

Members

Per A. Ramfjord, Chair
 Mark Hardin
 Paul Solomon
 Lisa Ludwig
 Thomas M. Christ
 Steven T. Wax
 Christine Thomas
 Alton Harvey Jr.
 Max Williams

**Ex-Officio Member**

Chief Justice Martha Walters

Executive Director

Stephen Singer

PUBLIC DEFENSE SERVICES COMMISSION
****Amended Agenda****

Meeting will occur in person and virtually.

Due to space limitations, in person attendance requires reservation.

Please contact opds.info@opds.state.or.us by 5 PM PT on Thursday, July 28, 2022,
 to make a reservation.

1133 Chemeketa NE Street
 Salem, OR 97301
 Friday, July 29, 2022
 10:00 AM – approx. 1:45 PM PT
 Via Microsoft Teams Live Event*

This is a public meeting, subject to public meeting law and it will be digitally recorded. Remember to state your full name for the record, as it is required for making a record of the meeting. For action items requiring PDSC approval, a roll call vote will occur, unless the chair directs otherwise. The chair shall read any motion requiring PDSC approval into the record before a vote is taken. We are mindful of everyone's busy schedule, particularly public defense providers, and we will adhere to the agenda of business unless the chair directs otherwise.

Approx. Time	Item	MEETING AGENDA	Lead(s)
5 min.	Welcome		Chair
5 min.	Action Item: <ul style="list-style-type: none"> • Approval of Meeting Minutes – PDSC meeting 6/23/2022, 7/13/2022, and 7/22/2022 <i>(Attachments 1a, 1b, 1c)</i> 		PDSC
20 min.	Action Item: <ul style="list-style-type: none"> • Approval of new Jackson Juvenile Contract • Approval of new Union/Wallowa Counties Contract • Approval of new Washington County Contract <i>(Attachment 2)</i> 		S. Singer
10 min.	Budget Update <i>(Attachment 3)</i>		R. Amador
10 min.	Contracts Update		S. Singer
30 min.	Benefits of Training and Supervision at Public Defender Offices		S. Lowe, C. Macpherson & B. Reinhard
90 min.	Unrepresented Client Proposals** <i>(Attachment to follow)</i>		S. Singer
15 min.	<i>**Break scheduled for approximately 12:00 PM</i>		All

5 min.	Action Item: • Approval of Unrepresented Client Proposals	PDSC
5 min.	Future Business	S. Singer
30 min.	Public Comment**	All

*To join the Microsoft Teams Live Event meeting, click this link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZiAzYTA2ODMMMWQ0ZS00NjYzLTk4OWYlZmJmNDIxMzE2N2Q4%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%22e2d550f7-f738-4d5a-9f2a-ebe0c9857447%22%2c%22lsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

***If you are interested in providing public comment to the PDSC (either IN PERSON or virtual), please email interest to opds.info@opds.state.or.us. Deadline to submit interest is 5:00 PM PT Thursday, July 28, 2022. Please include your full name, organization/entity name, email, phone number and whether you would like to present in person or orally via video conference. Each guest will be given up to 3-minutes to share comments. There will continue to be written Q&A available via the Microsoft Teams Live Event throughout the duration of the public meeting for all guests.

Please make requests for an interpreter for the hearing impaired, or other accommodation to opds.info@opds.state.or.us.

Next meeting: **Thursday, August 18, 2022, 10:00 AM – 2:00 PM PT.**

Meeting dates, times, locations, and agenda items are subject to change by the Commission; future meetings dates are posted at: <https://www.oregon.gov/opds/commission/Pages/meetings.aspx>.

Attachment 1a

Meeting: Public Defense Services Commission (PDSC) Meeting

Date & Time: June 23, 2022: 9:00 AM – to approx. 1:00 PM PT

Address/Platform: Hybrid: Meeting occurred in person and virtually

Link to Recording: https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZDVIZWRjMzUtMGZmNi00NGNjLTImYTItOWI2YTYwNzBkZWVm%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%22e2d550f7-f738-4d5a-9f2a-ebe0c9857447%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

Commissioners In Person

Paul Solomon, Acting Chair

Thomas Christ

Mark Hardin

Alton Harvey Jr.

Christine Thomas

Chief Justice Walters, Ex Officio

Commissioners Virtual

Lisa Ludwig

Steven Wax

Commissioners Absent

Per Ramfjord

Presenting Staff

Stephen Singer, Executive Director

Brian DeForest, Deputy Director

Ralph Amador, Budget & Finance Manager

Autumn Shreve, Government Relations Manager

Eric Deitrick, General Counsel

Shannon Flowers, Chief Juvenile Trial Counsel

Mary-Shannon Storey, Chief Defender

Ernest Lannet, Chief Defender

Presenting Guests In Person

Gary Kiyuna, Five Rivers Law in Malheur County

Brook Reinhard, Executive Director of Public Defenders Services of Lane County

Carl Macpherson Executive Director of Metropolitan Public Defenders (MPD)

Jessica Kampfe, Executive Director of Multnomah Public Defenders, Inc. (MDI)

Olcott Thompson, Executive Director of the Marion County Association of Defenders (MCAD)

Kathleen Dunn, Executive Director of Elkhorn Public Defender; President of Eagle Cap

*Agenda item requires a vote by the commission



Defenders, Inc; President of Strawberry Mountain Law, PC

Jared Boyd, Eastern Oregon Defenders

Shannon Wilson, Executive Director of Public Defender of Marion County

Steven Gorham, Attorney at Law

Shaun McCrea, Executive Director of Oregon Criminal Defense Lawyers Association (OCDLA)

Rob Harris, Executive Director of Washington County Consortium; President of Oregon Defense Consortia Association (ODCA)

John Lamborn, Attorney at Law

Jennifer Williamson, Strategies 360

Presenting Guests Virtual

Adrian Arias, Interpreter

1. Welcome

Presented by Acting Paul Solomon

Paul Solomon welcomed everyone to the June 23, 2022 Public Defense Services Commission meeting and announced that he would be serving as Chair for today's meeting.

2. *Approval of Meeting Minutes – PDSC meeting May 19, 2022

Commissioner Christ moved to approve the May 19, 2022, PDSC meeting minutes. Commissioner Hardin seconded the motion. The motion passed unanimously.

3. Budget Update

Presented by Mr. Ralph Amador

Mr. Amador presented an update on the budget and summarized the total funding available to the agency. He noted that the agency was still in negotiation with DHS and federal partners over the amount of Title IV-E funding the agency would receive, which will impact the agency's bottom line. Commissioner Christ asked if the budget included the \$100 million SPA from the legislature, and Mr. Amador stated that it did include that funding, as well as the \$12.8 million from the February legislative session and all other additional legislative investments. He also noted that the projections were based upon the assumption that all OPDS public defense contracts before the PDSC today had been signed.

*Agenda item requires a vote by the commission

4. Legislative Update

Presented by Ms. Autumn Shreve

Ms. Shreve discussed the recent May legislative emergency board hearing and the agency's presentation at that hearing. She summarized a series of letters and reports that the agency submitted to the emergency board. She also noted that the emergency board did release the entire \$100 million to the agency for use.

Ms. Shreve then provided an update on the three-branch workgroup which began in May to examine the state's public defense system, which would look at structure, governance, and service delivery models. She summarized the membership on the workgroup and provided an update on issues covered at the prior meetings. She noted that the workgroup originally planned to work up until the 2023 session, stop working, and then regroup with the hope of a reform bill for the 2024 session. But she also stated that there have been discussions about expediting a legislative concept for the 2023 session. Chair Solomon stated that he is also involved in the work group and expressed frustration at the original timelines. He was hopeful that timelines could be modified so that a public defense legislative concept could align with the agency's POPs for the 2023 session.

5. Agency Status Update re: FY22-23 Contracts

Presented by Executive Director Stephen Singer

Director Singer stated his intention to provide a high-level overview of proposed contracts for the PDSC to approve and then move to public comment. He began by summarizing the chronology of the PDSC's review of proposed contract language, stakeholder outreach, and the release of the RFQ.

Director Singer stated that the agency has offered 164 contracts and has received back 108 signed contracts. He stated that he expects most of the remaining offered parties to sign but that they were waiting for this PDSC meeting before doing so. He also acknowledged the concerns/criticisms that have been raised about the contracts and stated that he agreed with many of them. But he noted improvements had been made and that he made as many improvements as he could in his role and within budget. He summarized some differences between these and prior public defense contracts, which include reimbursement rates being attached to attorney qualifications, funding for administration, and more funding for investigation.

Director Singer then summarized the total attorneys that would be accepting appointments pursuant to the contract. He noted that there would be increase from the existing contract cycle, but only if the offered parties ultimately signed.

*Agenda item requires a vote by the commission

Commissioner Wax inquired about the caseloads standards that would govern the contract, and Director Singer noted that the standards were built by looking at best practices, other states, the data from the ABA, and staying within budget. He also stated that he would prefer the agency move to a workload model, as currently exists with PCRP.

Director Singer continued summarizing the financial values of the criminal, juvenile, and PCRP contracts, along with other smaller contracts that provide public defense providers with needed services. Commissioner Christ asked if the new contracts were more financially generous than existing contracts, and Director Singer stated that they were.

6. Public Comment limited to FY22-23 Contracts

Chair Solomon then opened public comment on the public defense contracts.

Gary Kiyuna stated he practiced in Malheur County. He spoke about the inequity in only have PCRP in 10 of Oregon's 36 counties. He believed that this presented an equal protection problem, and he noted that PCRP is not in any eastern Oregon counties.

Brook Reinhard, executive director of Public Defense Services of Lane County, stated he had not yet signed his contract. He offered criticisms of the contract language, and he also noted improvements between the proposed contracts and prior contracts. He stated that OPDS has been highly responsive to his questions and that he appreciates the leadership of Director Singer. He offered steps the PDSC could take, such as not contracting for all of case types, or not contracting for the full 12-month period.

Carl Macpherson, executive director of Metropolitan Public Defender, agreed with many of Mr. Reinhard's comments but noted that he did sign the contract. He discussed MPD's recent office move, which required him to go through a series of old documents. In doing so, he reviewed documents demonstrating to him that the public defense model in Oregon was never intended to be client centered; rather, it was intended to keep costs low. Mr. Macpherson discussed pay inequities and staff turnover. He also expressed his support of Director Singer and his work ethic.

Jessica Kampfe, executive director of Multnomah Defenders, told the PDSC that her board authorized her to sign the contract because it trusted the direction the agency was going under Director Singer's leadership. She inquired about whether additional agency funds were available to go to contractors and proposed a way to get more money to contractors.

*Agenda item requires a vote by the commission

Olcott Thompson, executive director of the Marion County Association of Defenders, described his history of contracting with OPDS and described the current contracting process as the worst ever. He was critical of the hurried process and the agency's communications. He compared the caseloads and reimbursements for MCAD attorneys to the PCRP and post-conviction relief contracts and urged more equity in contracting.

Katie Dunn, who administers several public defense contracts in eastern Oregon, described the three types of entities she administers, which includes a non-profit, a law firm, and a consortia. She stated she supported the direction that Director Singer was taking the agency. She was happy to see the focus given to caseloads and workloads, as well as additional focus on the administrative component to public defense services. She discussed the concept of moral injury and offered insights as to why people are leaving the profession of public defense. She also discussed her efforts to recruit attorneys to eastern Oregon.

Jared Boyd, the administrator for Eastern Oregon Defenders, discussed his frustration with the contracts and the contracting process. He was critical of the agency's responses to his proposed contract modifications and questions. He also discussed his frustration with the agency's shifts in reimbursement models and questioned whether the agency needed to move from the case credit model to the caseload model. He expressed particularized concern with the contract provision stating that attorneys contracting for maximum caseloads cannot take on other legal work.

Shannon Wilson, executive director of the Public Defender of Marion County, expressed support for current OPDS leadership. She stated that her organization was prepared to sign the proposed public defense contract, but that recent actions by the Marion County Circuit Court bench precluded her from doing so. She discussed how the Marion County bench continued to appoint attorneys at her firm to cases despite those attorneys having communicated they were ethically unable to accept new clients. She expressed gratitude for the agency's support in responding to their issues with the Marion County Circuit Court.

