted the need to reduce the caseloads of attorneys in juvenile dependency proceedings to permit those attorneys to provide higher quality representation. The committee was advised that significant overall savings could be realized in the cost of maintaining children in non-relative foster care if they and their parents received such representation in dependency proceedings. Caseloads in all categories of cases currently exceed recommended limits.

Strategy 4: Develop and refine Performance Measurements that assure the Legislative Assembly that PDSC is managing state funds devoted to public defense cost-effectively.

- A. PDSC presented its initial draft performance measures to the Joint Legislative Audit Committee (JLAC) in August 2004. The Committee directed PDSC to appear before the Joint Committee on the Judiciary in October and present additional draft performance measures for contract services to that committee for further input. These new draft measures were approved by the Joint Judiciary Committee at its October 2004 meeting. PDSC submitted its new and revised performance measures to JLAC in December 2004 and gained that Committee's final approval. However, PDSC assured JLAC that it would continue to develop and refine its performance measures.
- B. The 2007 Legislative Assembly approved PDSC's existing measures and added two new measures, one assessing customer satisfaction and the other, recommended for all boards and commissions, measuring best practices met by PDSC. In addition it recommended that PDSC review all of its measures during the interim and add "realistic but aggressive" targets.

Results of the strategies for obtaining an adequate budget for the 2007-2009 biennium: The Chief Justice's requested 2007-09 budget for PDSC was \$232.4 million which included an essential budget level of \$201.9 million and \$30.5 million in policy packages. The Governor's recommended budget for PDSC was \$212.7 million. The Chairs of the Joint Ways and Means Committee proposed the same funding level recommended by the Governor. In May, the Co-Chairs proposed that an additional \$0.9 million be added to PDSC's budget to increase the attorney hourly rates from \$40 and \$55 to \$45 and \$60. Public Safety Subcommittee members proposed, and the legislature ultimately endorsed, an additional \$1.9 million, for a total appropriation of \$215,489,928. Despite the fact that they were approving a budget level that was substantially higher than PDSC's essential budget level, almost all of the members of the subcommittee expressed concern about the adequacy of the recommended amount to address the needs of public defense providers.

In a positive development for the Appellate Division, which appeared to reflect confidence in PDSC and its Appellate Division by legislative leadership, an essential budget level adjustment for caseload growth added eight new attorney positions to the division for representation in criminal appeals and four new attorney positions for representation in juvenile dependency/termination appeals. The additions represented a 50% increase in attorney positions for the division.

Goal II: Assure the Quality of Public Defense Services.

Strategy 1: Continue to develop quality assurance standards and programs to improve public defense services across the state.

- A. OPDS's Quality Assurance Task Force established a site visit process in 2004 to monitor, evaluate and improve the management and operations of public defense contractors throughout the state. The first three visits in 2004, the four visits in 2005, the four visits in 2006 and the three visits thus far in 2007 have focused on larger providers or counties in which quality concerns have come to OPDS's attention. These site visits involve teams of experienced public defense attorneys and managers who volunteer two to three days of their time to conduct the visits to (1) survey relevant conditions in the contractor's local justice system, (2) interview criminal and juvenile justice stakeholders regarding the performance of the contractor, (3) interview the contractor's management and staff about the office's operations and (4) report to the manager of the office and OPDS's Executive Director and the Director of the Contract and Business Services Division on their findings and recommendations for improvements.
- B. Without disclosing the contents of individual site visit reports, PDSC's Executive Director or General Counsel reports to the Commission periodically on the general problems, accomplishments and best practices identified by the site visits. Progress on the adoption of best practices, such as systematic employee evaluations, active boards of directors or advisory boards with outside members and state-of-the-art case management and accounting practices, forms the basis for one of PDSC's performance measures of the public defense contracting system.
- C. OPDS and the Quality Assurance Task Force have agreed to complete four or five site visits during each year of the 2007-09 biennium. By the end of the calendar year 2007, 28 contractors with approximately 57 percent of the state's public defense caseload will have been visited and evaluated. OPDS measures the progress of this critical quality assurance process with Performance Measures 6 and 7.
- D. Reports of the Oregon State Bar's indigent defense task forces identified the need to improve the quality of juvenile defense services across the state. The quality of defense representation in juvenile cases is critical to the health and safety of Oregon's communities. The commission undertook a review of the delivery of services in juvenile dependency cases in the Spring and Summer of 2006. It concluded that (1) adequate state funding for public defense is essential to improving the quality of legal services in juvenile dependency cases in order to (a)

