

**Members**

Per A. Ramfjord, Chair  
 Hon. Elizabeth Welch, Vice-Chair  
 Mark Hardin  
 Paul Solomon  
 Lisa Ludwig  
 Kristen Bell  
 Thomas M. Christ

**Ex-Officio Member**

Chief Justice Martha Walters

**Executive Director**

Lane Borg

**PUBLIC DEFENSE SERVICES COMMISSION**

Tuesday, September 29, 2020  
 10:00am – approx. 2:00pm  
 Via Microsoft Teams Live Event

**MEETING AGENDA**

1.	<b>Action Item:</b> Approval of Meeting Transcript – PDSC meeting held on July 16, 2020. ( <i>Attachment 1</i> )	Chair Ramfjord
2.	Calendar of Proposed Dates for 2021 PDSC meetings ( <i>Attachment 2</i> )	L. Borg
3.	KPM Annual Progress Report ( <i>Attachment 3</i> )	L. Borg
*	<i>Five-minute break scheduled for approximately 11:00am PST</i>	All
4.	<b>Action Item:</b> Contract Options ( <i>Attachment 4</i> )	OPDS Contracts Staff
5.	OPDS Staff Update ( <i>Attachment 5</i> )	OPDS Staff
*	<i>Five-minute break scheduled for approximately 12:00pm PST</i>	All
6.	Public Comment	All

*In compliance with the Governor's Executive Order No. 20-12 issued on March 27, 2020, this meeting will occur via Microsoft Teams Live Event videoconference and will be available for both live-stream and archived viewing at:*

[https://teams.microsoft.com/join/19%3ameeting\\_NTgxMTc0OWQtYjMxNS00NWE4LWE5YmUtZjkwYTZjZWFKOWZl%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%223d7cf095-922e-45b6-ba97-3e8edd1f03db%22%2c%22IsBroadcastMeeting%22%3atrue%7d](https://teams.microsoft.com/join/19%3ameeting_NTgxMTc0OWQtYjMxNS00NWE4LWE5YmUtZjkwYTZjZWFKOWZl%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%223d7cf095-922e-45b6-ba97-3e8edd1f03db%22%2c%22IsBroadcastMeeting%22%3atrue%7d)

*Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting to Kaysea Dahlstrom at (503) 378-3349.*

**Next meeting: Friday, October 23, 2020. Details to be announced at a later date.**

*Meeting dates, times, and locations are subject to change; future meetings dates are posted at:*

<https://www.oregon.gov/opds/commission/Pages/meetings.aspx>

# Attachment 1

Ramfjord: Okay, welcome everyone. This is the time and virtual place for the July 16, 2020, meeting of the Public Defense Services Commission. We have a pretty full agenda today, another day of doing this virtually. And I appreciate everybody's patience in dealing with that.

The first item on the agenda is the approval of the meeting transcript from the prior meeting, on June 25, 2020. Anybody have any comments or corrections to that transcript? Or anything that they feel needs to be added? Hearing nothing, is there a motion to approve the transcript?

Solomon: So moved.

Ramfjord: Second?

Hardin: Second.

Ramfjord: Any further discussion? All those in favor, aye?

Multiple voices: Aye.

Ramfjord: Any opposed? All right, motion passes.

Okay, the first substantive item we have is really an informational item. It relates to the Secretary of State's audit. And Lane do you want to kick that off?

Borg: Yeah. Thank you. Thank you Chair and members of the commission. For the record, Lane Borg, Executive Director of the Office of Public Defense Services. And, as the chair acknowledged, this is really an informational thing. We've gotten a copy as Attachment 2 of the Secretary of State's audit plan, sort of agenda on that.

This is something that now we experience every year, because of the size of our budget. Just to remind people, as I have in the past. I think people are surprised, even though we're a small agency, less than a hundred FTE, we are in certainly the top 11 or 12 budgets in the state. And so this is something we experience every year. They don't audit everything about the agency, but they will pick certain accounts and audit them.

We're actually going to be audited twice this year. This is just the financial audit. They've also identified that we would... And this was before the Covid pandemic shutdowns and modifications to business. But they had identified us for a performance audit. Julie and I met with the auditors a couple of weeks ago, to start the process on the financial audit, and they confirmed that, as far as they knew, we were still on track for a performance audit that would start some time later in the fall, happen during the winter.

This audit will happen during... It starts already and will go on through the fall. And

there's a possibility that certain commission members may be contacted. We'll try to give you a heads up if you, for any reason. That's part of usually their due diligence. They'll certainly contact Per, I would assume, to review that. So again, this is just informational. If you have any questions, Julie is available on this item. It's not an action item, but on this agenda item, if anybody has any questions. And Julie, did you have anything you wanted to add to what I've said?

Fetsch: Nope, nope. I think you covered it well. We did include the letter in the packets that gives all the detailed information on the current audit we're going through, so if there's any questions from that, just let me know.

Ramfjord: Okay. Thank you very much for that. And I will say, just as sort of kudos to the staff, that we've gone through multiple audits like this. They've gone very, very well in the past. And Julie, I think, is going to do a great job on this too. So I feel very confident going into this. And it is something that I do typically get called on. We don't have a history of other people being called, but it is a process that's gone very well so far. So, thank you for that.

All right, moving on. I want to get from Kimberly a little bit of an update on the special session that just concluded. So why don't you go ahead and start with that? Thank you.

McCullough: Great, thank you. So, since our last commission meeting we had a special legislative session. It started with some informational hearings on June 22nd and 23rd, and that was followed by a three-day special session from June 24th to the 26th. Most of the bills that passed related to Covid-19, and then also police reform. In addition, there were a few miscellaneous bills that were revived from the 2020 regular session. Those were bills that had been expected to pass during the 2020 regular session, but they died because of the lack of quorum at the end of session. So I'm just going to through the bills very quickly, just to let you know the bills that impact public defense, dependency, juvenile, and criminal justice systems.

So the first bill was an omnibus bill, House Bill 4212. That bill contained numerous provisions related to a variety of areas of law, but there were some particular sections that related to judicial proceedings. And the things that were related to public defense was some provisions that authorize the chief justice to extend or suspend deadlines in court proceedings during Covid-19, and then continuing for 90 days after the declaration of the emergency is no longer in effect; allowing orders to appear for criminal citations to be issued more than 30 days after the date of issue; authorizing the extension of pretrial custody of defendants beyond statutory limits.

That last provision was one that was subject to a lot of conversation and debate. There were multiple workgroups, and we did participate in those workgroup meetings. They included the DAs, and OCDLA, and the courts, and AFSCME, and a variety of other folks. The ultimate provisions that were passed were the result of... They were consensus

provisions. Which, again, it took a lot of time to get to that, because this is a really complicated issue.

On the one hand, right now, because of Covid, it is dangerous to hold court proceedings. Particularly jury trials where there's a lot of folks that are involved in the case and they end up having to use multiple courtrooms and so on to be able to do that safely. On the other hand, when criminal trials don't occur, those individuals who are in pretrial detention and can't afford bail remain in jail. And we do have limits on how long that pretrial detention can happen. Normally it's 60 days. It can be extended to 180 if there are a variety of types of scheduling delays.

And what we learned was that there was a lot of cases that were approaching that 180-day deadline. And in some circumstances judges were particularly uncomfortable with the idea that someone who had committed a violent or person crime would be released because they couldn't hold the trial, despite the fact that if they did hold the trial their incarceration would continue without any sort of interruption. And so, essentially what was created was a very narrow exception where, if a person is charged with a person crime and the judge finds by clear and convincing evidence that there is a substantial and specific danger of physical injury or sexual victimization to the victim or members of the public, and that there's no release conditions that are available to sufficiently mitigate that danger, that that person can be held for an additional 60 days past the 180 days, so a total of 240 days, in order to give the court some time to be able to hold their trial. And so that is the provision that was passed.

There were six bills passed related to police reform. One created a legislative committee specifically focused on policing, and that committee has been holding hearings last week and this week. They're actually holding a hearing right now, and looking at additional potential legislation. There was a bill that banned choke holds, unless it is used within the parameters of what is currently allowed under Oregon law for use of deadly force. Now, our use of deadly force standards in Oregon are actually unconstitutional and need fixing, so that is something that they are talking about right now.

There's a bill about a duty to intervene. It requires an officer to intervene when another officer is engaging in misconduct. Unless they can't intervene safely. And it requires them to report to a supervisor if they've witnessed misconduct. And it also prohibits retaliation for reporting, which I think is a really crucial piece of that legislation.

There was a bill to create DPSST – that's the Department of Public Safety and Standards Training. They're the agency that certifies all of our police officers – require them to create a public database to show their decertification records of when they decertify or discipline an officer. That is fairly limited because DPSST only takes action in a narrow number of cases, so it doesn't catch the local misconduct. I think we may see that database get expanded to include more misconduct.

There was also a bill to ban the use of tear gas, except for in the case of a riot being declared. I'm sure many of you have seen in the news that the Portland Police Bureau started declaring riots as soon as this bill was passed, rather than unlawful assemblies. So I think that there is more legislation that we are likely to see there.

And then another bill related to arbitration of police misconduct. Policing contracts frequently require arbitration of misconduct findings. And basically what this does is it requires police departments to create a discipline guide, or a matrix, that is subject to collective bargaining. And then it essentially says that arbitrators can't overturn discipline, as long as it is consistent with the discipline guide and they do not have a different finding of the facts of what happened.

And then the other three bills that are not Covid or police related, but were revived, was Senate Bill 1601 that prohibits driver license suspension for failure to pay fines and fees. That was Oregon Law Center's bill they've been working on for a number of years. House Bill 4212 had to do with the Indian Child Welfare Act. In broad strokes, it codifies some aspects of the federal Indian Child Welfare Act, and it does a few other things. We actually had Tiffany Keast from our appellate division participated in that work group, and several of us will likely be participating in a workgroup to do some more work on that issue.

And then there was one final bill that relates to Oregon's foster care system, and the Oregon Promise Program, which provides free tuition grants to high school graduates. This bill really primarily related to foster youth who were placed out of state. There have been a number of problems related to out-of-state placements, and this was Senator Gelser's bill to address some of those things.

So those are the bills that related to public defense. We are expecting another special session sometime in August. The latest I've heard it's going to be the second week of August. Although these things are always subject to change, and we may not get a ton of notice. We do know that this next special session is primarily going to be focused on budget issues. Because obviously Covid is causing the state a lot of challenges in the budget realm. And we do also anticipate additional police reform bills to come out of that police reform committee.

And so, that is my legislative update. I'm happy to take questions if there are any.

Ramfjord: Any questions from anyone for Kimberly?

Borg: Per, I wanted to make a comment as people are thinking about questions. This is a new position for the agency, to have a full-time legislative director, and I really want to give a shout out to Kimberly and the job that she's doing post session. The particular bill on the extension of time has been one that everybody's been grappling with. And it's very complex, because it's balancing the safety needs and real concerns that people have

with very real constitutional concerns and potential abuses of people being incarcerated too long. It's something our trial-level people deal with literally every day.

So, by having a legislative director, Kimberly was able to participate in workgroups, participate in meetings on that. And, post session, I'll just say we got a shout out from Phil Lemman, who's Nancy Cozine's deputy at OJD, commending the work that she did, and really saying it was helpful to have her there. So, as I said, this is a new direction to have a dedicated legislative director, and I want to just thank Kimberly for her work, publicly, and note for the commissioners I think that this is really so far has been a good strategic move for the agency, to have that participation in there.

McCullough: Thank you, Lane.

Ramfjord: Yeah, thank you very much, Kimberly. We really do appreciate the work. Okay, any questions for Kimberly at this point in time?

Christ: Kimberly, this is Commissioner Christ. You can't see me, but I hope you can hear me?

McCullough: I sure can.

Christ: It didn't sound like any of the new legislation you described would have any budgetary effects on the agency.

McCullough: That's correct. None of these bills had a fiscal impact for us.

Christ: And likewise, probably no effect on providers?

McCullough: Other than the way it may affect their cases, the logistics, the substance of law of their cases. But I don't know that it will necessarily impact caseloads or things like that.

Christ: Okay. Not being a criminal defense attorney, it didn't sound like the burdens of dealing with this new law are going to substantially increase the amount of work they have to do on their cases.

McCullough: Yeah, I think the Indian Child Welfare Act bill, I do think is somewhat complicated. It does have a lot of provisions that are going to change things related to dependency cases that involve Native American children in Oregon. And so I do anticipate that there's going to need to be some provider education on that issue. And so I think that's something that we and OCDLA will have to do some educating of providers.

And I think it will also impact appellate cases, because there's a lot of case law on Indian child welfare cases that is going to now be changed because of that bill. So I think that one in particular is likely to have... It's going to need some education.

Borg: There's one other, Commissioner Christ, I wanted to respond to. And again, a shout out for Kimberly, because she pointed this out to me about 10 nanoseconds after the bill was passed. But frankly, we're not – I don't want to give it short shrift on this – the requirement for tear gas to declare a riot is and will have an impact on our providers because any offenses committed during a riot themselves are aggravated. And so there will have to be litigation about whether that was a convenience, to give an excuse to use tear gas, or whether that was actually going on and therefore an aggravating factor in their individual client's case.

So I am hopeful that the legislature can address that. But that is an almost immediate unintended consequence of that requirement is that we're seeing aggravation of charges filed.

McCullough: Yeah, absolutely.

Ramfjord: Other questions? One other comment that I would add about what Kimberly has been doing that I think has been helpful is that another aspect of caseload... One thing that is affecting caseload is the fact that with Covid you have more cases coming in but less cases getting disposed of. And Kimberly has been sending out requests for information from providers to see how that's affecting their caseload, which I think will be useful information for us to have. But I think it's worth letting the other commissioners know about that as a phenomenon that is going on.

Any other questions? Okay. Why don't we move on then? The next item on the agenda is the approval of one more parent/child representation program contract. We did approve several contracts in the June 11th meeting, but we have another one, and Keren is here to present on that. So why don't you go ahead, Keren?

Farkas: Good morning, Chair Ramfjord and members of the commission. My name is Keren Farkas and I am the PCRCP manager. As already mentioned, we were here several weeks ago and set forth several attorney and case manager contracts for approval to roll out PCRCP in Multnomah. Today we're here just for one additional attorney contract for PCRCP, which is for 2.65 attorneys and corresponding staff. This is for the Law Offices of Judith Rosenberg. We used the same analysis and consistent application and distribution of funds for this contract, as described during our prior commission meeting. We were just taking a little longer to finalize this contract.

So, if the commission has any questions, I'm happy to answer.

Ramfjord: Okay, any questions from folks? Okay. Is there a motion to approve this contract?

Christ: So moved, Commissioner Christ.

Ramfjord: And a second?



Hardin: Second.

Ramfjord: Any further discussion? Okay, all those in favor, aye?

Multiple voices: Aye.

Ramfjord: Any opposed? Okay, Keren, motion passes. Thank you very much.

Farkas: Thank you.

Ramfjord: We are moving through things a little quicker than we thought here, so I think that we'll just keep going for a little bit longer before taking a break. So the next item on the agenda is the current service-level presentation, and we've got Lane and Julie to do that. Go ahead.

Borg: Thank you, Chair Ramfjord, commission members, again, Lane Borg, Executive Director of the Office of Public Defense Services. I just want to do a quick sort of overview, and then Julie's going to get into more details on this for you.

So, our budget, or the funds available to the agency, really has two large components to them. One is what we often refer to as either the base budget or our current... It starts as a current service level budget and then gets massaged and added to with some allowed additions. But it's a construct. It's a formula that's used within the state so that the legislature can, as best as possible, understand, apples to apples, what an agency's budget or requested budget looks like, to answer the question of what does it take to keep doing the business that the agency is directed to do, without anything new, innovative, new programs, that type of thing. That's something we deal with in policy option packages, and we'll be talking about them in a separate agenda item this morning.

But we run into a little bit of a – I don't want to say hiccup or roadblock – but there's a little bit of a dilemma in the sense that, when you look at Chapter 151 it says the commission approves the budget. And that is certainly true. And ultimately we will be bringing forward a budget for you to vote on, as we have historically throughout the existence of the commission.