Steve Gorham stated that he has provided public defense services since 1977 and that he was formerly the executive director of MCAD. He did not believe the caseload model was much different than the case credit model and suggested that the PDSC look to an hourly billing model. He was skeptical that the state would ever create a public employee public defense model.

Shaun McCrea, executive director of OCDLA, discussed a letter she sent to the PDSC a few weeks ago that urged the PDSC to not authorize new contracts. She summarized

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the reasons for sending the letter but acknowledged an appreciation for the efforts of OPDS and the PDSC. She believed the need for public defense reform was urgent. She encouraged the agency and the PDSC to unify the public defense community, rather than divide it.

Rob Harris stated that he administers a consortia contract in Washington County and also serves as president of the Oregon Defense Consortia Association. He summarized the organization's membership and expressed frustration at the proposed contract and the contracting process. He stated that ODCA members feel unheard and expressed concern about the amount of intrusiveness and control in the contracts. He believed the PDSC should not approve proposed contracts and should extend existing contracts for one year and put together a workgroup to draft new contracts.

John Lamborn, a public defense attorney in Harney County, stated that he wished the agency would improve communications about which public defense contractors are compensated. He stated that a contract for \$219,000/year does not mean he earns that much money, and he described the various overhead expenses and duties he has to take on. He stated that administrative fees in contracts need to be increased. He also expressed support for Director Singer.

Commissioner Christ stated that he had listened to all of the public comment and had heard other criticism of the current contracting process. He said that he did not agree with the criticism and believed the agency had done a remarkably good job under the circumstances. He discussed how the agency kept the PDSC involved throughout the contracting process and expressed support for the amount of outreach and communication the agency had engaged in.

Commissioner Christ then inquired about whether there were existing agency funds, as Ms. Kampfe had suggested, that could go to public defense contracts. Director Singer then reviewed the budget again and stated that the agency is over-contracting by \$4.7 million, but that the agency also built in a \$10 million budget for increasing capacity throughout the year. To that end, there is approximately \$5 million available for contracts, but not the \$24 million that was suggested earlier in the meeting.

Director Singer discussed some of his meetings with public defense providers throughout Oregon and stated he agreed with much of the feedback he received from those providers. Chief Justice Walters inquired about the contract status involving Jared Boyd and his question regarding early disposition programs. Director Singer stated that he had talked with Mr. Boyd and would follow up with him after the meeting.

Commissioner Wax agreed with Commissioner Christ's comments and expressed

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support for the work of agency staff. He acknowledged that change is difficult and reform was needed, and he stated the challenges in reform do not come from a lack of understanding by agency staff and the PDSC. He urged those who expressed criticism of the agency and the PDSC to work collectively with the agency and the PDSC.

Commissioner Hardin inquired about the status of expanding the PCRP to other counties. Director Singer and Juvenile Trial Chief Shannon Flowers expressed support for continued expansion. Commissioner Thomas expressed gratitude for the discussion surrounding client-centered public defense. Director Singer acknowledged the process has been hurried, but he said it was necessary as he was new to the state and had a lot to learn in a short period of time. He then thanked various members of agency staff for their work to finalized public defense contracts. Chair Solomon also acknowledged the improved communication and level of PDSC involvement, as compared to past contracting cycles.

Chair Solomon suggested the PDSC take its ten-minute break now, which it did

7. PDSC Discussion with Agency Staff re: FY22-23 Contracts

Presented by Executive Director Singer and Mr. Eric Deitrick

Chair Solomon read several comments into the record that were posted on the virtual platform. Director Singer then summarized the contracts document that were before the PDSC for approval. Chair Solomon inquired about whether he was asking the PDSC to approve only the signed contracts, or all the contracts, including the ones that have yet to be returned to the agency. Director Singer stated he was seeking PDSC approval for all contracts – those signed as well as those that have yet to be signed.

Commissioner Thomas inquired about the unsigned contracts and asked the agency to provide a summary of some the concerns and feedback it had received. Director Singer asked General Counsel Deitrick to summarize a recently drafted contract addendum, which had addressed a significant number of provider concerns. Mr. Deitrick summarized the addendum which modified provisions relating to attorney obligations in adjacent counties, record keeping, indemnification, notification timelines for capacity shutoffs, and limitations on 1.0 attorneys. Commissioner Christ inquired about whether there was any difference between current limitations on 1.0 attorneys, and the language in the proposed contract. Mr. Deitrick replied that there was not and that the 1.0 rule has already been in the contract for 18 months. Commissioner Christ and Mr. Deitrick also discussed issues surrounding how an entity addresses issues of attorney capacity due to ethical considerations.

Chief Justice Walters asked Director Singer if had the flexibility he needs to wrap up

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existing contracts. Director Singer believed that most providers would sign and that it was his intention to continue to treat providers equitably. He noted that the PDSC has been flexible with its time and that if something urgent did arise, he would contact the PDSC about setting an emergency meeting.

8. *Approval of Public Defense Contracts for July 1, 2022

Chair Solomon entertained a motion to approve the contracts for July 1, 2022, as written in attachments 3a, 3b, 3c, 3d, 3e, 3f, and 3g.

Commissioner Harvey moved to approve the contract documents as outlined in attachments 3A, 3B, 3C, 3D, 3D, 3F, and 3G. Commissioner Christ seconded the motion but asked whether the motion would approve the sign contracts or all contracts, including the unsigned contracts. Chair Solomon stated that it would apply to all contracts – signed or unsigned – included in the attachments, and Director Singer concurred. The motion passed unanimously.

9. POPS & '23 Legislative Session Prep Update

Presented by Deputy Director Brian DeForest and Ms. Jennifer Williamson

Deputy Director DeForest discussed the agency's development of Policy Option Packages ("POPS") for the 2023 legislative session. He noted the agency's current service level, when inclusive of the \$100 million SPA, other appropriations, and mandated caseload, will likely approach \$500 million. He also noted that hourly rates for non-contract attorneys were significantly below market rates and that reimbursement rates for contract attorneys allow for compensation well below parity with DOJ and the appellate division.

Mr. DeForest reported the agency was working on a series of POPs that would be presented as a package in the 2023 session. Current concepts include funding to increase attorney compensation, reduce caseloads, create administrative parity for contractor non-attorney support staff, and expand the CAP division. Commissioner Hardin inquired about the expansion of PCRP. Mr. DeForest noted that it was an agency priority and stated it was yet to be determined whether that would be a standalone POP, or a part of another POP. He emphasized the importance of putting together a total package and advocating for the package as a whole that consists of interrelated parts.

Government Relations Manager Autumn Shreve noted that legislative concepts are another way to increase agency funding. Commissioner Christ asked how legislative concepts related to POPs and inquired about what options the agency had to pursue

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structural changes if it sought fit, such as creating a state employee trial division that mirrored the appellate division. Mr. DeForest observed that there were options but noted that its important to have legislative support of policy changes.

Jennifer Williamson, a former legislator and strategic consultant to OPDS, advised the PDSC that POPs are helpful in obtaining additional financial resources. But she stated that genuine changes in agency policy, such as a change in the service delivery model, would best be addressed through a legislative concept than a POP. She described the role of policy committees in the legislature and discussed the steps the agency could take to pursue a legislative concept. She also discussed the role of the three-branch workgroup.

10. Unrepresented Client Update

Presented by Executive Director Stephen Singer, Mr. Eric Deitrick, Ms. Mary-Shannon Storey, and Mr. Ernest Lannet

Director Singer discussed the current state of unrepresented individuals throughout Oregon and the agency's response to the crisis. He noted that the primary challenges have arisen in Washington, Multnomah, Marion, and Lane counties. He summarized steps taken by the agency, in conjunction with OJD and judges, to respond to issues and develop a prospective plan.

Director Singer then discussed recent events in Marion County, in which a judge appointed OPDS appellate attorneys and general counsel to trial level public defense cases without considering the attorneys qualifications or inquiring of the agency. While complimentary of some Marion County judges, he was critical of other Marion County judges, and he described the problems this created for both the agency and the public defense clients. He stated that a meeting was scheduled the following week between the agency, the Marion County bench, Marion County public defense providers, the Chief Justice, and OJD to address the situation and he was optimistic that the meeting would be professional.

Shannon Storey, Chief Defender of the Juvenile Appellate Section, described the impact of these appointments on the attorneys she supervises and expressed frustration that the Marion County judges had taken this approach. General Counsel Eric Deitrick emphasized that responding to the actions of the Marion County judges has taken a significant amount of agency time and resources. He noted that the agency has hired outside counsel simply to respond to the actions from the Marion County bench.

Chair Solomon acknowledged that this has become a distraction, particularly as the

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agency is trying to negotiate contracts, and he noted the impact of these actions on the ability to sign a contract with Shannon Wilson and the Public Defender of Marion County. Chief Justice Walters expressed frustration that the topic was being discussed in a public meeting without the Marion County judges being invited to explain the situation from their perspective. She viewed Director Singer's comments as an attack on the judges and questioned whether the Marion County judges and the agency could work collaboratively following this discussion.

Commissioner Christ asked about the court's role to assign counsel generally, and Director Singer summarized the agency's approach to working with the court to identify possible attorneys. Commissioner Wax noted that the issues arising from the Marion County appointments are currently being litigated in both the circuit court and the Oregon Supreme Court and expressed concern about whether the conversation on the topic should continue.

Commissioner Thomas referred to statements made by Steve Gorham earlier. She asked whether a triage approach to unrepresented individuals was an option, and she discussed how that worked in behavioral health. Director Singer stated that all options would be considered by the agency.

11. Future Business

Presented by Executive Director Stephen Singer

Director Singer stated that a discussion of POPs would be on the agenda for the next PDSC meeting. Commissioner Wax suggested that a meeting occur between agency staff and PDSC members who are on the three-branch workgroup. Director Singer stated that such a meeting would be scheduled.

Chair Solomon entertained a motion to adjourn the meeting.

Commissioner Christ moved to adjourn the meeting. Commissioner Thomas seconded the motion. The motion passed unanimously.

*Agenda item requires a vote by the commission

Attachment 1b

Meeting: Public Defense Services Commission (PDSC) Meeting

Date & Time: July 13, 2022: 3:00 PM – to approx. 4:35 PM PT

Address/Platform: Virtual Meeting via Microsoft Teams Live Event

Link to Recording: https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTVkOWIxMmItMDRjMi00NDBiLWFhN2EtNGVIYmE0MjdiOTQ1%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%22e2d550f7-f738-4d5a-9f2a-ebe0c9857447%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

Commissioners Present

Chair Ramfjord, Chair

Thomas Christ

Mark Hardin

Paul Solomon

Steven Wax

Chief Justice Walters, Ex Officio

Commissioners Absent

Lisa Ludwig

Alton Harvey, Jr.

Christine Thomas

Presenting Staff

Stephen Singer, Executive Director

Shannon Flowers, Chief Juvenile Trial Counsel

Eric Deitrick, General Counsel

1. Welcome

Presented by Chair Ramfjord

Chair Ramfjord welcomed everyone to the July 13, 2022 Public Defense Services Commission meeting. He announced that the Chief Justice had recently appointed Max Williams to the PDSC. Mr. Williams is a former legislator, former director of the Oregon Department of Corrections, and most recently, the executive director of the Oregon Community Foundation.

Director Singer also announced that, given the short timelines, the minutes from the last PDSC meeting were not yet available.

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2. Process for Adopting a Plan to Address Unrepresented Clients

Chair Ramfjord announced the purpose of the meeting, which was to discuss the process for developing a plan that is responsive to the issue of unrepresented clients. He noted the letter sent by Chief Justice Walters to the PDSC on July 1, 2022 and the urgency of the crisis. He also noted the need to involve stakeholders in developing a plan, including the legislature, LFO, the courts, and public defense providers. He emphasized the need to ensure the PDSC be involved in developing a plan, and that the merits of choices be discussed publicly.

Chief Justice Walters stated her desire that the PDSC vote and direct the agency to create a plan. She also noted that she would prefer the PDSC require the agency to collaborate with others in the creation of a plan.