retain and recruit qualified attorneys and (b) reduce the excessive dependency caseloads of currently qualified attorneys; (2) increases in public defense funding for juvenile dependency cases must be accompanied by new or expanded specialty training programs; and (3) in accordance with OPDS's proposals to the Dependency Appeals Work Group, PDSC should propose a Budget Policy Package to the 2007 legislature that funds additional specialist appellate attorneys at OPDS's Legal Services Division to handle dependency appeals more efficiently and effectively.

A legislatively sponsored workgroup arrived at similar conclusions in the legislative interim and sponsored SB 411 during the 2007 session. SB 411 would have significantly increased compensation and decreased caseloads for juvenile dependency attorneys. Unfortunately, SB 411 was not funded. As noted above, however, the Legislature did approve the addition of four Appellate Division attorney positions for juvenile dependency/termination appeals. Among legislators who supported this addition there was an expectation that OPDS would use the new positions to improve the quality of representation at both the trial and appellate levels. One of the positions could be designated as a "resource attorney" position similar to the death penalty resource attorney position approved by the Commission in February of 2007.

In addition, in 2004 OPDS, in conjunction with other public and private organizations, formed a work group to (1) develop a juvenile law training curriculum, and (2) sponsor periodic trainings to supplement the training opportunities available from other CLE sponsors. The juvenile law training academy will present its third annual CLE event in October of 2007. For the first time this event will be directed at new attorneys for the state as well as for parents' and children's advocates.

The National Association of Counsel for Children has developed a juvenile attorney certification procedure that requires attorneys who wish to be certified as specialists in juvenile dependency practice to complete a curriculum and pass an examination. A number of state bar associations have permitted attorneys in their jurisdictions to be certified as specialists if they meet NACC standards. OPDS will explore with the Juvenile Section of the bar and any other interested groups or individuals, the possibility of creating a certification program in Oregon.

- E. The Commission conducted hearings in February and March of 2007 to review the delivery of services in death penalty cases. A consistent message heard from those who appeared before the commission – two circuit court judges, a Senior Assistant Attorney General and three death penalty contractors – was that it is critical that adequate resources be made available to the defense from the outset of the case in order to

ensure that high quality legal representation is provided and to avoid a costly retrial at some indefinite time in the future. Consistent with its obligation under ORS 151.216 to establish and maintain a system that ensures representation conforming to state and national standards of justice, the Commission approved a legal representation plan conforming to the ABA Guidelines for the Performance of Defense Counsel in Death Penalty Cases. The Commission also approved a contract for a death penalty resource attorney as a cost-effective means of improving representation in death penalty cases. The resource attorney will prepare motions addressing legal issues common to most death penalty cases, will maintain a library and list serve for the benefit of death penalty attorneys, will create a list of experts and a brief bank, will be available to consult in cases, will coordinate training, and will perform other functions of assistance to counsel in death penalty cases.

- F. Post-conviction relief (PCR) which is intended to address, among other issues, inadequate representation by counsel at the trial and appellate levels, is an area of practice in which the quality of representation has been uneven and often inadequate. A state bar task force report recommended intensive study and improvement of this area of practice. OPDS conferred with its Contractor Advisory Group and public defense attorneys, prosecutors and judges throughout the state regarding the most effective ways to deliver quality public defense services in PCR cases. A clear consensus favored the establishment of a state office as a separate division of OPDS. Accordingly, OPDS developed a separate Policy Package in PDSC's proposed budget for 2005-07 to support a four-lawyer division of OPDS that specializes in PCR cases at the trial and appellate level. The package was not funded in 2005, nor was it funded in 2007 after PDSC again approved including it in its budget proposal. In the meantime, a number of steps have been taken in an effort to improve representation, including identifying particularly capable lawyers and urging them to devote at least some of their time to representation in post-conviction cases. OCDLA has sponsored CLE sessions on post-conviction relief. At OPDS's request the Oregon State Bar has approved the creation of a task force to establish performance standards for post-conviction relief cases, as it has done for criminal, juvenile and civil commitment cases. OPDS will participate in this work group and hope to create a product that can serve as a guide to good practice. If the Appellate Division is able to eliminate its backlog of pending criminal appeals and reduce the time from settlement of the record to filing of the opening brief to an acceptable time period, PDSC could then consider as part of a service delivery review of PCR representation whether to move some of the attorney positions in the criminal appellate section to a new PCR division or section.
- G. Over a period of approximately a year OPDS developed and PDSC has now approved new standards and processes for determining the

