

**Members**

Peter Buckley  
 Alton Harvey Jr.  
 Lisa Ludwig  
 Jennifer Nash  
 Jennifer Parrish Taylor  
 Per Ramfjord, Chair  
 Paul Solomon, Vice-Chair  
 Max Williams  
 Kristen Winemiller

**Ex-Officio Member**

Chief Justice Meagan Flynn

**Executive Director**

Jessica Kampfe

**PUBLIC DEFENSE SERVICES COMMISSION**

Meeting will occur in person and virtually.

Reed Opera House  
 Ballroom – Third Floor  
 189 Liberty St NE  
 Salem, OR 97301

Thursday, February 23, 2023  
 9:00 AM – approx. 11:00 AM PST  
 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.

**MEETING AGENDA**

<b>Approx. Time</b>	<b>Item</b>	<b>Lead(s)</b>
5 min.	Welcome	Chair Ramfjord
5 min.	<b>Action Items:</b> <ul style="list-style-type: none"> <li>Approval of Meeting Minutes – PDSC Meeting 01/19/2023 (<i>Attachment 1</i>)</li> </ul>	PDSC
10 min.	Budget Update ( <i>Attachment 2</i> )	R. Amador
40 min.	Oregon and National Public Defense Reform Efforts <ul style="list-style-type: none"> <li>Jon Mosher – Sixth Amendment Center (<i>Attachment 3</i>)</li> <li>Malia Brink – ABA's forthcoming National Public Defense Workload Standards (<i>Attachment 4</i>)</li> </ul>	
10 min.	Forecasting '23-'25 Biennium ( <i>Attachment 5</i> )	R. Amador L. Bender S. Flowers
15 min.	Preview and Discussion of Draft '23-'25 Contracts ( <i>Attachment 6</i> )	E. Deitrick
10 min.	<b>Action Item:</b> <ul style="list-style-type: none"> <li>Approval of PDSC Bylaws (<i>Attachment 7</i>)</li> </ul>	E. Deitrick & PDSC
5 min.	Future Business	Chair Ramfjord & J. Kampfe

15 min.	Public Comment**	All
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\*To join the Microsoft Teams Live Event meeting, click this link: [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NzQ1Y2JjZmltYjVkMS00ZDFmLTk3MzAtYTRhMTQ5MzE0ZWE1%40thread.v2/0?context=%7B%22Tid%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22Oid%22%3A%22110d9f80-a7c0-4ba5-b92a-9f1630040ede%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzQ1Y2JjZmltYjVkMS00ZDFmLTk3MzAtYTRhMTQ5MzE0ZWE1%40thread.v2/0?context=%7B%22Tid%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22Oid%22%3A%22110d9f80-a7c0-4ba5-b92a-9f1630040ede%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%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](mailto:opds.info@opds.state.or.us). Deadline to submit interest is 5:00 PM PT Wednesday, February 22, 2023. 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.

Please make requests for an interpreter for the hearing impaired, or other accommodation to [opds.info@opds.state.or.us](mailto:opds.info@opds.state.or.us).

Next meeting: **March 16, 2023, 2:00 PM – 4:00 PM PST**

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 1

**Meeting:** Public Defense Services Commission (PDSC) Meeting

**Date & Time:** January 19, 2023: 2:00 PM – to approx. 4:00 PM PST

**Address/Platform:** Meeting occurred virtually via Microsoft Teams Live Event

**Link to Recording:** [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_YzdhNmEwZGI0MDEzLTk2MzUtNzdhZTIjZGVIMWE5%40thread.v2/0?context=%7B%22id%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22oid%22%3A%22e2d550f7-f738-4d5a-9f2a-eb0c9857447%22%2C%22isBroadcastMeeting%22%3Atrue%22%2C%22role%22%3A%22a%22%7D&btype=a&role=a](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzdhNmEwZGI0MDEzLTk2MzUtNzdhZTIjZGVIMWE5%40thread.v2/0?context=%7B%22id%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22oid%22%3A%22e2d550f7-f738-4d5a-9f2a-eb0c9857447%22%2C%22isBroadcastMeeting%22%3Atrue%22%2C%22role%22%3A%22a%22%7D&btype=a&role=a)

### **Commissioners Present**

*Peter Buckley*

*Lisa Ludwig*

*Jennifer Nash*

*Jennifer Parrish Taylor*

*Per Ramfjord, Chair*

*Paul Solomon, Vice-Chair*

*Chief Justice Meagan Flynn, Ex Officio*

*Max Williams*

*Kristen Winemiller*

### **Commissioners Absent**

*Alton Harvey, Jr.*

### **Presenting Staff**

*Jessica Kampfe, Executive Director*

*Ralph Amador, Finance Manager*

*Lisa Taylor, Government Relations Manager*

*Laurie Bender, Chief Criminal Trial Counsel*

*Joshua Crowther, Chief Deputy Defender*

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## **1. Welcome**

Presented by Chair Per Ramfjord

Chair Ramfjord welcomed everyone to the January 19, 2023, Public Defense Services Commission meeting.

\*Agenda item requires a vote by the commission

## **2. \*Approval of Meeting Minutes – 12/15/2022, 1/5/2023, 1/9/2023, & 1/13/2023**

PDSC

*Commissioner Williams moved to approve the 12/15/2023, 1/5/2023, 1/9/2023 & 1/13/2023 PDSC meeting minutes. Commissioner Winemiller seconded the motion. The motion passed unanimously.*

## **3. Budget Update**

Presented by Ralph Amador

Mr. Amador provided the commission with the current budget developments for the Public Defense Services Commission. The current budget is showing a projected balance of \$22 million for the entire agency. The areas that are currently being monitored are the Trial Criminal Division which has approximately \$16 million outstanding and a projected ending balance which there are plans for later on in the discussion and the Case Support Services which is showing approximately a 1.9 balance.

Commissioner Williams recommended that it might be helpful to see a program-by-program model to better understand the budget impact as well as providing the actual costs.

Mr. Amador agreed with Commissioner Williams and stated that the agency has created some graphs for the commission that will map the trend going forward and show what is happening in each of those areas which will be able applied to the return on the investment. The intent is to have a more detailed outline for Director Kampfe's presentation before the Ways & Means. Mr. Amador also let the commission know that this information will be shared with them as soon as it has been completed.

## **4. Legislative & Tri-Branch Workgroup Update**

Presented by Autumn Shreve, Lisa Taylor, & Jennifer Williamson

Lisa Taylor introduced herself as the Government Relations Manager and gave a short description of her previous experience and what she will bring to help OPDS.

The last couple of weeks have been spent meeting with Legislators and other stakeholders to get up to speed on what is happening within the agency. Ms. Taylor

\*Agenda item requires a vote by the commission

explained that she is aware there is a lot of work that the agency needs to do, both in educating new members due to almost half of the Legislators have been there less than two years. The agency will need to education them on what we do and how we do it. Ms. Taylor did mention that everyone she has spoken with is very committed to the agency and making sure the public defense system is working in the state. They want to be helpful in what we need to succeed and that is nice to see.

The agency is in the process of analyzing the bills that have come out so far and the agency is working on prioritizing them. Top priority are the bills that are going to directly affect the commission. And then of course, the agency is tracking the policy bills that are going to have budget impacts, and policy bills that will affect our providers, things like Public Service Loan Forgiveness and other bills similar.

Finally, Ms. Shreve and Ms. Taylor will continue to attend workgroups including the Tri-branch Workgroup and Representative Kropf's Public Safety Workgroup. Ms. Williamson and her team have continued to talk to Legislators to mainly focus on addressing the impacts that the Ramos and Watkins decision are going to have.

Ms. Taylor let the commission know that she will be reaching out to each commissioner to have a one-on-one meeting to hear what their expectations are for government affairs and how would the commission like to communicate with the Legislature and what can Ms. Taylor do to facilitate the communication.

Chair Ramfjord thanked Ms. Taylor for her update and stated that there has been some discussion in prior meetings about bills related to moving the commission into the Executive Branch. There have also been discussions related to the commission taking a position since it does affect the commission. Chair Ramfjord wanted to make sure that that it is not too late for the commission to provide input regarding these bills. It is also important that the commission is well informed of these issues to have meaningful input and that there is enough time to convert that input into something that would be useful for Ms. Taylor to take as position on the legislation.

## **5. 2023-'25 Policy Option Packages Update**

Presented by Jessica Kampfe

Director Kampfe introduced to the commission the Policy Option Packages (POPS) that was proposed back in August of last year. Director Kampfe stated that she has reviewed the POPS and wanted to share with the commission what her vision is of

\*Agenda item requires a vote by the commission

what the agency needs at this point and time. Director Kampfe introduced the first POP for discussion as the Provider Compensation, Stabilization, Recruitment, and Retention. This POP is for existing providers and would increase provider compensation across the board so that people would be compensated similarly to the Department of Justice. It also includes increased payments for investigators and legal assistants, legal assistants are staffed at a one to two ratio; the investigators are staffed at a one to four ratio across the board. Funding for those positions is tied to how they are funded in the Department of Justice, and would create staffing across provider types, so it would no longer be law first that have in-house investigators. This would mean that everybody would have access to be able to contract with investigators and legal assistants at the ratio of one to two, or one to four, so it's not specific to provider type. The full biennium estimates to increase provider compensation to the DOJ rate, increase staff and investigators to DOJ rates, brings us to 88.9 million.

The next POP that was introduced was the Provider Staffing for more efficient case management. This request would harmonize the staffing levels across the delivery system by adding paralegals, supervisors, administrators, social workers, and office managers. This is again tagged to other state agencies, so the state rate was used for the supervision, and then OPDS used the Indiana model of the public defense for the ratios of social workers and other support staff to attorney. This shows the cost of adding those positions to our existing systems and it is again, across provider types. This would make these professionals available to providers no matter whether they are members of a consortia or members of a law firms. The total cost to do both the provider compensation and the provider staffing brings us to approximately 250 million.

Commissioner Nash had a question regarding the budget numbers. Because the number went up substantially for the first one, as the understanding was in part because of the shifted staff costs from what was 102 to 101, but now the number for what was 102 also goes up substantially. So, the question is why is there such a large disparity in especially the first POP?

Director Kampfe answered Commissioner Nash's question by stating there are more providers in the system than there were previously, and that staffing levels have increased. Mr. Amador could possibly answer the question and give more specific answers to Commissioner Nash's question. Director Kampfe did note that both are

\*Agenda item requires a vote by the commission

scalable. So, when we look at it broken down, the Legislature could choose to implement all of this, or they could choose to do an incremental implementation that is scalable.

Mr. Amador addressed the commission to further explain and answer Commissioner Nash's question. The difference is when it was priced the first time, POP 1012, the agency was only considering attorney salaries only. We were also using the existing maximum attorney caseload (MAC) that was in the department back in May because at that time that is the information that we had at that time. Since that time, we've grown substantially in the number of MAC that we have in the agency, so we used a different starting number to base the attorney salary on which drives the number up. Because the agency was not wanting to change things significantly, the contracts have a provision for staff, and some contracts have a provision for investigators. Mr. Amador stated that it wouldn't be fair and equitable if we subsequently took those out in the next biennium. The agency added those back in which drove the number up on POP 101 substantially.

For POP 102, the results are because of more staff, more attorneys in the system because all the support staff is based on a ratio of the number of attorneys in the system.

Commissioner Buckley added that he appreciated Director Kampfe in clarifying this information for the Legislature what a working system would cost and what it would look like.

Chair Ramfjord asked for further detail information from Director Kampfe regarding the definition of scalable.

Director Kampfe answered Chair Ramfjord's question by stating the explanation of scalable was an adopted pay that was based on the Department of Justice salaries and was a level five. It is scalable as far as the salary number as well as size related to the provider staffing. It is possible that not all contracts will move to that model immediately, and that is a way in which it's scalable, where we may see some individuals that would not adopt that option. Regarding the POP for efficient case management and provider staffing, it does envision the addition of paralegals, supervisors, administrators, social workers, and office managers.

Chair Ramfjord asked Director Kampfe if LFO has been involved in discussions regarding this concept.

\*Agenda item requires a vote by the commission



Director Kampfe stated that the agency has begun regular conversations with LFO regarding the budget. Currently the discussion has been more focused around the current service level budget rather than on POPs conversation. Director Kampfe let the commission know that she would be happy to update the commission when she has more specific information to give about the POPS.

Director Kampfe introduced the next POP for the Mandated Caseload for Juvenile; this is a system stability and equity POP. The agency is asking that our juvenile caseload be considered mandated for budget-building purposes.

The next POP is based on the Financial/Case Management System, and this is a system that the agency would use for billing and data collection. The POP was originally priced at 7.5 million. After speaking with various vendors, Ms. Kampfe stated that there would probably be a need to add a senior project manager to the agency to do implementation and that is why there is a change in the price tag.

Director Kampfe introduced the next POP which is the Oregon Judicial System IT services. The agency is in contract with the Oregon Judicial System to provide stability and data security for our IT team. The agency does not currently have an internal in-house IT team, so we are proposing the one-year contract again.

The next POP introduced to the commission is creating stability within the agency. The agency has several limited duration positions in the agency that are filled with people that are doing important work and we want to continue to employ them and have them continue to do great work. This POP would be to create permanent positions for the limited duration spots.

The POP related to Program Design and Research is around creating new positions in the agency. The 18 new positions are in all different departments within the agency, policy, data collection, supporting Trial Division in the work that they're doing.

Chair Ramfjord asked if the positions would be related to the Compliance, Audit, and Performance tasks?

Director Kampfe confirmed that this POP would encompass the Compliance, Audit, and Performance positions that are included in this request.

\*Agenda item requires a vote by the commission

Chair Ramfjord responded by stating in the POP permanent positions, there was a repurposing of two of the policy analysts positions from the Guardianship Program to policy work. Are some of the additions on the program design and research related to those open positions for Guardianship again?

Mr. Amador responded to Chair Ramfjord by stating that at this time he was unsure as the work for the Guardianship policy analysts is very minimal.

Next POP presented is for the PCRP Expansions, and this will expand the Parent Child Representation Program. The first county would be introduced in January and then the next one would be in June and the final county in would be introduced the following January.

## **6. Watkins v. Ackley, Jury Unanimity, and Retroactivity Update**

Presented by Joshua Crowther

Mr. Crowther addressed the commission to speak briefly with the recent decision in *Watkins vs. Ackley*. As a short background, in 1934, Oregonians amended the state constitution to permit a nonunanimous verdict of guilt in criminal cases. In 1972, the United States Supreme Court affirmed that process in a 4:1:4 split. After several waves of challenges from this office and others, the court ultimately reversed course in April of 2020 in *Ramos v. Louisiana* and held that the nonunanimous jury verdict violates the Sixth Amendment right to a jury trial. The court also went out of its way to highlight some of the racist history and underpinnings of that provision. Consequently, hundreds of cases that were on direct appeal were reversed at the Appellate Division. In the meantime, for judgments which had become final, were no longer being challenged on the direct appeal. The United States Supreme Court held the *Ramos* ruling was not a watershed ruling that provided for retroactive relief based on federal law. Ultimately the court held that a judgement based on a nonunanimous jury verdict constituted a substantial constitutional violation and was offensive to fundamental concepts of American Justice.

Currently there are cases that are in a *Watkins* procedural posture on PCR appeal. In addition, there are approximately 150-200 cases that will go back under *Watkins* for PCR relief which most likely will be a new trial. That could mean another 200 to 250 cases landing in the trial court that will need attorneys. This could happen immediately or it could take some time to organize.

\*Agenda item requires a vote by the commission

Chief Ramfjord thanked Mr. Crowther for his time and presentation.