Commissioner Christ inquired about the scope of the current problem. Director Singer provided an update, with specific numbers about the number of unrepresented clients. He noted that the current numbers are primarily coming from Multnomah, Washington, and Douglas counties. He also noted that there are three classes of cases with unrepresented individuals: (1) individuals who have been arraigned and not assigned an attorney; (2) individuals who have made a court appearance, but who have had their arraignment postponed to a future court date; (3) individuals who have not yet been assigned a court date because the district attorney has not yet filed charges, as they know attorneys are not yet available. Mr. Singer stated that the agency has good data on the first class, some data on the second class, and no data on the third class. He emphasized that the second class was comprised of out of custody misdemeanors and minor felonies. He also noted that class 3 was likely several hundred and primarily arising out of Multnomah County. Director Singer stated that there were also unrepresented individuals in juvenile dependency cases in Jackson County.

The PDSC and Director Singer discussed timelines regarding when certain counties lacked attorney capacity to represent public defense clients. This past spring, the primary issues arose from Lane, Marion, Multnomah, and Washington counties. Director Singer stated that the issues in Douglas and Jackson counties developed relatively recently. Director Singer and the PDSC discussed the causes of attorney shortages and what the agency was doing in response.

Chief Trial Counsel Shannon Flowers discussed the steps taken on juvenile dependency cases in Jackson County. She noted that the court in Jackson County is typically

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assigning counsel to the children and at least one parent on dependency cases. Director Singer stated that there was a long list of PCR and habeas corpus cases that had gone without counsel, but that the agency had recently secured counsel for all of the PCR cases.

Chief Justice Walters inquired if there were any unsigned public defense contracts, and if so, whether that was having an impact on the ability to secure attorneys for public defense clients. Director Singer stated that there were six contracts that had yet to be finalized – Public Defense Services of Lane County, Marion County Public Defender, Deschutes Defenders, Coos Public Defender, a consortium in Coos County, and a contract for Union/Wallowa counties. Director Singer summarized the status of each contract and opined that, aside from Coos County, the lack of signed contracts had not impacted the ability to procure attorneys for public defense clients.

Chair Ramfjord inquired about the contract for Union/Wallowa counties. Director Singer summarized steps that led the agency to change contractors in Union/Wallowa counties, moving from an existing consortium to another existing entity in eastern Oregon, which was administered by Kati Dunn. In describing why the agency elected to contract with Ms. Dunn, Director Singer noted the direction the agency has received from the PDSC and the legislature to treat providers similarly. He also noted Ms. Dunn's success in recruiting young attorneys to eastern Oregon.

Chief Justice Walters urged Director Singer to change course and contract with the existing consortium for Wallowa/Union counties, rather than Ms. Dunn. Director Singer responded by explaining the reasons for changing contractors. He stated that the agency would offer individual contracts to members of the existing consortium if Ms. Dunn's group cannot meet the existing caseload. He also noted that some members of the existing consortium were joining Ms. Dunn's group. He expected to have a contract finalized with Ms. Dunn by the end of the week.

Commissioner Christ stated a preference that the agency and the PDSC revisit whether to contract with individuals, rather than consortia, going forward. He then expressed concern with the existing caseload model and whether it would lead to more problems throughout the term of the contract. Commissioner Christ and Director Singer discussed the challenges of the existing model in terms of oversight. Director Singer noted that the underlying problem is the lack of attorneys and high caseloads, which when left unaddressed, cause attorneys to burn out and leave the profession.

Chief Justice Walters stated that she and others have been working to bring down public defense caseloads, and she noted that the need for lower caseloads and higher pay. She then emphasized the need to respond to the current crisis of unrepresented

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individuals.

Chair Ramfjord returned the conversation to the issue of developing a plan to address the issue of unrepresented individuals. He noted that the agency has been working on a plan, but he emphasized the importance of PDSC involvement in the development and approval of a plan.

Commissioner Wax stated that the agency has been putting together a plan as quickly as possible, and he noted the challenges in ensuring such a plan does not create additional problems. Mr. Wax stated that the development of a plan should involve key legislators and LFO. He also emphasized the important of OPDS staff, working with the PDSC, to project costs of varying plan options. Mr. Wax noted that a lot of agency work has gone into the development of a plan and commended staff for their efforts.

Commissioner Wax proposed a motion to direct staff to continue working on a plan as they have been and to report back to the PDSC on a weekly basis regarding (1) the status of unrepresented individuals throughout the state, (2) a calculation of the funding available to address the issue, and (3) a calculation of the funding needed to address the issue. Chief Justice Walters suggested the motion include a directive to collaborate, rather than simply report. Commissioner Wax agreed that collaboration was important and should include PDSC members with expertise and legislators with expertise. Chief Justice Walters emphasized that the courts should be included as well.

Chair Ramfjord noted that he had multiple communications with legislators who stated an appreciation for the PDSC to make a statement that it wants a plan. Commissioner Wax agreed but wanted to emphasize as a part of his motion that the PDSC recognize the existing efforts by agency staff to develop a plan.

Chief Justice Walters stated she wrote a letter to the PDSC on July 1 so that she and others could see a plan with numbers and discuss it with other judges. Chair Ramfjord acknowledged the existence of a legislative workgroup that was discussing ways to improve Oregon's public defense system, and he noted that the PDSC and the agency should ensure that the workgroup be informed of agency action and proposed action.

Director Singer concurred with Chair Ramfjord and discussed the importance of developing specific options, with data and price points, that can be shared with partners, stakeholders, the courts, and the legislature. Commissioner Christ emphasized the urgency of the crisis and stated a need to discuss the plan in concrete terms at the next PDSC meeting so that people could provide input. A discussion occurred about a draft plan shared by Director Singer prior to the meeting. The PDSC and Director Singer discussed how best to provide feedback. General Counsel Deitrick

*Agenda item requires a vote by the commission

stated that the matter would be best discussed in a public meeting, although he would look into whether an executive session could be held for such a discussion.

Chair Ramfjord reiterated Commissioner Wax's motion, which was to direct the agency to continue its efforts to develop a plan, bring it to completion, report back to the PDSC on status, to work collaboratively with stakeholders, including the courts, and to begin discussion of the plan at the next PDSC meeting. He emphasized the need to move forward as quickly as possible. Commissioner Solomon called for a vote and seconded Commissioner Wax's motion. The motion passed unanimously.

3. Future Business & Scheduling Next PDSC Meeting

A discussion occurred about when to hold the next PDSC meeting. Chair Ramfjord said he would be out of the country next week but would commit to a meeting if others were available.

Commissioner Wax motioned to adjourn the meeting. Commissioner Solomon seconded the motion to adjourn. The motion passed unanimously.

*Agenda item requires a vote by the commission

Attachment 1c

Meeting: Public Defense Services Commission (PDSC) Meeting

Date & Time: July 22, 2022: 9:00 AM – to approx. 11:24 PM PT

Address/Platform: Virtual Meeting via Microsoft Teams Live Event

Link to Recording: https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2NmNTFhZjktNThjMi00OGU0LWI2N2EtZGE3Y2ZhNTA0MTI%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%22e2d550f7-f738-4d5a-9f2a-ebe0c9857447%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

Commissioners Present

Per Ramfjord, Chair

Paul Solomon

Thomas Christ

Mark Hardin

Alton Harvey, Jr.

Lisa Ludwig

Steven Wax

Max Williams

Chief Justice Walters, Ex Officio

Commissioners Absent

Christine Thomas

Presenting Staff

Stephen Singer, Executive Director

Laurie Bender, Chief Criminal Trial Counsel

Shannon Flowers, Chief Juvenile Trial Counsel

Christine Breton, Deputy Criminal Trial Counsel

Eric Deitrick, General Counsel

1. Update on Plan to Address Unrepresented Clients

Presented by Chair Per Ramfjord and Commissioner Lisa Ludwig

Due to limitations arising from travel, Chair Ramfjord was present but requested Commissioner Ludwig perform the role of Chair for the meeting. Commissioner Ludwig welcomed everyone to the July 22, 2022 Public Defense Services Commission meeting. She announced that the Chief Justice had recently appointed Max Williams to the PDSC. Chair Ramfjord introduced Mr. Williams to those present and described his background as a former legislator, former director of the Oregon Department of

*Agenda item requires a vote by the commission



Corrections, and most recently, the executive director of the Oregon Community Foundation. Commissioner Williams then introduced himself. Director Singer also noted that, given the short timelines, the minutes from the last PDSC meeting were not yet available.

Director Singer turned to the substance of the meeting agenda and stated that he and Laurie Bender, OPDS Trial Criminal Chief, would be presenting the agency's proposed plan regarding unrepresented individuals together.

Ms. Bender described her past experience as a public defense attorney, including her roles in a public defender office and private practice, as well as her experience handling death penalty cases and practicing in federal court. She stated that, since joining OPDS in February, she has spent a considerable portion of her time responding to the issues surrounding unrepresented individuals. She described her efforts, which included meeting with stakeholders, communicating with OJD and judges, and contacting former colleagues and other public defense providers. Ms. Bender stated the efforts that went into contacting individual people were not that helpful or efficient in responding to the growing problem. Occasionally, she could identify an attorney to accept an appointment to a misdemeanor or lower-level felony case. But she was not as successful with in custody major felonies, which was the bulk of the problem.

Ms. Bender also described that, while working on locating attorneys for unrepresented individuals, attorneys were leaving public defense throughout the state, thereby exacerbating the problem. She then referred to data showing the agencies increased reliance on non-contract hourly conflict counsel, which continues to grow, as there is insufficient contract capacity to cover the workload. Ms. Bender then discussed some of the jurisdiction specific attorney capacity issues throughout Oregon.

Commissioner Christ asked why there were so many unrepresented individuals. Ms. Bender stated that there were differences from jurisdiction to jurisdiction, but on the whole, there just were not enough attorneys to serve clients. Director Singer noted additional causes such as people leaving public defense, which is occurring for various reasons, including age, burnout, and the great resignation. He also noted the PDSC's decision to move from the case credit model and implement caseload limits.

Chief Justice Walters inquired about how many more attorneys were needed, she and Director Singer discussed several ways of considering the issue of capacity. Director Singer noted that the agency did not have sufficient contractors based upon the caseload standards and forecasting. He also noted that those caseload standards do not appropriate account for workload or the real time needed per case. He stated that CAP would be working on gathering data and developing a workload model, but that

*Agenda item requires a vote by the commission

the work had just begun with the new legislative investments in the agency.

Commissioner Harvey noted the severity of the problem and inquired about what can be done that doesn't involve additional funding. Director Singer talked about workforce development and the steps taken to expand the profession by recruiting directly from law schools. Christine Breton, Deputy Trial Counsel, then discussed the goals and progress of the agency's workforce development workgroup. She also noted how attorneys are continuing to quit the profession.

Director Singer turned to the agency's proposed plan to respond to the issue of unrepresented individuals, which included four components: (1) raise the hourly rate for non-contract attorneys to \$158/hour for in-custody clients, which mirrors the rate for the federal CJA panel; (2) increase the contract reimbursement rates for 1.0 public defense contractors; (3) provide funding for non-profit public defender offices for supervision and training; and (4) create a OPDS Trial Division Quick Response Unit.

Director Singer discussed the benefits of increasing the hourly rate for non-contract attorneys to mirror the federal rate, and he noted that it was likely the most effective way to increase capacity on a short-term basis, as private criminal defense attorneys and attorneys in the federal system are more likely to accept cases at that rate. He then described the proposal to increase reimbursement rates for 1.0 contractors, and he noted that there were several options, ranging from 10% to 25% increases. Director Singer noted that low pay had been listed in exit interviews as a driver of people leaving the profession. Additionally, this proposal would incentivize contractors to dedicate more of their capacity to public defense work.

Commissioner Ludwig asked about the potential impact of more hourly billings on the agency's payment processing times, and Director Singer provided context as to why those times have increased. Director Singer then described the proposal to fund training, supervision, and investigation at public defender offices, and he noted the benefit this proposal would have on compensation and attorney retention. He also discussed the benefit that training would provide to add capacity to the system.