eligibility of attorneys for court-appointments, including revisions to the standards for the qualification of attorneys to take court-appointments that were originally developed and adopted by the State Court Administrator's Office and readopted by PDSC. The new standards and procedures were based in part upon OPDS's experience in developing the Commission's new court-appointment process in Lane County, the operation of the Appellate Division's appellate panel, and best practices from across the country.

- H. PDSC has established a formal complaint policy to permit OPDS to address complaints from clients and other interested parties about the quality and cost of public defense representation. OPDS will continue to work with contactors and the Oregon State Bar to ensure that the complaint process operates fairly and effectively, avoids duplication with the Bar's processes and protects the confidentiality of privileged information.

Strategy 2: Continue PDSC's Service Delivery Planning Process to address significant problems with the quality and cost-efficiency of local public defense services and with the systems to deliver those services.

- A. Following OPDS's investigation and review of the public defense services and service delivery systems in a county or judicial district, which includes input from public defense contractors and criminal and juvenile justice stakeholders and public safety officials in the county or district, PDSC will develop a "service delivery plan" for the locale. A service delivery plan (1) takes into account local conditions, practices and resources unique to the county or district, (2) outlines the structure and mission of the local delivery system and the roles and responsibilities of PDSC's local contractors, (3) proposes changes to improve the operation of the local delivery system and the quality of its public defense services and (4) when appropriate, directs the incorporation of changes it proposes into the Commission's contracts with local service providers.
- B. PDSC's service delivery plans encourage practices and procedures in a county or judicial district that promote (1) technical assistance and administrative support for contractors in the area, (2) specialized training for local public defense attorneys, (3) sharing of information and improvement of communication with the Commission, (4) accountability of public defense managers and boards of directors for the quality of their services and the performance of their lawyers and staff, and (5) public outreach and legislative relations in the county or district.
- C. PDSC plans to visit the following counties during the remainder of 2007:

- 1) Coos and Curry Counties. In July of 2007, OPDS began its investigation of the conditions in Judicial District No. 15 in Coos and Curry Counties in preparation for PDSC's public hearing in Coos Bay in August.
- 2) Umatilla, Morrow, Union and Wallowa counties. Before the November 8th Commission meeting in Pendleton, OPDS will investigate the condition of the service delivery systems in Umatilla and Morrow Counties (Judicial District No. 6) and Union and Wallowa Counties (Judicial District No. 10). This service delivery planning process will give the Commission an opportunity to consider strategies to encourage the entry of new lawyers into public defense practice and the retention of experienced ones in rural counties with small urban centers. It will also allow the Commission to familiarize itself with the challenges faced by attorneys who practice regularly in multiple counties and courts.
- 3) In combination with completion of its service delivery plans in Benton, Lane, Lincoln and Linn Counties in 2004, in Multnomah, Marion, Yamhill and Klamath Counties in 2005, in Clatsop, Gilliam, Hood River, Sherman, Wasco and Wheeler Counties in 2006, and Washington County in early 2007, completion of the foregoing three plans will mean that, by the end of 2007, PDSC will have investigated and undertaken improvements in local public defense service delivery systems involving 35 public defense contractors who handle 73 percent of the state's public defense caseload. In addition PDSC will have investigated and undertaken improvements in two statewide areas of practice – juvenile dependency and delinquency cases and death penalty cases. In 2007-09 the Commission will be asked to review delivery of services in post-conviction relief and civil commitment/PSRB cases.

Strategy 3: Encourage public defense contractors to establish active boards of directors or advisory boards that include outside members in order to (a) broaden the support and understanding of public defense in local communities, (b) strengthen the management of contractors, (c) facilitate communication with PDSC and OPDS and (d) increase the number of advocates for adequate state funding for public defense.