But the reality I want you to understand, as to this part of the budget, the base budget, is that by the time you vote on it, in many ways it is already baked into what it's going to be. Because it's a formula. It's a recipe that's built that starts with the issue of what would it cost you to do next year what you did this year? Exactly. Your current service level. Then we get to add an inflationary factor, like all agencies. We get to add mandated budgets. Mandated budgets or mandated caseload is things that we're required to do. Think Ramos. And that we have to provide. And we try to monetize what

that would be. And then they put that together. That then becomes the agency's recommended budget.

And then it goes in ultimately a budget submission. The governor will include us, along with OJD. Those are not within executive, but her executive departments. It all goes to the legislature and then the legislature, in the long session, hashes it out and we have hearings on that.

But a lot of what you do, a lot of the way the commission expresses itself in terms of what are our values and where should we be going, frankly comes up in the policy option packages. Because the base budget, again, it has these very strict formulas. And if we varied from it, they wouldn't understand what we're asking for. They want to know the answer. What does it cost you to do your business next year, what you did last year? How does this compare with other agencies if we gave you a little bit of inflation? And has something happened in your world, mandated caseload, that you know your workload is going to increase?

So with that preface, I'm going to turn it over to Julie to kind of get into more details. You have been given, through the electronic packet, the budget. It is like a billion pages... [Laughs] No, it's long, but please, I'm going to have Julie give her presentation, and then we'll have a discussion with the commissioners.

Fetsch: All right, thank you Lane. Good morning Chair Ramfjord, members of the committee. For the record, my name is Julie Fetsch and I'm the budget and finance manager for OPDS. A lot of what I'm going to tell you right now is kind of a recap of what Lane just said. So we did include in the commission meeting packet a summary memo that gave the information, a little bit of detail about what the current service-level budget looks like that we've attached. I assume you've had time to read that, so I'm sure that you're going to have questions. So I'll go through this really quickly so that you have a chance to ask those questions.

So we basically start with the current legislative authorized budget as a base. We have the packages. The state refers to those as packages. Those are all preset. We have phase-in costs for new programs and additional staffing that we received at the last legislature, and other one-time adjustments that were intended for the current biennium only, that you have to phase out.

So we also included a Package 40, which allows the agency to request the additional mandated caseload. And the mandated caseload really can be loosely described as additional work that the agency is required to perform due to outside influences, versus a policy change that's within the agency. So that would include new legislation. If some of the information Kimberly had given us on the legislation that was being presented had affected us, that would fall into a Package 40. Supreme Court decisions such as Ramos versus Louisiana, or just simply an overall increase of cost due to the number of

cases that are being heard by the courts.

So we did prepare a Package 40 for this budget cycle. And basically it adds in the additional workload, an estimate that we put in for the Ramos versus Louisiana decision. We did ask for additional funding because of our overall case cost increase. But we did have a reduction in death penalty caseload. So that offset those just a little bit. And it is important here to note, too, that if the mandated caseload levels increase significantly during an existing biennium – we make this one guess – and if it increases during an existing biennium, we do have opportunities during the biennium to go back and ask for funding for those. Those will happen in the fall of each year.

So all of those packages that I mentioned are standard to state agencies. Any adjustments that we do outside of those standard packages are the Policy Option Packages, which are the four that we'll be presenting to you in the next agenda item. These are the items that would be additional funding for the program. And even though during this current environment it's highly unlikely that they're going to be growing agencies and adding a lot to the budget, we still want to make sure that we present that information to them so that they know what our agency needs are.

And then, once all of this is glued together, it becomes the first draft of the agency-recommended budget, or agency-requested budget. And then we work with the CFO and LFO, and the governor's office. It will change, back and forth, back and forth, until they finally make it final and present it for the legislature for them to go forward during the 2021 regular legislative session.

So with that, I'll turn it back over to you, Chair Ramfjord, for any questions.

Borg: Just a second, Chair. I just wanted to add one other thing, because I want to do a call-out on that to give an example of how this relates because base budget or this budget, the current service level, which will become the agency-recommended budget, and POPs.

It's always a challenge when a new thing happens in one biennium – because we are biennial budgets, we're two-year budgets. And then the question is, what's that going to cost going forward? And we were concerned earlier in the year when we had understood, based upon some communication with the legislature, that the addition of PCRP in Multnomah County was not part of our base budget. Because that was something that was added during the year. But yet, PCRP is a program we've had operating for more than six years, and we expanded it to Multnomah County, but it was not a fundamental change or new program. And it was the legislative intent to want us to expand it there. We got clarification, between short session and when we have to do this process of putting the budget in, that we were able to include that in our base budget. That we are in some ways acting as if it's been going on for the whole biennium and they just put it into the base budget to analyze it.

That is important, because the funding we received in this biennium covers it for one year. It started this month, July of 2020, and the biennial cycle ends June 30th of 2021. But by being able to include it in our base budget, it means – and this is a term you'll hear us use sometimes – it rolls up. So we get to analyze the cost and value of that as part of the business of the agency for the entire biennium of next year. So that was a significant – I hate to say it this way – win for us, because it is really an understanding, then, that this is part of the business of what the agency does in representation. This wasn't just a one-off, let's do this for a year and see what happens.

And that was important because we have had a roll up. We've added capacity in Multnomah County. When this all works, we are lowering caseloads and adding resources. And to continue that is critical. It takes additional funding, significant additional funding. And by including it in our base budget, that means we don't have to go fight for it in a Policy Option Package. And so again, I want to commend Julie and Kimberly in making that communication with the LFO and the legislature to understand that. I'm not criticizing them. They just needed to understand, oh, this is now the business of the agency, and this is how you're doing business. This isn't some special one-off program. So I just wanted to give that addition as an example of how a POP or new program might relate to our base budget.

Ramfjord: Okay, thank you very much for that. Do other commission members have questions related to the budget documentation that's been provided and the narrative that's been provided here today?

Christ: Yes. This is Commissioner Christ. I have some process questions. I understand we're only going to vote on the POP package, right? The current service level presentation you've put together, that's a formula that you have to do and we don't approve that or not, right?

Borg: Right.

Christ: Okay. My other question is, are we going to see this again at some point in time? What I'm getting at is this – my view on any or all of the POPs may change over time if it turns out that the rest of the budget changes going forward, as I expect it probably will, in light of decreased revenue from the pandemic. And so I want to know, down the... It's one thing to express our preferences now, but down the road are we going to get another opportunity in that regard, before this gets shipped off to the legislature to decide what to appropriate?

Borg: The quick answer is yes, you will. These are documents that... And one of the big reasons to not vote on the base budget at this point – which I want to remind people is statutorily required, and we will need to bring that before you – but it's a work in progress. Less with the PSA, the Public Services Account, where most of the funding for

trial-level services comes from. But for instance, in appellate division and in contract and business services, there's a significant component of that that DAS puts in through basically allowed personnel costs and how they value that. And so Julie's in communication with DAS now. Those things will be filled in.

And I don't know that they're going to change drastically, but we have to wait for them to essentially first bless it and then say, okay, we'll now monetize it and fund it. But in the fall we'll be bringing it back to the commission for a vote before it's submitted, along with – just on the POPs today – what we're going to be asking for is the commission to vote on the concepts of them. We're going to talk about each of them, but the actual monetary amounts will actually be filled in later. Because that requires input from the commission and stakeholders, and other sources of information that we're getting.

I will also say that we will be – not to preview too much – but it is the intention at the retreat next month to bring in, for informational purposes, folks from state budgeting that can talk about what that process is in a more detailed manner.

Fetsch: And I can add in to there, again, Commissioner Christ, for the timeline on that. We did just pass audit on this CSL back on Tuesday. We finally just got that information. The ARB initial document that we turn in, after you guys approve these POPs, we'll put it in. We'll call it the ARB and we'll file the initial draft of that ARB in August. And that's when we go back and forth with the LFO and CFO. We have conversations with the governor's office. And I believe that somewhere in November it is anticipated that we will finally all agree to what that is. That's about when the governor's budget is due, and the governor will have input into things she may want to add or not add. And then that's when it's due to the legislature, at that point.

So we will have something for you definitely in December, for what it is for the completed ARB. But in the meantime, we are closely working with them all the time, with the LFO and CFO, and Kimberly and Lane are in on those conversations. So we have a good opportunity to discuss that.

Christ: Okay. One other process question. Lane said at the outset that ultimately the budget is a decision for the commission. Can I assume that we can make that decision independent of what's actually appropriated by the legislature? I mean, the legislature may give us so much money and we may decide that, to provide constitutionally mandated representation, we need to spend more than has been appropriated. Or spend it faster than it's been allocated.

Fetsch: I can answer that. So when I briefly talked about the Package 40 mandated caseload, because that does happen. The legislature does understand that we can't predict how many cases the court's going to have, or predict what legislation is going to come through. So there are several vehicles in order for us to go back to the legislature and

ask for additional funding. And we call that mandated caseload. And if those happen, yes, we have two opportunities. And in between there are other things that we can do, other options. And we are constantly in contact with them if we do identify that as an issue.

So we have that option to add to the budget, and that is a standard formula that has to be done. We have to show that there really is truly a need for that. And then the other is just the policy option packages. The commission has the option to introduce any of those policy option packages. The rest of it, the base budget, is a standard base budget.

Christ: Okay. What I'm stumbling towards here is that we are in the process of reconsidering how we compensate providers, and their workloads and everything. And so it seems a little strange to me that we're preparing this budget that's based on how we've been paying them in the past when it's anticipated that we're going to start paying them differently going forward. And those two may not connect. Right?

Borg: Yeah, I'll answer this one, Julie.

Christ: And so, at some point in time, we may feel constrained by the money they've given us based on past funding models, based upon our future payment formulas.

Borg: Right. So, Commissioner – and again for the record Lane Borg – that's the crisis. That's the BRAC. If either the authorized contracts, in that the commission authorizes the contracts, approves the contracts that are recommended by the agency. If the revenue is less than adequate to meet those, then we don't have funds to pay them and we would presume that the contractors stop working at that point. And then that's the BRAC year, or what happened in the Budget Reduction Act year, where public defenders basically stopped for three months. And the effect of it was it shut the system down.

And that's what we've talked about over the last four or five years as The Crisis. Should we push The Crisis? Should we put the system into crisis? I mean, I think that philosophically... I feel, as an agency head, that I have an obligation to not do that irresponsibly, or willy-nilly, just to say let's do it. We have to make an earnest effort to say this is the monies that are available. And you're right, it is hard, because the way the legislature understands change over time of budgets is, what are we spending now? We want to give you as much of that as we can, plus additions. And we have done well over the last several years. This agency, compared to other agencies, has had relatively stable and significant increases in terms of providing. And that is a tribute to all the work that people in this commission have done over the years, and the agency, of convincing the legislature of the need for improvement. The Sixth Amendment Center addressed that also.

But what will happen is that the legislature will authorize a certain amount of money. I have an obligation statutorily to see if I can – within the parameters and values that the

commission expresses about what contracts should provide, what does it mean to have a constitutional representation? – I go out and try to get those, as much as possible – or the agency does – to get contracts to cover the predicted caseload. And then we take them in front of the commission. And if the commission says, “No, we don’t support that. We’re not going to vote for that. We think it should be twice that.” Or “We think the caseload should be half of that.” Then those are things that we take forward and ultimately will...

I think we can get to a point where there would be a crisis. If our funds are not adequate to meet the contracts that we have let, then that is the crisis. The crisis being a lack of funding, because we do not expect people to just do this for free. But I do think, before we get there – and that’s the process we’re in now – we have an obligation to do the best job we can, within the funds allocated, to see what we can buy. And that’s the point of... I want us to talk about this at the retreat. We’re getting stakeholder input on it.

We are changing the model. We have changed the model. We are already – it’s not adequate – but we are already away from the case credit model and we are buying the time and efforts and services of both consortium members and nonprofits out there. The caseloads are probably – although we’re in the process of gathering that information – probably too high. And that’s something that we’re going to have to – as we move forward with the ABA study, which we hope to conclude this year – as we move forward with understanding how many cases these contractors are doing and what’s required in there – it’s all being warped because of the Covid crisis, as mentioned earlier. The intake is on full flow, the outtake is almost dammed up. Caseloads are going up.

So those are all things that I think we have to deal with, but this is all by way of dancing around saying that the quick answer to your question is, if the legislature does not and refuses to authorize funds for the contracts that the commission authorizes, then we have a crisis. Because we can’t just print money. And we can’t force them. Now other states have had a number of different responses. And they’ve not all been successful. In some cases there have been lawsuits against the state to say you have to increase funding. Again, sometimes that works, sometimes it doesn’t. They’re complex. If they were easy, we would have already seen those lawsuits.

But I’d end with, unless you have further questions on this, is that I understand what you’re saying, but I do think that we – meaning me, the agency – has an obligation to try to understand what we can afford within the authorized amount of money for representation.

Ramfjord: And just if I could comment on a couple things about that. First of all, I just want to make... And this is all in flux at this point in time. Right now, just to make sure, when I’m thinking about this budget in terms of where we’re going to end up, Julie, what I hear

you saying is that if we end up getting cuts – which is, I think, unfortunately something that we can expect – is it more likely to be in the appellate and the contract and business services area than in the professional services account? Which is the largest part of the budget. Or is that not correct? Okay, correct.

Fetsch: That's correct. Yeah. If we received cuts, it would be in the professional services account. It's 90% of our budget, so it would be there.

Ramfjord: Right, okay. All right. And it also seems to me that, right now, since we haven't even gotten to the point of having these contracts really developed in the format that we want, it's very difficult for us to figure out where it's going to fit. How much we can actually buy at the appropriate levels, or what the level is going to have to be for what we will be able to buy. Is that fair, Lane?

Borg: Yeah, that's exactly right. Let me take what you just said in a slightly different way. If we want to make our best case to the legislature that we need increased base-level funding – basically along the lines of what we were hoping for with the special appropriation, where it was the bulk of that going to trial-level services, where we would add capacity or add infrastructure, or increase rates – we have to make our case to them that those are necessary. Because that's what they're going to respond to.

If we just go in and say, "Give us more money because these feels inadequate," that's not going to be successful. But if we go in there and we say, "You know what? We now have a study that says we should have more transparency and oversight. We have base ideas of what people should be doing and an ABA caseload study that says in our jurisdiction, Oregon, the caseloads should be..." They're almost inevitably going to be lower. Every single state that's had an ABA study, especially in misdemeanors, has had a significant decrease in what they feel is competently being able to do. If we're able to do that, and we're able to say – and we've engaged with the courts and the other stakeholders – to say this is what we need in Deschutes County, or this is what we need in Lincoln County, in terms of the number of bodies, then that's going to fit into what Julie talked about, about mandated caseload.

I think we've got good support. The governor is very supportive of us, the legislative leadership is supportive of us. It's just it would be unrealistic to expect that we just say, "It's bad, give us more money." Because lots of people need more money from the state. But if we can go to them and say, "Here's the data. Here's what we know, and this is what we expect in representation." I mean, look at the PCR model. That is, by and far, per capita, the most expensive defense representation we do in the agency. And yet, they love it. The legislature loves it, because they understand the components, they understand – at least the leadership – in terms of what's behind it, in terms of social service support, outcomes for clients, looking at that. The leadership does get that interagency savings, that PCR does cost more, but it saves the system more. Because the goal is quicker time to permanency, fewer kids in care, better outcomes that way



that stick.

And that is the way we make our case to the legislature. And so I think if we continue in the process that we're doing, in terms of stakeholder engagement, commission involvement in values and contracting, and then we make our case, that is how we get more funding for our system. So that they know what they are buying. If you go back to what did leader Jennifer Williamson say when the Sixth Amendment Center report kicked off? She and then McClane both said, "Our problem with public defense is we don't know what we're buying." So that's what we need to answer that question. Tell them what we are buying, why it's important, and then we have a better chance of getting more money.

Ramfjord: Right. Let me just ask a couple of followup questions on that, just so I'm clear. This kind of relates to what Commissioner Christ was saying too. From what I understand, from what you and Julie have been reporting now, the current service level aspect of the budget is a pretty set formula. We don't really have a whole lot of flexibility, other than these allowable adjustments that she outlined in the memo, to make there. So we're going to be stuck with that.

So if we were to develop contracts between now and the time we finally approve the POPs, and if we've concluded that, okay, if we had X dollars extra we could make these contracts funded at a level that would actually be more reasonable. That's the issue that I think Commissioner Christ was getting at. Would we rather put some of that POP money into modifying those contracts, or getting funding for those contracts, than doing what we're thinking about doing here? Recognizing that POPs may not be approved this time around, but at least we're laying the record for how we really want to spend that money. Do you understand what I'm saying? I'm just trying to figure out the relationship between the two.