Commissioner Solomon inquired as to why these funds would only be available for public defender offices. Director Singer stated that only public defender offices had the internal structures requiring the supervision and training piece, but he agreed that all entity types would benefit from predictable and sustainable funding for investigation.

Director Singer then described the OPDS Trial Division Quick Response Unit, which he said could begin with somewhere between 10 and 18 attorneys, plus needed support staff. He described the costs for this office and discussed the flexibility such an office

*Agenda item requires a vote by the commission



would bring to the agency. Director Singer stated that some of the attorneys would be regionally located and noted how this proposal would add capacity to the system.

Commissioner Solomon expressed concern about the potential pay disparity between contractors and the proposed OPDS Trial Division. Director Singer understood the concern but noted how this would demonstrate that a workforce can be developed if there are appropriate investments.

Commissioner Wax provided a summary of the meeting to this point, noting Ms. Bender's comments that recruiting attorneys one-at-a-time to take cases has proven largely ineffectual. He noted that the agency needed more funding, in order to recruit more attorneys. And he stated that none of the proposals provided a magic bullet solution.

Chair Ludwig requested that someone else take over as Chair of the meeting, and Commissioner Solomon agreed to do so. Commissioner Wax expressed support for making some PDSC decisions in response to the proposal at the next PDSC meeting. Director Singer noted that the agency has been meeting with LFO, members of the legislature, and stakeholders to discuss the agency's proposed plan, and he described the meetings as ongoing.

Chief Justice Walters discussed efforts taken by herself, OJD, judges, legislators, OPDS staff, and public defense providers to procure attorneys for unrepresented individuals. She emphasized the need for solid numbers and data when seeking legislative approval for funding. She then asked various questions about the agency's four proposals and identified areas where she would like more information. Chief Justice Walters suggested not raising the rate uniformly for public defense providers and granting the agency discretion in negotiating rates with attorneys.

Commissioner Wax stated that he would not favor allowing contractors to take cases at an hourly rate, as it would incentivize those attorneys to stop working their contract cases and spend more time on the hourly cases. Commissioner Christ agreed. He also expressed concern about the distinction between custody v. non-custody cases. Commissioner Wax expressed a desire to have more information by the next PDSC meeting on the potential use of certified law students. He then had to leave the meeting.

Commissioner Solomon then read some of the online comments into the record. One of the comments raised concern about the idea of the agency negotiating rate with attorneys, rather than having an across-the-board rate. Commissioner Christ agreed and expressed his preference to simply set a higher hourly rate that applied uniformly

*Agenda item requires a vote by the commission

without individualized negotiation. Commissioner Christ and Chief Justice Walters discussed the merits of this issue.

Commissioner Solomon read several more comments into the record. Shannon Flowers, OPDS Trial Juvenile Chief, summarized steps taken by the agency to procure lawyers for dependency clients. Commissioner Solomon discussed other steps that could be taken to address the issue of unrepresented individuals and asked if there were conversations with district attorneys about dismissing cases or not filing low level cases. Chief Justice Walters summarized some of the steps taken in Multnomah County to do just that. Commissioner Solomon read a comment from Shannon Wilson into the record, which explained the benefits of funding training and supervision.

Director Singer stated that he had one last issue to address for the meetings adjournment. Chief Justice Walters stated that she had questions that remain unanswered about the agency's proposed plan. Commissioner Christ stated that he wanted to make decisions on what parts of the plan to support at the next PDSC meeting. He asked the agency to provide the PDSC with a decision tree on the plan for the next meeting. Commissioner Hardin suggested the agency consider proposals from OCDLA and others and report back to the PDSC at the next meeting on which proposals are helpful. Director Singer stated that the agency would do that.

Director Singer then provided an update on some outstanding public defense contracts in Union and Wallowa counties and noted that they would be on the agenda at the next PDSC meeting for approval. Chief Justice Walters then asked questions about those contracts, and a discussion occurred about whether the agency was contracting for the full forecast of public defense cases for the contracting period.

Acting Chair Paul Solomon entertained a motion to adjourn the meeting. Commissioner Ludwig moved to adjourn the meeting. Commissioner Christ seconded the motion to adjourn. The motion passed unanimously.

*Agenda item requires a vote by the commission

Attachment 2



To: Per Ramfjord, Chair, PDSC
Members, PDSC

Re: Action Item: OPDS seeks PDSC approval of the above six new contracts for the 2022-2023 Contract Term.

Date: July 29, 2022

NEW CONTRACTS – 2022-2023

County	Contract Term	Proposed Contractor	Maximum Attorney Coverage	Value
Jackson	August 1, 2022-June 30, 2023	Rouge Valley Defenders - Juvenile	0.10	\$ 21,796
Union/Wallowa	July 1, 2022-June 30, 2023	Jared D. Boyd, LLC – Criminal	0.75	\$170,297
	July 1, 2022-June 30, 2023	Jared D. Boyd, LLC – Juvenile	0.20	\$45,413
	July 1, 2022-June 30, 2023	Eagle Cap Defenders – Criminal	3.00	\$692,828
	July 1, 2022-June 30, 2023	Eagle Cap Defenders – Juvenile	0.60	\$138,380
Washington	July 1, 2022-June 30, 2023	Vicki Vernon	0.70	\$12,614.58 Emergency Funding

OPDS seeks PDSC approval of the above six new contracts for the 2022-2023 Contract Term.

The Jackson County Juvenile Contract is a small but much needed increase in capacity with a current public defense contractor providing adult criminal representation. This new non-PCRP contract for .10 MAC will help address the current number of unrepresented parents and children/youth in this county. Rouge Valley Defenders has reviewed the unrepresented delinquency list and identified seven youths they could take if the contract is approved.

The new Union/Wallowa Contract with Jared Boyd adds capacity to the adult criminal projected caseload needs of this area. Because the Eastern Oregon Consortium dissolved, OPDS contracted with Eagle Cap Defenders, Inc., for 3.6 MAC.



OPDS projected the need for additional capacity and agreed to contract with Jared Boyd, individual, for .95 MAC, thus resulting in a total 4.55 MAC. This constitutes an increase from the 2021-2022 FTE contracted between OPDS and Eastern Oregon Consortium.

The new Washington County adult criminal contract with Vicki Vernon, individual, for .70 MAC is in direct response to the unrepresented in-custody unrepresented clients in Washington County. This contract will be funded by the emergency funding authorized by the legislature for Washington, Multnomah, Marion and Lane counties. In anticipation of PDSC approval, Ms. Vernon has accepted assignment to eight unrepresented in-custody clients facing serious felony charges, including attempted murder and sexual offenses.

Attachment 3

OFFICE OF PUBLIC DEFENSE SERVICES

AY 2023

Budget Report by Fund and Program

As of fiscal month ended June 30, 2022

Biennium percent elapsed: 50.00

	Leg. Approved Budget	Total Expenditures	Total Projections	Total Forecast	Budget Variance
General Fund					
Administrative Services Division	14,189,812	6,180,965	5,896,147	12,077,112	(2,112,700)
Special Progs., Contracts, & Distr.	380,436	424		424	(380,012)
Appellate Division	24,818,312	10,825,077	9,166,593	19,991,670	(4,826,642)
Compliance, Audit, & Perf. Division	4,904,659	1,494,333	3,057,793	4,552,126	(352,533)
Court Mandated Expenses	39,567,492	12,759,904	35,863,163	48,623,067	9,055,575
Executive Division	3,743,464	1,654,954	1,576,039	3,230,993	(512,471)
Juvenile Division	40,965,293	23,835,434	27,766,272	51,601,706	10,636,413
Non-Routine Expenses	50,511,590	29,767,445	14,991,120	44,758,565	(5,753,025)
Trial Criminal Division	258,915,757	113,462,758	124,198,871	237,661,629	(21,254,128)
Total General Fund	437,996,815	199,981,294	222,515,997	422,497,292	(15,499,523)
Other Funds					
Court Mandated Expenses	4,449,667	1,435,380	0	1,435,380	(3,014,287)
Juvenile Division	14,000,000	2,148,871	(2,148,871)	0	(14,000,000)
Total Other Funds	18,449,667	3,584,252	(2,148,871)	1,435,381	(17,014,286)
General Fund	437,996,815	199,981,294	222,515,997	422,497,292	(15,499,523)
Other Funds	18,449,667	3,584,252	(2,148,871)	1,435,381	(17,014,286)
Total Funds	456,446,482	203,565,546	220,367,126	423,932,672	(32,513,810)

Leg. Approved Budget: Oregon Laws 2021, Chapter 444; Oregon Laws 2021, Chapter 669; Oregon Laws 2022, Chapter 110; and June 13, 2022, Joint Emergency Board meeting

Total Expenditures: Recognized expenditures from July 1, 2021, to June 30, 2022

Total Projections: Management's estimate of expenditures from July 1, 2022, to June 30, 2023

Total Forecast = *Total Expenditures* + *Total Projections*

Budget Variance (Savings) = *Total Forecast* - *Leg. Approved Budget*

Note: Court Mandated Expenses are pass through dollars to the Oregon Judicial Department which are not a part of the PDSC operating budget, except for approximately \$800,000. The \$32 million total fund ending balance is realistically more like \$29 million in total funds. The \$14 million in the Juvenile Division is Title IV-E funding that has not been released to the PDSC and although we don't know the timing of this action, we are continually working to make this happen.

Contract Update

The purpose of the below charts is to provide a reconciliation of where the agency is currently at with the contracts at the period ending June 30, 2022, and where there is additional funding that could be used to fund the agency's proposed plans to address the unrepresented individual's crisis. The first chart considers the actual contracted dollars against the LAB, and without the consideration of the Emergency Fund dollars, you will have approximately \$14,567,432 that is associated with any contract in the Adults and Juvenile trial programs. In PCRP there is a \$7,587,357 budget to actuals overage which can be fixed once the Title VI-E is received.

Contract Summary	Trial Adult	Trial Juvenile	PCRP	Total
General Fund Appropriations	212,310,921	46,604,836	40,965,293	299,881,050
General Fund Expenditures (June 30, 2022) (minus)	92,564,862	20,423,296	23,835,434	136,823,592
Emergency Funding (minus)	10,518,383	2,281,617		
General Fund Remaining (w/o e-funding)	109,227,676	23,899,923	17,129,859	150,257,458
Contracts Forecast (fiscal year ended June 30, 2023) (minus)	97,321,787	21,238,470	24,717,216	143,277,473
General Fund Remaining	11,905,889	2,661,453	(7,587,357)	6,979,985
Other Funds (IV-E)	-	-	14,000,000	14,000,000
Total Available	11,905,889	2,661,453	6,412,643	20,979,985

For the period ending June 30, 2022, below is the status of the Emergency Funding showing that as of the period end date the Agency had expended \$474,600 to vendors. The Agency's contract process is committed to fund attorneys who meet the criteria for these dollars. The 2022-23 contracts have earmarked approximately \$8,000,000 to increase attorney capacity.

Emergency Fund Summary	
General Fund Appropriations	12,800,000
General Fund Expenditures (June 30, 2022) (minus)	474,600
Contracted Dollars (minus)	7,939,232
General Fund Remaining	4,386,168

The above information suggests that there is approximately up to \$18.9 million dollars (\$11,905,889 + \$2,661,453 + \$4,386,168) that could be used towards funding other agency initiatives. The agency advises against using all available dollars, as there have been several change amendments, capacity additions, and overages in court mandated expenses this is currently projected to exceed its budget by \$9 million with more expected to come. The agency financials have some growth capacity built in the projections, which is why these numbers are different.

Administrative Functions / Operations

For the period ending June 30, 2022, there is an overall positive variance of \$8,184,358 spread among these five currently non-program appropriations. At the mid-point of the biennium this variance may appear healthy however the savings will be eroded as positions are filled and other expenses are recorded. The agency expects to maintain some savings that maybe used to offset other program related appropriations that may exceed their statutory authority.