- A. The Executive Director will urge public defense contractors that don't already have them to establish boards of directors or advisory boards.
- B. OPDS plans to include a segment on boards of directors and advisory boards in its 2007 Public Defense Management Conference.

- C. PDSC should consider, on a case-by-case basis, requiring boards of directors or advisory boards with outside members as a condition of contracting with the Commission.

Strategy 4: Explore and test the feasibility of incentives for the delivery of legal services in areas of the state with shortages of qualified public defense attorneys.

- A. During its 2003 Retreat, PDSC identified a number of policies and practices to encourage public defense attorneys to practice in areas of the state experiencing a shortage of public defense services. Among the strategies which may be made available are the following:
- 1) Identify and actively recruit defense attorneys in the offices of current contractors, who have approximately three to five years of experience and are interested in establishing law practices in underserved areas of the state;
 - 2) As a primary incentive, offer these attorneys four-year contracts with guaranteed caseloads, supplemented by appellate and PCR cases if necessary;
 - 3) Advocate for state and federal measures that provide for, or use public defense funds to provide for, the forgiveness of student loans and housing allowances as additional incentives;
 - 4) Recruit interested law students and, in cooperation with larger contractors' offices, provide apprenticeship training upon graduation, in exchange for a commitment to practice in underserved areas;
 - 5) Offer technical and administrative support for new offices in these areas; and
 - 6) Provide technical support through OPDS's Appellate Division.
- B. OPDS will continue to explore these and other incentives for public defense attorneys to practice in underserved areas of the state, and will evaluate the feasibility of such incentives when a particular need for additional services arises. OPDS should consider pilot projects or programs to establish incentives in Lincoln County, pursuant to the Commission's service Delivery Plan for that county, and in Clatsop County as indicated in the service delivery plan approved by the Commission in December of 2006, and, depending upon the findings of OPDS's investigation and the Commission's service delivery plan for

those counties, potentially in Coos, Curry, Umatilla, Morrow, Union and Wallowa Counties.

Strategy 5: Continue efforts to improve the quality of AD's legal services and reduce the backlog of AD's appellate cases.

- A. AD will implement new attorney caseload and performance standards and will publish new manuals governing the office practices and procedures of AD's management, attorneys, and support staff by June 2008.
- B. AD, with its eight new criminal appellate positions, will enhance its efforts to manage its caseload and measure its progress in accordance with Performance Measure 1.
- C. OPDS will upgrade and improve AD's databases.
- D. AD has undertaken a training program to improve the skills and efficiency of its secretaries and to standardize secretarial office practices, which will be completed by June 2008.

Strategy 6: Establish a New Appellate Section to Handle Appeals in Juvenile Dependency and Termination Cases.

- A. AD will create a new section that will handle juvenile appeals. Recruitment for the four attorneys to staff the section will occur in August and September of 2007 with the section to be in place and accepting appointments by October 2007.
- B. The juvenile appellate section (JAS) will also serve as a resource center for juvenile dependency lawyers at the trial level. JAS will work with other public and private entities interested in improving representation in juvenile dependency cases to provide training opportunities for attorneys and to explore other means of improving representation.

Strategy 7: Expand AD's capacity to support PDSC's contractors and the state's public defense system.

- A. OPDS is enhancing its website, using the technical expertise of CBS and the legal expertise and research capacity of AD's appellate lawyers. The website should be fully updated and should include a periodic appellate case analysis by June 2008. AD will continue to submit articles to the OCDLA newsletter on a regular basis and will make its attorneys available for CLE presentations.

- B. By December 2007 AD will assume responsibility for (1) advising contractors on the legal merits and strategies of potential mandamus actions, (2) developing a collection of expert witness transcripts to assist public defense attorneys preparing for trial.

Goal III: Strengthen the PDSC's Contracting Process.

Strategy 1: Develop a systematic process to evaluate the legal competency and ability of public defense providers prior to the time that PDSC's contracts are negotiated or renewed.

- A. OPDS will develop a systematic process to ensure that professional judgments are made with regard to the legal competency and abilities of candidates for PDSC's contracts before those contracts are negotiated or renewed. OPDS advised the Public Safety Subcommittee of the Joint Ways and Means Committee in its budget hearings that it would be developing an instrument that could be used to survey judges, district attorneys and other juvenile and criminal justice system representatives regarding the quality of representation provided by public defense contractors and hourly rate attorneys. Survey results may be used in combination with other information about a contractor's performance to assess legal competency.
- B. PDSC will need to identify alternative legal counsel in the event that it determines available attorneys in a county or region are incapable of delivering legal services at a level of quality and cost-efficiency acceptable to the Commission.