## **7. Unrepresented Person Update**

Presented by Laurie Bender & Jessica Kampfe

Director Kampfe presented to the commission that they are currently 78 people that are identified as unrepresented in custody at this time and 634 that are identified as unrepresented and out of custody on criminal cases. There are 53 on probation violations out of custody, 527 that have active warrants, and 32 on non-criminal cases.

Director Kampfe shared with the commission a power point that explained about some of the programs that the agency has started or have involved in that addresses this crisis. Some of the topics included questions that the commission had asked of the agency to investigate the cases that have closed so far and provide an analysis. As well as what counties have cases closed and the overall complexity of the cases.

Commission Nash asked for clarification related to the slide that was title “Attorney Monthly Appointments” related to MAC reported, Attorney MAC, and MAC unused.

Ms. Bender address the commission related to the question asked that the number of MAC reported for that attorney would be what had been reported through five months. The Attorney MAC number is what the entity had contracted for that attorney.

Chair Ramfjord thanked Director Kampfe and Ms. Bender for the presentation and slides provided.

## **8. Public Comment**

Ms. Rachel Phillips, Attorney - provided public comment to the commission. Ms. Phillips stated her concern is based around retention of practicing attorneys and she feels that the PDSC should be aware of why attorneys are leaving practice and specifically how many are men and how many are women. Ms. Phillips also wanted the PDSC to know that she has been in contact with the State Bar, and they are working to provide her with a list of active members and provide a breakdown of criminal defense in general.

Mr. Olcott Thompson, Executive Director Marion County Associations of Defenders. Mr. Olcott address the PDSC with his appreciation of the discussions surrounding the retention money. Mr. Olcott also addressed the commission with a summary of the discussions provided during the PDSC meeting and how some of the proposed changes will affect the provider community.

\*Agenda item requires a vote by the commission

Chair Ramfjord thanked Ms. Phillips and Mr. Olcott for providing public comment

#### **9. \*Action Item**

Presented by Jessica Kampfe & PDSC

- Approval of Proposals to Spend \$10 Million Emergency Funding to Address Unrepresented Persons Crisis
  - Increased and Tiered Hourly Rate Structure for All Unrepresented Persons
  - Supervised Civil Attorney Program
  - Retention of Contractors

Director Kampfe addressed the commission stating that the agency has provided the letter to the presiding officers and did not receive any feedback.

Chair Ramfjord opened the discussion up to the commission for any feedback and if there is not any, he proposed a motion to approve the proposal to spend the \$10 million emergency funding to address the unrepresented persons crisis.

Commission Parrish-Taylor moved to approve the proposal as presented.  
Commission Williams seconded the motion. The motion passed unanimously.

#### **10. \*Action Item**

Presented by Jessica Kampfe & PDSC

- Approval of Submission of the Report on the Unrepresented Crisis

Director Kampfe addressed the commission by stating the presentation did have one minor adjustment in the graph to reflect the programs that increased MAC. The agency felt that this would be beneficial for Legislators to know which programs are bringing in new MAC.

Commission Ludwig moved to approve the Approval of Submissions of the Report on the Unrepresented Crisis. Commission Parrish-Taylor seconded the motion. The motion passed unanimously.

#### **11. \*Action Item**

Presented by Laurie Bender & PDSC

- Approval of Contract with Reza Khanjan

Ms. Bender asked the commission to approve the contract with Reza Khanjan who will be opening his criminal practice in Washington County within the next week. Ms.

\*Agenda item requires a vote by the commission

Bender stated that approving the contract would help support the ongoing need for misdemeanor representation as well s felony representation out in Washington County.

*Commissioner Williams moved to approve the Contract with Reza Rkanjan. Commission Parrish-Taylor seconded the motion. The motion passed unanimously.*

## **12. Future Business**

Director Kampfe addressed the commission to let them know that Alaina Haines has accepted a position with the Trial Division as a contract Analyst and this will be her last meeting.

*Chair Ramfjord asked for a motion to adjourn the meeting. Commissioner Ludwig made the motion to adjourn. Commissioner Winemiller seconded the motion. The motion passed unanimously.*

\*Agenda item requires a vote by the commission

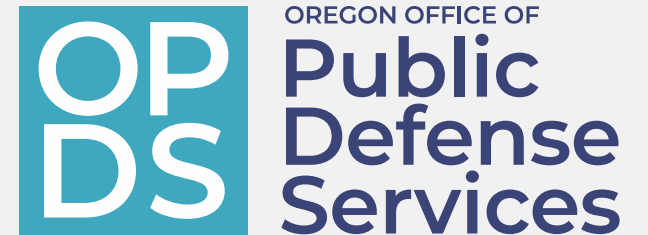
# Attachment 2

# Financial Forecast and Budget Update

**As of month ended  
December 31, 2022**

**Ralph Amador, Budget and Finance Manager**  
Ralph.H.Amador@opds.state.or.us

February 23, 2023



## Proposed Rebalance Forecast Summary

Agency Division / Program		Legislatively Approved Budget	Proposed Rebalance	Proposed LAB	Budget Forecast	LAB Variance	Rebalance Variance
Compliance, Audit, and Perf.	General	5,026,309	(200,000)	4,826,309	4,014,055	(1,012,254)	(812,254)
Appellate Division	General	22,818,312	(500,000)	22,318,312	22,027,373	(790,939)	(290,939)
Trial Criminal Division	General	264,007,664	(5,000,000)	259,007,664	256,056,618	(7,951,046)	(2,951,046)
	Other	4,000,000		4,000,000	3,696,626	(303,374)	(303,374)
Case Support Services (NRE)	General	45,511,590	1,000,000	46,511,590	43,706,439	(1,805,151)	(2,805,151)
Court Mandated Expenses	General	51,567,492	4,000,000	55,567,492	53,066,091	1,498,599	(2,501,401)
	Other	4,449,667		4,449,667	2,288,197	(2,161,470)	(2,161,470)
Juvenile Division	General	40,965,293	1,375,000	42,340,293	42,339,556	1,374,263	(737)
	Other	10,000,000		10,000,000	5,933,672	(4,066,328)	(4,066,328)
All other programs	General	18,263,712	(675,000)	17,588,712	16,988,696	(1,275,016)	(600,016)
	Other	0		0	0	0	0
<b>Subtotal programs</b>	<b>General</b>	<b>448,160,372</b>	<b>0</b>	<b>448,160,372</b>	<b>438,198,828</b>	<b>(9,961,544)</b>	<b>(9,961,544)</b>
	<b>Other</b>	<b>18,449,667</b>	<b>0</b>	<b>18,449,667</b>	<b>11,918,495</b>	<b>(6,531,172)</b>	<b>(6,531,172)</b>
<b>Total programs and funds</b>		<b>466,610,039</b>	<b>0</b>	<b>466,610,039</b>	<b>450,117,323</b>	<b>(16,492,716)</b>	<b>(16,492,716)</b>



## Trial Criminal Division | Macro View

		General Fund	Other Funds	Total Funds
Leg. Adopted Budget (HB 5030 (2021))	Ordinary	186,458,931	-	186,458,931
Even-year session (HB 5202 (2022))	Emergency	12,808,337	-	12,808,337
June 3, 2022, Emergency Board, net	Ordinary	59,648,589	-	59,648,489
September 23, 2022, Emergency Board	Ordinary	91,907	-	91,907
December 9, 2022, Emergency Board				
Technical adjustments (rebalance)	Ordinary	(5,000,000)	4,000,000	(1,000,000)
Unrepresented individuals*	Emergency	10,000,000	-	10,000,000
<b>Total December 9, 2022, Emergency Board</b>		<b>5,000,000</b>	<b>-</b>	<b>9,000,000</b>
<b>2021 – 23 Legislatively Approved Budget</b>		<b>264,007,664</b>	<b>4,000,000</b>	<b>268,007,664</b>

## Trial Criminal Division | Line-item Accounting

(in terms of General Fund unless otherwise stated)			
	Ordinary	Emergency	Total
<b>2021 – 23 Leg. Approved Budget</b> (incl. proposed rebalance)	<b>241,109,117</b>	<b>17,898,547</b>	<b>259,007,664</b>
Less Fiscal Year 2022 expenditures	113,462,758	-	113,462,758
Less Fiscal Year 2023 forecast (incl. training, investigation, etc.)	130,067,210	-	130,067,210
<b>Budget remaining after regular contract expenditures</b>	<b>(2,420,851)</b>	<b>17,898,547</b>	<b>15,477,696</b>
Less unrepresented emergency funds (HB 5202 (2022))	-	6,989,250	6,989,250
Less hiring bonuses	729,400	-	729,400
<b>Budget remaining after emergency fund and hiring bonuses</b>	<b>(3,150,251)</b>	<b>10,909,297</b>	<b>7,759,046</b>
Less retention bonuses	6,000,000	2,105,800	8,105,800
<b>Budget remaining after retention bonuses</b>	<b>(9,150,251)</b>	<b>8,803,497</b>	<b>(346,754)</b>
<b>Application of Title IV-E reimbursement to General Fund*</b>	<b>(5,150,251)</b>	<b>8,803,497</b>	<b>3,653,246</b>
Less strategic reserve (not included in division's projections)	-	2,500,000	2,500,000
Less civil attorney supervision (not included in division's projections)	-	394,200	394,200
<b>2021 – 23 Projected remaining budget balance</b>			<b>759,046</b>

# Unrepresented Individuals

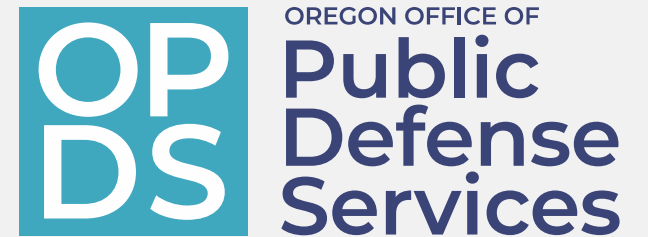
## Tiered Hourly Rate Projections

	FY 2023	FY 2024	FY 2025	Total
Cost at new rates Aug 22-Jan 23	1,519,827	806,073	473,767	2,799,667
New Caseload Feb 23 - June 23	1,382,954	923,206	493,507	2,799,667
<b>Projected hourly attorney costs*</b>	<b>2,902,781</b>	<b>1,729,280</b>	<b>967,274</b>	<b>5,599,335</b>

	FY 2023	FY 2024	FY 2025	Total
Projected Total Cost	2,507,733	1,729,280	967,274	5,204,287
Current Paid Attorney Cost	395,048			395,048
Current Paid other CSS	60,587			60,587
Current Paid Investigation	36,840			36,840
Projected Additional Other CSS	233,857	265,213	148,347	647,417
Projected Additional Investigation	384,601	161,263	90,203	636,067
<b>Projected total costs</b>	<b>3,618,667</b>	<b>2,155,756</b>	<b>1,205,823</b>	<b>6,980,246</b>

*\*only attorney costs will be paid out of the \$10 million allocation*

# Thank you



# Attachment 3

## **Oregon Public Defense Services Commission meeting**

### **OPDS Public Defense Provider Summit**

February 23, 2022

*Salem, Oregon*

\*\*\*

**SLIDE 1 [INTRO].** Good morning. I am Jon Mosher, deputy director of the Sixth Amendment Center (6AC). 6AC is a national, non-partisan, non-profit organization assisting state policymakers understand the prevailing constitutional obligations of the right to counsel under the Sixth and Fourteenth Amendments.

In March 2018, the legislature appropriated funds to the Public Defender Services Commission (PDSC) to retain 6AC to conduct a top-to-bottom assessment of the trial level public defense services in the state. The resulting report was published in January 2019.

Before discussing the report, it's important to acknowledge that in each county we visited as part of our study, we found indigent defense lawyers working extremely hard under difficult circumstances, and for not a lot of pay. They gave us their time and attention, and they were candid with their opinions. To those attorneys and to all criminal justice stakeholders – including judges, prosecutors, law enforcement, and court personnel – I extend our thanks.

**SLIDE 2 [FINDINGS].** U.S. Supreme Court case law is clear that the Sixth Amendment right to effective counsel is an obligation of state government under the due process clause of the Fourteenth Amendment. The State of Oregon attempts to fulfill its Fourteenth Amendment obligation in trial courts primarily through an array of contracts with public defender offices, private law firms, consortia of individual attorneys and law firms, non-profit organizations, and occasionally individual lawyers. In doing so, we found that:

- 1. The State of Oregon has created a complex bureaucracy that collects a significant amount of indigent defense data yet does not provide sufficient oversight or financial accountability. In some instances, the complex bureaucracy is itself a hindrance to effective assistance of counsel.**
- 2. The complex bureaucracy obscures an attorney compensation plan that is at root a fixed fee contract system that: pits appointed lawyers' financial self-interest against the due process rights of their clients; and is prohibited by national public defense standards.**

These are the two principal findings from our study. The complex PDSC bureaucracy hides a stunning lack of oversight that does not allow state policymakers to assure taxpayers that funding invested in indigent defense is expended effectively and efficiently.

For example, although PDSC required all potential public defense providers to submit lengthy and detailed proposals for contracts, the subsequent contracts expressly allowed consortium contractors to enter into side agreements and subcontracts, without notice to or oversight by

PDSC. Furthermore, PDSC did not require any of the contractors to explain the manner in which the contractor assigns cases to individual subcontract attorneys.

In short, PDSC devolved onto its contractors the state's responsibilities under the Fourteenth Amendment. PDSC did not have any way of knowing who the attorneys are or how many attorneys are providing right to counsel services on any given day. PDSC did not require the contracting entities to explain how much money is spent on overhead and what is acquired, how much money is paid to a contract administrator and what services are provided in exchange, or how much money is paid to subcontractors and what services those attorneys provide in exchange.

Our report explains in great detail the complex "case credit" system devised by PDSC to administer its contracts with providers. But when all is said and done, that system does not allow PDSC to know the actual number of cases being handled by every attorney at any point in time. Thus, PDSC has no means of knowing on an ongoing basis whether its contract providers have sufficient attorneys with sufficient time to provide effective assistance of counsel. Not surprisingly, examples of excessive caseloads abounded throughout the state, upwards of *four* times the caseload maximums under national standards according to PDSC's internal data. And that PDSC had no way of knowing the actual caseloads of the lawyers representing defendants in Oregon's courts is itself part of the problem with the "case credit" system.

PDSC's compensation scheme compounded these caseload problems, because the "case credits" system ultimately paid most contractors a fixed fee per case without regard to how much or how little time the case requires of the attorney. This compensation plan creates an incentive for most contractors and subcontractors to handle as many cases as possible as quickly as possible, rather than focusing on their ethical duty of achieving the client's case-related goals. American Bar Association standards specifically state that contracts with private attorneys for public defense services should never be let primarily on the basis of cost. Furthermore, a federal court in 2013 called the use of fixed fee contracts an "intentional choice" of government that purposely leaves "the defenders compensation at such a paltry level that even a brief meeting [with clients] at the outset of the representation would likely make the venture unprofitable."

We made two further findings in our report. The third finding states that:

- 3. The composition of the Public Defense Services Commission does not adhere to national standards, in that all commissioners are appointed by the judiciary, while the legislative and executive branches of government have no equal voice in the commission's affairs.**

In a series of decisions, the U.S. Supreme Court has stated ...

- that the "independence" of appointed counsel to act as an adversary is an "indispensable element" of "effective representation" and is "constitutionally protected"; and
- that "[g]overnment violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense."



Heeding these admonitions from the Court, national standards call for states to create independent statewide commissions in which members are selected by diverse appointing authorities, so that no single branch of government has the ability to usurp power over the chief defender or exert outsized influence over the delivery of public defense services. As the American Bar Association explains, “[r]emoving oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.”