Borg: That is absolutely correct. It is the best way to express values about how we should reform and change is really through the POPs. Even if they don't necessarily have hope in this, it's a way for us to, over time, educate and explain how we would change and what would be important about that. And I know we're all talking pessimistically about these, but I will say that in conversations the thing that I find heartening is that I don't think that leadership sees us, at this point, as rudderless or without a plan. I think they understand when we start talking about things, like we're talking about caseloads.

And the fact that we've already changed to how many people are we buying has already changed the conversation questions we get from the LFO about things like, "Well, if we gave you this much money, how many more people would you be able to afford to do representation?" Rather than, "Well, if we change this law, how many more misdemeanors are you buying?" Or "How many more felonies are you buying?"

So we're already starting to change that conversation, and I think that will be important

over time. Because the goal is to get all of this into your base budget. Ideally, in an ideal world, you'd never have to ask for a POP because they're already funding everything that is good and right and good that way. But yes, it is through the POPs – both in what the amounts should be and what the components of them should be – but ultimately and historically the commission – at least for the last five or six years – has prioritized those in the final meeting of the year. Which is direction to the agency on how to advocate to the legislature relative to the POPs.

Ramfjord: Okay, thank you for that. That's helpful. Do other commissioners have further questions about the current service level budget review? And again, this is something that's being provided for informational purposes at this point in time, but I think that there've been a lot of questions here, a lot of new commissioners who haven't seen this kind of detailed information on the budget before. So if people have questions, now is the time to go ahead and ask them.

Solomon: Paul Solomon, Commissioner Solomon. I have a question not so much about the current service-level budget, but about the current biennial budget. And I know, Julie, you referenced the process in the fall of making additional asks. And I'm curious about the impact of Ramos in this current biennial budget, and whether there will be an ask. And I'm also curious about this short session, whether there's any risk of cuts in funding in the second year of the biennium. I know the governor's office asked agencies to go through the exercise of putting together 8.5% reductions. And I'm just curious the rub there between asks in the fall and the potential for reductions in this current biennial budget.

Fetsch: All right, thank you Commissioner Solomon. I'll start with Ramos in the current budget. We did add Ramos into the Package 40 mandated caseload for the next biennium, but we also are keeping track of the costs associated with that. And we do anticipate that there will be an ask this fall. We call it a fall rebalance. And we'll take all of that mandated caseload, which will include the additional costs for Ramos. And I think there's going to be an additional ask in there, too, for the PCRP in Multnomah County. And we'll have that discussion with the LFO. Everybody will be on board with that. We'll lay it out for them so that they understand what that is. And that's where we get the additional funding for what we need for that.

As far as budget cuts, or anything that's coming up in the short session, we don't have any official word on what the budget cuts are for our agency. I will say, though, that I did get information on what the executive branch did for the larger agencies, Oregon Health Authority, DHS, and all of those. They were cut less than a percent in their budget, about \$144 million worth. So it's certainly not going to be the eight or ten percent that we initially did, I can say that. But I don't know yet definitely what it's going to be.

Borg: And, Commissioner Solomon, the only thing I would add to that, and specifically I'm glad you asked about Ramos. But I want to make sure that we have informed and let the

commission review on it. Very briefly, the impact this biennium is primarily a reinfusion of almost 300 cases that are going back. And essentially will be dealt with one way or another. Because these were cases that were on direct appeal or in a status where there was enough conceded impact that DOJ, and in some cases the courts signaled on some grants that they did prepare quickly, that there's approximately 300 cases going back to the trial level. It's happening really as we speak.

So, assuming they all get there by September, those will be dealt with during this biennium. And so we gave the LFO a figure of what we thought that would be, how many caseloads we anticipated. They were not like a normal NAC standards on felonies. We treated them more like an appellate standard of what a caseload would be. Because these are cases that have already been to trial. So we don't anticipate they would be plea bargained out, but they would likely go to trial again. And they accepted that. But we gave them a calculation that way, and then we also funded a clinic through Lewis and Clark, and Professor Kaplan is working within the prisons to review other people who are post appeal that may have a claim under Ramos for post-conviction relief.

And that's the bulk of the impact for next biennium, is cases that they would identify over this next year that then would be appointed counsel and have representation to challenge a previous non-unanimous conviction. So there's two components to Ramos, what affects us in this – and we've already given that to them, and then what goes into that Package 40 as an addition to caseload in the next biennium.

Solomon: Great, thank you.

Ramfjord: Okay, are there other questions? Lisa, you were about to talk I noticed.

Ludwig: Yes. I have kind of a budget-adjacent question. And I put it in the chat, so I don't know if you guys can see the chat. But I put it in there. I think it's really a question for either Keren or Kimberly or Julie. Or maybe Lane. But it has to do with Title IV-E, and hopefully some income stream that we should be getting for dependency cases.

Farkas: Lisa, for our audience who cannot see the chat, do you mind reading your question aloud?

Ludwig: Oh, sure. Hang on, let me get that. Okay, so a question in four parts. I know that there's a memo of understanding in place with DHS for the IV-E fund – I think that's correct. But are the claims currently being made – I'm not sure if claims is how you characterize it – but under the memo of understanding are we submitting the data that they need to pass through the funds, if they were going to pass them through? And then are the funds going to the general fund rather than to the agency?

And that seems like a legal question for general counsel, is that legal? It's supposed to expand dependency. And if it's just subsidizing the general fund, or replacing some of

the income we would otherwise get, then is it really expanding it? That seems like a legal question that was going to be resolved, and should be. And then, if it has been resolved, are we getting income? I looked, the budget summary, the narrative, I word searched it for Title IV-E and it's not mentioned anywhere in there. So I don't see anything to indicate that we're getting IV-E money right now.

And then the last thing was, when we talked about it a while ago, I think that what you said was that – oh, I see a typo. I spelled believe wrong – that the claims relate back. So even while it's kind of in limbo, we haven't lost anything by the delay in resolving this issue because we'll get a lump sum if indeed we're right and it relates back to whenever we signed the memo or started making the claims or whatever. So, sorry, that was long.

Borg: That's all right. I'll take it. Thank you, Commissioner Ludwig. Let me see if I can just... I'm going to start at the end of your question first, because that is absolutely correct. We can claim money back. We've identified what – and in fact it's been expanded recently on the federal level what we can claim, things we wouldn't have been able to claim in the past we would be able to claim now.

But where I want to try to answer your question is, if you look at page 11 of the budget summary you'll see sort of an overview of our budget. Our base budget is made up of two big buckets. One is the general fund and the other is what's called Other Funds. Now every agency, or most agencies, have an Other Funds component. Some agencies, that's the vast majority of what they get. For Oregon Health Authority, the money coming in for Medicare, Medicaid, from the federal government, you would look at it and you'd see a huge amount of money in Other Funds and relatively small for just the personnel that covers it within that. Same with Forestry. There's a lot of money that comes in from Other Funds.

For us, right now, if you look our budget, as a legislatively approved budget for the current biennium, we had, of all funds, \$346 million plus, 342 was general and only 4 million was Other Funds. That is specifically, and has been for a long time, that is the money that we squeeze out of people that are applying for court-appointed counsel. That \$20 fee, or if the judge orders money to be paid up front. That constitutes Other Funds. Most of that money that comes in that we get in Other Funds goes to – because we collect more than 4 million a year on that – it goes to OJD to fund several clerical positions. It funds a few clerical positions within our agency.

In order for us to spend IV-E money... So Other Funds is other sources than general fund. So if it was anything – if it was grants, if it was we had lemonade stands set up everywhere as an enterprise – we would have to have authority from the legislature under the Other Funds to spend it. We couldn't just take money in and spend it. So we have been working with them, and what we were working with them, is to say, "I need the Other Funds category increased commensurate with what we think we're going to recoup through IV-E," and then have a plan for how we would spend that to enhance,

increase that. In some draft language that did not pass because the short regular session didn't end, there was verbiage in the budget note that would have done just the opposite of that. It would have said, "Oh, you think you can get X millions of dollars through IV-E, we're going to take that out of general funds and put it over into Other Funds. And therefore, all that work, anything we do to recoup money, would be just paying for things that the legislature had previously authorized to pay for out of general funds.

So that is not the case right now, because the session didn't end and that didn't happen, any change that way. We do have the agreement with DHS that would allow us to recoup, but we aren't recouping at this point – because we know we can go back some period of time – but we aren't recouping right now because if we did it would have the effect you started with, which is it would just go into the general fund and they would look on our budget and say, "Well, you have authorization to spend \$4 million of Other Funds." And so as soon as we collected \$4 million, either through IV-E or that, we would be done. We would have no more authority to do that.

So we need, and are working to get that adjusted so that the Other Funds would give us the authority to spend the IV-E money that we recoup. We have made a decision not to pursue it this summer, with the budget special session coming up, because we are in a challenging environment. And I'll own, I'm concerned, that if I said, "Hey, there's \$10 million out there," we would get it taken out of our general fund in three nanoseconds. There is actual palatable fear in Salem over what is going to happen.

Everybody is threatened with cuts. It is heartening to hear what Julie said about executive branch looking at only a one percent cut, or something like that. But I don't know that everybody believes that that's where it's going to end up. Everybody's waiting for it and living in fear, kind of, of the revenue forecasts that will come out I believe in September. And I don't know if you remember, if you were part of policy and politics before, but during the recession there was a period of time, in 2009 and 2010, where they were doing special sessions almost every other week, to cut. They would just cut. And so people, we don't know if we're going to end up there, but that is the fear right now.

So I made the decision, in consultation with staff up there, that we are not going in at this point and saying, "Hey, we need \$10 million more put into Other Funds," because I'm afraid that what they would do is just take it out of general fund. And I think we can have that conversation later on, after people know what the impact... When we're in a better position after September's revenue forecast and we have a better idea of where things are going.

There are hopeful signs out there. I heard the other day that, in Oregon, one-third of the jobs lost have been restarted again. People are back at work. But nobody knows where this is going out, and this is just the wrong time to go in and say adjust this Other Funds

right now. We're better off leaving things where they are right now than having that conversation. Because we can still go back and recoup that amount. We have the agreement in place, and it's really the Feds that define what you're allowed to recoup or not recoup. So by them adding it, we didn't have to go renegotiate that with DHS. Does that answer?

Ludwig: Not really. So, I guess I still have a couple questions. First of all, does the agency have the mechanisms in place to transmit the information to DHS that they need to file the claims under Title E? That's the first question.

Fetsch: Yes.

Ludwig: Literally, mechanically, is it being done?

Fetsch: Yes. So this is... For the record, this is Julie. And yes, we have the data collected. We have the information ready to go. We just got that all together. We can report to them quarterly. And when we decide to pull that trigger, it's all there waiting for us.

Ludwig: Okay. And then my second followup question is – and I don't mean to be boneheaded about this – but my question is, if Title E provides for an expansion – what it funds is an expansion of services – is it lawful for the legislature to basically treat that money not for purposes of expansion, but to sort of hijack it and treat it as a subsidy, instead of an expansion? And I guess what I'm just asking for is, has General Counsel run down that legal issue, and can they give us an answer? Or maybe Kimberly?

McCullough: Yeah, I just popped on here to let you know. We have looked into this issue and there are no legal restrictions from the federal government on how the state uses those Title IV-E funds. Whether they have them go into the general fund, if they end up being used by OPDS to fund other things. They do not have... Sometimes when they create these programs they have a limitation or a restriction on the way that those funds can be used, but this particular program does not do that.

And that is, I think, contrary to what all the folks nationally who are tracking this issue understand was the intent of these funds. But there is nothing in the federal law that legally restricts the state. And I think that, in light of Covid, this particular challenge of states making decisions about how they're going to spend that money is something that is being discussed and is based in a variety of places, and so I think the timing of Covid is just extremely unfortunate, that it is placing this pressure on budgets in this particular way.

Ludwig: Thank you, that was helpful.

Ramfjord: And this is Per again. I just want to emphasize, Lisa, those are excellent questions. I can tell you that staff has been contemplating these issues very closely for some time. I've

had multiple conversations with Lane and Eric and Kimberly about these issues. And with Mark Hardin, who has expressed interest in them too. These are important issues, but I think that the position that's being taken is the appropriate one at this time. And I think that our goal is certainly to maximize our ability to take advantage of the IV-E program, but at the appropriate time and in the appropriate way.

Other questions about the current service-level budget?

Christ: This is Commissioner Christ again; I have one. Does the current service-level budget include the undistributed portion of the SPA from the last session? Or is that money not included in this budget?

Fetsch: So, Commissioner Christ, just again this is Julie Fetsch. No, that is not included. It was never approved. The legislature left without approving that money. So it is not included as an authorized budget for us to spend. It's still out there, but it's not included in our current budget.

Ramfjord: Okay. Are there other questions about the current service-level budget? Okay. Hearing none, I think it is an appropriate time to take our break now. Why don't we come back in about five minutes, so that would be at 11:15, if that works for everyone?

[Silence 01:09:23 - 01:13:56]

Lannet: So, ready and waiting. I'll retreat to the background again now.

Ramfjord: Okay, are we ready to start again? All right. So, the next item on the agenda relates to the POPs, or Policy Option Packages. And given that we have, again, quite a few new commissioners, we thought it would be good if Lane could give kind of an overview of the policy option package – maybe Julie can help with this – the policy option package process, how these work, how they get put together, the timing of our approval, etc., and things like that. And then we'll go through the specific items that have been proposed, if that makes sense. Lane, you're still on mute.

Borg: Oh, thank you. [Laughs] Just waiting for this in Zoom meetings. People have to quickly just freeze and you can get out of there. Thank you, Chair Ramfjord. Again, Lane Borg, executive director, for the record. So, as I mentioned before when we were talking about the base budget, the primary way that an agency tries to do new business – tries to do some new program that they think is an enhancement of their mission, something beneficial that the state should be doing in some fashion, but it needs money – you do that through a policy option package.

Now, just to make the point here, we had a good conversation with the LFO and CFO, that's the governor's side of the budget process, on our Package 40 within the base budget. Because the question came up, should Ramos be a POP, be a policy option

package? And our position was no, because that was not an idea that the commission or the agency came up with to say, let's not have unanimous verdicts. That was an external decision. We supported it. We argued for it. We submitted amicus briefs. Obviously, we were pleased with the outcome of the decision. But it was not a decision of the agency to say this is some new way to do business. This was imposed upon us through a court decision.

Or, as Julie mentioned earlier, if a law passed that said... Well, the change to death penalty. That has an impact on – because we already were funding death penalty. We're going to be funding a lot less of it, but that gets included within already the base budget.

But with a policy option package, it's a new program. A new idea that you're doing. In some cases it's an expansion. PCRPP generally in new counties has been done as a policy option package, and we have one of those here. But these are ways that we express to the legislature that we need new money to do new things, to do additional things that we weren't doing before, because we think it's a good idea. And so it takes a lot. It takes the agency to come together with a package recommendation. It takes the commission to decide that that's a good idea. That's what we're doing today as an action item. Are these good ideas to continue to pursue? And then, obviously, it takes the legislative fiscal office, and the governor's CFO office will evaluate them.

I want to be clear. They're not evaluating them for whether they think it's a good idea. That's not the role they play. That's the commission's role. It's to say, do we think you have fairly expressed the cost of them? We're going to evaluate what you said, and does it look like (1) you'd be able to do it for that? That you've covered everything that we as a fiscal organization, CFO or LFO, think is necessary and appropriate. And then they would make a recommendation. But that recommendation is as to the fiscal viability of it, rather than whether it's substantively a good idea to do one thing or another. It doesn't mean they don't necessarily weigh in on things that they've seen. I'm not naïve that way. But their role primarily is to evaluate the finances and fiscal soundness of the recommendation. And then obviously the legislature has to decide those.

I want to next say, before we get into the specifics of the four POPs, that there's been a lot of discussion, because of the challenges with Covid. There was already, even before Covid hit, the governor's office, the economic forecast was that we were going to go into a recession at the end of 2020 and into '21. We knew we had some budget challenges. It was not just going to be expanding budgets forever. And so there have been people that have been saying, "Why are you even doing those? Why should you do those?" They're not without effort. It takes time to put these together, and it obviously raises people's excitement and expectations when you see a POP of what we're trying to do. So I'm cognizant of that.