Administrative Services Division					
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	8,873,673	4,186,344	4,269,872	8,456,216	(417,457)
Services & Supplies	5,316,139	1,963,599	1,626,275	3,589,874	(1,726,265)
Capital Outlay	0	31,022	0	31,022	31,022
Total Funds	14,189,812	6,180,965	5,896,147	12,077,112	(2,112,700)

Special Progs., Contracts, & Distr.					
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	110,456	0	0	0	(110,456)
Services & Supplies	269,980	424	0	424	(269,556)
Total Funds	380,436	424	0	424	(380,012)

Appellate Division					
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	24,444,754	10,754,932	11,200,127	21,955,059	(2,489,695)
Services & Supplies	373,558	70,145	(2,033,534)	(1,963,389)	(2,336,947)
Total Funds	24,818,312	10,825,077	9,166,593	19,991,670	(4,826,642)

Compliance, Audit, & Perf. Division					
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	4,424,872	1,314,957	2,554,039	3,868,996	(555,876)
Services & Supplies	479,787	179,376	503,754	683,130	203,343
Total Funds	4,904,659	1,494,333	3,057,793	4,552,126	(352,533)

Executive Division					
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	3,175,026	1,265,108	1,486,526	2,751,633	(423,393)
Services & Supplies	568,438	389,847	89,513	479,360	(89,078)
Total Funds	3,743,464	1,654,954	1,576,039	3,230,993	(512,471)

Program Support Services

For the period ending June 30, 2022, Court Mandated Expenditures are projected to exceed its statutory general fund authority by \$9,055,575, but it is worth noting that this appropriation has always hinted at overspending. There is a possibility that this variance could be eroded in the second half of the biennium as expenditures on average came in a little below projections. Expenditures are projected to be even higher in the second half of the biennium because of the anticipated increase in hourly contractors that will be needed to assist with the unrepresented clients. While there are other funds displayed in this chart, they are not for our agency use aside the \$800K that stays within the agency.

Court Mandated Expenses					
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	39,567,492	12,759,904	35,863,163	48,623,067	9,055,575
Other Funds					
Services & Supplies	4,449,667	429,194	0	429,194	(4,020,473)
Special Payments	0	1,006,186	0	1,006,186	1,006,186
Total Funds	44,017,159	14,195,284	35,863,163	50,058,447	6,041,288

For the period ending June 30, 2022, Non-Routine Expenses or Case Support Services are currently projecting a positive variance of \$5,753,025. While this may appear promising, this appropriation has a very unique volatility associated with how the agency realizes expenditures. In a real sense this savings could evaporate very quickly as there has not been significant change to the outstanding liability issue.

Non-Routine Expenses					
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	50,511,590	29,767,445	14,991,120	44,758,565	(5,753,025)
Total Funds	50,511,590	29,767,445	14,991,120	44,758,565	(5,753,025)

Program Delivery

For the period ending June 30, 2022, Trial Criminal Division is currently projecting a positive variance of \$21,254,128, that is made up of several components. The variance contains money that is not associated with any specific contract, and additionally it contains the entire Emergency Fund Amount minus some expenditures. The projections and the variance in the agency financials will not match the contract summary charts, as the agency needs to use conservative budget practices when constructing and executing the agency budget. Projections are a moment in time and are expected to increase as contracted firms add capacity and raise their expenditures. The agency financials would suggest that there is approximately \$12,614,896 available for agency initiative once the adjustments for the emergency funding are calculated.

Trial Criminal Division					
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	258,915,757	113,462,758	124,198,871	237,661,629	(21,254,128)
Total Funds	258,915,757	113,462,758	124,198,871	237,661,629	(21,254,128)

For the period ending June 30, 2022, Juvenile Division Expenditures are projected to exceed its statutory general fund authority by \$10,636,413. To address this problem there is \$14,000,000 of currently empty other fund limitation. If realized this money could offset the potential overage(s) and/or possibly provide additional General Fund to either expand the PCRP program in the future or used on a onetime basis to offset other expenditures within agency wide budget. The projections and the variance in the agency financials will not match the contract summary charts, as the agency needs to use conservative budget practices when constructing and executing the agency budget. Projections are a moment in time and are expected to increase as contracted firms add capacity and raise their expenditures.

Juvenile Division					
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	40,965,293	23,835,434	27,766,272	51,601,706	10,636,413
Other Funds					
Services & Supplies	14,000,000	2,148,871	(2,148,871)	0	(14,000,000)
Total Funds	54,965,293	25,984,305	25,617,401	51,601,706	(3,363,587)

Attachment 4a



July 27, 2022

Via eMail

Per Ramfjord, Chair
Thomas Christ
Mark Hardin
Alton Harvey
Lisa Ludwig
Paul Solomon
Chris Thomas
Steven Wax
Max Williams

Re: Office of Public Defense Services revised draft “Immediate and Near-Term Plan to Address Unrepresented Clients”

Chair Ramfjord and Members of the Public Defense Services Commission,

I appreciate the Commission’s discussion and evaluation of the 4-Part Proposed Plan presented by OPDS at the meeting on July 22, 2022 (July 22 Proposed Plan). I understand OPDS is continuing to revise and refine its plan and that new draft plan (“Plan”) is to be available sometime later today or early tomorrow morning.

Given the new Plan’s anticipated release, I am concerned about whether there will be sufficient information and time for its consideration in full at our scheduled meeting on July 29. Before the Commission can approve a detailed plan, Commissioners will want to ensure that it receives (1) wide distribution, (2) stakeholder review and feedback, (3) OPDS review and evaluation of any solicited feedback, and (4) an opportunity to the Commission to consider a plan that has broad stakeholder support.

Therefore, I am writing to urge that PDSC receive and discuss but, with two exceptions, not make decisions on the Plan until further collaboration and consensus occurs. The two decisions I think we can make relate to Proposals 1 and 3 from the plan that was previously presented and are outlined below.

Proposal No. 1: Match federal rate (\$158) for in custody clients

The July 22 Proposed Plan included a proposal, Proposal No. 1, that would lift the current hourly rate on payment to providers—but only for providers who do not currently contract with OPDS and only for defendants who are in-custody. Proposal No. 1 included a “soft-cap” per case with leave to exceed for good cause (e.g., case goes to trial) and a limited duration of up to 12-months.

While Proposal No. 1 shows promise, there are some important questions, and it may be difficult to obtain the information necessary to reach consensus on how to resolve them.

The questions include the following:

- How many lawyers (in hours) will it take to provide representation for all those who are currently entitled to counsel and who are in custody?
- How much would that cost?
- Should OPDS also provide hourly payments for defendants who are not in custody, perhaps focusing on those who are charged with felonies or subject to dependency or TPR petitions?
- How much would that cost?
- Should there be a differential in the hourly rate based on case complexity (different rates for misdemeanors, for example)?
- Should OPDS propose hourly arrangements with providers who contract with OPDS at less than 1.0 MAC if they are willing to fulfill their contractual obligations and take on additional work?
- Are there other alternatives that would provide more capacity at less cost?

Without deciding those questions, the Commission could decide to immediately lift the current cap on payment to providers meeting the above requirements, and give OPDS discretion to find those providers and pay them up to the federal rate of \$158.00/hour to fulfill constitutional responsibilities. Doing so would provide immediate capacity and give OPDS and stakeholders time to discuss the questions outlined above. It would allow for narrow, but immediate, relief while also providing time for additional data and analysis.

As noted during the last Commission meeting, any time OPDS must make payments to non-contracted providers at an hourly rate, the Commission and OPDS risk exceeding the budget. However, if such payments are not made, the Commission and OPDS risk failing to meet their constitutional obligations.

I therefore recommend that the Commission lift the current hourly rate for the time necessary to obtain additional information and make the calculations and adjustments to better frame a more concrete legislative proposal.

The July 22 Proposed Plan is limited to providers who are not currently OPDS contractors, meaning that current less than 1.0 MAC contractors would not be eligible. While there may be sound reasoning for this decision, I would encourage OPDS to investigate whether, by permitting payment of a higher rate to current providers working at less than 1.0 MAC, OPDS may be able to identify additional attorney capacity. The Proposal could be structured to address concerns about contract providers declining contract work in favor of the hourly rate. This is an all-hands-on-deck moment, and I hope OPDS will work with providers to see whether it can use all extended hands.

Proposal No. 3: Fully fund supervision, training, investigation at public defender offices

The July 22 Proposed Plan also included Proposal No. 3, that provided increased funding for supervision, training, and investigation to nonprofit public defense offices. I understand that Proposal No. 3 was limited to nonprofit public defense offices due to (1) their supervisory and training capacity, (2) OPDS's ability to oversee such training and supervision, and (3) their interest in retaining investigation "in-house." And I understand that the July 22 Proposed Plan did not extend such funding to the functional equivalent of nonprofit public defense offices (e.g. consortia, law firms) due to the OPDS view that (1) the current consortia structures do not allow for OPDS oversight of the training and supervision and (2)

consortia members prefer to not have investigators “in-house” and would prefer to do hiring on an hourly basis. I also understand that some nonprofit public defense offices are depending on the proposed funding to sign and/or fulfill contractual obligations.

Proposal No. 3 also shows promise, but understanding the anticipated implementation and effectiveness is useful as Proposal No. 3 does not clearly articulate whether it will:

- Increase salaries and, if so, for which employees;
- Increase the number of attorney positions and/or staff positions;
- Make it more likely that nonprofit public defense offices will stabilize and maintain current attorney and staffing levels, including filling vacant positions;
- Allocate supervisor resources to improve the quality of representation and maximize effectiveness;
- Increase the attorney capacity of nonprofit public defense offices;
- Have supervisors carry a caseload;
- Have supervisors train or coordinate certified law students; or
- Result in promoting case-carrying attorneys, and, if so, include plans for how the case-carrying work will be backfilled.

If Proposal No. 3 is included in the new draft Plan, the Commission may want to consider it, but, should the Commission do so, I hope that it will address the listed questions before making a decision to approve it. I am writing this before we receive the new draft Plan and it may in fact answer some of those questions. I also hope that the Commission will obtain clear information about the cost of this Proposal and whether OPDS has funds on hand to cover it. I understand the Proposal No. 3 will cost approximately \$7.5 million and that amount is in the current budget. If that cost assessment is correct, then legislative approval of this strategy may not be necessary. PDSC could approve the contract improvements on its own, but would want to acknowledge that spending for this purpose could foreclose or limit spending for other purposes.

In Summary

While some additional information could strengthen Proposal Nos. 1 and 3 and make their purposes and expected benefits more transparent, given the information available, the efforts reported by OPDS, and the potential outcomes suggested by OPDS, both appear to offer immediate results – additional attorney capacity to ensure representation for unrepresented individuals who are facing criminal prosecution and are constitutionally entitled to counsel—and they are worthy of consideration with the caveats set out above.

Further Collaboration and Plan Development is Necessary

I have made the recommendation set out above as a way to address the immediate need before PDSC does the more detailed work necessary to obtain support for broader legislative action. A fuller proposal that can be submitted to and approved by the legislature is necessary, but that will require more work and support from the provider community. I recommend that OPDS bring a small group together early next week, that that group include providers, OCDLA, and the courts, and that that group gather additional

suggestions, and conduct continued evaluation, data-gathering, and collaboration to arrive at a broadly supported, more fully developed plan. Having those that are affected by the plan engage in that way will:

- Increase understanding of how any adopted proposal(s) address the immediate, mid- and long-term;
- Strengthen planning and allow for effective implementation of any proposal(s) pending adoption; and
- Increase the likelihood of receiving sustained legislative support.

The letters that I, along with OCDLA and Rob Harris, submitted to PDSC in advance of the July 22, 2022 meeting will provide a good starting point for this group as they frame questions and offer additional suggestions and considerations. Engagement in meaningful dialogue with stakeholders and collaborative and transparent work will strengthen the Commission's and OPDS' efforts to stabilize and improve the public defense system in the immediate, mid-, and long-term.

I want to raise an additional point that I think is important to understand. The courts have been asked to provide data about the number of unrepresented defendants in our courts, and OJD has done its best to respond to those requests on very short timelines. This requires building out new data sets; never before have courts been asked to or needed to report on the number of unrepresented individuals – it simply wasn't something that happened in Oregon. While court system data can provide a snapshot, there are daily fluctuations and local business processes that present challenges. With continued collaborative work we can develop standardized business processes that can be implemented statewide to allow us to have more immediate access to accurate data. But, even with more refinement needed, no one can disagree that, at any one time, there have been over 30 people in custody and over 500 cases with defendants out of custody without the lawyers to which they are entitled. OJD staff is working collaboratively with OPDS to develop joint understandings and common business processes that will support continued data refinement, but further refinement will not change the need for immediate action.