In Oregon, the power to appoint the members of PDSC rests entirely with the Chief Justice. Currently, the legislative and executive branches are excluded from holding any stake in or responsibility for the success of the public defense system, as are members of the client community, academicians, researchers, minority constituents, and others who might have much to contribute. The Chief Justice certainly could choose to appoint persons from these stakeholder groups to PDSC, but nothing requires their participation or that their input be considered.

I want to be clear that none of this is to suggest any nefarious conduct or motive on behalf of any Oregon Chief Justice. To the contrary, there is every reason to believe that the most recent Chief Justice fully desired for the PDSC to properly carry out its work, and no doubt the current and future Chief Justices do so as well. It is simply the case that policies regarding the provision of the Sixth Amendment right to counsel should not be controlled by a single branch of government.

Our final finding is that the State of Oregon is not upholding its Fourteenth Amendment obligations to provide effect representation in all misdemeanor cases where jail is a possible sanction. Specifically, our report states:

- 4. The Public Defense Services Commission lacks the necessary statutory scope to ensure the state’s Fourteenth Amendment obligation to provide effective Sixth Amendment assistance of counsel in every courthouse in Oregon.**

All state law misdemeanors adjudicated in justice and municipal courts carry jail time as a possible punishment, as do some county and city misdemeanor offenses. Accordingly, any defendant who cannot afford to hire his own attorney is entitled under both federal and state law to have counsel provided at public expense. Yet the State of Oregon has no mechanism to know whether it is fulfilling its obligation to provide counsel to the poor who face incarceration in the justice and municipal courts, because PDSC has no statutory authority over Sixth Amendment right to counsel services in those courts.

**SLIDE 3 [OVERSIGHT].** 6AC made four recommendations to rectify these deficiencies. The first two relate to PDSC’s composition and oversight authority:

- 1. The Oregon legislature should amend the statute establishing the Public Defense Services Commission to ensure that the commission members are appointed by diverse authorities such no single branch of government has a majority of appointments.**

- 2. Although PDSC currently has extensive regulatory authority to promulgate and enforce standards, the Oregon legislature should direct PDSC to promulgate and enforce specific right to counsel standards.**

National standards agree that the best way to protect defense counsel independence is by establishing an independent public defender commission, with standards stating that “a special Defender Commission should be established for every defender system, whether public or private,” and the “members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics,” and “[n]o single branch of government should have a majority of votes on the Commission.” PDSC’s composition does not comply with these national standards. The legislative and executive branches of Oregon government are excluded from holding any stake in or responsibility for the success of the public defense system, and critically PDSC’s makeup institutionalizes judicial interference in the provision of defense services.

The Oregon legislature should amend the PDSC statute to ensure that commission members are appointed by diverse authorities such that no single branch of government has a majority of appointments and to ensure that voices of the client community, minority constituents, and others with valuable contributions are heard.

The legislature should also address the issue that PDSC already has broad authority to promulgate and enforce standards – *but has not done so*. Just as PDSC lacks structural independence, it also fails to ensure proper oversight. Thus, we recommend the legislature should direct PDSC to promulgate *specific* right to counsel standards on issues like: attorney qualifications and training; attorney performance guidelines; attorney supervision protocols; time sufficiency standards; client communication protocols; and data collection standards. And PDSC should have authority *and funding* to enforce those standards.

**SLIDE 4 [MIXED SYSTEM].** Finally, the legislature should take steps to address PDSC’s method of selecting attorneys to provide trial level representation, the oversight of such attorneys, and their method of compensation for the work provided. We recommend in our report that:

- 3. The State of Oregon should require that services be provided free of conflicts of interest, as is constitutionally required, by abolishing fixed fee contracting and other forms of compensation that produce financial disincentives for public defense lawyers to provide effective assistance of counsel.**
- 4. With the abolition of fixed fee contracting, PDSC/OPDS should pay private lawyers at an hourly rate that accounts for both actual overhead and a reasonable fee, and/or hire government employed attorneys for trial level services. OPDS should have the appropriate resources to provide oversight of such a private attorney and state public defender employee system.**

Here I want to be perfectly clear. We first presented these findings to the legislature in 2019 and it looks as though the legislature turned to PDSC and asked the deficient system to try to fix itself. For example, nowhere in our lengthy report did we ever say, “redraft the contracts into an

FTE formula.” By NOT fixing the structural deficiencies, it is not surprising that the state finds itself in the current crisis of having too few lawyers trying to represent too many clients, with some defendants being denied representation altogether. Had the legislature followed our lead, flat fee contracting would have been abolished four years ago. Moreover, had PDSC been made to follow national standards, the executive and legislative branches would have been informed of the impending problems in real time.

Oregon’s provider contracts still cause conflicts of interest between the indigent defense attorney’s financial self-interest and the legal interests of the indigent defendant, and in the process prevents the state accountability required by the 14<sup>th</sup> Amendment by permitting contractors to continue letting subcontracts without notice to state government. Oregon should follow the lead of other states, like Idaho, Michigan, Nevada, and Washington, that have recently banned flat fee contracting.

To eliminate such financial conflicts and to ensure proper oversight of direct services, PDSC should be responsible for qualifying individual attorneys by case type, and for making individual case-assignments to qualified attorneys, and PDSC should pay private appointed attorneys an hourly rate. PDSC is responsible for ensuring that no lawyer handles any case for which they are unqualified. Continuing to rely on private attorney consortia to provide direct services under annual contracts prevents PDSC from fulfilling this core oversight obligation.

And PDSC should determine an hourly fee for assigned counsel that is reasonable. All national standards require that “counsel should be paid a reasonable fee in addition to actual overhead and expenses.” Significant state caselaw, from Alaska, Kansas, West Virginia, Mississippi, Oklahoma, and elsewhere, likewise require states to pay attorneys a reasonable fee in addition to overhead expenses.

Because of conflicts relating to codefendants and workload, Oregon will always require the use of private attorneys to some extent to provide right to counsel services going forward. However, PDSC should determine whether effective use of taxpayer resources and other efficiencies call for public defender offices staffed by salaried state employee attorneys to provide right to counsel services in certain jurisdictions. Governmental public defender offices need not be exclusive to a single county or judicial circuit. For example, both Colorado and Montana maintain regional public defender systems for providing trial level representation in each county.

No matter the method used in each jurisdiction – private attorneys paid a reasonable hourly fee, or state public defender employees paid annual salaries, or some combination of the two – PDSC has a fiduciary duty to taxpayers to exercise oversight of the system they have established to provide the Sixth Amendment right to counsel.

The Massachusetts Committee for Public Counsel Services or “CPCS” offers a best practice model for overseeing a combined private attorney and state government employee right to counsel system. CPCS uses the assigned counsel model to provide the bulk of its representational needs, with public defender offices handling only the most serious cases and juvenile delinquency cases in the more urban areas of the state. Private attorneys handling direct services on behalf of CPCS statewide must meet CPCS’s certification requirements before they can be

assigned any case, including agreeing to abide by CPCS's published *Performance Guidelines* for private assigned counsel. Centralized billing systems allows for CPCS to monitor attorney performance in the aggregate, but the direct review of ongoing attorney performance is handled locally. CPCS contracts with private attorneys in each county to serve as supervisors for other private attorneys handling direct case-assignments, through reviews of case files and courtroom observations.

**SLIDE 5 [GIDEON QUOTE].** Oregon policymakers need not feel they must reinvent the wheel. Over the years, many of the same states referenced in this presentation have addressed many of the same questions facing Oregon today. And the Sixth Amendment Center stands ready to assist you in finding policies that fit local needs while also meeting constitutional standards.

Thank you for inviting me to speak with you today. I am happy to answer any questions.



# THE RIGHT TO COUNSEL IN OREGON

Presented by  
**Jon Mosher, Deputy Director**  
**Sixth Amendment Center**

Jon Mosher has been working on right to counsel issues for almost 20 years. He is an expert on the standards for the delivery of indigent defense services, and the methods used by state and local government in providing for those services. He earned his J.D. from Northeastern University School of Law, where he was a public interest scholar, a fellow of the Rappaport Center for Law & Public Policy, and a fellow of the Program on Human Rights & the Global Economy.



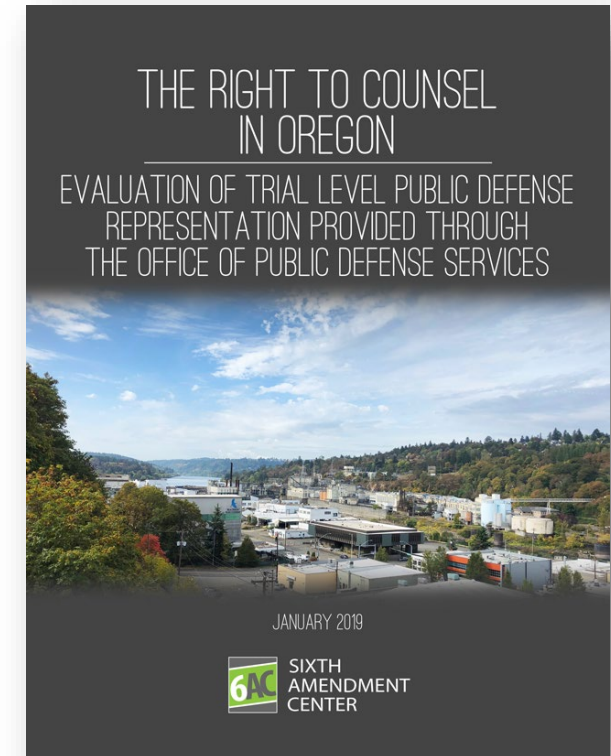
Presentation to Public Defense Services Commission  
OPDS Public Defense Provider Summit – Feb. 23, 2023



## THE RIGHT TO COUNSEL IN OREGON

# Findings

1. Complex bureaucracy, little oversight
2. Flat fee compensation
3. PDSC lacks independence
4. No authority over justice & municipal courts

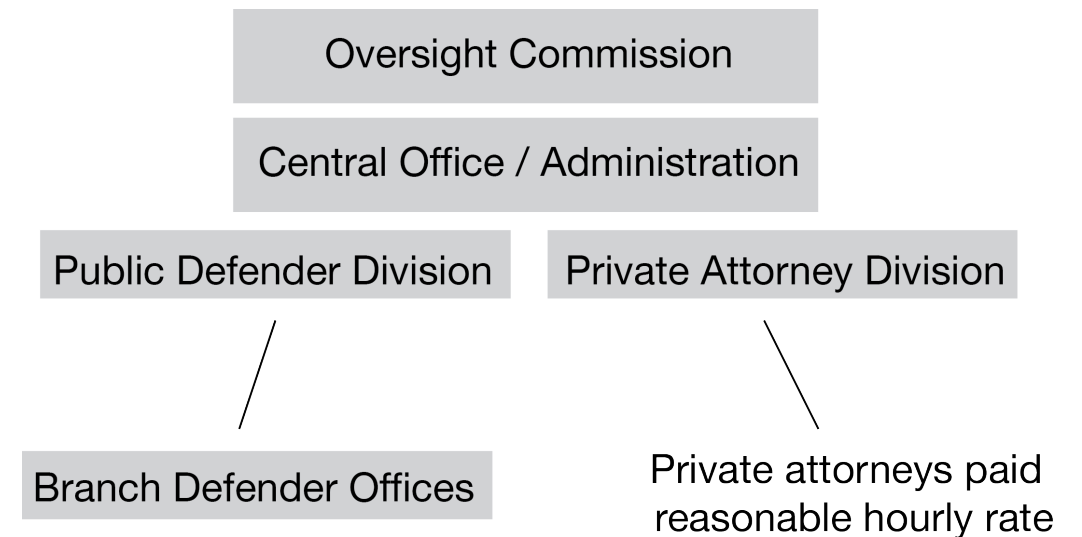


## Oversight

1. Independence: equal appointment by all three branches of government
2. Commission should be 9 to 13 members
3. No current judges, prosecutors, defense attorneys, law enforcement
4. Diversity of constituencies represented on PDSC
5. Broad standards-setting authority
6. Oversight of all courts statewide

## Mixed Public/Private System

- Abolish fixed fee contracting
- Hourly rate:  
actual overhead + reasonable fee
- Governmental public defender offices







“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

- Gideon v. Wainwright



Presentation to Public Defense Services Commission  
OPDS Public Defense Provider Summit – Feb. 23, 2023

# Attachment 4




# Public Defense Workloads

Malia N. Brink

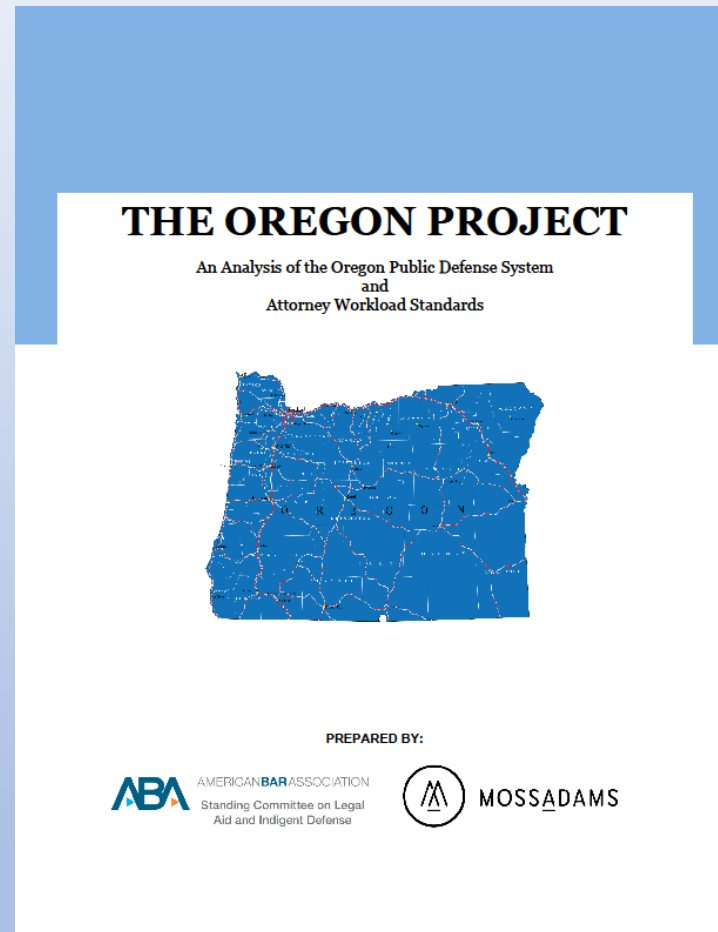
Oregon Public Defense Services Commission

February 2023

# History of Public Defense Workload Standards

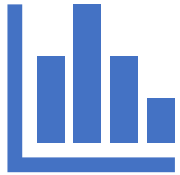
	1973 NAC Standards 150 felonies/year 400 misdemeanors/year
	Deficiencies of NAC Standards Lack of defensible methodology Failure to distinguish case types Outdated
	Jurisdiction-specific efforts to set workload standards through empirical studies

# Oregon's Workload Study



- Commissioned by and funded through OPDS
- Completed in Jan 2022 by ABA SCLAID and Moss Adams

# ABA SCLAIID Delphi Workload Studies



## System Analysis

Historical Caseload Analysis

FTE analysis

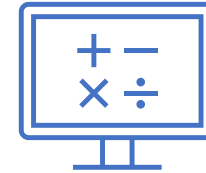
Describes the “World of Is”



## Delphi Process

Describes the “World of Should”

How much time *SHOULD* a public defender spend on a particular case task in a particular type of cases?