But I want the commission to know that it's important to me, these POPs are important to me and to the agency, because they do express our values. They do express what we



think is important about public defense, about public defense funding and reform. And I don't want the history and legacy of the agency to just be, well, we opportunistically asked to do something if there's a few more bags of money sitting around. But these are important. These are core. Whether there's enough money for it or not, we understand that. We're mature adults and we get it. They aren't going to approve everything we request. But it's still a good idea. And it's a good idea whether we're in recession or whether we're in crisis, or whether we're in good times and there's a good chance of getting all of them funded.

So that's the POPs that we are bringing to you. What we're asking today from the commission as an action item is – if you do – to approve them conceptually moving forward. That will then authorize the agency to keep working on the details of those and to bring them back for final vote. And ultimately, as I said before, at least the last six years, the agency prior to long session has prioritized the POPs. The numbering isn't the priority, necessarily. It might end up that way, but that's just the numbering because they need a number as they get evaluated. When the LFO looks at it, they will say, "We want to talk about POP 104 or POP 103."

So, with that premise of what the overall view, I'm going to be talking about 102 and 103 and then Keren is going to talk about, and Kimberly, about 104, and Ernie is going to talk about 105.

So, 102, Policy Option Package 102, is to address trial-level sustainability. Now we don't have a dollar figure in there at this point. We do have the notion, where it says increase statewide provider pool by 30 representational units. That is our current language around the concept of... Let's see, around the concept of an FTE. An attorney and the commensurate support staff and overhead that would go with that, to represent caseload. Whether it's criminal, juvenile, or mixed.

Ramfjord: Lane, just one quick question. So, when I looked at this I thought it seems to relate fairly closely to what we were thinking about with the money we're going to get from the SPA.

Borg: Correct.

Ramfjord: And we're going to add capacity in that way. If you could just comment on that.

Borg: Yeah. That's exactly right, Chair. We started with what we had in order to just start the conversation moving forward, that we had a plan to spend the 17 million of the SPA on increasing capacity within the PSA to use contracts to add capacity, which would lower caseloads; to add infrastructure, like support staff; or to increase rates where we see that there's a great deal of disparity; or a combination of any of those. And that's really what we've just put in now, that we would have a policy option package that would go towards increasing the PSA, particularly around trial-level contracts.

We will be continuing discussion. Kimberly is leading a group, or starting a group, with stakeholder engagement. The commission is going to be weighing in at the retreat. These are conversations that we will further develop it. But the concept is to have a sizeable chunk of money that, if approved, the way we would use it is to improve public defense at the trial level through the PSA, through contracting on capacity, infrastructure, and rates.

I'll just do real quickly POP 103, and then I don't know, Chair, if you want to do questions on that at that time, or whether we'll go through the overview on all of them. But 103 again comes out of the SPA. There was an agreement we've been working with LFO on adding positions to the contracted business services, mostly to achieve two main goals. And that was to address the accountability and oversight that was noted in the Sixth Amendment Center report, and to – because we knew that by changing the model we would likely have more bill processing we needed to do, and to make sure that we had additional capacity to process the bills, to do that in a timely manner.

So we had an agreement with the SPA where we were going to get 23 additional positions through the agency, nine of which were basically already there in limited durations. And we got the nine, but we are asking in this policy option package for the balance. Because again, we didn't think those were just opportunistic to give us those positions because there was some money at the time, it was because we really think we need them. And in consultation with leadership and the co-chairs of Ways and Means and with the LFO, there was an agreement on those positions. Just the circumstances didn't fund them, and so we're going to be asking for them in POP 103.

Ramfjord: Okay, why don't we just take a break here for a second and I'd like to just open it up to see if any commissioners have questions, either regarding the process generally or the initial two POPs as discussed by Lane.

Bell: I have a question. This is Commissioner Bell. So about 102, it's three questions. And I suspect some of this might come out in the process you described, Lane, wherein there's more detail about these. This is just sort of the rough sketch. So I apologize if this all goes to that more level of detail.

But first, the name sustainability to me suggests that it's just to keep doing what we're doing better, as we don't have enough to be doing as much, as good quality at this thing. So the way that you described the POP seemed to be that it's a new kind of thing, and so I just wondered if the framing in terms of sustainability is particularly helpful with respect to achieving the aim of getting this passed. Because it just doesn't seem like a new thing.

And the second question was whether – we've heard a lot of from investigators, their rates of pay – whether that is encompassed in this, or if what is being discussed here

applies only to attorneys. And the third, this is really more detailed. It says trial-level representation. My assumption is that for most of the cases they're not going to trial, and so this would allow people to be funding for sort of facing trial. So work that is done in advance to take a plea or something like that. Just because calling it sustainability sort of trial practice seemed maybe narrow in a way that I wasn't sure applied.

Borg: Sure. Thank you, Commissioner Bell. First of all, let me just take the last one first. Trial level there is because again, within the agency, the way they break down – once they approve a budget, the way the agency's budgets break down, once the legislature approves them – is the PSA, or the Public Service Account, which is the bulk of our budget, which is the trial-level service, as opposed to the business or contract and business services or the business of the appellate division, which are state employees.

So trial means anything. It just means the contractors. This would be money... And that's a good point. I mean, I'm glad you raised that because it allows me to remind people that, for instance, if they gave us money under POP 102, I can't just take that and spend it for POP 103 because they didn't approve that. They will go in and say, "If we gave you that money, it increases your PSA." Or it increases your contracted business services, or increases your appellate division. They put it in those specific categories. That we do have to respect in terms of the authority to spend that.

Number two, the second question as to the investigators, they certainly can be included in that. We had them included in the original SPA allocation, and then there was some money given to us by the E Board about that. As I said at the time, the amount that the E Board gave us to increase was neither exactly what we'd asked for or exactly what we think it should be, in terms of an inflationary increase. So I think there's still room to discuss that there. But I think that this is where we need to get input from the commission, the stakeholders, and then run it through our own budgeting process to see what would that cost. Because again it goes back to we need to be able to tell them if you give us this money, this is how we would spend it.

But certainly investigators could be part of that. All monies that are expended through the non-routine expenses could be included in that. We've recently had – and there was some discussion about some changes we've made as the death penalty need in that community has gone down. We have a great deal of very talented expertise mitigators, and we pay them more for mitigation. But I think we have to do a better job of understanding when mitigation is appropriate, as opposed to normal investigation. Because those are paid at different rates.

And so, those are all things that we would have further discussions on, and I think need to have discussions on, in how we spend that. But yeah, the quick answer is they could be a part of 102, and that's really going to be developed further in conversations. I don't want to say just starting with the retreat next month, but with a number of different meetings that we have planned and ongoing.

And then, on the first part about sustainability, I think I would just say I hear what you're saying. We were trying to pick a vanilla enough, or a broad enough term that it encompassed... Because one of the arguments we're trying to make, or the things we are saying to leadership in the legislature, to our community, we're saying this to the commission, is that the solution is not a one size fits all. The more I've looked at this and thought about it, I think that it's not easy enough to just say all we have to do is add more bodies. I think that the resolution and the improvement in public defense at our trial level – as opposed to appellate – trial-level services really cannot be a one size fits all.

We need to look at the particular community, what has evolved over time, and what their needs are. And in some cases, as I said, we know because caseloads are too high that they need more bodies. Before they can do anything, we just need more defenders so that the caseloads go down. In some cases we need to add rates, because I believe in some cases that's what's happened over time. There hasn't been a rebalancing of that. The rates are too low, and yet the way it's being expressed is that it's difficult to get people to move there.

We've kind of already done that in Eastern Oregon by raising rates to reflect that they need enough to cover conflicts and to go out there. But for instance, on the coast this has been a more recent realization, is that – and this isn't just public defense – all state agencies are struggling with how do we get permanent employees out to coastal communities? Because housing is very expensive. It is hard to live out there. And we have to recognize that it's just more expensive to live in some of those communities. So there we have to address it perhaps with rates.

And then in other cases we see systems that have grown over time but have almost no infrastructure. They don't have adequate office space, they don't have adequate support staff. And so we want to be more directive and prescriptive and say, "We think you need that." It was recognized in the Sixth Amendment Center report as a criticism, perhaps, of that community. But we need to pay for it too. So it was trying to pick a term that was broad enough to encompass anything that would improve that system and what is necessary, and it's not going to be a one size fits all.

Bell: If I could just ask one sort of followup about that – What's the comparative advantage of saying to the legislature, "Here's a vanilla thing," understanding that not one size fits all, and having say three different proposals: Improving coastal representation, improving eastern – at the trial level – improving Eastern Oregon at a trial level, that could be more I guess grounded?

Borg: Yeah. I fully expect that once we submit this actually to that, and in conversations it's going to be much more detailed, because that's what they've actually... In some cases I've said I can't get so detailed, but I can tell you exactly who's going to be doing what in

what particular county. But no, it will be more detailed. This is to say, really asking approval for POP 102 to be money that would be going to the PSA, focused on improving public defense using the contractor model that we have. because we had also been told that at this point – and I don't think things have changed in the last six months – at this point there is not a major appetite for reviving 3145, which was the going to primarily a public employee/public model at the trial level.

So this is recognizing that we need resources to allow us to make improvements in a targeted way for using a contractor model at the trial level.

Ramfjord: Okay, are there other questions for Lane on these particular POPs?

Christ: Yes. Lane, this is Commissioner Christ. And I'm sorry if this may cause you to repeat yourself, because somehow I fell offline during your earlier presentation. Just let me say, here's my concern about POP 103, which involves increasing staffing. And to some extent it applies to the next two, which involve more staff as well.

I'm wondering if even having those POPs presented detracts from the first one, which involves more money to providers. And I'm thinking back to a few months ago when the legislature approved a SPA that was supposed to give a lot of money to providers and some to increase staffing for the agency, and when push came to shove, the only thing that we got was staffing for the agency.

And I do not want to get into a situation where the more funding for providers, which I think is the highest priority – because it's got the biggest price tag – is always going to be the one that gets canceled out at the end of the day, and what we end up with is the legislature says, "Here, we'll give you the alternatives, and we'll give you some more money for increased staffing." And I don't want to get into that position. And so I'm wondering here now, even if preliminarily approving POPs 103, 104, and 105 creates a risk down the road that we're going to have a repeat of what happened last spring.

Can you speak to that? Am I overstating the risk? Is it something we can deal with later in ranking these things? And I sort of recollect this has happened in prior sessions as well, is that the legislature comes back and says, "Wow, that's a big number for the providers, and we're not going to give you that, but here's some more money to hire more people in the agency."

Borg: Thank you, Commissioner Christ. I guess the way I would answer that is that, (1) yes, there will be an opportunity through the prioritization for the commission to say this is what our most important – rank them in that way. I will say in defense – I know maybe this becomes a, well of course the head of the agency would argue for that. But I'm also saying this as somebody who's been doing public defense for a long time, and ran Metropolitan Public Defenders for about 10 years.

And I guess I would circle back to remind people that the actual number one finding of the Sixth Amendment Center report was that the agency lacked the capacity to do oversight. And this is something that has happened over the entire history of this. And I don't mean just the 18, 20 years that the agency has existed. I mean going all the way back to the 1980s when the state took over public defense and it was a division of the courts. Agency oversight has always been relegated below support of and support to trial-level services.

And I don't want to be put in a position of saying I don't think they're important, and I fully expect that the historic trend will be there, that POP 102 will be the one that the commission ends up prioritizing. That's what's happened in the last three long sessions in a row. But I think that those positions were not just superfluous, were needed. If we're going to try to meet our obligations.

And it wasn't just oversight and it wasn't just bill processing. If we'd gotten the positions, part of the discussion with leadership in the legislature was to say that, like other large states, like Massachusetts... I mean states similar to us, like Massachusetts and Colorado, with public defense, we should be doing training. And that's not to take away from OCDLA and the value that they bring to CLEs and convenings and all the important work that they do. But I mean basic public defender boot camp training is something that the agency should be doing, and should have oversight for monitoring. And we do not have that capacity at this point. So the purpose of 103 is to stay the course with those conversations, to say that those were important.

And then, as to the others, as to 104, that one is – and I will be urging the commission to please adopt that one – because as I have tried to say from the very first day of my tenure in this job, I believe in PCR. I believe that that is the model we should be moving towards. I have directed Keren and my staff to say that, in my estimation, my belief, all of the state is either doing PCR, implementing it, or getting prepared and should be getting prepared to do PCR. We've even expanded the model, the usage of case managers in non-PCR counties, to be used through the NRE process. Because I think that's a critical model and part of the benefits of PCR.

So it is important for us to keep PCR, the 104, in there as an independent, because it makes the statement in case, but this very important program has not been rolled out everywhere. We now, with Multnomah County, should be at about 40%, but that means that after six years of implementation we are not over 50%. We are behind the State of Washington in terms of a rollout implementation model. And if this is valid and important, then we should be moving forward with that, and it needs to be expressed separately.

And then on 105, the reality on that is that the appellate attorneys are doing a mandated caseload. Appeals are by right. And that's all they do. They don't do other... There's discussions about training in all that technical assistance, but in terms of their

day-to-day work it is cases that the clients have a constitutional right to appeal. So they're going to be there whether the appellate division exists or not, or whether they have more attorneys or not.

And the analysis on 105 is always going to be what is the cost to do it through the PSA – to do it through assigned counsel – versus the cost to do it in house, within that office? And then is there a value to a qualitative difference? Do we believe that we have the right mix, as best practices with the ABA Public Defense Model says, to have a mix between private and public employees doing the work? And that's always going to be a question. So in 105, I'm not trying to downplay it, I'm just saying that we put that in there because we believe in it. We believe in the model that we have in AD for mooted, development, and argument of cases. And so we expect to always put in something that says it's always an option. If there's enough cases out there that are being appealed, that you can add – if you think that is valuable to the legislature, they can add staff to the appellate division.

The other reason is, going back to budgeting, that I need a POP, if we're to add them, is even if they thought it was a good idea, I cannot permanently add an appellate division lawyer without hiring authority. In other words, it's two steps. They approve the money and they approve the position to the agency in order to have them in there.

And then I guess I'll end – and I see Kimberly on there, she might have some additional comments on this – is that in my two and a half years' experience on the inside of the agency with the legislature, these are certainly discussed. And they're discussed discretely. I don't mean by that in a discrete manner. I mean in a separate manner. That there are clear conversations around money for the PSA, money for contracted business services, and money for AD. They're not mixed and matched, in my experience. I haven't at least openly heard them say to me, "Well, we're giving you this so we're not going to give you that." They tend to look at them like what need are we fulfilling? And they've felt, in the release of the money by the E-board, that it was the best opportunity to try to keep us from going backwards on the positions that we had already had as limited duration.

Christ: Just to follow up... I agree, Lane, that all of these POPs are essential. Clearly. But in my mind one of them is more essential than the others. And I'm wondering if giving all four of them to the legislature will allow them to conclude that a different one is more essential. And in a limited-budget world, that's the one they're going to choose. And I'm trying to assess that risk.

Borg: Kimberly?

McCullough: Yeah, maybe I can jump in here really quick. I just think – just to put a little bit of a political lens on this – I think that... First of all, I agree with everything that Lane said. And I would like to just sort of reiterate or remind folks that when the legislature

decided to allocate some small portion of the SPA funding to OPDS infrastructure it was not to grow the agency, or to really give us a boost. It was to keep us at the status quo.

We had added limited-duration positions that were really truly necessary in order to get payments out the door to providers. And in order to implement some of the oversight that we need to implement because of the Sixth Amendment Center report.

And we aren't anywhere near the capacity that we need as an agency to really meet all of the needs. So that really was just a we're keeping the agency at the status quo. This is we're throwing them this bone just to keep them there. So I don't know that that action should be seen as some sort of precedent for how things are going to be moving forward.

I also think that, as an agency, it's extremely important for us to continuously tell the legislature all of our needs. And make them understand where our deficiencies are across our budget. But the legislature is not going to... I don't think that they will look at this and they will say, "Oh, this is a smaller amount of money so we're going to throw money there because we're giving them something." I think they're going to evaluate it based on the policy and based on the actual needs.

And I think that the legislators that I have spoken to, and the legislative leadership that's very supportive of the public defense community, is extremely aware of the fact that there is a real deficiency in our funding that goes out to providers. I think there is also a very large group of advocates who really care about this, and who have been extremely strong-voiced in the legislature. And so I think that there is a lot of awareness of the great need there.