In closing, I want to express my sincere appreciation for courts, OPDS staff, and public defense attorneys who are working every day to protect and fulfill the constitutional right to counsel. I continue to ask that we keep our focus on the unrepresented individuals who are facing criminal prosecution. I know they are our common concern.

Sincerely,



Chief Justice Martha L. Walters,
Oregon Supreme Court

cc: Stephen Singer, Executive Director

Attachment 4b



Date: July 28, 2022
To: Per Ramfjord, Chair, Public Defense Services Commission
Members, Public Defense Services Commission
From: Steve Singer, Executive Director, Office of Public Defense Services
Re: OPDS Plan to address Unrepresented Clients

I. Executive Summary

The problem with unrepresented clients is a classic “wicked problem.” This means that the problem presents unique challenges because the public defense delivery system is complex and involves competing interdependencies and interests. It also means that there can be no single solution. A silver bullet simply does not exist. To be viable, a multifaceted approach that takes into account the structure and incentives that characterize the public defense system is required.

The agency’s four-part proposal does just that: it targets the problems that have given rise to unrepresented clients from multiple angles, it accounts for how the public defense delivery system is currently structured, and it is responsive to the incentives and disincentives that that system creates. In other words, it is grounded in the real-world challenges that have resulted from the chronic underfunding and under-resourcing of Oregon’s public defense system for decades. It accounts for the fact that lawyers that serve our public defense system are overworked and underpaid. It takes into account that Oregon chooses to deliver public defense services by contracting in the free market with independent contractors and this has meaningful and lasting impacts on the quantity and quality of services received by clients. It confronts the reality that no single strategy will suffice because it is the combination of those factors that have led to a shortage of lawyers and to defendants sitting in jail without representation.

The component parts of this proposal have been vetted with the Legislative Fiscal Office, leadership of the Joint Interim Committee On Ways and Means, the Judicial Department, the Three-Branch Work Group, the Oregon Criminal Defense Lawyers Association, Oregon Defense Consortia Association, and Public Defenders of Oregon.

II. Context for understanding the unrepresented client problem

Oregon Office of Public Defense Services

198 Commercial St. SE, Suite 205, Salem, OR 97301 • 503.378.2478 • www.oregon.gov/opds

A. Scope of unrepresented client problem

There will always be a certain percentage of individuals across Oregon who qualify or may qualify for court-appointed counsel but lack counsel at any point in time. There are multiple reasons for that. A person may have not have yet applied for court-appointed counsel or may be awaiting arraignment. A person may have failed to appear at arraignment. A person may be unrepresented due to a previously appointed attorney having an ethical conflict or due to the court approving withdrawal due to breakdown in the attorney-client relationship. A person who has been qualified for court-appointed counsel may also be without counsel because providers in the jurisdiction do not have capacity to take additional cases, and the trial court cannot find alternate counsel to represent the person.

Trial court staff seek OPDS's assistance in finding counsel for a small subset of those cases. Specifically, trial court staff seek OPDS's assistance in finding court-appointed counsel when the court has been unable to secure counsel for a person with an active case.¹ The list maintained by OPDS includes only those clients who have active cases in the trial court and for whom the trial court, due to the capacity of local providers or because of multiple attorney withdrawals, cannot find court-appointed counsel to represent the person.

As of July 28, 2022, OPDS data indicates that there are 37 in-custody criminal defendants in Coos, Deschutes, Douglas, Klamath, Lane, Multnomah, Wasco, and Washington who are unrepresented by counsel and for which

¹ For this reason, the OJD data does not accurately reflect the scope of the unrepresented client problem. The OJD data includes clients who have not yet applied for court-appointed counsel, clients who have yet to be arraigned and have counsel appointed, and potentially clients whose cases are in warrant status. Distinguishing those groups for purposes of identifying the scope of the "unrepresented client problem" matters. It is simply too early to tell whether counsel cannot be found for people who have yet to be verified as eligible for court-appointed counsel or have yet to be arraigned and have counsel appointed. Similarly, it may not be necessary to secure counsel for accused individuals currently on warrant status because it is unknown if and when they will come into the system and whether counsel will be unavailable at that time. To illustrate, although OJD data indicates that there are 191 out-of-custody criminal defendants who do not have counsel appointed as of July 19, 2022, in Jackson County, on July 25, the agency was able to confirm that the Jackson County Circuit Court is only seeking OPDS's assistance in securing counsel in two criminal cases, both of which involve in-custody clients with active cases. Likewise, although the OJD data indicates that there are 234 out-of-custody clients needing counsel in Clackamas, the agency confirmed on July 27 that the trial court is not seeking OPDS's assistance to find counsel in any of those cases.

the trial court has been unable to secure counsel.² Of those, 12 are unrepresented due to (at least in part) the local provider(s) having an ethical conflict or due to a breakdown in the attorney-client relationship. OPDS data shows that an additional 91 out-of-custody criminal defendants in Coos, Curry, Douglas, Hood River, Lane, Jackson, Morrow Marion, and Multnomah Counties for which trial court staff are seeking OPDS assistance in finding counsel.³ Finally, OPDS is looking for counsel for two juvenile delinquency clients. Taken together, OPDS is currently looking for counsel for clients in approximately 130 adult criminal and juvenile delinquency cases.⁴

B. *What is already in place to address the problem of unrepresented clients: the emergency-funded positions*

In February 2022, the legislature approved spending \$12.8 million to help address the problem of unrepresented clients. Between March and June 30, 2022, entities within the crisis jurisdictions, Lane, Marion, Multnomah, and Washington, added an additional 7.5 lawyers and 4 non-attorney professionals. During the '22/23 contracting process, providers identified an additional 4.4 attorneys to take emergency-funded work starting July 1, 2022, and another 16 lawyers who will begin work over the next couple of months.

In sum, the majority of the emergency-funded lawyer positions are coming online between now and the fall. Under current PDSC standards, the addition of those new lawyers translates into the capacity to take up to approximately 4,520 misdemeanor cases over the course of the next year.⁵ That new capacity can be specifically—and cost-effectively—targeted to those misdemeanor cases for which counsel is currently lacking.⁶ The addition of these new lawyers will also allow providers to “up-qualify” attorneys currently handling only misdemeanor cases to take minor felony appointments, creating a “trickle-up” effect that can also help address the existing capacity issues contributing to the unrepresented client problem in those higher-level caseloads.

² See Table 1, Appendix. Additionally, as of July 1, 2022, Multnomah County reported 511 individuals who have not been formally arraigned on charges but who nonetheless are entitled to court-appointed counsel.

³ See Table 2, Appendix.

⁴ OPDS is also working to locate counsel for approximately 41 juvenile dependency clients in Jackson County and for 22 clients in 26 habeas corpus cases.

⁵ Because the 16 new lawyers are misdemeanor lawyers who need to be onboarded and trained after their hire dates, OPDS calculated their capacity at 75% of a regular 1.0 MAC attorney caseload (200 cases).

⁶ Assuming a misdemeanor-qualified attorney handles 300 cases per year, the cost per misdemeanor case is approximately \$653. OPDS caseload standards contemplate that a misdemeanor lawyer will receive approximately 25 new appointments per month.

C. Understanding the '22/23 contract model and statewide capacity

For the first time starting in 2021, the Public Defense Services Commission implemented a contract model that included caseload standards. That policy continues—albeit in improved form—in the '22/23 contracts. This is a significant policy reform that has implications for understanding the structural environment in which the agency is operating in and the unrepresented client problem.

The PDSC's decision to contract for maximum attorney caseloads is a step towards removing the problematic incentive that was inherent in the case-credit system for attorneys to take on more clients than they could ethically represent. Maintaining this reform is vital to improving the sustainability and quality of the public defense services delivery system. However, the adoption of caseload standards necessarily impacts the ability of the agency to cover projected caseloads. This is important: it means that the agency's ability to cover projected caseloads is contingent on the number of public defenders it can contract with and what percentage of a maximum attorney caseload each of those attorneys agrees to take.

That reality is illustrated by the projected caseloads covered by the '22/23 contracts. As reported at the June 23, 2022, PDSC meeting, the agency calculated that it would need a total of 636 attorneys handling 1.0 maximum attorney caseloads to cover the criminal, juvenile, and post-conviction/habeas corpus cases it forecasted for '22/23. As of July 28, 2022, the agency was able to contract for a total of 608.04 maximum attorney caseloads.⁷ OPDS projects that the contracted attorney capacity will be insufficient to meet the anticipated criminal caseload in 29 counties and the anticipated juvenile caseload in 16 counties.⁸

D. Contracts are the most cost-effective short- and long-term solution to capacity issues across the state.

Under the limitations of the current delivery system, contracts are the most cost-effective solution to addressing capacity issues—both short-term and long-term—across the state. There is simply no comparison.

Under the current reimbursement schedule and caseload standards adopted in the '22/23 contracts, the agency pays roughly \$650 for each misdemeanor case, \$1,250 for each minor-felony case, \$1,570 for each major felony cases, \$4,805 for each Ballot Measure 11 case, and \$37,740 for each

⁷ On June 23, 2022, the PDSC approved contracts for a total of 606.79 MAC.

⁸ Charts 1 and 2, Appendix.

murder case, not including costs for co-counsel.⁹

Paying attorneys hourly is considerably more expensive. Assuming lawyers spend the number of hours that the ABA found attorneys should be devoting on average to their cases at the standard hourly rate of \$75 per hour,¹⁰ the agency would pay approximately between \$1,670 and \$2,775 for each misdemeanor case, \$2,985 for each minor-felony case, \$3,580 for each major felony case, \$11,170 for each Ballot Measure 11 case, and \$41,435 for each murder case, not including costs for co-counsel. Even if assuming that lawyers spend a third fewer hours than the ABA recommends, contracts are still significantly more cost-effective. But the current reality is that most attorneys are generally unwilling to agree to represent clients at \$75 per hour. At the going rate of \$105 per hour, those amounts increase substantially.¹¹ When these amounts get multiplied across the entire system, the cost of providing representation at an hourly rate becomes prohibitive.

Although there are undeniable financial benefits for bringing cases under contract, there are also significant benefits in terms of quality. The agency does not have mechanisms in place for ensuring that hourly attorneys either devote sufficient time to their cases or that the services that they do perform meet minimum standards for quality. Currently, the best assurance that public defense clients are receiving quality services is through the administration, supervision, and training provided by the entities with which the agency contracts.

III. Addressing unrepresented clients in the immediate and near term

A. Match the federal CJA rate of \$158 per hour for in-custody clients

Agency's proposal: The agency proposed matching the federal Criminal Justice Act (CJA) panel rate of \$158 per hour for in-custody criminal and delinquency cases. The agency would impose a \$10,000 "soft cap,"

⁹ This is a rough calculation for multiple reasons, including that it presupposes that the attorney who is taking the case is qualified at the lowest-qualification necessary to provide representation. Of course, attorneys qualified at the murder rate may represent clients in misdemeanor, minor felony, major felony, or a Ballot Measure 11 cases, and the corresponding cost per case to the agency would be slightly higher. These calculations do not account for Jessica's Law cases. These figures also amply demonstrate why contracts are becoming increasingly less attractive to many providers, as they do not come close to paying market rates for attorney services.

¹⁰ ABA Standing Committee on Legal Aid and Indigent Defense and MossAdams, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards* (2021).