## Deficiency Analysis

Uses the system analysis and the Delphi analysis to calculate a staffing deficiency or excess

# System Analysis: The Oregon Project



## Historical Caseload Analysis

- Data sourcing
- Case mapping



## FTE Casework Attorneys

# System Analysis: Historical Caseload Analysis

## STATEWIDE CASES REPRESENTED BY COURT APPOINTED ATTORNEYS BY TYPE AND ESTIMATED CASELOAD

Adult Criminal					
Case Type	2017	2018	2019	2020	Jan 1 - October 10, 2021
Adult Criminal	76,371	76,929	74,573	67,738	44,710

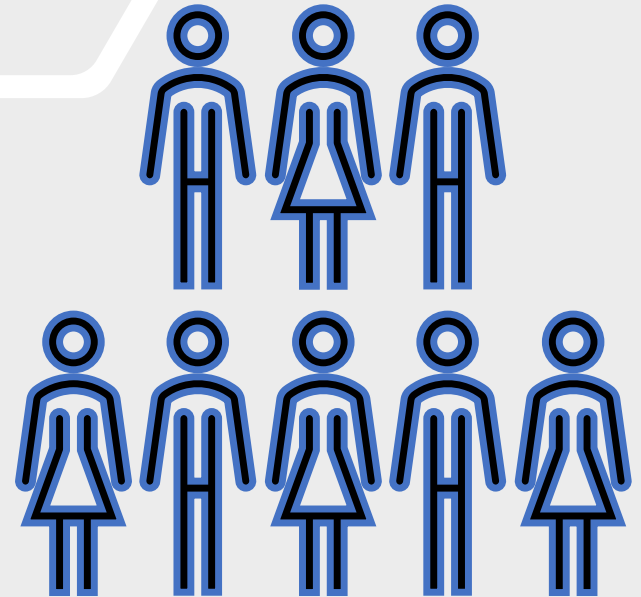
Juvenile					
Case Type	2017	2018	2019	2020	Q1 2021
Dependency	15,429	12,781	12,034	9,076	1,756
Termination of Parental Rights	3,747	3,645	3,367	2,269	882
Delinquency	2,865	3,032	2,857	2,224	350
<b>Total Juvenile</b>	<b>22,041</b>	<b>19,458</b>	<b>18,258</b>	<b>13,569</b>	<b>2,988</b>

<b>GRAND TOTAL</b>	<b>98,412</b>	<b>96,387</b>	<b>92,831</b>	<b>81,307</b>	<b>47,698</b>
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## System Analysis: FTE Casework Attorneys

- November 2021 – 592 contract attorney FTE (excluding administrator roles)
- Represents 97-98% of system



# Delphi Panel Results: Adult Criminal

Delphi Panel Results - Adult Criminal	
Case Type	Hours Per Case
Low-Level Misdemeanor	22.26
Complex Misdemeanor	36.98
Low-Level Felony	39.78
Mid-Level Felony	47.73
High-Level Felony	148.95
Homicide and Sex Cases	552.46
Probation Violations	8.33

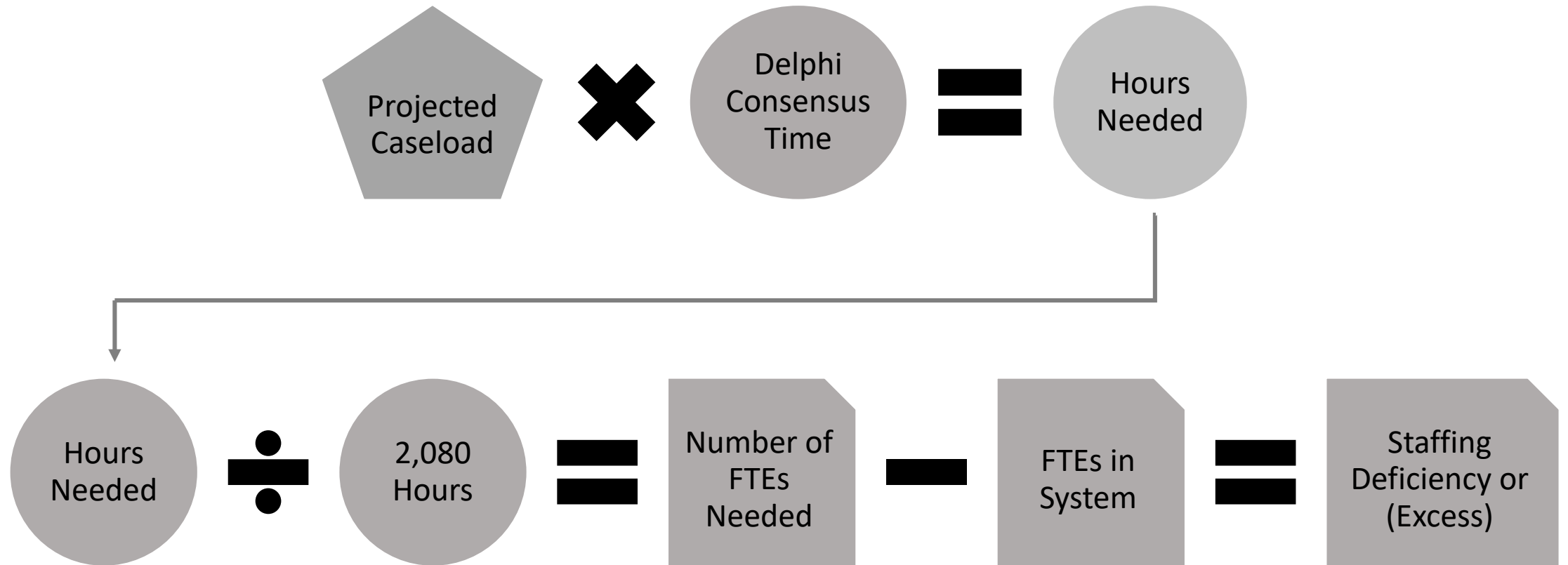
# Delphi Panel Results: Juvenile

Delphi Panel Results - Juvenile - Dependency	
Case Type	Hours Per Case
Parent Representation	115.62
Child Representation	117.07

Delphi Panel Results - Juvenile - Termination of Parental Rights	
Case Type	Hours Per Case
Parent Representation	104.92
Child Representation	76.83

Delphi Panel Results - Juvenile - Delinquency	
Case Type	Hours Per Case
Misdemeanor / Other	35.65
Minor Felonies	43.79
Major Felonies	68.50
Waiver/Measure 11 Cases	261.48
Probation Violation / Contempt	14.07

# Deficiency Analysis

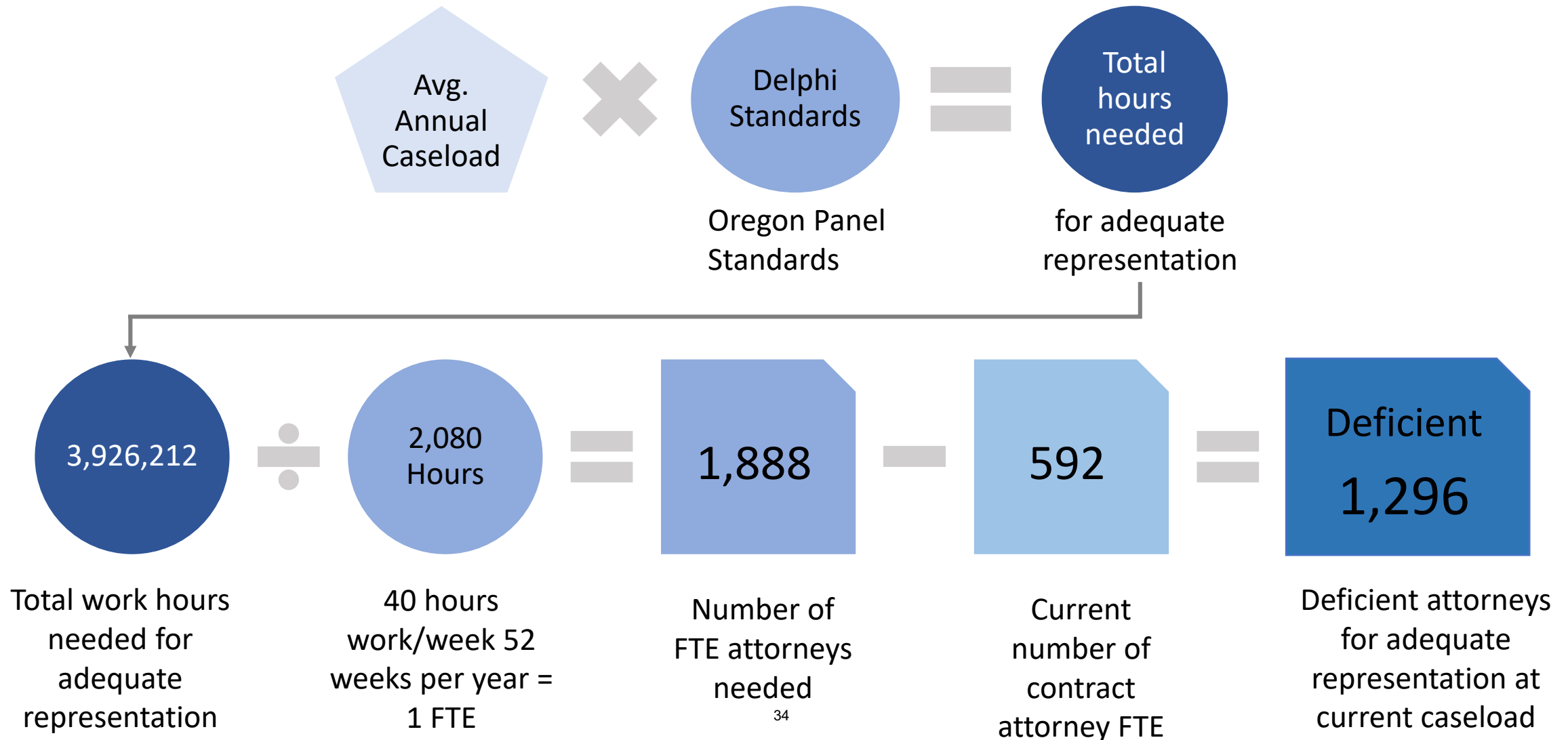


# Total hours of attorney time needed

EXAMPLE: Case Type: Low-Level Felony



# Deficiency Analysis – Adult Criminal and Juvenile



# Conclusions

- OPDS has a significant deficiency of FTE attorneys that must be addressed
  - OPDS has 31% of the attorneys needed to address current caseload
  - This requires attorneys either to triage, choosing to prioritize some clients over others, or to have less time than necessary to serve each and every client
- This workload study is an important step to being able to address the problem
  - Empowers OPDS with data needed to demonstrate deficiency
  - Assists OPDS in allocating resources to areas of greatest need
  - Also allows for calculation of impact of changes in policy

# Why try to set national workload standards?

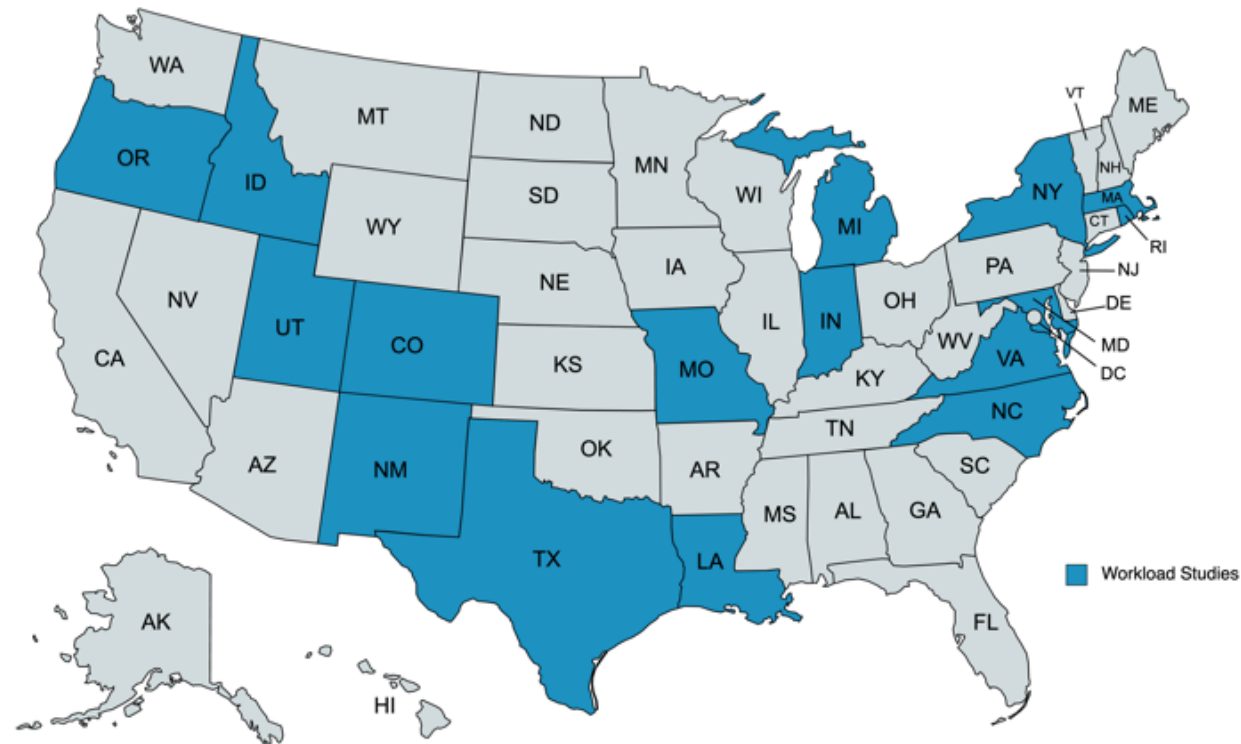
Not every state has the financial resources, necessary data collection capabilities, or political will to conduct a jurisdiction-specific study

National standards can provide a default option for policymakers

National standards could provide useful benchmarks for federal assessments and funding decisions



# Jurisdictions with Workload Studies



# Public Defense Workload Studies 2005 – April 2022

ABA SCLAID	RAND	NCSC	Other
CO (2017)	MI (2019)	MD (2005)	ID (Idaho Policy Institute, 2018)
IN (2020)	NY non-NYC (2016)	NC (2019)	MA (Center for Court Innovation/ MA Committee for Public Counsel Services, 2014)
LA (2017)	UT (2021)	NM (2007)	TX (Public Policy Research Institute, 2015)
MO (2014)		VA (2010)	
NM (2022)			
OR (2022)			
RI (2017)			

# National Workload Study Overview

- **Subject Limited in Scope – Only Adult Criminal Cases**
- **Participants – 33 Criminal Defense Lawyers from Around the Country**
  - Full-time public defenders
  - Court-appointed counsel
  - Private practitioners
- **Identify Case Types and Activities/Case Tasks**
  - 11 Case Types
  - 8 Lawyer Activities
- **Information provided to Panelists**
  - Results of all 17 previously conducted workload studies (2005-2022)
  - Ethical Rules and Standards applicable to adult criminal cases

# National Workload Study Overview

## **Adult Criminal Case Types - 11**

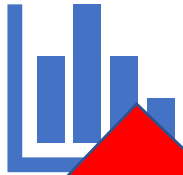
- Felony High – LWOP
- Felony High – Murder
- Felony High – Sex
- Felony High – Other
- Felony – Mid
- Felony – Low
- DUI – High
- DUI – Low
- Misdemeanor – High
- Misdemeanor – Low
- Probation/Parole Violations

Study	Study Case Type	Standard in Hours
<b>Oregon-2022</b>	<b>Homicide or sex case</b>	<b>552.5</b>
New Mexico-2022	Murder including CARD (child abuse resulting in death)	391.0
Utah-2021	Non-capital murder	300.0
<b>Oregon-2022</b>	<b>Mid-level felony</b>	<b>47.7</b>
Indiana-2020	Mid-level felony (levels 3-4)	42.6
Louisiana-2017	Mid-level felony	41.1
Michigan-2019	Class B, C, D felony	40.0
New York-2016	Nonviolent felony	50.0
<b>Oregon-2022</b>	<b>Low-level felony</b>	<b>39.7</b>
New Mexico-2021	Drug crime, property crime, or status offense	32.5
Indiana-2020	Low-level felony (levels 5-6)	22.0
Louisiana-2017	Low-level felony	22.0
<b>Oregon-2022</b>	<b>Low-level misdemeanor</b>	<b>22.3</b>
Utah-2021	Class B & C misdemeanor	12.0
New York- 2016	Violation (sentence not more than 15 days)	10.0
Rhode Island-2017	Probation violation	16.9
Missouri-2014	Probation violation	9.8
Indiana-2020	Probation/community corrections revocation	8.5
Louisiana-2017	Revocation	8.5
<b>Oregon-2022</b>	<b>Probation violation</b>	<b>8.3</b>
New Mexico-2021	Probation violation	5.2

# Results of National Workload Study

- **Case Weight for each Case Type**
  - E.g., 100 hours for each Felony-- High—Other
  - *Not a real example*
- **Case weights → caseload standards**
  - To be turned into standards, need attorney hours available for case work
    - ABA studies default to 2080 hours
      - 40 hours/week x 52 weeks/yr = 2080 hours
      - Does not account for vacation, sick leave, training, community outreach, etc.
    - Will differ by jurisdiction
    - Might differ within a jurisdiction
  - E.g., 2080 hours/year ÷ 100 hours/case = 21 Felony—High—Other per attorney per year

# National Workload Study



## System Analysis

Historical case analysis

FTE analysis

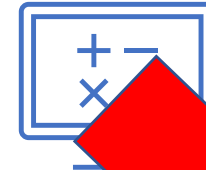
Describes the “World of Is”



## Delphi Process

Describes the “World of Should”

How much time *SHOULD* a public defender spend on a particular case task in a particular type of cases?