And I do also agree with Lane that there will be an opportunity as we approach the legislative session for the commission to prioritize things and give us direction. And ultimately what will happen when I meet with legislators is I will be your voice. And so I think that, to the degree that the commission is these are the things that we really need to fund, recognizing that we need money for all of these things, right? But these are the things that we really want to fund. Then that's where our communications with legislators will express the commission's desires. And we will take direction at that point.

Hardin: I have a comment. I just want to say that, as pointed out in the Sixth Amendment Report, I think that having a more systematic and thorough approach to oversight, accountability, and also to provide support, can provide a real boost to the quality of representation in the state. It's a system that is more organized, more systematic, and more focused on what the real issues and the real potential improvements are out there that could occur.

So I just want to express my strong support of adding positions that would enable OPDS



to better perform that function. And I think, in terms of bang for the buck, that is to say cost effectiveness, that those enhancements would be very high level, very important. So I just want to be clear on that. I don't regard those as secondary, personally. Thank you.

Ramfjord: Okay, are there other comments on these particular POPs? I think one other thing that your comments, Lane, about the need for transparency and oversight I think are important ones, because that is one way in which I think we will better enable ourselves to get more funding in the future. I think that making sure that we tie those positions into that effectively is important, how we're going to use that.

I would also just suggest that one way of dealing with this – because to my mind some of these positions are actually... As we expand, we have additional administrative needs, and the positions reflect that. So they kind of go together. I mean, one other alternative that we could consider is putting them into a single POP that has both the trial level and the administrative services, so that they don't get separated out. But those are just ideas.

Anybody else have any comments on these particular POPs before we move on to the Parent Child Representation Project? Okay, hearing none, Keren, do you want to present the policy option package regarding PCRCP?

Farkas: Yes. Am I live?

Ramfjord: You are live.

Farkas: Okay. Thank you Chair Ramfjord, members of the commission. Again, my name is Keren Farkas and I am the juvenile and PCRCP manager at OPDS. Kimberly McCullough and I worked on this POP. I will give the introduction. As Julie and Lane mentioned, one of the OPDS policy option packages is to expand PCRCP to three counties. As Lane mentioned, and we have mentioned to the commission before, OPDS's goal and intent is to bring the interdisciplinary representation model of the Parent Child Representation Program across the State of Oregon. So all our providers can practice within this model that is evidence based and linked to positive outcomes for court-involved parents and children.

For this POP, it was for three counties. Two of the counties requested. Douglas and Clackamas counties were chosen because there was already momentum built, and clear interest in bringing PCRCP to these counties. These were two of the five counties included in a bill introduced earlier this year that would have brought both family treatment court and PCRCP, but did not move forward because there was a lack of quorum at the end of the session. The third county included in this expansion bill is Clatsop County, which is a smaller county where, through our oversight and conversations with both the judiciary and attorneys, we've seen an interest and need for PCRCP in this smaller county.

The POP also includes a request for corresponding OPDS internal infrastructure, so we can adequately support this PCRP expansion through oversight, training, and collaborative efforts with stakeholders for systemic improvement. I'm happy to answer any questions, and Kimberly, of course, if you want to add.

Ramfjord: Okay, do people have questions regarding this particular POP? I thought the write up was very thorough and helpful as well.

Hardin: I have a comment, which is, besides the fact that I enthusiastically support the POP, the staff would enable OPDS to more fully approximate the model of representation established in the State of Washington, which has proven to be very effective in reducing unnecessary foster placements. The staff support has enabled them to improve their practice model throughout the state, to establish a higher degree of uniformity throughout the state, and it is really essential. So I just want to really applaud OPDS in not only the proposal generally, but with regard to that specifically.

Ramfjord: All right, thank you. Any other comments on this particular POP? Okay, hearing none, we will move on to POP 105, addressing the appellate division, and Ernie will present that.

Lannet: Good morning, still. A few minutes left. Commissioner Ramfjord and members of the commission. I don't want to come across as sounding a little tone deaf, talking about adding to the appellate division, but this is really – to go back to where Lane started – there are two types of POPs. One is when you're adding new functions and the other one is if you need new positions. And this is a new position request because the criminal appellate section has 29 attorneys. The last time that attorneys were added to this section was in the 2009-2011 biennium. However, since then the caseload has increased.

If you look at, in the .pdf, our position program description starts at page 88. I think it's 64 in the actual budget, if you have it printed out. There are two graphs in there, one graph for JAS and one graph for the criminal appellate section. Start with the criminal appellate section, it shows the pot of cases that would have been referred in the last basically three months. And you can see that that pot is continuing to grow. So that's kind of like the wave coming at us that we have to get through.

And we already ask our attorneys to do an enormous amount of work. We can't really just tell them to do more cases. So it is a function of either it gets handled in house, cases get reverted to panel members – which is limited in itself, or our clients wait for us to address their cases. And you can see that we've been wrestling to push back our key performance measure, which is the number of months/days a client has to wait for an attorney's recommendation on their case, or a brief being filed. And at this point it's a little over seven months. The state routinely takes just as long as we take, so already we're talking about 14 months before the briefing is complete.

We continue to think that that just isn't acceptable, and there's no other way to get ahead of these numbers without adding to the capacity. So if you look at what the actual request is, it's for two senior attorneys who can work on the major felony-type cases, three attorneys – deputy public defenders – to work on the misdemeanor and simple felony-type cases.

The juvenile appellate section is making a request for one senior attorney. They only have five attorneys. They were added an attorney I think some time over the last six years, but since then they've been just the same size they are. And if you look at the graph that's included in the materials there, you can see just the number of cases that they're able to handle that come in, versus the number of cases that they're having to revert out of the office.

And, to the credit of all my staff, we've grown. We started out with a lot of attorneys who were new and now we have much more attorneys who are experienced, since we've brought on those six positions back 10 years ago. And so I think we are doing more cases than we were doing then. And the fact that we've been able to keep up with this I think is a tribute to them and their efforts, and their work, because they don't like to have their clients waiting.

But the reality is, at some point the capacity of the office needs to catch up with the statewide caseload that's out there. So, I'm happy to answer any questions.

Ramfjord: Okay, this is a question that maybe Julie is even more suited to answering this. But it seems to me that this increase – and I fully support the idea that we need to have more appellate lawyers, I'm not suggesting otherwise – but it seems to me that this is something that has to do with the caseload that we're forced to take on. And I sort of think of changes in our budget that are forced upon us by the mandated caseload is something that we would try to get money for through the base-level budget. The current service-level budget.

So I'm just kind of questioning about why are we doing it this way, and are we setting a precedent that, whenever we want to match our appellate staffing to our appellate caseload that we're going to go through a POP, as opposed to doing it directly in the CSL budget. So that's my question.

Fetsch: I can answer that, Chair Ramfjord. Again, Julie Fetch, for the record. They're employees. The difference is the difference between having an employee and having contractors. So when you have staff, no matter how much the workload is, they just have to keep doing it. It doesn't cost us any more. They either get it done or it takes them longer to get it done. So you have to add more employees to that in order to bring the caseload down.

Whereas if we're talking about professional services, then you have to add a contract.

And that qualifies as mandated caseload. So if we did add these positions, which we have done, one of the packages, which we call a phase in, actually allows for that additional funding to come in through a different package. So as we added those people we did receive funding for that. But this goes through requesting people. It's the only want to get money added into the employment portion of it.

Ramfjord: All right, that helps. Okay, other comments on this POP?

Hardin: I have a question. And I'm not sure whether it's relevant to this POP or not. But as you know, in dependency cases in particular, there can be lots of conflicts. Because there are multiple parties, different parties have different parents, or putative parents have different legal interests, different legal positions. And further, children are separately represented. Therefore, this may create conflicts in terms of representation on appeal.

So I'm wondering a couple of things. How fully funded are you with regard to representing children generally? And how do you provide appellate support when cases get conflicted out? Are there, for example, people with whom you contract on a consistent enough level to provide backup support to attorneys handling appeals where conflicts exist?

[Crosstalk 02:02:21]

Storey: Thank you for the question. Conflicts are something we're acutely aware of, both with regard to different parents and to children. We don't represent children on direct appeal. We have a panel of appellate attorneys who are qualified both through the expertise of the appellate division and through General Counsel's Office, in order to be on the panel. As well as we have an individual contractor who handles children's appeals and conflicts as well.

Hardin: And in terms of support for attorneys on the panel, and sometimes I would assume that the attorneys who handle the matter at trial, where there's a conflict, may also be involved in handling the appeal. I'm wondering how you provide support and advice for attorneys doing appeals where conflicts exist.

Storey: Well, part of the criteria for being on the panel is that you're an expert appellate attorney who can function independently. We certainly provide appellate update trainings. And as you're aware, we're doing the technical assistance with Keren. But the idea of being on the panel is that that person wouldn't require assistance of the office. That they've demonstrated an ability to handle the caseload independently and to process the appeals efficiently.

Hardin: So I'm assuming that – and correct me if I'm wrong – that there are occasions where the trial attorney is involved in the appeal. Would that basically be a teaming of the private attorney with the panel attorney then?

Storey: Well, I guess just to go back, Commissioner Hardin, in dependency cases in Oregon the appellate attorney has a duty to raise ineffective assistance of counsel on appeal, in the first instance, if they identify that. So the best practice is not for the same attorney to be the appellate attorney that's the trial attorney. So that there are fresh eyes and the appellate attorney can act as an auditor of the representation.

That being said, panel attorneys as well as attorneys in my office do partner with trial attorneys in the interest of achieving the best outcome for the client. Oftentimes that can be we think you should go litigate a motion to dismiss now, and that may moot out our appeal, but the client will get the relief they're entitled to more timely. And we do quite a bit of work in that regard. And I know the other panel attorneys do to varying degrees as well.

Hardin: Do you pay trial attorneys where, for example, they might help gather additional information relevant to the appeal, or perform sort of helping functions for the appellate attorney?

Storey: Well, the record on appeal is set by the time we get the referral. So there's no additional information the trial attorney can provide at that point, when we're litigating an appeal. And then I don't have any authority... I don't deal with the payment of trial attorneys. That would be a question for Julie or Lane or someone else.

Borg: I'll just... Very briefly, Commissioner Hardin, juvenile cases, as you know, present a unique situation because they both live concurrently and on appeal and everything is happening at the same time. And so there are many instances where we're in continued communication through the CBS, through the contracted business services, with the trial-level attorney. And it may be at the same time that the appellate attorney is raising ineffective assistance on something that happened a year ago, or earlier. But we are saying to them, okay, it looks like the best play may be to go in and do this motion. That would be part of your continued representation there. If they're being paid hourly, they would continue to bill on that hourly.

I do anticipate – as this will create an issue for us in PCRPP where we manage our workload – that we may very well need to say that, even though that case is on appeal, it's still – if there's work that's ongoing – it's part of your caseload moving forward. But I think we're going to have to see how that evolves and moves forward. But no, it's something that's an ongoing – Shannon is absolutely correct – the appellate division wouldn't necessarily be dealing with that issue. There may be communications. They may say, "Hey, this would be a good play if they could do this." And then through CBS we would be re-engaging the trial-level attorney.

Hardin: Yeah, I would assume that ineffective assistance issues would come up a lot less often in the context of a dependency as opposed to delinquency. And then finally, I'm

wondering about representation of children and how frequent do attorneys for children request appellate decision or take a different appellate position? Is that something that comes up often in these cases on appeal? Or it's relatively uncommon, and how do you feel about that?

Storey: The majority of our cases, I would say, the children don't participate in the appeal. They have an absolute right to do so if they choose to. Oftentimes when there's an appeal the children are aligned either with the state or with a parent, and so they may not feel a need to file an additional brief. And I'm sorry, what was the rest of your question?

Borg: I'll pick it up, Shannon. This came up. This issue came up before. If a person who has an appeal has a right to appeal, whether they're a parent, child, or criminal defendant, and they qualify for court-appointed counsel, we are absolutely appointing counsel. We do not require – there's no litmus test to say well you can only get an attorney if you agree to oppose the state, or to take a different position. If they have a right to appeal and they feel that they want to appeal, or they want to explore that, we are appointing counsel.

For a good deal of the children's representation on appeal, we contract with YRJ to do that. But we also have a panel of lawyers that will take that. And we do not put in there – I think in the past there may have been some belief that they could do that, but it's been my position that we don't put a positional position on your right to counsel. [Laughs] You have a right to counsel when you have a right to counsel. And then that's a decision between your counsel and the client about what particular arguments they want to raise.

Hardin: And this is the decision of trial counsel?

Storey: Right. Trial counsel decides – depending on the age of the client – either at the direction of the child client or on their own, that they want to appeal. And then the appellate attorney for a child is required to independently assess and take independent direction from their client.

Hardin: Okay. Thank you very much.

Storey: Mm-hmm. Thank you. I'll let Per get back on.

Ramfjord: Okay, I believe that Commissioner Bell has a question about how the POPs are interrelated. Do you want to go ahead with that?

Bell: Sure. Yeah, so I think this is tying into some questions that Commissioner Christ raised earlier with respect to how P-102 relates to the other POPs. And after having discussed the other ones, what I'm struck by – and just looking over the materials again – is how much more detail there is in the explanation and the development of the ideas for all of

them except for 102. And I'm wondering whether that can be addressed in the fleshing out of the details that's about to happen.

If I were seeing this, I'd think gosh, all these are really well thought out, and 102 sort of sticks out as not. Especially if that's one that we want to make sure the legislature prioritizes. I just wanted to flag that.

Borg: This is for the record, Lane Borg, Executive Director. Absolutely, Commissioner Bell. The point of it was I didn't want to write it and then say let's go get input on it. Think of it right now as a placeholder. We know what we want. We don't know how big the amount is going to be. We put it in there because that's what the leftover from the SPA was, to have the concept of adding representational units. But no, through the process of the retreat, through the engagement with stakeholders, we will flesh that out much more.

We are gathering the data, and have been gathering the data since we changed away from the case-rate model, so that we better understand where things like some of the discrepancies are between case rates county to county, and sometimes even within that county. But this one will take the most work. The others are a little bit easier because we know what PCRP is. It has its components. It's a matter of saying what county and what would it take in that county? And the same with 104, with the appellate attorneys and how many we would add there. And then, as I said, 103 was really a continuation of conversations we had in detail last winter.

So 102, I would not expect it to look like this going in as the final. It's going to take input. I just didn't want to put that all together and make it look like it was all polished and finished before important stakeholders such as the commission had a chance to weigh in on it and say, "This is what we would like you to emphasize."

Bell: Thanks.

Ramfjord: Okay, are there other questions about the POPs? Or other comments that people want to make at this point in time? Okay, for us, I think that my understanding is the action on this is to approve these in concept, recognizing that they will be refined and that we would have a final ability to approve them once we've got everything resolved. Is that fair to say?

Borg: Yes. Up to and including withdrawing them. They have not been submitted at that point. But yes, it is to approve these concepts and allow us to keep working on those as a direction.

Ramfjord: Okay. Any further questions or comments from other commissioners?

Christ: Yeah. This is Commissioner Christ again. I remain very concerned that POPs 3, 4, and 5, while very important in their own right, detract from POP-2, which is for me the highest priority. And I'm concerned that if we go to the legislature with a wish list that they are not going to approve in full, and I assume they won't, that that wish list be as narrow as possible. And I really do not want to see a legislative session where the agency grows and the income to providers doesn't.

So I guess, if I heard correctly, we can approve all four of these now and at a later time not only prioritize or rank them, but we can also drop some of them, as the revenue forecast becomes clear and we know what is likely to get through the legislature or not. Then I'm willing to move all of them down the line, with that understanding. But if circumstances become dire, I'm sure that I will come back here again and argue for dropping 3, 4, and 5 in order to preserve POP-2. And so I'm only willing to approve all four of them now with that understanding, that we are going to revisit this.

Borg: So, Commissioner Christ, Julie just put in a comment. You'll see that the deadline to drop something – drop it, drop it, like it's not going forward and no one else is working on it – would be August 30th. I will say that actually, politically, it's beyond that. Because I had conversations last session, when we were talking about – the last long session – about 3145. And when we looked at it, it actually was saying to the governor's office if 3145 moved, you can drop all of the POPs. Because all of the POPs are incorporated in that bill concept.