¹¹ The costs increase to approximately \$2,340 to \$3,880 for each misdemeanor case, \$4,175 for each minor-felony case, \$5,010 for each major-felony case, \$15,640 for each Ballot Measure 11 case, and \$58,010 for each murder case.

which may be exceeded for good cause, and limit the duration of this program to 6, 9, or 12 months.¹²

What we heard: In general, the feedback we received coalesced around the following themes¹³:

- *Agreement on raising the non-contract attorney hourly rate for appointment of in-custody unrepresented persons to the federal CJA rate;*
- *Desire to expand proposal to apply to some or all out-of-custody criminal cases;*
- *Desire to expand proposal to allow contract attorneys at 1.0 Maximum Attorney Capacity (MAC) to accept hourly appointments;*
- *Desire to expand proposal to allow contract attorneys at less than 1.0 MAC to accept hourly appointments;*
- *Some interest in a scaled hourly attorney rate for different case types.*

Agency's recommendation: The agency recommends that the PDSC approve the agency's original proposal, which would limit the \$158 rate to attorneys who are not currently providing public defense services and to providing representation to in-custody clients.¹⁴

This allows the agency to attract *new* attorney capacity with the \$158 rate. Critically, by limiting this proposal to in-custody clients and to providers who do not currently provide public defense services, it avoids the

¹² Under OPDS's proposal, the CJA rate would continue for the full duration of the case.

¹³ OPDS also received feedback to expand the agency's proposal to address unrepresented clients with dependency and habeas cases. Because the issues giving rise to the unrepresented dependency clients are almost exclusively confined to one jurisdiction, Jackson County, the agency does not believe that a one-size-fits-all statewide approach is appropriate at this time. OPDS has significant juvenile dependency expertise in its Juvenile Trial Division. Those individuals have been tasked with addressing the unique problem in Jackson County and, at the same time, are evaluating whether this problem is likely to spread to other jurisdictions and, if so, developing proposed solutions.

¹⁴ See Table 3, Appendix (budget analysis). The agency's initial cost estimates were based on a starting case number of 39 in-custody unrepresented clients and anticipating an additional four clients each month. The total \$2,047,467 projected cost for the in-custody unrepresented clients is an average of estimated attorney time at the higher hourly rate of \$158.00. OPDS recognizes that there will be additional costs related to the execution of this plan with respect to increased workload on its accounts payable staff and contract analysts and will result in increased reporting requirements.

risk that current public defenders will leave the system and cripple the agency's capacity to cover forecasted caseloads.

As explained previously, the agency currently does not have sufficient attorney capacity under contract to cover the forecasted caseloads for the '22/'23 contract cycle. The single best mechanism to cover forecasted need—and safeguard against the unrepresented client problem resurging perennially—is by increasing the percentage of the forecasted caseload covered under contract. To do that, it is essential that the agency create incentives for attorneys to *increase* the amount of their contracted caseloads statewide and retain those attorneys in the public defense system. To do this, the agency proposes increasing salaries for all providers who agree to 1.0 MAC, as described in more detail in Section B. below.

This approach also allows the PDSC to realize the full benefit of the emergency-funded positions and the implementation of the agency's other proposals before taking steps that could undermine or curb the effectiveness of those other reforms. Should the unrepresented client problem persist into the fall, the PDSC could then decide to implement one or more of the options below.

Suggested alternative approaches:

1. *Option 1:* Allow current public defense providers, who have less than a 1.0 MAC, to accept a limited number of non-contract hourly case appointments for any in-custody criminal and juvenile delinquency cases at the CJA Panel rate of \$158.00 per hour following OPDS review of the providers' open caseload (including public defense clients and non-public defense cases or legal work).

Analysis: This option allows attorneys who have less than a 1.0 MAC to devote a percentage of their caseloads not currently devoted to public defense cases under contract to do hourly work at the CJA rate of \$158 per hour for the in-custody unrepresented clients. This option increases the number of lawyers in the system available to the unrepresented in-custody population.

One significant risk of this option is that it creates an incentive for the public defense provider carrying both hourly and contracted cases to prioritize their hourly cases over their contracted ones. It essentially creates two different classes of public defense clients served by the same set of providers. It is not clear that it is necessary to take on this risk given the relatively small number of unrepresented clients in custody. It is for these reasons that the agency is not recommending this approach.

2. *Option 2:* Expand agency's proposal to allow current public defense providers, whose caseloads are less than 1.0 MAC, to take a limited number of non-custody **felony cases** at the rate of \$115 for minor felony (with a soft cap of \$3,500) and \$130 for major felony (with a soft

cap of \$5,000) following OPDS Trial Division review of the providers' open caseload (including public defense clients and non-public defense cases or legal work).

Analysis: This approach attempts to balance the need to address the out-of-custody unrepresented client population while maintaining PDSC's goal of providing quality representation to all court-appointed clients. Moreover, it diminishes the risk of creating an incentive for attorneys currently under contract from reducing or leaving their contracted public defense work to accept the hourly non-contract case assignments. Finally, as with the agency-recommended proposal, it allows the PDSC to realize the full effect of the emergency-funded positions before deploying additional resources to find counsel for clients with misdemeanor cases.

The agency has not been able to determine the projected cost of addressing this subset of unrepresented clients. However, based on OPDS's current unrepresented client data, there are approximately 78 adult out-of-custody criminal defendants with felony charges and approximately 2 juvenile delinquency clients for whom the agency is currently seeking counsel.

3. *Option 3:* Expand agency's proposal to allow current public defense providers, whose caseloads are less than 1.0 MAC, to take a limited number of adult-criminal cases, **including misdemeanors**, at the rate of \$105 for misdemeanor cases (with a soft cap of \$2,000), \$115 for minor felony cases (with a soft cap of \$3,500) and \$130 for major felony cases (with a soft cap of \$5,000), following OPDS Trial Division review of the providers' open caseload (including public defense clients and non-public defense cases or legal work).

Analysis: This option has the same principal advantages and disadvantages as the previous option. The most significant disadvantage of this option is the additional costs of paying for misdemeanor cases on an hourly basis before realizing the full benefit of the emergency funded positions on this caseload.

B. Increase reimbursement rate for 1.0 MAC attorneys

Agency's proposal: Increase the reimbursement rate for all non-PCRP trial-level attorneys who have contracted for a 1.0 MAC, to promote retention of current attorneys, to recruit new lawyers into public defense, and to incentivize lawyers with a less than 1.0 MAC to increase to a 1.0 MAC.

What we heard: There was widespread support for this proposal, and the only modifications suggested involved expanding on it.

Agency's recommendation: OPDS recommends a 20% increase to the

reimbursement rate for contracting attorneys with a trial level, non-PCRP 1.0 MAC.¹⁵ Attorneys currently contracting for less than a 1.0 MAC would receive the increased reimbursement rate for the trial level, non-PCRP portion of their caseload only if the lawyer increased their contract to a 1.0 MAC.

Adoption of this proposal is critical if the PDSC elects to adopt any form of the hourly-rate increase proposal in order to retain current contract attorney capacity.

The vast majority of 1.0 MAC attorneys practice in areas with higher rates of unrepresented clients. Increased compensation will greatly help with retention¹⁶ and recruitment¹⁷ in those locations, likely attracting attorneys or

¹⁵ It would cost \$11.43 million to provide the recommended 20% increase to the reimbursement rate for attorneys contracting for a 1.0 MAC from October 2022 through the end of the biennium. However, this amount does not include the increased cost of lawyers with a less than 1.0 MAC increasing to a 1.0 MAC. OPDS has been working on a policy option package requesting increased reimbursement rates for all providers as part of its long-term plan to improve the quality of representation in Oregon public defense. However, any funding that is obtained to fund all or part of this proposal would not be part of the agency's baseline budget for the 2023-2025 budget, so any increase in funding would have to be through the regular legislative process.

¹⁶ A survey of the non-profit public defender offices regarding the attorneys who have left the office shows a startling trend: **Intermountain Public Defenders** reports that their office was fairly stable until 18 months ago. In 18 months, IPD has lost 11 attorneys. The office usually has approximately 11 attorneys and currently has only four. **Southern Oregon Public Defenders** has lost six lawyers in the last 12 months. Historically, the office would average three attorneys a year leaving the office, so the pace has doubled in the last 12 months. **Southwestern Oregon Public Defender Services** has lost four lawyers since January 2021. **Public Defender of Marion County** lost 9 lawyers in the last 12 months. **Deschutes Defenders** has had 5 lawyers leave since the beginning of 2021. **Metropolitan Public Defender** has had 12 attorneys resign in the last 8 months. **Elkhorn Public Defenders** has had 5 resignations in the last 18 months. **Umpqua Valley Public Defender** has had 5 attorneys resign in the last 6 months. **Multnomah Defenders, Inc** has had 8 lawyers leave in 2022. **Public Defender Services of Lane County** lost 6 attorneys in the last 18 months. Carl Macpherson, Executive Director of Metropolitan Public Defender has been told by many lawyers leaving his office that they would consider staying if MPD could pay them \$20,000 to \$30,000 more per year.

¹⁷ A disturbing problem that several non-profit public defense administrators have mentioned is the lack of applicants for the posted vacancies. Justin Morton, the Director at Intermountain Public Defenders wrote, "Attorneys leaving, while a problem, is not the end of the world. The real issue is that it has become increasingly difficult to hire new attorneys. We just can't replace the ones that leave. And that is what makes things scary. Because at some point, if enough attorneys leave, then a firm like IPD, which has been around for over 30 years, will cease to exist." Other administrators have mentioned getting one applicant—or no applicants—for posted vacancies.

new law graduates from in and out of state to increase capacity.

This proposal will also increase capacity across the state by providing a significant incentive for attorneys who are currently under contract at less than 1.0 MAC to increase to 1.0 MAC. Attorneys contracted for 1.0 MAC provide the highest capacity for public defense services, and frequently do so more efficiently than those providers contracted for less than 1.0 MAC. Payments made to providers who contract for 1.0 MAC go entirely to the provision of public defense services, whereas it is significantly more difficult to monitor and track how payments made to other contractors—who often spend the balance of time on private practice cases—are used.

Finally, this proposal aligns with the PDSC's long-term goals to address structural problems with the current public defense system.

Suggested alternative approaches:

1. *Option 1:* Expand OPDS's proposal to apply the reimbursement rate increase to staff investigators and case managers.
2. *Option 2:* Applying the reimbursement to PCRP contractors to build capacity for juvenile cases.

Analysis: The cost of each of these suggested modifications and the recommended plan are listed in the following chart:

Payments for Providers with 1.0 MAC						
	Number of Attorneys	Total Rate	10%	15%	20%	25%
Adult Trial Criminal	196	\$ 41,956,600	\$ 4,195,660	\$ 6,293,490	\$ 8,391,320	\$ 10,489,150
Juvenile Trial Criminal	37	\$ 8,011,450	\$ 801,145	\$ 1,201,718	\$ 1,602,290	\$ 2,002,863
PCRP	41	\$ 10,221,587	\$ 1,022,159	\$ 1,533,238	\$ 2,044,317	\$ 2,555,397
1.0 MAC Across Adult, Juvenile, and PCRP	36	\$ 7,919,362	\$ 791,936	\$ 1,187,904	\$ 1,583,872	\$ 1,979,840
Case Managers & Investigators	64	\$ 5,001,048	\$ 500,105	\$ 750,157	\$ 1,000,210	\$ 1,250,262
		\$ 73,110,047	\$ 7,311,005	\$ 10,966,507	\$ 14,622,009	\$ 18,277,512

Note that this shows providers that are currently at 1.0 MAC. There would be incentives to increase MAC in some cases, and that impact is not included here.

While OPDS would like to increase the reimbursement rate for all providers and include all staff case managers and investigators, this plan is proposed in response to the crisis of unrepresented persons. There are many structural changes that need to occur to stabilize, grow and improve public defense, but in order to meet the demands of the current situation in a fiscally responsible and targeted manner, the increase in reimbursement rate should be limited to the trial-level, non-PCRP attorneys.

C. Fully fund supervision, training, and investigation at public defender offices handling adult criminal cases.

Agency's proposal: The Agency proposed fully funding supervision, training, and investigation at Oregon's 10 public defender offices that handle adult criminal cases.

What we heard: We heard general support for this proposal, but questions as to what extent and how quickly it would result in increased attorney capacity to address the problem with unrepresented clients.

Agency recommendation: The agency recommends that the PDSC adopt the agency's original proposal.