## Definition Analysis

Uses the system analysis and the Delphi analysis to calculate a staffing deficiency or excess

# National Workload Study v. State Study

- In general, state-specific will be preferred unless the state study is old or flawed
- May be used for comparison purposes
- May also be of use in substitution for one or more case type for reasons of legal development or data availability



# Attachment 5

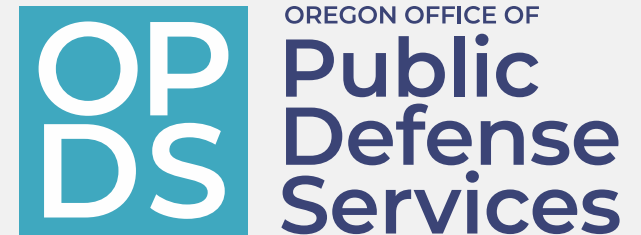
# Oregon Office of Public Defense Services

## 2023-2025 FY24 Caseload Forecast

February 23, 2023

**Jessica Kampfe, Executive Director**  
[Jessica.Kampfe@opds.state.or.us](mailto:Jessica.Kampfe@opds.state.or.us)

Ralph Amador, Finance & Budget Manager  
[Ralph.h.Amador@opds.state.or.us](mailto:Ralph.h.Amador@opds.state.or.us)



# Methodology

- Historical Case Data - appointed cases reported by current providers

County by County

All Case type Categories

- 10 Year Average number of cases by county and case type
- Calculated Average growth rate Year over Year

(Next year case count – previous year case count)/previous year case count

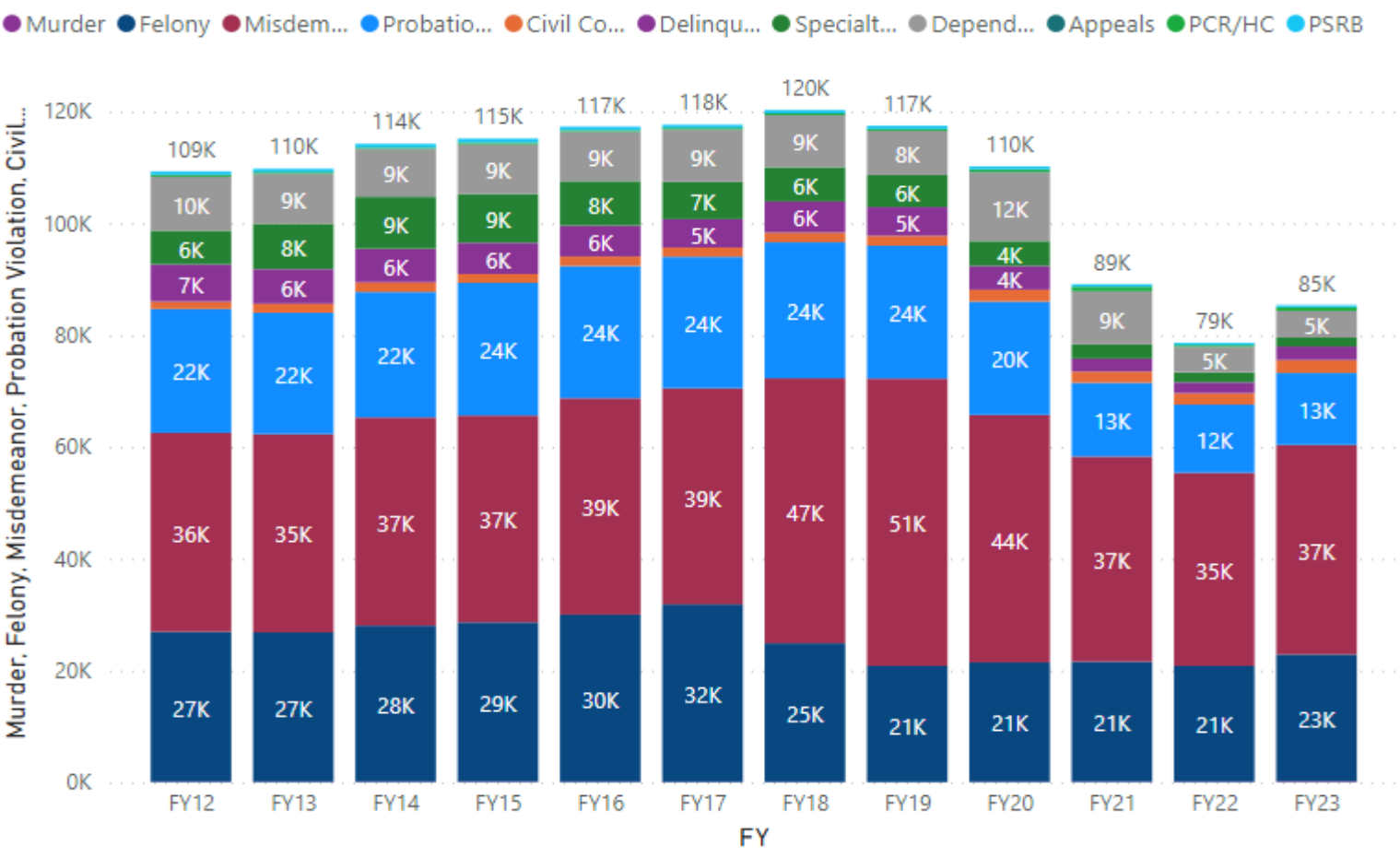
- FY 2023 projected off current 6 months of data

% of Growth by Case Type: Source: OJD Pre-Trial Dashboard FY18-FY23

County	Murder	A/B Felony	C Felony	Misdemeanor	TOTAL COUNTY GROWTH
Baker	0.00%	3.94%	-3.96%	-6.49%	-6.02%
Benton	0.00%	1.53%	9.70%	4.03%	4.61%
Clackamas	-25.00%	-10.63%	5.92%	0.73%	0.91%
Clatsop	0.00%	-11.10%	2.64%	3.27%	1.95%
Columbia	0.00%	1.82%	5.53%	0.28%	0.72%
Coos	-25.00%	-2.64%	-9.06%	0.38%	-3.05%
Crook/Jefferson	100.00%	0.33%	-6.47%	-8.45%	-7.96%
Curry	0.00%	-13.80%	-2.25%	0.49%	-1.10%
Deschutes	0.00%	-11.92%	-4.88%	-4.28%	-5.15%
Douglas	0.00%	-6.48%	-4.27%	-6.91%	-6.35%
Grant/Harney	100.00%	2.57%	-9.22%	1.59%	-1.55%
Hood River/Wasco/Sherman/Gilliam/Wheeler	0.00%	5.23%	5.18%	6.63%	5.85%
Jackson	-25.00%	-7.23%	-1.20%	-6.78%	-5.92%
Josephine	75.00%	-11.69%	2.29%	-16.06%	-13.11%
Klamath	0.00%	-5.00%	0.98%	-0.07%	-0.47%
Lake	0.00%	-7.90%	2.97%	22.94%	13.30%
Lane	-46.43%	-7.72%	-9.30%	-7.86%	-8.72%
Lincoln	-50.00%	-6.92%	-0.47%	-0.08%	-1.24%
Linn	-25.00%	-7.77%	0.31%	-5.24%	-4.07%
Malheur	-25.00%	4.91%	9.96%	6.53%	6.70%
Marion	-25.00%	-6.15%	5.84%	0.26%	0.87%
Multnomah	-57.64%	-4.53%	12.34%	-15.72%	-7.16%
Polk	-25.00%	-7.53%	1.47%	-11.63%	-9.33%
Tillamook	0.00%	-39.78%	1.47%	-13.87%	-15.34%
Umatilla/Morrow	50.00%	-3.83%	2.82%	-8.02%	-5.90%
Union/Wallowa	100.00%	10.28%	3.56%	7.56%	6.19%
Washington	-25.00%	-1.32%	3.01%	2.30%	1.95%
Yamhill	-25.00%	-9.46%	6.83%	1.62%	1.54%

# Historical View of Reported Cases (2012-2022)

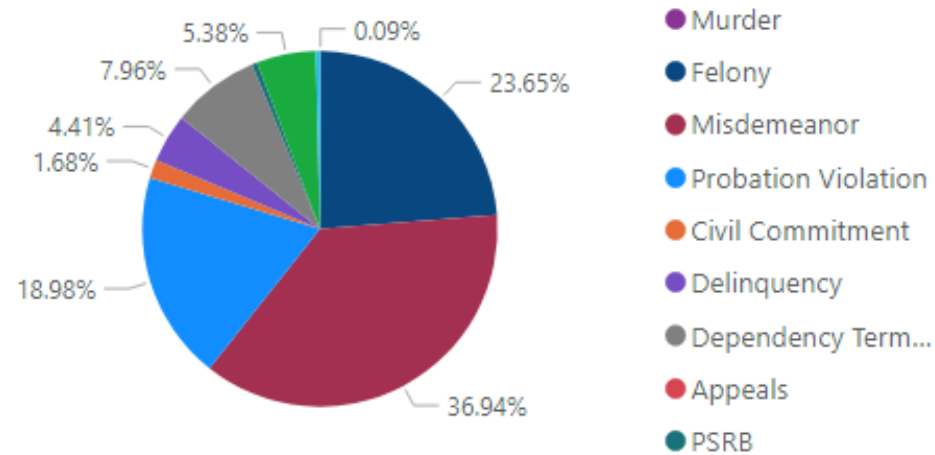
Cases Reported Historical (2012-2022)



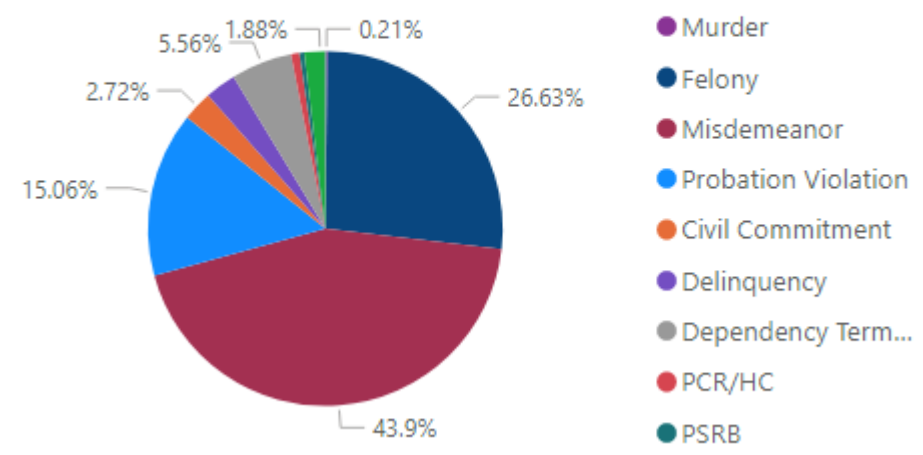
Source data from OJD Pre-trial Dashboard

# Cases Reported by Type

Cases Reported Historical (FY12-FY22)



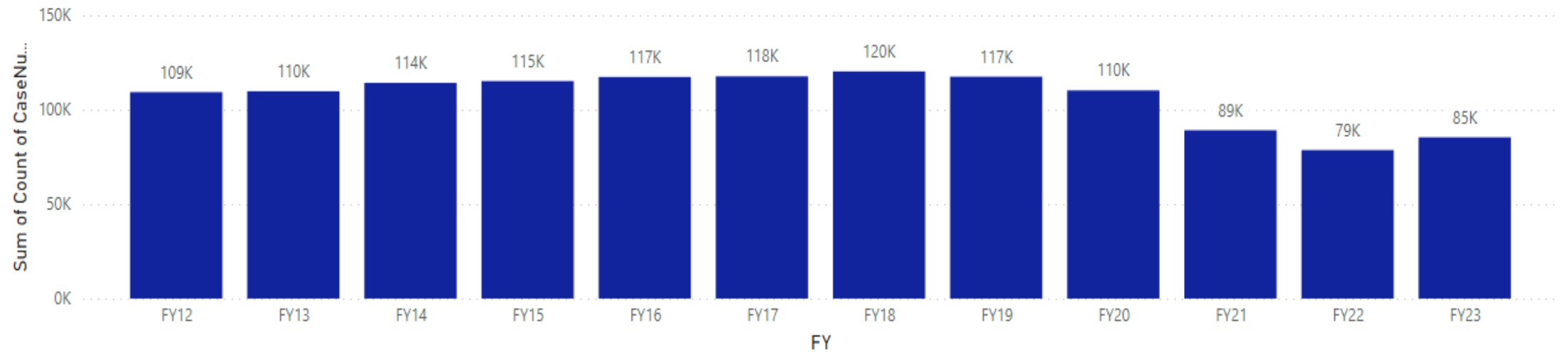
Cases Reported FY23 (projected)



Source data from OJD Pre-trial Dashboard

# 10-year view of Reported Cases

OPDS Statewide Cases Reported Criminal and Juvenile (PCRPP Reporting Excluded)



*Source data from OJD Pre-trial Dashboard*

# What we did

- Applied growth rate to average case counts for 10 Years.
- Applied growth rate to actual case counts for FY23.
- Projected FY24 need for each county and case type by current standards.
- Considered Oregon population growth 2010-2022 US Census Data
- Considered OSP Uniform Crime Reporting Data (2020-2022 by county)

PDSC Current Caseload Standards	
Case Type	Case Count
Murder	6
Jessica's Law	6
Measure 11	45
Major A/B Felony	138
Minor C/D/U Felony	165
Misdemeanor	300
PVs	825
Civil Commitment	230
Delinquency	132
PVs	825
Dependency/Termination	69
PCR/HC	45
PCR Appeal	50
Juvenile Appeal	32
Civil Commitment Appeal	60

## Projected MAC for 2023-2025 (FY 24)

# Results

- The results of the analysis is comparable to what we are requesting in our policy option packages.
- This is only for newly appointed and appointed cases.
- This includes the unrepresented cases as part of the universe.
- This does not however demonstrate the problems associated with open cases.