So up until the legislature takes a vote, the agency can come in and say we no longer support this. Maybe you put in a POP for contingency that then didn't need or come about. So the commission will definitely have the ability to say, "You know, we think that the situation is so dire that we're directing the agency to only advocate for this POP," and to in fact inform the legislature that you're no longer supporting these other POPs.

And I've got to tell you, I cannot see the legislature moving forward on a POP the agency doesn't even want. And so yes, there will be that opportunity to, as I said, not only prioritize, but up to and including saying we don't want you to advocate for this one anymore because of where the circumstances are at.

Ramfjord: I would agree generally with what Commissioner Christ is saying. I think the first POP is definitely the most important one. I think one other thing to consider is whether or not there would be some potential of integrating – to the extent there is staff that is needed to make the trial-level positions effective that are being asked for in 102 – maybe integrating them so that there's not some ability of the legislation to make an artificial split might be appropriate.

I tend to think that the PCRP POP and the appellate POP are things that actually do provide meaningful benefits to the people that we serve, in the State of Oregon. And if



we aren't able to get the larger POP, 102, I still think they're valuable. But I do think that there's a particular level of sensitivity and concern with respect to 103. But I would be willing to move them all forward at this point in time.

Other people have comments?

Christ: Well, it's me again. Just to follow up. So, can we have an understanding that the status of any POPs approved today will be on the agenda for every meeting between now and the session? So we can keep an eye on this, and if need be reconsider some or any of them.

Borg: Absolutely, yes. This will be the major – as I was saying... I mean, I'm glad you asked it that way, because it ties back to what I was saying earlier where, unfortunately, because of the way the legislature constructs – I know there's lots of good reasons for it – but the way they do their base budgets for agencies is really so that they can understand them as apples to apples as much as possible. There is very little input on the base budget.

But it's through the policy option packages that the commission really expresses its fundamental beliefs on how do we change this. So we can absolutely say that they will be on there for updates, for input, and for reconsideration about what sort of... Because as I said, even though the 30th of August goes past, that just means that LFO and CFO think that they're still there and they're still evaluating them, and scoring them, and looking at whether they think we put the right numbers in there.

But if we go to them and say, "I'm sorry, the commission has said this is the only one we're pushing at, and we're not going to give you any more information on that," it's functionally dead. So that can absolutely be a part of the agendas moving forward through into the long session.

Ramfjord: I just want to mention one thing and give Keren an opportunity to comment too. But I just want the commission to be clear that 104 is a supplement to 102 in the sense that it is another POP that actually is providing trial-level support. So it is something that's doing that. I don't know, Keren, if you want to comment any further on that. But I just wanted to make that clear.

Farkas: Chair Ramfjord, members of the commission, I don't need to add to what Chair Ramfjord elaborated with regarding POP 104, but if there are any questions from the commissioners about how POP 104 also supports trial-level practitioners, increases compensation, adds resources, really reaches the goals and objectives that I believe the commission wants for our trial-level practice, I'm happy to answer those questions.

But to the extent, I think the conversation, as I see it, is really it's a component of us adding to trial-level practice, not a separate and apart conversation.

Welch: Mr. Chair, this is Betsy. I want to join in the cult, or whatever has been formed here, [Laughs] about supporting things. I agree with Mr. Christ and with the Chair that, as long as we can play it by ear for a while, I can support the proposal. Thank you.

Ramfjord: All right, thank you.

Hardin: This is Mark Hardin. I just want to agree with what Keren said that POP 104 is to enhance quality, and is essentially of a similar nature to POP 102. And I just want to say, respectfully, that I believe it is at least equal priority to 102. I would not put it in second place.

Ramfjord: All right, thank you for that. With those comments, do we have a motion to – with all the caveats that we’ve put on this – to go ahead and move forward with this policy option packages, recognizing that we can revisit it at future commission meetings?

Welch: So moved.

Ramfjord: Do we have a second?

Christ: Second.

Ramfjord: All in favor?

Multiple voices: Aye.

Ramfjord: Opposed? All right, motion passes.

Okay, we still have to have an OPDS staff update. We had planned a short break for a while ago, so we’ll take that short break now. We’ll take a 5-minute break and we will start up again at 12:30. All right, thank you everyone.

[Silence 02:24:02 - 02:29:55]

Ramfjord: All right. One thing about not being in the room where everybody is milling about is that when I say we’re going to start in five minutes we can actually start in five minutes. [Laughs] I hope that people have had the time to do what they need to do.

So, we’re down to the last couple items here, the OPDS staff update. Lane, do you want to go ahead and start with that?

Borg: Sure. So, thanks. Again, for the record, Lane Borg, Executive Director. The only things I would say is that we’ve been talking about those positions that we were given authority. In some cases they’re right on the cusp, but we’ve filled now most of those positions

that we were given authority. It's been a little bit challenging. We brought on some operation and policy people to help with data, to help with systems descriptions within the agency that we've been discussing. And it's been a little bit challenging, but we have been able to, I think, attract some good people. It's been very encouraging that the quality of people that have been applying for positions has been really outstanding. So I'm heartened by that.

In terms of the occupation or using the new courthouse space, the courts delayed that a month. So they were going to start, they were going to be taking possession really this weekend, I guess. But that's going to be now mid to late-August. And we're essentially following track with them. We've toured the space. It looks fine. It looks like they've got everything that we had bargained for, as far as we know. But we are probably not going to start really using it until sometime in August.

And that's all I have from my perspective. Eric? You're muted.

Deitrick: Can you hear me now? Okay. So there's just a few things I wanted to update the commission on while we have this meeting. My name is Eric Deitrick, General Counsel for OPDS.

The first thing I wanted to give you an update on was the ABA caseload study. So I've actually been spending a good chunk of this meeting multitasking with Moss Adams. The initial survey that'll go out to the criminal defense experts around the state, to start proving their input on how much time should be spent per case task, per case type, will be going out next week. So we've been confirming email addresses. But that is finally going to be kicked off. And we will be in the beginning phase of finally getting a report on what reasonable caseloads are in Oregon. So I'm pretty excited about that. It's taken a lot of effort and coordination to get that under way.

The second piece I wanted to update on, which was talked about during some of the budget talks, but that is the agency's response to the Ramos opinion. We still have been having regular meetings at the agency level between DOJ and OJD to discuss how our systems are going to absorb this influx of new post-conviction relief cases. We have entered into a relatively small contract with the Lewis and Clark Law School Criminal Justice Reform Clinic to provide certain services, in terms of doing education and outreach for adults in custody, providing legal materials to be shared with other people litigating these issues.

And also we're in talks with the Oregon Post-Conviction Relief Consortium for the reasons that were discussed during the budget discussion earlier. We have to add capacity to their consortium to be able to handle this influx of cases. And we're working with the Oregon Post-Conviction Consortium to do that.

The last thing I wanted to provide an update on, and this is a little wonky, but for those

members of the commission who aren't so familiar – if you ever hear the word NRE, that is an acronym for non-routine expenses. And while we fund the attorneys who do the work when there is a right to counsel statewide, we also fund the necessary and reasonable expenses that go along with their cases. And we do that through a process we call the NRE system.

And to get case-related expenses funded that are not routine – and this is for matters such as investigators, mitigators, social workers, if they need a psychologist on the case, if they need an expert, if they need a forensic expert, if they need an interpreter or a transcript, they fill out a form and they submit it to our agency. And what they're asking us to do is to authorize funding for that provider.

There are, I think, systemic issues for this that have probably reached a time where we should reexamine that as an agency, how we do this. The current way in which we're providing funding for case-related expenses, we're hearing from the providers that it's become more stressful. We're hearing from the attorneys the same thing. And I know internally we're struggling to keep up with the number of requests. And some of the challenges are that our system requires the attorneys themselves to identify the experts, which is fine until we get to a point where – particularly we see this in rural areas – they struggle to find psychologists or investigators. And I think there are additional things the agency could do to develop and curate lists and share them around the state.

The other issue we have is we have no oversight of the providers that we're funding. And I expect we'll talk more about this at the retreat in August, but when we fund, we fund, for example, an investigator on a specific case – again, we don't have lists of investigators. So long as they have a DPSST license we authorize them. And we've definitely heard – particularly from the investigator community – that they would welcome some additional collaboration with OPDS on how we fund investigators and work with investigators.

One of the weird positions our system puts the attorneys in is the attorneys are often caught in the middle. They are put in the position of having to negotiate a rate on behalf of the provider when the provider themselves are not a privy to the conversation, and so it makes the attorneys feel awkward that they're negotiating someone else's salary with a state agency. One of the challenging things for the providers, too, is the way our system works is that we authorize them on a case. And so they routinely do not submit their bill until the case is closed, which does mean, in some instances, they're waiting on payment for a significant amount of time, for things that are beyond their control. They could have wrapped up their piece to the case, but until the case is closed, routinely they cannot get billed.

And then finally, from the agency perspective, when we have all of these bills flying around, that people we've authorized in one-off cases, it's really difficult to audit and

track how much time a particular individual is billing the agency. And so, again, this is an issue I expect we will discuss at the August retreat, but we have certainly found instances of providers billing excessively in ways that can't be explained.

So we've been talking for several months. Lane asked me at the beginning of the year to put together a working group on non-routine expenses. And when I sent out the request two weeks ago to solicit volunteers, I'm looking for about 14 to 15 people, we got 61 people interested! And so we've got a workgroup about case-related expenses. So I'm pretty excited. The current timeline is to get started in early August, meet every three weeks or so, probably through the fall, with the goal of that group making recommendations to the agency on how we can improve our systems.

That's the update that I have for now.

Ramfjord: All right, thank you very much, Eric. Appreciate that. We will turn now to where we stand on the Covid policy with Wendy. Go ahead.

Heckman: Hello everybody, Chair Ramfjord, members of the commission. For the record, my name is Wendy Heckman, Human Resources Manager with the Office of Public Defense Services. As I've talked about in previous commission meetings, on March 16th of this year we implemented a Covid policy which put about 80% of our workforce in a work-from-home situation, so that we could provide safety and protections for our employees. Based on the current environment in Oregon and the spike in the cases, and looking around state government and seeing what other branches of government are doing, we've now elected to extend our policy through October 2nd.

And this is kind of in line with what other branches are talking about doing. There has been some discussion about going through Labor Day Weekend, and then there was concerns that exposure could happen over Labor Day Weekend, so then it was two weeks out from that. And so we've elected to go to October 2nd. We're still looking at what the CDC best practices are. We're looking at the DAS protocols that have been issued by the governor in reopening, or potentially reopening offices. And we've brought very few staff back into our in-office environment. We're still not allowing public access to either one of our locations. So we're continuing to look at and monitor safe practices for all of our employees.

On another note, in regards to recruitments, we are in the process of promoting, recruiting, and appointing roughly 10 positions within the agency. We've recently done two internal promotions to accountant positions. We've hired our new HR analyst that's going to start on Monday. And we've hired our operations and policy analyst position to help with the NRE processes internally. We're in the process of hiring deputy defenders, a deputy general counsel, a policy analyst to help with our internal policies and procedures. We're looking at a temporary manager at the courthouse when the courthouse opens. And then also filling a vacancy for a legal secretary.

So that's all I have today, but I'm happy to answer any questions you may have. Thanks.

Ramfjord: All right, thank you very much. Anybody have questions for Wendy? Okay, thank you for that report, and I'm glad that we're able to move forward with hiring, and that's a positive step.

Okay, moving on to the appellate court update. Ernie?

Lannet: Yeah, thank you Chair Ramfjord. For the record, Ernie Lannet, Chief Defender of the Criminal Appellate Section. I have a few items. I've been keeping you apprised of the arguments going on with regard to the Ramos cases. We have almost a full day of argument at the Oregon Supreme Court on August 18th. We have three attorneys: Josh Crowther, Nora Coon, and Erik Blumenthal, who will be presenting arguments on the issues that were identified as outstanding.

The arguments, as I understand it, are going to be in person, to the extent that there'll be three justices on the bench, the attorneys will be in the courtroom, and the rest of the justices will be appearing via video, to ensure social distancing. On the court of appeals, arguments are still proceeding all by video. And the chief judge, Jim Egan, just sent out a minute order where that's going to continue through the end of the year at this point.

In September we have another six arguments at the Oregon Supreme Court. Those are non-Ramos-related cases, so our attorneys are really gearing up. We're having briefs filed in those cases and we're having to do this all remotely with these meetings, and it's been definitely a learning experience, but I think everyone's in a good place and doing well with that.

As far as actions by the court, we got a decision in State v. Payne. And that was a case litigated by Sara Werboff. And it was released earlier this month. And it was basically there's a statutory instruction on witness-false-in-part which has been subject to criticism by the courts, by the Court of Appeals, saying that it wasn't really necessary and just common sense, but we were able to argue that it is something that should be given in appropriate instances where you have a record where there is some evidence that a juror could find that someone lied on the stand.

And it basically informs the jury that, despite this is all being sworn testimony, just like they would at any other situation in their life, if someone lies to you, you can have some distrust about other things they say. So it's not really a revolutionary point of law, but a nice win.

As Wendy said, we've gone through the hiring process for the two Deputy I positions. And we have extended and received offers from Joel Duran and Bruce Myers. Bruce

Myers is a Lewis and Clark new graduate. He has worked with Aliza Kaplan's clinic with incarcerated youth, basically being a number. I think three or four students started that as a pilot project and now it's a full part of her clinic, extending legal services to incarcerated youth. He was also a law clerk for a year at O'Connor Weber, which is the consortium that does the PCR appeals. He was filing briefs with them, and argued a case in the court of appeals as a certified law student. So that's great.

Joel Duran is a graduate of Willamette University. Right out of law school he actually externed for us – or right before he got out of law school he externed for us. While he was in law school he also volunteered with the De Muniz Resource Center. He has currently been a clerk for the Court of Appeals for the last five years.

And, like I said, we're doing interviews tomorrow for an open legal assistant position. So we're just keeping the ball rolling.

Ramfjord: Great, thank you very much. Any questions for Ernie? Well, I really appreciate that.

Keren, you want to give us a PCR update?

Farkas: Sure. Hello again, Chair Ramfjord, members of the commission. I'm here to provide just a brief update on two pieces of OPDS's juvenile portfolio. First, the rollout of PCR in Multnomah did get started on July 1st. Dana Brandon and Shannon Getman, our case manager administrators, have been busy training a really great team of independent case managers to get them up to speed in supporting parent and child clients in Multnomah. Billy Strehlow, OPDS's contract analyst, one of our contract analysts, and I have been fielding questions about case allocation and reporting. And our team has held a couple meetings over the past two weeks to orient people on the PCR, both regarding practice and reporting.

Over the next two months we will have two orientation-like summits for all PCR providers. First, next Friday, professor Marty Guggenheim, who is currently a clinical professor at NYU School of Law. He spent decades as an attorney in the child welfare field and has been integral to the development of interdisciplinary representation in New York and nationwide. And he'll be doing a webinar for all our PCR attorneys and case managers on interdisciplinary representation, both the research and the known impacts and benefits.

We will also be doing a second summit-like orientation for our PCR attorneys about best practices for case manager and attorney teams, timekeeping, and also using case managers in delinquency cases. And that will be in September or August, and also by webinar.

Another brief update: Earlier we reported that the legislature did provide \$150,000 in funding for OPDS to invest more in training of our juvenile attorneys. So to use that

funds over this – which we have until next July – we recently issued an RFQ, which is a request for qualification, where we are seeking applications from experienced and skilled attorneys across the state who can be resource attorneys, and do technical assistance and training both regionally and all across Oregon for our juvenile practitioners.

This model is largely borrowed from the model used in Massachusetts, who similarly to OPDS, fund both parent and child representation, and also have both an institutional provider contingent as well as independent contract providers. We're also working with our technological support staff to create online portals and easier ways for our attorneys to request technical assistance, and also get resources, training materials, that we hope to collect on our website.

And also just to add is Shannon Storey, chief defender of our juvenile appellate section, mentioned earlier during this presentation, we're formalizing a method to track and respond to all child and parent representation, dependency as well as delinquency, requests for technical assistance and support. And to do that through OPDS in partnership with our JAS attorneys, as well as some contract providers. Thank you.

Ramfjord: Okay, thank you very much. Appreciate that. Does anybody else have any further questions or comments for Keren? All right. Lane, do you have any other followup?