Critically, four providers have signed contracts *contingent* on the PDSC's approval of this proposal. Those providers, the nonprofit public defender offices in Coos, Deschutes, Lane, and Marion counties, are depending on this money to be able to continue operations.¹⁸

Currently, most non-profit public defense offices siphon the money they use to fund supervision, training, and investigation from the reimbursement amounts that they receive for case representation. This means that these offices have less money to devote to attorney and staff salaries, hindering retention and recruitment. ***Currently, public defender offices subsidize the salaries of approximately 11 senior attorneys to provide supervision and training across the state and the salaries of all in-house investigators.***

Fully funding supervision, training, and investigation will increase attorney capacity in immediate and near-terms in several ways:

- Enables public defense offices where these services are already being provided to increase salaries to retain current attorneys and staff and recruit additional attorney and staff, growing capacity;
- Enables those offices to bring on new, less-experienced attorneys to handle lower-level cases under supervision, freeing up current attorneys' capacity to take on more serious cases, increasing capacity for higher-level caseloads;

¹⁸ Although the contracts with only these four entities are explicitly contingent on approval of this proposal, the agency is recommending treating all like-providers the same and therefore recommends broadening this to encompass all non-profit public defender offices that handle trial level adult criminal cases and that currently provide supervision and training to their attorneys.

- Allows experienced supervisors who have more time to devote to supervision to better support attorneys, improving retention and assisting those attorneys in resolving cases or taking them to trial more quickly;
- Provides a training ground for attorneys that leave public defender offices but continue doing public defense work at private law firms or as part of consortia;
- Provides sufficient supervision and training capacity to make productive use of certified law students (CLSs) and build capacity to assist private bar attorneys with criminal defense basics.

This proposal is also consistent with the PDSC's stated intention to fully fund these services.

D. Create an OPDS Trial Division Quick Response Unit

Agency's proposal: Create an in-house Trial Division Quick Response Unit to fill gaps in capacity for representation. This would be a six-month pilot, followed by evaluation and a potential extension if necessary and financially prudent.¹⁹

The unit would consist of OPDS employees compensated at a level equal to the Appellate and the existing Trial Division attorneys, with one or two supervising attorneys managing a team of 10, 15, or 18 staff attorneys. This team would handle cases state-wide to help fill gaps in capacity for representation, targeting in-custody arraignments and shelter care hearings (for children taken into protective custody) where it may be difficult to find hourly attorneys within statutory time limits.

In addition to remaining flexible to handle high-need locations, the Quick Response Unit would also be capable of providing longer-term support on cases requiring specialized knowledge, such as Jessica's Law and juvenile waiver hearing cases. Helping jurisdictions with these types of highly specialized and time-intensive cases will significantly increase capacity by freeing up local providers to handle more routine cases and potentially providing additional opportunities for local providers to qualify to handle more serious types of cases.

To gain access to a wider variety of experiences and approaches, recruitment for the Quick Response Unit would be on a national scale.

What we heard: The feedback we received regarding this proposal generally focused on logistical concerns:

- Some were concerned that current public defense attorneys will seek positions in the Quick Response Unit, which could impact existing trial level attorney capacity and questioned whether the agency has plan to

¹⁹ See Table 4, Appendix.

backfill that attorney capacity.

- Some questioned where the Quick Response Unit attorneys would be located in the state and whether they would be able to respond to unanticipated, last-minute needs of clients and courts in multiple judicial districts.
- Some questioned whether Quick Response Unit attorneys would represent clients from arraignment to disposition and, if not, how case transfers would occur.
- Others questioned whether the Quick Response Unit positions would be permanent OPDS employee positions and encouraged a comparison of the costs of starting up a new employee attorney unit within the agency with the costs of expanding existing contract attorney capacity and assessment of the timeline for establishing this unit.

Agency Recommendation: OPDS recommends that the PDSC adopt the agency's original proposal.

Although there is some risk that contracted public defense providers will seek positions within the Quick Response Unit, negatively impacting existing local attorney capacity, OPDS intends to recruit for these positions outside existing providers. This is consistent with the agency's overarching goal to expand public defense attorney capacity statewide. Additionally, the risk of impacting existing attorney capacity is balanced by the benefits of being able to deploy Quick Response Unit attorneys to jurisdictions in need with minimal notice, something that is virtually impossible given the current independent contractor structure in Oregon public defense. Moreover, such risk can be substantially mitigated by increasing the contract attorney reimbursement rate contemporaneous with the implementation of the Quick Response Unit, incentivizing existing public defense attorneys to continue in their existing positions.

In conclusion, OPDS has proposed a four-part plan targeted to deal with the problem of unrepresented clients both immediately and in the short-term. The four parts are integral to each other and the entire plan, are designed to minimize any possible destabilization of the public defense system, and will support the reformation process started by the PDSC in 2021.

Appendix

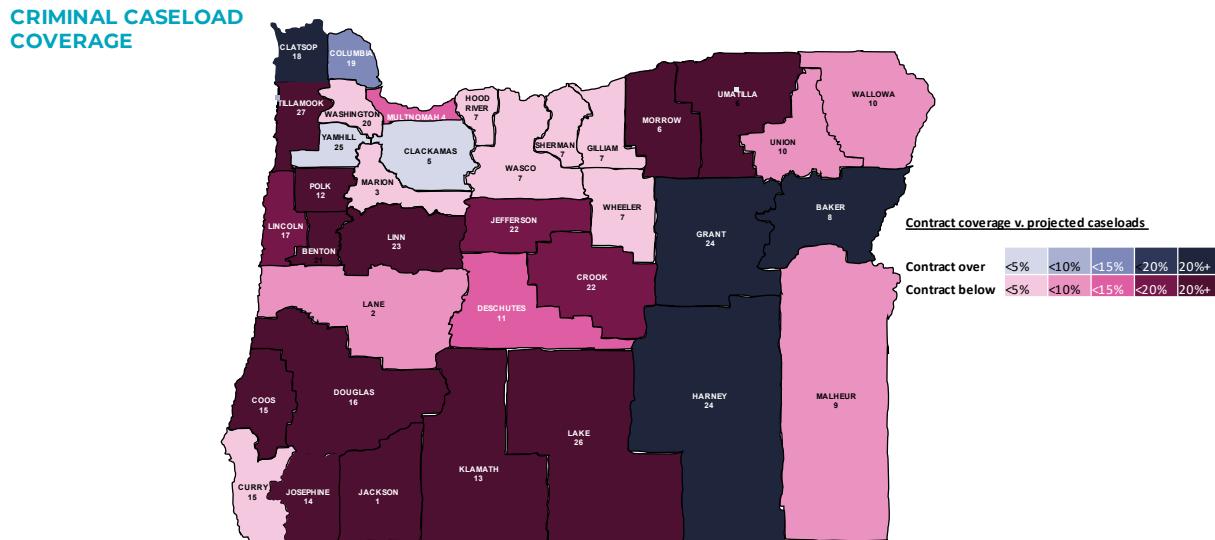
Table 1: In-custody unrepresented defendants for which OPDS is seeking counsel by most-serious charge (July 28, 2022)

Table 1: In-Custody Unrepresented Defendants by Most Serious Charge									
Court	MURD	JLAW	AM11	AFEL	BM11	BFEL	CFEL	MISS	Total Def.
Coos				2	1		5	1	9
Deschutes			1						1
Douglas			1	3		1	3		8
Klamath							1		1
Lane							2		2
Multnomah			2	3	3	1	2		11
Wasco			1						1
Washington	1	1	1					1	4
Total Defendants	1	1	6	8	4	2	13	2	37

Table 2: Out-of-custody unrepresented defendants for which OPDS is seeking counsel by most-serious charge (July 28, 2022)

Table 2: Out-of-Custody Unrepresented Defendants by Most Serious Charge						
Court	Felony Class A	Felony Class B	Felony Class C	Misdemeanor	Total Defendants	
Coos	1	1	7	7	16	
Curry			1	1	2	
Douglas	1	4	4	1	10	
Hood River/Wasco			1		1	
Jackson		1		1	2	
Lane		1	1	2	4	
Marion		2	16	14	32	
Morrow	1				1	
Multnomah	1	3	11	8	23	
Total Defendants	4	12	41	34	91	

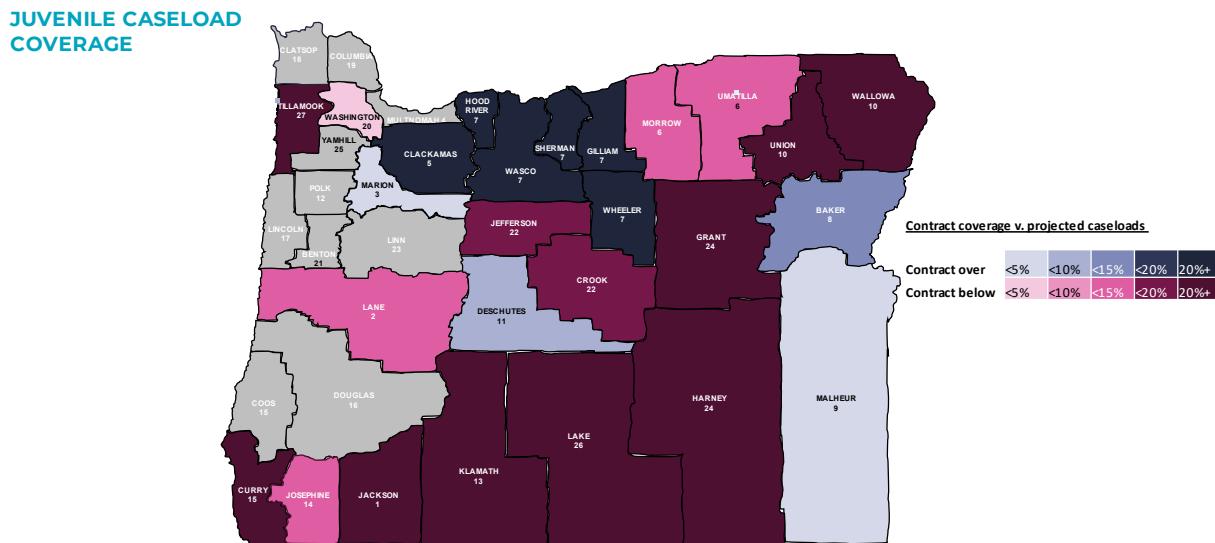
Chart 1: Criminal caseload coverage



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Office of Public Defense Services

Chart 2: Juvenile caseload coverage



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Office of Public Defense Services

Table 3: Budget Analysis for \$158 hourly-rate increase

	10K Cap	Plea	Trial	Average
Hours*	63.29	108.85	268.25	148.95
Est. Total per Case @ \$158/hr	\$10,000	\$17,198	\$42,384	\$23,534

Month	Cases	10K Cap	Plea	Trial	Average
Jun 2022	39	\$390,000	\$670,734	\$1,652,957	\$917,830
Jul 2022	4	\$40,000	\$68,793	\$169,534	\$94,136
Aug 2022	4	\$40,000	\$68,793	\$169,534	\$94,136
Sept 2022	4	\$40,000	\$68,793	\$169,534	\$94,136
Oct 2022	4	\$40,000	\$68,793	\$169,534	\$94,136
Nov 2022	4	\$40,000	\$68,793	\$169,534	\$94,136
Dec 2022	4	\$40,000	\$68,793	\$169,534	\$94,136
Jan 2023	4	\$40,000	\$68,793	\$169,534	\$94,136
Mar 2023	4	\$40,000	\$68,793	\$169,534	\$94,136
Apr 2023	4	\$40,000	\$68,793	\$169,534	\$94,136
May 2023	4	\$40,000	\$68,793	\$169,534	\$94,136
Jun 2023	4	\$40,000	\$68,793	\$169,534	\$94,136
Jul 2023	4	\$40,000	\$68,793	\$169,534	\$94,136
TOTAL	87	\$870,000	\$1,496,252	\$3,687,365	\$2,047,467

*Hours based on ABA Study of hours required for cases that plea (108.85 hours go to trial (268.25 hours), and overall case averages (148.95 hours). See: The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards
https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-or-proj-rept.pdf

Table 4: OPDS Trial Division Quick Response Unit

	Unit	Overhead	Total
Personal Services	\$1,864,870	\$0	\$1,864,870
Services & Supplies Recurring Costs	\$64,380	\$106,575	\$170,955
Total:	\$1,929,250	\$106,575	\$2,035,825