Contract Type	Based on FY2023	Based on 10yr Avg
Criminal	481.64	435.62
Juvenile (Non-PCRPP)	116.84	147.16
Statewide Appeals	12.36	10.06
Total	610.84	592.84



# Next Steps

- Quarterly reviews of each county and judicial district.
- Quarterly review of data collection, new policies and/or changes, new/changing legislation, other environmental influences.
- Invite key partners to discussion to include OJD, DOJ, OSP, District Attorney Association, OCDLA, ODHS, interested providers, LFO, CFO and internal staff.
- Update the forecast on a quarterly basis to report to changes or deviations to Commissioners and the Legislature.
- Active discussion on how to improve methodology.

# Thank you



# Attachment 6



To: Per Ramfjord, Chair, Public Defense Services Commission  
Paul Solomon, Vice-Chair, Public Defense Services Commission  
Members, Public Defense Services Commission

From: Eric Deitrick, General Counsel

Cc: Jessica Kampfe, Executive Director

Re: Draft '23-'25 Public Defense Contract

Date: February 15, 2023

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This memo is intended to summarize changes between the existing 2022 public defense contract document and the one currently before you.

The existing public defense contract has been described as unwieldy and unhelpful, both by attorney providers and PDSC staff. It's over two decades old and exists on a word processing document that originated from the Oregon Judicial Department, before the agency was created. It's been amended over and over again.

Structurally, the previous contract was organized by rights and obligations of the PDSC, rights and obligations of Contractor, and mutual rights. The challenge with that approach is that a right to one party often creates an obligation of the other party. Accordingly, provisions regarding concepts like "breach," "notice," and "reporting requirements" are located in multiple locations throughout the document. This is confusing to any reader of the document, and in some instances, creates contradictory directives.

The intent with the new document is to have a better organized contract that provides clarity and is easier to read. As a starting point, we looked to the model public defense contract put forth by the National Legal Aid and Defenders Association (NLADA). The structure of this new contract was predicated upon that. From there, we used existing contract language as often as possible and moved it into this new document. There are terms removed from the prior contract, and on occasion, new language introduced. Most of the new language is based upon language from the NLADA model contract.

There are three structural changes to the contract model. We propose moving to two tiers of

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reimbursement rates, rather than four. We propose only contracting with attorneys who are giving at least half of their time to public defense work – so .5 FTE and up. And we are proposing a 15% variance on the maximum attorney caseload to account for jurisdictional practice differences. This mirrors the variance in PCRCP contracts

We want feedback on these changes and the new document as a whole. As described above, our goal is not to make significant changes with this contract, but better organize it. If you see language additions or deletions that concern you, please let us know.

The PDSC is required to have separate contracts for criminal, juvenile, and PCRCP representation. The structure of this new contract has general language applicable to all contractors. From there, there are three exhibits that are contract specific to criminal, juvenile, and PCRCP. Those are Exhibit A (Compensation), Exhibit B (Caseload & Workload Standards), and Exhibit C (Additional Performance Standards).

One final note – this contract does not refer to OPDS. It only refers to the PDSC. This is not intended to change our governance roles of contract management and oversight. Rather, use of this term is in line with our governance improvements and direction from the legislature.

I will now walk through the new contract document and summarize the source of the language, along with any notable changes.

Preamble: The preamble is predicated upon language from the NLADA model contract, tailored to Oregon.

I. Duration of Contract: This is predicated upon NLADA model contract.

II. Rules: The contract interpretation rules are identical to what is in the existing contract.

III. Definitions: These are the structural components of our service delivery model – clients, cases, attorneys, maximum attorney caseload, caseload, workload, and services. The misappropriation of funds term comes from the NLADA model contract, and the concept is a triggering point for notice obligations and potential breach.

IV. Independent Contractor: The language is predicated upon language in the NLADA model contract, with some language from the existing contract overlaid.

V. Assignment and Subcontracting: The language is our existing contract language, written more simply.

VI. Agency's Employees, Members, Office, and Equipment: This is language from the NLADA model contract, with the existing requirement that attorney providers maintain an office at which confidential confirmation with client can occur overlaid. These concepts are already implicitly or explicitly embedded in various parts of the existing contract.

VII. Performance Requirements: This is language from the NLADA model contract, tailored to

Oregon. The existing contracts contain numerous performance requirements, which are identified in section 7.1. The approach here was to define the big picture standards to which attorneys are tethered, with specific performance requirements for each contract type identified in Exhibit C to the contract.

VIII. Attorney Training: This is new language taken from the NLADA model contract. CLE requirements from the existing contract were added here. The training obligations, while never previously funded, were previously implied by sections 7.10 and the general language surrounding compliance with best practices.

IX. Compensation and Method of Payment: This section clarifies several big picture items regarding compensation. It clarifies that attorney FTE compensation is pegged to the case types to which its attorneys accept appointments (for this contracting cycle, the agency's current plan is to reimburse providers at two rate tiers). It uses language from the NLADA model contract to define the scope of what PDSC funding may be used for. It uses the NLADA model contract language to discuss when funds can be withheld from contractor. Finally, there is language establishing the obligations for the parties in the event of a budget shortfall or adjustment. This language exists in the existing contract.

X. Contract Modification and Adjustments: This section is in the existing contract and governs when the PDSC can modify a contract without mutual agreement.

XI. Establishment and Maintenance of Records: Sub A is language from the NLADA model contract that contains obligations in our existing contract but stated more clearly. Sub B and C are from the existing contract.

XII. Contracting Reporting and Inspection: This section cleans up multiple sections of the existing contract. Sub A is predicated upon the NLADA model contract and would create a new reporting requirement for Contractors to disclose the identity of those performing work on the contract, the case types they are qualified to accept, and the funds they receive from the contract. Sub B incorporates our existing caseload and workload report requirements. Sub C authorizes additional reporting obligations not yet contemplated if the commission approves the reporting obligation and the agency creates the reporting form. This is a catch all to give the agency flexibility. Sub D takes obligations under the existing contract and uses the NLADA model contract language to incorporate those concepts. Sub D incorporates concepts from sections 3.6, 4.3, 4.4, 7.5, and 7.10 of the existing contract. Sub E are the potential penalties for late reports and is in the existing contract.

XIII. Evaluation of Contractor: The first paragraph is based on the NLADA model contract and defines the areas in which the agency could evaluate a Contractor. The second paragraph incorporates the meeting provisions from the existing contract. This is the space in which CAP will eventually play a role.

XIV. Corrective Action: This is language from the NLADA model contract and describes the process for the PDSC to engage a Contractor it believes may be in breach. This concept is in the existing contract in section 5.4, with different language with different time requirements.

XV. Contract Termination and Suspension: This is language from the NLADA model contract. The existing contract had termination provisions in sections 2.2, 3.3, 4.1, and 5.4

XVI. Notices: These concepts are already included in the existing contract. The misappropriation of funds provision is new and based upon language from the NLADA model contract, although the concept is arguably implied by language in existing section 7.8. Other ambiguous notice requirements have been deleted, as have provisions 7.8.2.1 and 7.8.2.2 of the existing contract. The timeline for reporting is shifted to time at which the Contractor becomes aware of the triggering event.

XVII. Insurance Requirements: These provisions are in the existing contract. Casualty insurance has been expressly deleted. However, there is a catch-all provision in the new contract requiring Contractors to comply with all applicable laws. So, if there are other insurance requirements required for a particular type of entity, they will still need to comply with those. The NLADA model contract had an express requirement for automobile insurance, which we have not incorporated. There are also specific notice provisions regarding insurance changes that we have deleted.

XVIII. Hold Harmless & Indemnification: This is the existing contract language that was vetted by Oregon DOJ and agreed to by public defense contractors previously.

XIX. Responsibility of Contract Administrator: These requirements are identical to what is in the existing contract.

XX. Compliance with Applicable Laws: This concept is already in the existing contract. This language comes from Oregon Department of Justice to highlight some of the existing state and federal statutes and rules that it believes should be highlighted in contracts.

XXI. Nondiscrimination: This language is from the NLADA Model Contract. The concept is not expressly stated in the existing contract, although implied by the existing “compliance with applicable law” provision.

XXII. Conflict of Interest: This is language from the NLADA Model Contract that does not currently exist in our contracts.

Exhibit A: This defines obligations and rules regarding Contractor compensation and will be updated as the budget picture becomes clearer.

Exhibit B: This defines the caseload and workload obligations for Contractors. It is consistent with the existing contract, although we built in a 15% variance in the caseload obligations to account for diverging practices in jurisdictions. This mirrors the existing PCRCP variance. For out of county cases, we kept the same structure but used different language. It’s still not a mandate; rather, we are trying to incentivize through additional case weighting.

Exhibit C: While section VII defined the high-level performance standards for attorneys, this exhibit provides specific expectations by contract type. It is consistent with the current contract.

# **PUBLIC DEFENSE SERVICES COMMISSION CONTRACT FOR PUBLIC DEFENSE SERVICES**

## **Table of Contents**

### **Contents**

I.	DURATION OF CONTRACT .....	3
II.	RULES .....	3
III.	DEFINITIONS .....	4
IV.	INDEPENDENT CONTRACTOR .....	5
V.	ASSIGNMENT AND SUBCONTRACTING .....	5
VI.	CONTRACTOR'S EMPLOYEES, MEMBERS, OFFICE, AND EQUIPMENT .....	5
VII.	PERFORMANCE REQUIREMENTS .....	5
VIII.	ATTORNEY TRAINING .....	5
IX.	COMPENSATION AND METHOD OF PAYMENT .....	6
XI.	ESTABLISHMENT AND MAINTENANCE OF RECORDS .....	7
XII.	CONTRACTOR REPORTING AND INSPECTION .....	7
XIII.	EVALUATION OF CONTRACTOR .....	9
XIV.	CORRECTIVE ACTION .....	9
XV.	CONTRACT TERMINATION AND SUSPENSION .....	10
XVI.	NOTICES .....	11
XVII.	CONTRACTOR INSURANCE .....	11
XVIII.	HOLD HARMLESS AND INDEMNIFICATION .....	12



XIX.	RESPONSIBILITY OF CONTRACT ADMINISTRATOR.....	12
XX.	COMPLIANCE WITH APPLICABLE LAW .....	13
XXI.	NONDISCRIMINATION.....	13
XXII.	CONFLICT OF INTEREST .....	13
XXIII.	MERGER CLAUSE .....	14

DRAFT

# CONTRACT FOR PUBLIC DEFENSE SERVICES

The Public Defense Services Commission, referred to as “the PDSC,” and [entity name], referred to hereafter as “Contractor,” agree to the provision of public defense services as outlined below for the period [date] to [date] in [county/counties]. The Contract incorporates Exhibits A (Compensation), B (Caseload and Workload Standards), and C (Additional Performance Requirements). The Contract Administrator is [ ].

The following are the underlying bases for the Contract:

- Oregon has a constitutional and statutory responsibility to provide public defense services, and pursuant to ORS 151.216, the Public Defense Services Commission has responsibility for ensuring those services are available in circuit and appellate courts.
- The PDSC desires to have legal services performed for eligible persons entitled to public defense representation by Contractor, as authorized by law.
- Contractor agrees to accept appointments to represent eligible clients. Contractor agrees to provide, and the PDSC agrees to pay for, competent, zealous legal representation to its clients as required by this contract, the Oregon Rules of Professional Conduct, Oregon State Bar Performance Standards, American Bar Association Best Practice Standards, and Oregon and federal judicial opinions regarding the right to counsel. Contractor agrees to comply with PDSC policies and procedures.
- The PDSC and Contractor agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of representational services to eligible clients of Contractor, the training and educational expenses associated with providing those services, and overhead costs.

The parties agree as follows:

## I. DURATION OF CONTRACT

This Contract shall commence on \_\_\_\_\_ and terminate on \_\_\_\_\_, unless extended or terminated earlier in a manner allowed by this Contract.

## II. RULES

A. Interpretation of Terms: Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and not merely directive.

B. Construction and Jurisdiction: This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit arising under this contract to a court of competent jurisdiction in the State of Oregon.

C. Severability: If a court of competent jurisdiction declares, or the parties agree that any term or provision of this contract is illegal or in conflict with any other law, the remaining terms and provisions shall remain valid, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the term or provision held to be invalid.

D. Waiver: Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

### III. DEFINITIONS

A. Eligible client: An eligible client is a person who has been determined by a court or the PDSC to be entitled to a court-appointed attorney, pursuant to Oregon statute, the Oregon Constitution, or the United States Constitution.

B. Case: A Case shall mean any action in which there is one eligible client on one charging instrument, or on one petition and its successor.

C. Full Time Equivalent Attorney (FTE): A FTE Attorney is an attorney under contract with the PDSC to provide representational services. FTE Attorneys shall be eligible for appointment to the maximum number of cases as described in Exhibit B, based upon their time commitment to the PDSC. A FTE attorney must provide at least .5 of a maximum attorney caseload.

D. Maximum Attorney Caseload: The measurement in Exhibit B that defines the caseload and workload limits for FTE attorneys.

E. Caseload: The number of cases assigned to a FTE Attorney on an annual basis.

F. Workload: The number of open cases assigned to a FTE Attorney at a given point in time.

G. Representational Services: The services for which the PDSC is to pay Contractor are representational services, which includes lawyer services and appropriate support staff services, investigation and appropriate sentencing and disposition advocacy, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the PDSC is to pay Contractor do not include fees and expenses authorized as routine expenses or case support services as defined by the PDSC.

H. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term

shall include the disbursement of funds for which prior approval is required but is not obtained.

#### **IV. INDEPENDENT CONTRACTOR**

Contractor is, for all purposes arising out of this Contract, an independent contractor, and neither Contractor nor its employees, members, agents, or successors shall be deemed employees of the PDSC. Contractor shall complete the requirements of this Contract according to Contractor's own means and methods of work, which shall be in the exclusive charge and control of Contractor, and which shall not be subject to control or supervision by the PDSC, except as specified herein.

#### **V. ASSIGNMENT AND SUBCONTRACTING**

Contractor shall not subcontract, delegate, or assign any of the services or duties required under this contract without obtaining the PDSC's prior written consent.

#### **VI. CONTRACTOR'S EMPLOYEES, MEMBERS, OFFICE, AND EQUIPMENT**

Contractor agrees that it has secured or will secure at Contractor's own expense, all persons, employees, office space, and equipment required to perform the services contemplated/required under this Contract. Contractor agrees that all attorneys performing services pursuant to this Contract shall maintain an office in the judicial district in which they have contracted to provide representational services at which Contractor can have confidential communication with public defense clients. If Contractor contracts to provide services in more than one judicial district, then Contractor shall maintain an office in at least one of the judicial districts in which they have contracted to provide representational services.

#### **VII. PERFORMANCE REQUIREMENTS**

Any attorney working under this contract shall use their independent professional judgment in their representation at all proceedings related to the legal matters that are the subject of the representation.

Contractor agrees to provide representational services and comply with the requirements of this Contract. Contractor agrees to comply with the Oregon Rules of Professional Conduct, the Oregon State Bar Performance Standards, American Bar Association Best Practice Standards, and to provide competent legal representation as mandated by Oregon and federal judicial opinions regarding the right to counsel.

Contractor agrees to adhere to the caseload and workload standards in Exhibit B and the additional performance standards in Exhibit C.