Borg: The last thing I had was really just to remind people – and we talked a little bit before we went live, but now that we have all the commissioners here – we've had to adjust. The retreat will still happen in August. We're getting materials together to send out to the commissioners beforehand so they can start to digest that. But we will be doing it in a different location in Salem. The capitol is closed for August. We can't have meetings there. But Kaysea has found a location and she'll be getting that information out to you.

And we will be asking still – because if somebody doesn't feel comfortable coming to – it's a large room where we can do social distancing – but still will have the ability to participate remotely. But commissioners will be getting more information on that pretty soon, because we're nailing that down.

Ramfjord: Okay. The last item here would be public comment. I didn't see anything in the public comment section right now, but I'll give it just a minute. If anybody who's watching remotely has an issue that they'd like to raise, if you just want to post it and we will raise it as appropriate.

[Silence 02:50:52 - 02:51:04]

Ramfjord: Okay, I'm not seeing anything. Anything else that any other commissioners have for the good of the order? Or do I have a motion to adjourn for the day?



Solomon: So moved.

Ramfjord: Second?

Ludwig: Second.

Ramfjord: All right, all in favor?

Multiple voices: Aye.

Ramfjord: Any opposed? None. Okay. Just for the record, to be clear, no other comments or questions appeared in the public comments section, so there's nothing there.

All right, so we are adjourned until we meet for the retreat. And I will see you all then.  
Thank you very much for participating.

Borg: Thank you everybody.

Ramfjord: All right, okay. Bye-bye.

# Attachment 2

## Proposed 2021 PDSC Meeting Dates

Date	Day	Location	Notes
<b>February 18</b>	Thursday	Salem, OR	Legislative Session begins early February
<b>April 15</b>	Thursday	Salem, OR	
<b>June</b>	TBD	TBD	
<b>August 19</b>	Thursday	Salem, OR	
<b>October 21</b>	Thursday	Salem, OR	
<b>December 16</b>	Thursday	Salem, OR	

# Attachment 3

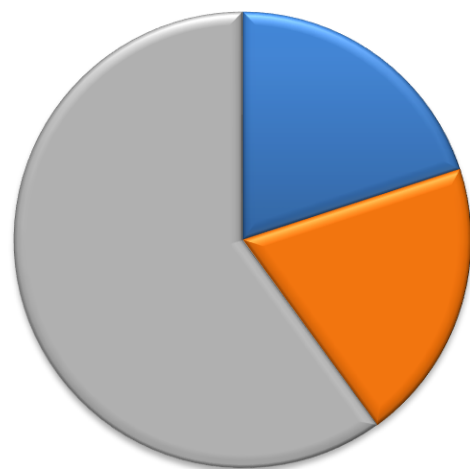
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## ***Public Defense Services Commission***

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Annual Performance Progress  
Report Reporting Year 2019  
Published: 6/17/2020 11:00:00 AM

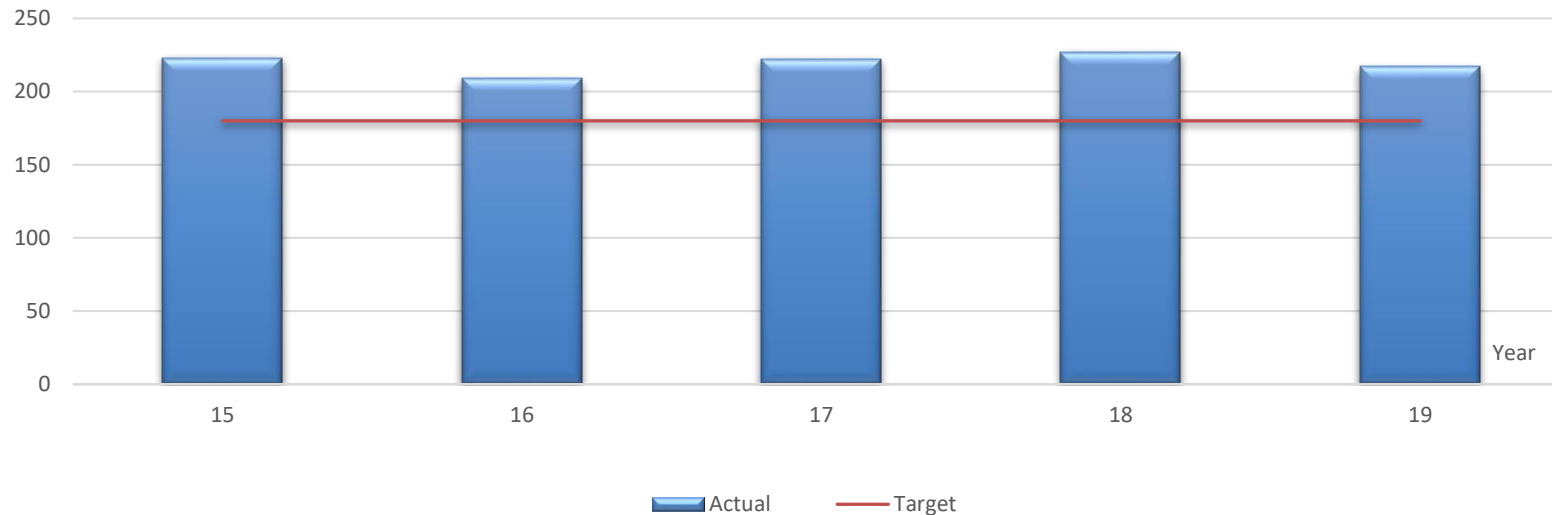
KPM #	Approved Key Performance Measures (KPMs)
1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.
2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.
3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.
4	TRIAL LEVEL REPRESENTATION - During the term of the OPDS contract, percent of attorneys who obtain at least 12 hours per year of continuing legal education credit in the area(s) of law in which they provide public defense representation.[1] [1] Case types listed in the 2014-2015 Public Defense Legal Services Contract General Terms are: criminal cases, probation violations, contempt cases, civil commitment cases, juvenile cases, and other civil cases. ( <a href="http://www.oregon.gov/OPDS/docs/CBS/ModelContractTerms/documents/ModKJan2014.pdf">http://www.oregon.gov/OPDS/docs/CBS/ModelContractTerms/documents/ModKJan2014.pdf</a> )
5	PARENT CHILD REPRESENTATION PROGRAM (PCRP) - Percent of PCRP attorneys who report spending approximately 1/3 of their time meeting with court appointed clients in cases which the attorney represents a parent or child with decision- making capacity.[1] [1] For a discussion on determining decision-making capacity, see The Obligations of the Lawyer for Children in Child Protection Proceedings with Action Items and Commentary, Oregon State Bar, Report of the Task Force on Standards of Representation in Juvenile Dependency Cases (2014).



■ Target to 5% 
 ■ 5.01% to 15% 
 ■ > 15.01%

Performance Summary	Blue	Orange	Gray
Summary Stats:	<i>0% - 5% from Target</i> 20%	<i>5.01% - 15% from Target</i> 20%	<i>15.01% or More from Target</i> 60%

Data Collection Period: July 01, 2018 - June 30, 2019

*\* Downward Trend = positive result***Median Number of Days to File Opening Brief**

Report Year	2015	2016	2017	2018	2019
Actual	223	209	222	227	217
Target	180	180	180	180	180

**How Are We Doing**

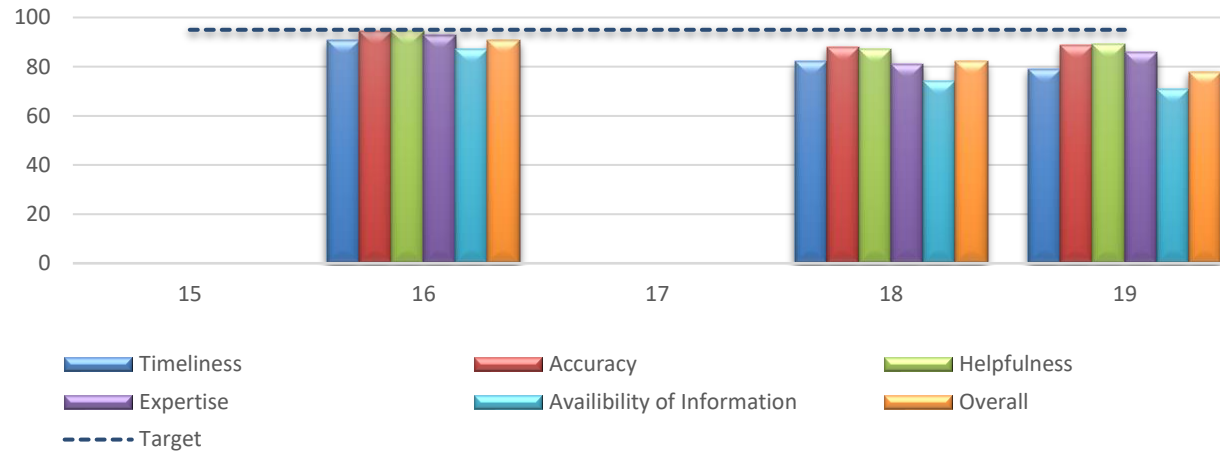
The Appellate Division made progress toward its goal despite continuing uptick in case referrals. The median number of days to file the opening brief in the fiscal year ending in 2015 was 223. By 2016, the Appellate Division had reduced the median to 209 days. However, the median increased over the next two fiscal years to 227 days. The setback was primarily attributable to a steady increase in case referrals balanced against a steady attrition rate of experienced attorneys. Case referrals increased 10% in both 2017 and 2018. Second, a series of attorney departures from the Criminal Section led to prolonged attorney position vacancies, lost efficiencies of experienced attorneys, and resources invested in training. The median filing date for the fiscal year ending in 2019 was 217 days, despite a continued increase in case referrals, which can be attributed to retention of ever more experienced attorneys.

**Factors Affecting Results**

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

Data Collection Period: Jan 01, 2019 - Dec 31, 2019

## Customer Service Satisfaction



Report Year	2015	2016	2017	2018	2019
Timeliness	No Data	90.84	No Data	82	78.89
Accuracy	No Data	94.5	No Data	88	88.76
Helpfulness	No Data	94.24	No Data	87	88.89
Expertise	No Data	92.67	No Data	81	85.71
Availability of Information	No Data	87.17	No Data	74	70.97
Overall	No Data	90.57	No Data	82	77.89

### How Are We Doing

The most recent survey was conducted in June 2020. The survey results indicated a slightly lower level of satisfaction with customer service in 2019 than the survey results from 2018. The overall service provided by OPDS was rated as good or excellent by 78% of the respondents. The standard reporting measure for state agencies groups both "good" and "excellent" into one category. In the categories of helpfulness and accuracy of OPDS employees, 89% of respondents rated the agency's service as "good" or "excellent." The lowest rating was in the category of availability of information, where 71% of the respondents rated the agency's service as "good" or "excellent."

### Factors Affecting Results

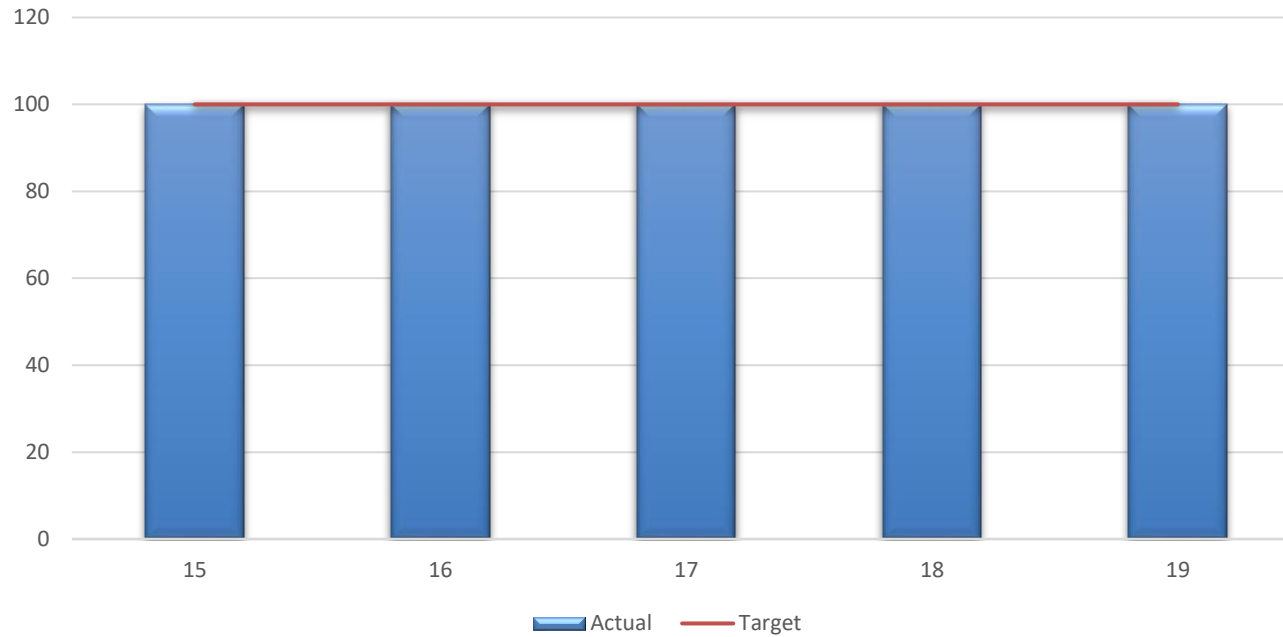
Despite the lower overall rating, the ratings in three categories were higher in 2019 than in 2018. Notably, respondents rated OPDS higher in the categories of accuracy, helpfulness, and expertise. The two categories in which respondents rated OPDS lower than in 2018 are timeliness and availability of information. There are several factors that contributed to this lower rating. During the contracting process, the agency worked on developing a new contract model for trial-level providers that focused on improved funding and lower workloads for providers. That work led to a need to extend existing contracts by six months and caused a delay in releasing new contract



information to the providers. At the same time, the agency was waiting to learn how much of the \$20 million that had been set aside in a Special Appropriation Account (SPA) the legislature was going to allocate to OPDS during the short legislative session, which was a decision that would directly impact the terms of OPDS's contracts. Shortly after the session ended with the Republican walk-out, the COVID-19 pandemic hit and OPDS had to wait until the Emergency Board met in April 2020 to learn whether the agency would receive any of the money allocated to the SPA. Once OPDS learned that it would not receive additional funding from the SPA that would have improved funding for trial-level providers, the agency had to scale back its original plans while also still developing a new contract model. That chain of events, most of which was unpredictable and outside the agency's control, has made this contract cycle particularly challenging and led to a slightly lower rating in the categories of timeliness and availability of information.

Data Collection Period: Jan 01, 2019 - Dec 31, 2019

### Best Practices for Boards and Commissions



Report Year	2015	2016	2017	2018	2019
Actual	100%	100%	100%	100%	100%
Target	100%	100%	100%	100%	100%

#### How Are We Doing

In 2018, the PDSC engaged in a self-assessment to determine if it complied with best practices for boards and commissions. It concluded that it did, and OPDS agreed. In June 2020, a review of the PDSC, its schedule, and its meeting materials confirmed that the PDSC continued to comply with those best practices in 2019.