Strategy 2: Continue to improve the effectiveness and cost-efficiency of OPDS's administration of the contracting system.

- A. In 2005 CBS adopted a new, secure and reliable method to send non-routine expense authorizations and denials by e-mail.
- B. By March 2008 OPDS will propose to PDSC (1) revisions in its current Confidentiality Policy to more clearly protect confidential communications involved in the administration of non-routine expenses and complaints concerning attorneys and (2) a new policy governing OPDS's release of public records, including its costs of production.
- C. In 2006 OPDS established a database to track attorney complaints by provider.
- D. OPDS will continue to measure its progress in improving the administration of the contracting system through application of

Performance Measures 2-5. (or amended measures with “realistic but aggressive” targets as recommended by the legislature).

Goal IV: Strengthen Working Relationships with Public Defense Contractors.

Strategy 1: Continue to hold PDSC’s monthly meetings in various counties and regions across the state.

Strategy 2: Continue to meet and confer regularly with the Contractors Advisory Group.

Strategy 3: Administer CBS’s “customer satisfaction” survey of contractors in 2007 and 2008 to obtain feedback on how PDSC’s contracting processes and services are being administered.

Goal V: Continue to Strengthen the Management of OPDS.

Strategy 1: Refine and maintain OPDS’s performance-based employee evaluation system.

Strategy 2: Complete the Personnel Policy Manual and an employee handbook to set forth office policies and practices.

Strategy 3: Refine agency performance measures for direct and contract legal services.

Strategy 4: Continue to integrate relevant functions and operations of AD and CBS and exploit the benefits of their combined experience and expertise.

Goal VI: Respond to the Requests and Directives of the Oregon Legislature in a Timely and Effective Manner.

Strategy 1: PDSC will implement the two new performance measures required by the Legislature and will review and refine its existing measures.

Strategy 2: PDSC’s Executive Director will submit a biennial report as required by ORS 151.219 to the Legislature after the PDSC retreat in August of 2007.

Strategy 3: PDSC will participate as directed by the Legislature in an interim work group to establish a process to determine mandated caseload adjustments, including a forecast of caseload growth, for all public safety agencies.

Strategy 4: PDSC will continue to participate in a work group of public safety agencies which is seeking to identify a shared performance measure for all such agencies.

Goal VII: Promote the Diversity and Cultural Competence of Oregon's Public Defense Workforce.

Strategy 1: Implement the recommendations of the Diversity Task Force to improve the recruitment of minority attorneys and staff and to increase the cultural competence of the state's public defense workforce by: (a) establishing a statewide directory of job openings in public defense offices across the state, (b) supporting proposed federal legislation that would create a loan forgiveness fund and considering the commitment of PDSC funds to the creation of such a fund, (c) developing a recruiting brochure that sets forth PDSC's commitment to equal opportunity and to increased diversity and cultural competence, (d) exploring the development of a training/mentoring program for new attorneys, and (e) administering a baseline survey of providers to determine the current level of diversity among Oregon providers.

Strategy 2: Continue to develop working relationships with criminal law faculty, career counselors, and placement offices at Oregon's three law schools to identify and recruit law students of color who may be interested in internships and attorney positions in the state's public defense system.

Strategy 3: Participate in job fairs and recruitment programs throughout the Pacific Northwest for law students and attorneys of color who are interested in careers in public service. Announce OPDS positions in publications likely to reach members of minority communities in Oregon and elsewhere.

Strategy 4: Design and implement a diversity training curriculum for OPDS employees and any interested members of the larger public defense community.

Goal VIII: Ensure that PDSC and OPDS Hold Themselves Accountable to this Plan.

Strategy 1: Integrate this Plan into the operations and performance of AD, CBS and their individual employees.

Strategy 2: Use this Plan as a basis for the agendas of meetings of OPDS's Management Team and the personal performance and management plans of its members.

Strategy 3: Ensure that a progress report on the implementation of this Plan is a regular item on the agenda at PDSC's monthly meetings.