#### **VIII. ATTORNEY TRAINING**

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes

and developments in the law and assure continued rendering of competent assistance of counsel. Contractor shall provide sufficient training, whether in-house or through a qualified provider of continuing legal education (CLE), to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules.

Contractor shall ensure all of its attorneys comply with the CLE requirements of the Oregon State Bar and obtain 12 hours of CLE credit specific to their contract (criminal or juvenile) during the contract period.

## **IX. COMPENSATION AND METHOD OF PAYMENT**

The PDSC shall pay Contractor pursuant to the rates specified in Exhibit A, which may be amended during the term of the Contract by mutual assent of the parties. Payments shall be made in monthly installments by direct deposit into the account designated by Contractor. Compensation rates for Attorney FTE will be determined by the types of cases attorneys are qualified and agree to accept. All funds provided pursuant to this Contract are provided for the sole purpose of provision of representational services to eligible clients of Contractor, the training and educational expenses associated with providing those services, and overhead costs.

Contractor shall not expend funds under this contract for work performed outside the scope of this contract; accept funds from anyone other than PDSC for work performed under the scope of this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or solicit or accept payment from a client for representational services on a matter within the scope of services of this contract or on a matter which Contractor has been appointed by the court.

In the event of Contractor failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the PDSC reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the PDSC's right to termination as provided in Section XV of this Contract.

At the time this contract is executed, sufficient funds either are available within the Contract Authority's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability and appropriation of funds. The PDSC may modify, suspend, or terminate this contract if it reasonably determines that funds will not be sufficient to pay anticipated costs of the contract. The PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense contract agencies. The PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the legal requirements to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct. The PDSC may unilaterally suspend or terminate the contract if the parties cannot agree to modification.

## **X. CONTRACT MODIFICATION AND ADJUSTMENTS**

If Contractor's caseload increases or decreases by 15% or more for six consecutive months, the PDSC shall notify Contractor and schedule a meeting to discuss the circumstances surrounding the increase or decrease. The PDSC may not decrease a Contractor's attorney FTE, or the financial value attached, without considering whether Contractor's declination of court appointments was required by Exhibit B. The PDSC may adjust the number of attorney FTE in the contract to meet the changing needs of the jurisdiction if:

- The actual or reasonably expected number of available cases increases or decreases substantially, such that the existing attorney FTE amount no longer corresponds with caseload needs;
- The introduction or discontinuation of a specialty court; or
- The PDSC determines that an increase or decrease in attorney FTE capacity is necessary.

## **XI. ESTABLISHMENT AND MAINTENANCE OF RECORDS**

A. Contractor agrees to maintain accounts and records, including client case files, personnel records, property records, and financial records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract.

B. Contractor's financial records shall be on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

C. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the PDSC. In addition, Contractor agrees to retain all public defense client case files as required by the Oregon State Bar, with a minimum of 10 years from the time of closure for all cases except murder and Ballot Measure 11 offenses, which shall be preserved for a minimum of 20 years.

## **XII. CONTRACTOR REPORTING AND INSPECTION**

Contractor agrees to audits and inspections, and it agrees to submit to the PDSC reports, as prescribed below. Failure to comply with requested audits and inspections, or to submit required reports and records, may be considered a breach of this contract and may result in the PDSC withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

### **A. Position Profile**

Contractor shall submit to the PDSC on September 1, and the first day of each subsequent quarter, a profile of Full-Time Equivalent (FTE) positions for both legal and support staff who

perform work on this Contract, distributed by type of case. The report will designate the name and compensation for each person who performs work on this Contract, in a format to be provided by the PDSC. The PDSC will not release this information except as required by law. If the employee splits his/her work between work under this Contract and other business, the report will indicate the amount of time that employee devotes to private matters compared to work under this Contract.

**B. Caseload and Workload Reports**

By the 20th day of the month, Contractor shall submit a monthly report to the PDSC detailing assigned and open cases, as required by the PDSC's Caseload and Workload Reporting Policy.

**C. Other Reports**

Contractor agrees to provide PDSC with other reports during the Contract if the PDSC commission determines additional reporting obligations are necessary and the PDSC provides a template to Contractor to submit the reports.

**D. Audit and Inspection and Records**

Contractor agrees to grant the PDSC full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the PDSC may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, Contractor shall provide to the PDSC requested records and/or a right of access to its facilities to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by Contractor in a way that allows access by the PDSC without breaching such confidentiality or privilege. Contractor agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the PDSC agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The PDSC will respect the attorney-client privilege.

**E. Failure to Provide Reports**

Except with prior approval from PDSC, Contractor shall submit timely and properly completed reports. If Contractor fails to submit a reasonably accurate report on the due date, the PDSC may withhold the following percentage of funds from Contractor's monthly payment, and each subsequent monthly payment, until the PDSC receives the report and supporting documentation. Funds withheld may be paid to Contractor once reporting is current.

- Not received within 10 days of the due date: 5% of contract funds
- 30 days of the original due date: 10% of contract funds
- 60 days of the original due date: 15% of contract funds
- 90 days of the original due date: 25% of contract funds

### **XIII. EVALUATION OF CONTRACTOR**

The PDSC may review information to monitor Contractor activity, including attorney caseloads and workloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, the compensation provided to attorneys and support staff to assure adherence, and whether Contractor is meeting the performance requirements of this Contract.

At the request of either party, and at least twice per year, the PDSC and Contractor will meet to discuss case assignment trends and any other matters needed to determine contract compliance or any necessary contract modifications. In counties where more than one Contractor provides representational services, these meetings will include a review by the PDSC of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates contemplated under the contracts, the PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected.

### **XIV. CORRECTIVE ACTION**

If the PDSC reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The PDSC will notify Contractor in writing of the nature of the breach.
2. Contractor shall respond in writing within five (5) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The PDSC will notify Contractor in writing of the PDSC's determination as to the sufficiency of Contractor's corrective action plan. The determination of the sufficiency of Contractor's corrective action plan will be at the discretion of the PDSC and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event Contractor does not concur with the determination, Contractor may request a review of the decision by the PDSC Executive Director. The PDSC agrees that it shall work with Contractor to implement an appropriate corrective action plan.

In the event that Contractor does not respond to the PDSC's notification within the appropriate time, or Contractor's corrective action plan for a substantial breach is determined by the PDSC to be insufficient, the PDSC may commence termination of this Contract in whole or in part pursuant to Section XV (Contract Termination and Suspension).

In addition, the PDSC reserves the right to withhold a portion of subsequent payments owed Contractor which is directly related to the breach of the Contract until the PDSC is satisfied the corrective action has been taken or completed.



## **XV. CONTRACT TERMINATION AND SUSPENSION**

A. The PDSC may terminate this Contract in whole or in part upon 10 days' written notice to Contractor in the event that –

1. Contractor substantially breaches any duty, obligation, or service required pursuant to this Contract;
2. Contractor engages in misappropriation of funds; or
3. The duties, obligations, or services herein become illegal, or not feasible.

Before the PDSC terminates this Contract pursuant to Section XV A.1, the PDSC shall provide Contractor written notice of termination, which shall include the reasons for termination and the effective date of termination. Contractor shall have the opportunity to submit a written response to the PDSC within 10 working days from the date of the PDSC's notice. If Contractor elects to submit a written response, the PDSC will review the response and make a determination within 10 days after receipt of Contractor's response. In the event Contractor does not concur with the determination, Contractor may request a review of the decision by the PDSC Executive Director. In the event the PDSC Executive reaffirms termination, the Contract shall terminate in 10 days from the date of the final decision of the PDSC Executive Director. The Contract will remain in full force pending communication of the PDSC Executive Director to Contractor. A decision by the PDSC Executive affirming termination shall become effective 10 days after it is communicated to Contractor.

B. Contractor reserves the right to terminate this Contract with cause with 30 days written notice should the PDSC substantially breach any duty, obligation or service pursuant to this Contract. In the event that Contractor terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the PDSC, Contractor shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the PDSC that (i) no default actually occurred, or (ii) the failure to perform was without Contractor's control, fault or negligence.

C. In the event of the termination or suspension of this Contract, Contractor shall continue to represent clients that were previously assigned and the PDSC will be liable for any payments owed for the completion of that work. Contractor will remit to the PDSC any monies paid for cases not yet assigned or work not performed under the Contract. The PDSC may request that Contractor attempt to withdraw from any case assigned and not completed. Should a court require, after Contractor has attempted to withdraw, the appearance of counsel from Contractor on behalf of any client previously represented by Contractor where such representation is no longer the obligation of Contractor pursuant to the terms of this Contract, the PDSC will honor payment to Contractor upon judicial verification that continued representation is required.

D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, Contractor shall return to the PDSC those funds,

unexpended or misappropriated, which, at the time of termination, have been paid to Contractor by the PDSC.

E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.

F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract.

## **XVI. NOTICES**

Contractor will immediately notify the PDSC in writing if one of the following events occurs:

- A. Bar Discipline. When it becomes aware that a complaint lodged with the Oregon State Bar has resulted in discipline, reprimand, suspension, or disbarment of any attorney who is a member of Contractor's staff or working for Contractor.
- B. Criminal Charges or Conviction. When it becomes aware that an attorney or investigator performing services under this contract has been charged with or convicted of a crime.
- C. Events Impacting Contractor's Ability to Perform Contract. When it becomes aware of an event that impacts its ability to perform services under this contract including, but not limited to, events such as fire, flood, burglary, or other damage to offices, buildings, or equipment used by Contractor to provide services.
- D. Embezzlement or Misappropriation of Funds. When it becomes aware of embezzlement or misappropriation of funds as defined in Section III.
- E. Ability to Accept Appointments to Eligible Clients. When it becomes aware that Contractor is unable to accept appointments to represent eligible clients.

## **XVII. CONTRACTOR INSURANCE**

Without limiting Contractor's indemnification, it is agreed that Contractor shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below. Contractor shall provide a certificate of insurance or, upon written request of the PDSC, a duplicate of the policy as evidence of insurance protection.

### **A. General Liability Insurance**

At its expense, in whole or in part from contract funds, Contractor, and each independent member of Contractor, shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred

thousand dollars (\$500,000) per occurrence for personal injury and property damage.

**B. Professional Liability Insurance**

Contractor shall maintain, or ensure that its attorneys maintain, professional liability insurance for any and all acts which occur during the course of their work for Contractor, and the professional liability insurance must meet the minimum requires as established by the Oregon State Bar.

**C. Workers' Compensation**

Contractor shall maintain Workers' Compensation coverage as required by the State of Oregon.

**XVIII. HOLD HARMLESS AND INDEMNIFICATION**

Contractor shall protect, indemnify, defend, and hold harmless the PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that are related to, result from, or arise out of Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement. Notwithstanding the above, Contractor has no duty to indemnify, defend, or hold harmless the PDSC for its actions, decisions, work, activities, or failures to act related to this Agreement.

**XIX. RESPONSIBILITY OF CONTRACT ADMINISTRATOR**

Contractor shall name a Contract Administrator, who is responsible for contract administration duties in this contract. Typical Contract administration duties include, without limitation, the following:

- Selection of prospective contract attorney members;
- Assigning cases in accordance with contract attorney qualification level and oversight of case assignments;
- Timely and accurate tracking and reporting of caseloads to PDSC;
- Management and disbursement of contract funds;
- Working with PDSC to organize regular meetings to review data and ensure sufficient support to achieve program expectations;
- Consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing;
- Corresponding with PDSC regarding contract inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations;
- Maintaining records of all case reporting, financial and other records regarding contract members and making such records available to PDSC upon request;
- Negotiating new contracts and contract changes with PDSC as necessary;
- Actively participating in system improvement initiatives including multi-disciplinary training and partner meetings and providing training and mentorship to

contract attorneys and staff.

Contract administrators and PDSC will meet a minimum of three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

## **XX. COMPLIANCE WITH APPLICABLE LAW**

Contractor shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its status as an entity and the work to be done under this contract. Such laws include, but are not limited to, the following laws, regulations and executive orders to the extent they are applicable to this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

## **XXI. NONDISCRIMINATION**

During the performance of this Contract, neither Contractor nor any party subcontracting with Contractor under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

## **XXII. CONFLICT OF INTEREST**

### **A. Interest of Members of PDSC and Contractor**

No officer, employee, or agent of the PDSC, or the State of Oregon, who exercises any functions or responsibility in connection with the planning and implementation of the services funded herein shall have any personal financial interest, direct or indirect, in this Contract, or Contractor.

B. Interests of Contract Administrators and Officers

Contractor shall not acquire or rent real and/or personal property owned or rented by (a) an officer of Contractor, (b) a Contract administrator, (c) an individual related to an officer of Contractor or Contract administrator, or (d) a corporation owned by Contractor, a Contract administrator, an officer of Contractor, or relative of an officer of Contract or Contract administrator, without prior disclosure and approval by the PDSC

**XXIII. MERGER CLAUSE**

This writing, together with Exhibits A, B, and C, constitutes the entire agreement between the parties. There are no other oral or written understandings, agreements, or representation regarding this agreement. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless made in writing and signed by both parties. If made, such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given. Contractor, by the signature below of its authorized representative hereby acknowledges that it and all attorneys providing representational services pursuant to this contract, have read this agreement, understand it, and agree to be bound by its terms.

Agreed:

\_\_\_\_\_  
PDSC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

## EXHIBIT A – COMPENSATION

The compensation for this contract is detailed below. These amounts may be amended:

- By mutual assent of the parties;
- Following receipt of Contractor's Profile Report, based upon a change in the attorney qualification status of its attorneys; or
- Following a contract modification authorized by Section X.

Compensation authorized by this contract may be withheld:

- When Contractor has a vacancy that has not been filled for 60 days;
- When Contractor fails to submit reports as required by Section XII;
- In response to the breach, corrective action, and termination provisions established in Sections XIV and XV.

Contractor shall be compensated at two rates based upon the number of Attorney FTE in their contract – Attorney 1 and Attorney 2. This contract includes funding for the following Attorney FTE:

Attorney 1:	FTE at	per year.
Attorney 2:	FTE at	per year.