#### Factors Affecting Results

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

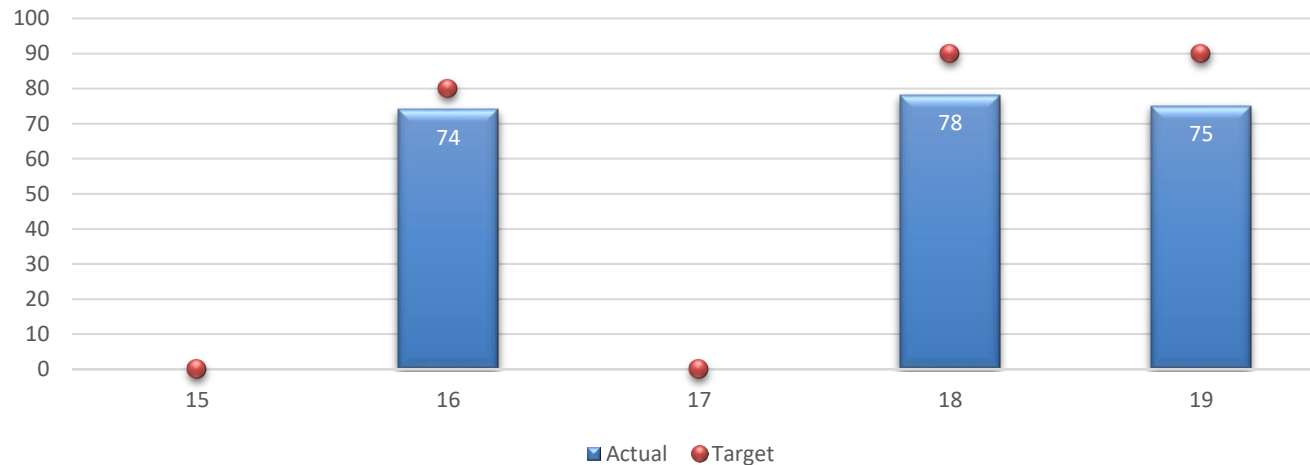
KPM #4

TRIAL LEVEL REPRESENTATION - During the term of the OPDS contract, percent of attorneys who obtain at least 12 hours per year of continuing legal education credit in the area(s) of law in which they provide public defense representation.[1] [1] Case types listed in the 2014-2015 Public Defense Legal Services Contract General Terms are: criminal cases, probation violations, contempt cases, civil commitment cases, juvenile cases, and other civil cases. (<http://www.oregon.gov/OPDS/docs/CBS/ModelContractTerms/documents/ModKJan2014.pdf>)

Data Collection Period: Jan 01, 2019 - Dec 31, 2019

\* Downward Trend = negative result

Percentage of Attorneys with 12 CLE Credits Annually



Report Year	2015	2016	2017	2018	2019
Actual	No Data	74%	No Data	78%	75%
Target	TBD	80%	TBD	90%	90%

#### How Are We Doing

The survey was sent to 130 attorneys, with an 89% survey completion rate. Of the 130 respondents, 75% report obtaining at least 12 CLE credits annually.

#### Factors Affecting Results

This was the third time this agency requested that all public defense lawyers across the state report CLE information. Because attorneys are accustomed to reporting to the Oregon State Bar every three years, this request was outside of their normal reporting period, and required them to take additional steps to report CLE activities. Additionally, the survey was sent out during the COVID-19 pandemic, which may have affected public defense lawyers' ability to take the time to respond. This survey was structured to collect information from 2019.

KPM #5

PARENT CHILD REPRESENTATION PROGRAM (PCRP) - Percent of PCRP attorneys who report spending approximately 1/3 of their time meeting with court appointed clients in cases which the attorney represents a parent or child with decision-making capacity.[1] [1] For a discussion on determining decision-making capacity, see The Obligations of the Lawyer for Children in Child Protection Proceedings with Action Items and Commentary, Oregon State Bar, Report of the Task Force on Standards of Representation in Juvenile Dependency Cases (2014).

Data Collection Period: Jul 01, 2018 - Jun 30, 2019

\* Downward Trend = negative result



Report Year	2015	2016	2017	2018	2019
Actual	No Data	54%	63%	67%	54%
Target	No Data	80%	95%	95%	95%

#### How Are We Doing

This Key Performance Measure separates representation of clients with decision-making capacity from representation of clients with diminished capacity (typically young children). However, data gathered by the PCRP program does not distinguish based on decision-making capacity. Therefore, the data reported for this KPM includes time spent with all clients.

From July 2018-June 2019, 54% of the PCRP attorneys report spending approximately one-third of their time meeting with clients. During this time period, the PCRP attorneys spent an average of 37% of their time meeting with clients.

#### Factors Affecting Results

The Parent Child Representation Program was launched in August 2014 in Linn and Yamhill counties and in January 2016 in Columbia County. In October 2018, PCRP expanded into Coos and Lincoln Counties and data from the first 9 months of implementation is included in the measures. The PCRP has consistently shown that improved legal advocacy leads to promising results such as a reduction in the use of foster care, an increase in family reunification, and expedited permanency for children.[1]

The Parent Child Representation Program includes case managers, who are social service professionals and work as part of the legal representation team in 10-15% of

the cases. The use of case managers who work with attorneys to address non-legal barriers and help achieve timely and sensible case resolution is a best practice and a critical component of the success of the PCRCP. The PCRCP case managers are required to spend at least 85% of their time in direct service work, providing an additional investment in client contact by the defense team. Other factors include the complexity of the case, the age and capacity of the client, and the direction of the client with respect to case objectives.

The agency needs to continue monitoring the quality of work provided by lawyers in the Parent Child Representation Program. Additional consideration should be given to the data collection and utilization process. There should be further examination of which metrics are most sensible to measure and which are indicative of standard's based legal representation associated with improving client engagement and court outcomes. Mixed-methods (quantitative and qualitative) data should also be used to establish benchmarks which are indicative of effective legal representation.

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[1] Annual Report 2016-2017, Parent Child Representation Program. [https://www.oregon.gov/opds/commission/reports/PCRCP\\_Report\\_PDSC\\_Jan\\_2018.pdf](https://www.oregon.gov/opds/commission/reports/PCRCP_Report_PDSC_Jan_2018.pdf)

# Attachment 4



# Oregon

## Office of Public Defense Services

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Salem, Oregon 97301

Telephone: (503) 378-3349

FAX (503) 378-4463

[www.opd.state.or.us](http://www.opd.state.or.us)

Date: September 22, 2020

To: Public Defense Services Commission  
Lane Borg, OPDS Executive Director

From: Heather Pate, Contract Manager  
Amy Jackson, Contract Analyst  
Billy Strehlow, Contract Analyst  
Caroline Mayer, Contract Analyst  
Shelley Dillon, Research Analyst

RE: Contract Options

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In February 2019, the commission voted to change the way OPDS engages in public defense contracting, and it directed OPDS to move away from the existing “case credit” model. Since then, the agency has made several changes in the contracting model. Case rates were removed, and outputs contracts were put into place. During that time, the agency anticipated receiving additional funding from HB 3145, however that was unsuccessful. Contracts were extended and amendments were made to address capacity needs late in 2019 and early 2020. A Request for Proposals was issued in early 2020 to establish new contracts based on the anticipation of new funds from the 2020 short session. Unfortunately, that session ended with no new funds for trial level providers.

Below are options for consideration.

### **Option 1 – Extend Contracts to December 31, 2021 with FTE adjustments**

This option is intended to stabilize caseloads across the state by adding attorneys to address caseload needs. For now, OPDS is relying upon the OPDS Case Counting Guidelines established by Commission for the 2020 Request for Proposal. Going forward, however, the agency intends to rely upon the results of the ABA caseload study in order to determine both caseloads and the number of statewide FTE needed to cover those caseloads. As you can see from the attached spreadsheet, the cost of adding attorneys to cover all the need is approximately \$11 million. We have no additional funding to cover that amount, it is the agency's intent to shift funding within the PSA to fund as many additional attorneys as possible.

Using 2019 data and the OPDS Case Counting Guidelines the attached chart indicates the percentage above or below the guidelines for each county and the corresponding number of FTE needed to reduce the caseload to the guidelines where applicable.

## **Option 2 – Establish urban and non-urban FTE rate and caseload guidelines**

This option establishes:

1. Statewide attorney FTE rate.  
The statewide average FTE rate is approximately \$208,000.
2. Separate non-urban and urban rates for overhead costs.  
The agency goal is to establish the same rates for Criminal and PCRCP contracts, however due to funding limitations the agency recommends an FTE rate of \$200,000 for non-urban and \$220,000 for urban counties.
3. Both FTE rates assume an attorney staff ratio of 1:1.
4. Rate differential for each staff investigator.  
The agency recommends an FTE rate of \$75,000.
5. Caseload guidelines as adopted by OPDS adding additional attorneys as described in Option 1.

Please note the following counties are excluded from these options because of the unique geographical challenges: Baker, Malheur, Grant, Harney, Klamath, and Lake as well as statewide contracts for death penalty, appeals, post-conviction relief, habeas corpus, and psychiatric security review board cases.

Entities affected with a downward adjustment for the non-urban rate of \$200,000 and the urban rate of \$220,000 are highlighted in red.

To implement this option the agency would need an influx of approximately \$5 million annually, \$10 million per biennium; this does not include the capacity issues addressed in Option 1.

## **Option 3 – Hourly model**

This will require each attorney to bill the agency once per month for all cases and will be managed through an attorney agreement with each attorney. Approximately 345 FTE, spread out over 475 actual attorneys, would bill hourly. This excludes public defender offices and PCRCP contracts.

Accounts Payable Staff – 15 additional positions (minimum)

The annual cost for accounts payable staff to attempt to process such an increase in monthly invoices, in addition to the current workload, is several million dollars for 15 FTE annually. Furthermore, this would require the legislature to approve all additional positions needed to sustain an hourly model. The preparation for each individual provider to be established as a vendor with our agency and at the state level would require several weeks of processing for all individual credentials and extensive



coordination with the Department of Administrative Services because of the hundreds of vendor requests for federal tax id confirmation, direct deposit banking information, etc.

#### Contract Analysts

Administering approximately 475 agreements statewide and within each judicial district will require additional analysts.

#### Technology, Office Space, Equipment, and Administrative Infrastructure

The impact to our current database with a significant increase in the number of billings is not sustainable. Additional office space, equipment, and administrative infrastructure will be necessary for this model.

The agency recognizes that no additional funding has been made available. Funding will have to be shifted within the PSA to accommodate additional attorneys needed as highlighted in the attached spreadsheet. **The agency recommends Option 1 for calendar year 2021.** This will allow providers to plan with some funding certainty. It will also give the agency time to apply the results of the ABA study to current caseload, as well as determine appropriate staffing levels for public defender offices and consortia. Furthermore, as state funding availability is extremely uncertain at this time, the agency will be in a better position to react to funding availability and impacts to the public safety system going forward due to unanticipated pandemic and wildfire expenses.

Option 1					Option 2			
					Average FTE by entity type			
County	Current FTE	% of NAC Standards	Additional FTE Needed	Estimated Cost	Urban Non-Urban	Consortium	Law Firm	Public Defender
Polk	5	137	3	\$570,119	Urban	\$190,040	\$239,139	
Umatilla/Morrow	13.6	133	6.6	\$1,195,960	Non-Urban	\$296,704		\$181,206
Tillamook	3	126	1	\$183,771	Non-Urban	\$183,771		
Benton	5	123	1.5	\$316,490	Urban	\$210,993		
Clatsop	4.7	122	1.3	\$199,884	Non-Urban	\$211,275	\$153,757	
Linn	13	121	3.5	\$692,187	Urban	\$197,768		
Josephine	9.5	115	2.8	\$464,211	Urban	\$165,789		
Marion	48.4	112	6.3	\$1,314,051	Urban	\$208,579		\$161,777
Union/Wallowa	4.35	112	0.6	\$100,338	Non-Urban	\$167,229		
Lane	41.8	110	3.8	\$752,376	Urban	\$242,514		\$197,994
Multnomah	32.9	110	6.9	\$1,505,908	Urban	\$241,965		\$218,247
Multnomah/Washington	68	110	6.9	\$1,537,843	Urban			\$222,876
Clackamas	33.5	109	3.3	\$692,948	Urban	\$209,984		
Jackson	15.8	109	3.3	\$772,131	Urban	\$233,979		
Jackson/Josephine	25	109	3.3	\$714,353	Urban			\$216,471
Columbia	4.65	108	0.4	\$69,061	Non-Urban	\$172,653		
Washington	26.85	98			Urban	\$211,872	\$185,518	
Deschutes	30.5	96			Urban	\$218,099	\$159,980	\$217,492
Yamhill	10	96			Urban	\$186,866		
Lincoln	9.5	95			Non-Urban	\$213,420		
Wasco/Hood River/Sherma	13.75	90			Non-Urban	\$175,139	\$187,074	
Douglas	13.1	89			Urban	\$184,855	\$188,447	\$186,226
Coos/Curry	12	85			Non-Urban	\$210,000		\$180,000
Crook/Jefferson	11.75	85			Non-Urban	\$184,782		

\$11,081,629

# Attachment 5

# OPDS NEW TEAM MEMBERS

September 2020

## Sean Connor

LD Deputy 1 Defender, Juvenile Appellate Section

The Juvenile Appellate Section is pleased to announce that Sean Connor will be joining JAS as a Limited Duration Deputy 1 Defender on September 28. Sean is graduate of Willamette University College of Law and was admitted to the Oregon State Bar in 2019. Prior to joining OPDS' Appellate Division, Sean worked as a staff attorney at the De Muniz Legal Clinic providing free civil legal services to individuals with criminal history.

## Joel Duran

Deputy Defender 1, Appellate Division

Joel graduated from Willamette University College of Law. He was a summer extern for OPDS AD during law school. Joel just finished a five-year clerkship with Judge Douglas L. Tookey with the Court of Appeals.

## Shannon Flowers

Juvenile Training Counsel, Contracts and Business Services

Shannon Flowers graduated from Lewis & Clark Law School in 2007 and joined OPDS as a charter member of the Juvenile Appellate Section in March 2008. She is a member of the Oregon State Bar House of Delegates and the Oregon Criminal Defense Lawyers Association Legislative Committee. Shannon has given numerous continuing legal education presentations focused on juvenile dependency practice over the years, on topics including litigating shelter hearings and visitation issues, safeguarding family unity through early advocacy, advocating on behalf of an absent parent, and making a record for appellate review. In September 2020, Shannon transitioned from OPDS AD/JAS to CBS to develop a robust training and technical assistance infrastructure for juvenile defense providers in Oregon.

## Bruce Myers

Deputy Defender 1, Appellate Division

Bruce is a 2020 graduate of Lewis & Clark Law School, where he was a recipient of that school's scholarship established in honor of Multnomah County Circuit Court Judge Roosevelt Robinson. Bruce argued before the Oregon Court of Appeals in a post-conviction relief case during an externship with O'Connor Weber LLC.

## Todd Rush

Executive Assistant, Appellate Division

The Appellate Division is pleased to announce that we have promoted Todd Rush to the position of Executive Assistant. Todd has a B.S. from Oregon State University and has been with the Appellate Division for over 12 years. In that time, he has consistently demonstrated his commitment to the office and our clients, as well as a high level of professionalism, flexibility, initiative, and collegiality.

## Erin J. Snyder Severe

Deputy General Counsel, Contracts and Business Services

Erin has worked at OPDS since 2011, handling criminal appeals in the Appellate Division. Prior to that, she clerked for Hon. Rick T. Haselton at the Oregon Court of Appeals. She has served on the ACLU of Oregon's Board of Directors, and during and prior to law school she worked at the ACLU of Oregon, Hoffman Angeli, and Metropolitan Public Defender. Erin is a graduate of Lewis & Clark Law School's Evening Program and Reed College, and she is a native Oregonian.

## Norah Van Dusen

Juvenile Defense Counsel, Contracts and Business Services

Until joining OPDS as the PCRJ Juvenile Defense Counsel, Norah Van Dusen worked as a public defender for 14 years, defending youth and adults in juvenile and criminal courts and most recently in the major felony unit at Metropolitan Public Defender. A native New Yorker, Norah attended undergrad at Lewis & Clark College and returned to New York to attend law school. She began her career at the Legal Aid Society in New York City, practicing in the juvenile and criminal trial divisions. Norah, her husband and young son returned to Portland in 2018.

## Aimi Vansyckle

Legal Secretary, Appellate Division

Aimi has more than 15 years of experience as a legal administrative assistant for a local private firm. She holds a degree from Lewis Clark State College, Lewiston Idaho.

## Gloria Vidal

Juvenile Data Analyst, Contracts and Business Services

Gloria Vidal joins OPDS from the New York City Mayor's Office of Criminal Justice (MOCJ) where she managed the juvenile and adolescent research and analytics portfolio. While at MOCJ, Gloria led citywide monitoring and analytic efforts to support the successful implementation of legislation raising the age of criminal responsibility from age 16 to age 18. Gloria has also worked as a research and policy consultant for NYC's child welfare agency and has worked as a direct service provider for young people involved in the juvenile justice and child welfare systems in Washington. Gloria received an MPH from Columbia University and a BA in Cultural Anthropology from Haverford College.

## James Wilborn

Legal Secretary, Appellate Division

James most recently was the lead treatment specialist at Bridgeway Recovery Services. Previously, James assisted administrative law judges for the Oregon Office of Administrative Hearings.