In addition, the contract contains the following funds:

## EXHIBIT B – CASELOAD AND WORKLOAD STANDARDS FOR CRIMINAL CONTRACT

Contractor agrees that its attorneys will provide legal services in accord with the following caseload and workload standards:

- A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the caseload and workload limits described below. Contractor agrees that all attorneys will accept appointments to case types that they are qualified, competent, and reimbursed. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts. Due to jurisdictional differences in practice, the annual caseload limits are subject to a 15% variance.
- B. Annual Caseload Limits: Below is the maximum number of cases a 1.0 FTE attorney may be assigned per calendar year, if the attorney was assigned only cases from one case type.
- |                         |     |
|-------------------------|-----|
| • Murder:               | 6   |
| • Jessica Law:          | 6   |
| • Ballot Measure 11:    | 45  |
| • Major (A/B) Felonies: | 138 |
| • Minor (C) Felonies:   | 165 |
| • Misdemeanors:         | 300 |
| • Probation Violation:  | 825 |
| • Civil Commitments:    | 230 |
- C. Case Weighting and Annual Caseload Limits: The annual caseload limit for a 1.0 FTE attorney is 300 weighted cases per year, which corresponds to 25 weighted cases per month. The maximum number of cases an FTE Attorney may be assigned is equal to the product of their percentage of FTE Attorney and the percentage of the year they are under contract (300 Weighted Cases x Percent FTE x Percent of Year under Contract). Each case type receives the following weights:
- |                         |     |
|-------------------------|-----|
| • Murder:               | 50  |
| • Jessica Law:          | 50  |
| • Ballot Measure 11:    | 6.7 |
| • Major (A/B) Felonies: | 2.2 |
| • Minor (C) Felonies:   | 1.8 |
| • Misdemeanors:         | 1   |
| • Probation Violation:  | .36 |
| • Civil Commitments:    | 1.3 |

- D. Workload: Contractor agrees that it will monitor attorney workloads to ensure those attorneys can meet their ethical obligations to each of their clients. Contractor agrees to adhere to the ABA's *Eight Guidelines of Public Defense Related to Excessive Workloads*. Contractor agrees to report attorney workload information to the PDSC in its monthly caseload reports.
- E. Partial Representation Weighting: When an attorney's representation ends prior to the entry of a final order or judgment, the attorney shall be assigned a percentage of the case weight described in B, based upon the following formula:
- 0-14 Days, 25%
  - 15-30 Days, 50%
  - 31-89 Days, 75%
  - 90 Days or more, 100%
- F. Out of County Weighting: When an attorney accepts an appointment to a case outside the county or counties for which this contract is contemplated, the case shall receive twice the case weighting described in B. An attorney shall endeavor to accept appointments to current clients in other counties to support the best practice of one client, one lawyer.
- The additional weighting does not apply to Murder or Jessica's Law cases;
  - If an attorney is assigned to an out of county client with more than one case, the most serious case type will be the case for which double credit is assigned.
- G. Additional Case Weighting: In addition to the assigned case weight in B, an attorney may treat the case as a new appointment and receive a new case weight:
- The attorney has represented the client for a year or more and the case has been delayed pursuant to a bench warrant, a dismissal without prejudice, or issues surrounding aid and assist;
  - The case is retried following a hung jury; or
  - The case returns for a new trial or sentencing following a direct appeal or post-conviction relief.
- H. Extraordinary Case Weighting: Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of case may be granted additional case weight, subject to the PDSC's discretion. No earlier than thirty (30) days after being appointed in any particular case and no later than thirty (30) days after final disposition, an attorney seeking additional case weight for extraordinary circumstances may submit such a request using the form provided by PDSC for this purpose.
- I. Case Closure: Contractor shall close a client's case when:
1. The final judgment or order has been entered into the court register, and the



Contractor has met all other contractual obligations:

- If the appointment was for a probation violation, the attorney shall close the case upon disposition of the probation violation.
  - A judgment of dismissal constitutes a final judgment.
  - An attorney may not close a case that has been entered into a deferral, diversion, or conditional discharge agreement until the final judgment has been entered into the court register;
2. A judge has signed an order removing the attorney from the case; or
  3. A bench warrant for a client's failure to appear has been active for 180 days.

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## EXHIBIT B – CASELOAD AND WORKLOAD STANDARDS FOR JUVENILE CONTRACT

Contractor agrees that its attorneys will provide legal services in accord with the following caseload and workload standards:

- A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the caseload and workload limits described below. Contractor agrees that all attorneys will accept appointments to case types that they are qualified, competent, and reimbursed. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts. Due to jurisdictional differences in practice, the annual caseload limits are subject to a 15% variance.
- B. Annual Caseload Limits: Below is the maximum number of cases a 1.0 FTE attorney may be assigned per calendar year, if the attorney was assigned only cases from one case type.
- |                       |     |
|-----------------------|-----|
| • Murder:             | 6   |
| • Delinquency         | 132 |
| • Dependency          | 69  |
| • Probation Violation | 825 |
- C. Case Weighting and Annual Caseload Limits: No 1.0 FTE attorney shall be assigned more than 300 weighted cases per year, which corresponds to 25 weighted cases per month. The maximum number of cases an FTE Attorney may be assigned is equal to the product of their percentage of FTE Attorney and the percentage of the year they are under contract (300 Weighted Cases x Percent FTE x Percent of Year under Contract). Each case type receives the following weights:
- |                       |     |
|-----------------------|-----|
| • Murder:             | 50  |
| • Delinquency         | 2.3 |
| • Dependency          | 4.3 |
| • Probation Violation | .36 |
- D. Workload: Contractor agrees that it will monitor attorney workloads to ensure those attorneys can meet their ethical obligations to each of their clients. Contractor agrees to adhere to the ABA's *Eight Guidelines of Public Defense Related to Excessive Workloads*. Contractor agrees to report attorney workload information to the PDSC in its monthly caseload reports.

- E. Partial Representation Weighting: When an attorney's representation ends prior to the entry of a final order or judgment, the attorney shall be assigned a percentage of the case weight described in B, based upon the following formula:
- 0-14 Days, 25%
  - 15-30 Days, 50%
  - 31-89 Days, 75%
  - 90 Days or more, 100%
- F. Out of County Weighting: When an attorney accepts an appointment to a case outside the county or counties for which this contract is contemplated, the case shall receive twice the case weighting described in B. An attorney shall endeavor to accept appointments to current clients in other counties to support the best practice of one client, one lawyer.
- The additional weighting does not apply to Murder or Jessica's Law cases;
  - If an attorney is assigned to an out of county client with more than one case, the most serious case type will be the case for which double credit is assigned.
- G. Juvenile Case Weighting: The following rules apply to juvenile contracts specifically:
- Sibling Groups: When an attorney represents one or more children in a sibling group, they will receive a full case weight for the oldest child and half (0.5) of a case weight for each sibling; up to a maximum total weight of three (3.0). If an attorney represents a parent, they will receive one case weight. This rule applies to both dependency and termination cases.
  - Post Disposition Additional Sibling: If a new petition is filed regarding a sibling of a child client or clients whose cases are post disposition, then the new appointment will receive one (1.0) additional case weight.
  - Formal Accountability Agreements: Representation regarding a formal accountability agreement will receive half (0.5) of a delinquency case weight.
  - Waiver Hearings: If the state files a motion requesting a waiver hearing in a case eligible for waiver, then the case will receive one (1.0) additional case weight. When an attorney continues to represent a client in criminal court after the juvenile court waives jurisdiction, the attorney will receive additional case weighting for the criminal case, consistent with these guidelines.
- H. Additional Case Weighting: In addition to the assigned case weight in B, an attorney may treat the case as a new appointment and receive a new case weight:
- The attorney has represented the client for a year or more and the case has been delayed pursuant to a bench warrant, a dismissal without prejudice, or issues surrounding aid and assist;
  - The case is retried; or
  - The case returns for a new trial or sentencing following a direct appeal or post-adjudication relief.

- I. Extraordinary Case Weighting: Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of case may be granted additional case weight, subject to the PDSC's discretion. No earlier than thirty (30) days after being appointed in any particular case and no later than thirty (30) days after final disposition, an attorney seeking additional case weight for extraordinary circumstances may submit such a request using the form provided by PDSC for this purpose.
- J. Case Closure: Contractor shall close a case when one of the following has been entered into the court register, and the attorney has met their contractual obligations:
- Dependency, permanent guardianship, and termination-of-parental-rights cases
    - An order or judgment dismissing the petition;
    - An order or judgment dismissing the case and/or terminating the wardship over the child;
    - An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
    - An order or judgment disestablishing the parentage of the attorney's client;
    - An order or judgment terminating the parental rights of the attorney's client;
    - An order or judgment granting an adoption of the attorney's client; or
    - An order terminating or vacating the attorney's appointment.
  - Delinquency cases
    - An order or judgment dismissing the petition;
    - An order or judgment dismissing the case and terminating the wardship over the youth;
    - An order terminating or vacating the attorney's appointment;
    - A bench warrant, which has remained in effect for 180 days.

## EXHIBIT B – CASELOAD AND WORKLOAD STANDARDS FOR PCRPP CONTRACT

Contractor agrees that its attorneys will provide legal services in accord with the following workload standards:

- A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the workload limits described below. A 1.0 FTE Attorney shall maintain an open caseload of 80 cases. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts.
- B. General Case Counting Standards
- Representing one parent, legal guardian, or child in a dependency case counts as one case.
  - Representing one parent, legal guardian, or child in a termination-of-parental-rights case counts as one case.
  - Representing multiple children in a dependency case counts as one case for the first child and as 0.5 cases for each additional child.
  - Representing one youth in a delinquency case up through the time of disposition counts as one case.
  - Representing one youth in a delinquency case after disposition counts as .5 of a case.
  - Pre-appointment representation of one child, youth, parent, or legal guardian, preapproved by OPDS, counts one case.
  - Pre-appointment representation of multiple children, preapproved by OPDS, counts as one case for the first child and as 0.5 cases for each additional child.
  - When representation on a case begins and ends within the same calendar month, the case can count toward the attorney's open caseload until the end of that calendar month unless the court allows the attorney to withdraw due to a conflict.
- C. Case Count Adjustments
- Delinquency cases in which the alleged conduct, if committed by an adult, would constitute murder or a crime subject to ORS 137.707 shall be granted an additional case count.
  - Any case in which the attorney accepts an appointment in a county other than those specified in this Contract shall be granted an additional case count.
  - Cases that involve extraordinary circumstances and require work well beyond the range of work typically required in juvenile cases may be granted additional case

counts, subject to OPDS's discretion. No earlier than thirty (30) days after being appointed in any particular case, an attorney seeking approval for extraordinary circumstances case counts for that case shall use the form provided by OPDS.

- For any client or sibling group, the attorney may count a maximum of three cases in their open caseload, except that additional case counts granted pursuant to subsections (a) through (c) above shall be in addition to this maximum.

D. Case Closure

- For dependency, permanent guardianship, and termination-of-parental-rights cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
  - An order or judgment dismissing the petition;
  - An order or judgment dismissing the case and/or terminating the wardship over the child;
  - An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
  - An order or judgment disestablishing the parentage of the attorney's client;
  - An order or judgment terminating the parental rights of the attorney's client;
  - An order or judgment granting an adoption of the attorney's client; and
  - An order terminating or vacating the attorney's appointment.
- For delinquency cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
  - An order or judgment dismissing the petition;
  - An order or judgment dismissing the case and terminating the wardship over the youth;
  - An order terminating or vacating the attorney's appointment; or
  - A bench warrant for a youth's failure to appear has been active for 180 days.

## EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR CRIMINAL CONTRACT

Contractor agrees to provide legal services in accord with the additional performance standards:

- A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 24 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. During the initial contact, an attorney will make reasonable efforts to conduct interviews of clients or to schedule such an interview.
- C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.
- D. Attorney Departure/Continuous Representation. When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting PDSC and obtaining PDSC’s written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.
- E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings

not otherwise provided for under this contract. Representation in these matters may be undertaken at an attorney's discretion pro bono.

F. Pre-appointment representation. Where an individual would be eligible for appointed counsel at state expense if charged with a crime, but exigent circumstances preclude an appointment order, Contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of the client, upon written approval from the PDSC. In determining whether to authorize pre-appointment representation, the PDSC will consider whether:

- The individual is a clear target of the investigation;
- The Contractor has a good faith basis to conclude the individual seeks counsel;
- It is reasonable for the Contractor to believe the person qualifies for public defense counsel; and
- The case is of a magnitude for which pre-indictment/petition appointment is reasonable.

G. Initial Appearances. Contractor shall provide representation at all arraignment and first appearance hearings, unless the PDSC agrees in writing otherwise. Contractor shall work with the PDSC and the court to determine schedules for providing representation at arraignments and first appearance hearings in jurisdictions in which there is more than one Contractor. Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. Contractor will include the attorney's contact information in the notice to the client.

H. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:

- Providing representation at all scheduled hearings and court proceedings;
- Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
- Filing or arranging for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
- Devote sufficient time to interviewing and counseling clients;
- Seek pretrial release of all detained clients when the client so desires;
- Assure all necessary investigation is conducted;
- Pursue all avenues of discovery from the prosecution, both formal and informal;
- Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case; and
- Sufficiently prepare for all hearings, trials, and sentencings.



- I. Post-Judgment Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:
- Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
  - Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
  - Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
  - Seeking court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
  - Filing a motion for new trial;
  - Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705, when merited and requested by a former Client;
  - Consulting with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and
  - Upon request, providing copies of the entire file to appellate or post-conviction relief counsel.

## EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR JUVENILE CONTRACT

Contractor agrees to provide legal services in accord with the additional performance standards:

- A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 24 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. During the initial contact, an attorney will make reasonable efforts to conduct interviews of clients or to schedule such an interview.
- C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.
- D. Attorney Departure/Continuous Representation. When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting PDSC and obtaining PDSC’s written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.
- E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings

not otherwise provided for under this contract. Representation in these matters may be undertaken at an attorney's discretion pro bono.

- F. Pre-appointment representation. Pre-appointment representation (also referred to as "prepetition representation") means representation of a parent, legal guardian, or child during a child welfare investigation by the Oregon Department of Human Services and representation of a youth during a law enforcement investigation, before a court has appointed counsel for that person and typically before a proceeding under ORS chapter 419B or ORS chapter 419C has been initiated

Contractor may commence pre-appointment representation only with pre-approval from PDSC. In determining whether to authorize pre-appointment representation, PDSC will consider whether the agency has a good faith basis to conclude the individual seeks counsel, and it is reasonable for the agency to believe the person financially qualifies for public defense counsel.

- G. Initial Appearances. Contractor shall provide representation at all shelter hearings, detention hearings, and other initial appearances, unless the PDSC agrees in writing otherwise. The Contractor shall work with The PDSC and the court to determine schedules for providing representation at these hearings in jurisdictions in which there is more than one Contractor. The Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. The Contractor will include the attorney's contact information in the notice to the client.

- H. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:

- Providing representation at all scheduled hearings and court proceedings;
- Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
- Filing or arranging for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
- Devote sufficient time to interviewing and counseling clients;
- Seek pretrial release of all detained clients when the client so desires;
- Assure all necessary investigation is conducted;
- Pursue all avenues of discovery from the prosecution, both formal and informal;
- Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case; and
- Sufficiently prepare for all hearings, trials, and sentencings.

I. Post-Adjudication Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- Seeking court orders or other remedies on behalf of a client if a term of disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- Filing a motion for new trial;
- Filing a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- Filing a motion for a review hearing under ORS 419C.626, as requested by a youth client;
- Consulting with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation; and
- Upon request, providing copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation.

## EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR PCRPP CONTRACT

Contractor agrees to provide legal services in accord with the additional performance standards:

- A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 24 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. During the initial contact, an attorney will make reasonable efforts to conduct interviews of clients or to schedule such an interview.
- C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.
- D. Attorney Departure/Continuous Representation. When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting PDSC and obtaining PDSC’s written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.
- E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings

not otherwise provided for under this contract. Representation in these matters may be undertaken at an attorney's discretion pro bono.

- F. Pre-appointment representation. Contractor may commence pre-appointment representation only with pre-approval from PDSC. In determining whether to authorize pre-appointment representation, PDSC will consider whether the agency has a good faith basis to conclude the individual seeks counsel, and it is reasonable for the agency to believe the person financially qualifies for public defense counsel.
- G. Initial Appearances. Contractor shall provide representation at all shelter hearings, detention hearings, and other initial appearances, unless the PDSC agrees in writing otherwise. The Contractor shall work with The PDSC and the court to determine schedules for providing representation at these hearings in jurisdictions in which there is more than one Contractor. The Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. The Contractor will include the attorney's contact information in the notice to the client.
- H. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:
- Provide representation at all scheduled hearings and court proceedings;
  - File timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
  - File or arrange for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
  - Attend all meetings as appropriate and as requested by client where DHS, OYA and/or other state actors or parties are present and discussing matters relevant to the case
  - Advocate for client at all court hearings;
  - Meet and communicate with clients before court hearings and CRB reviews; in response to client contact; when a significant change of circumstances needs to be discussed; when notified that a youth or child's placement has been changed; or when a lawyer learns of emergencies of significant events impacting the youth or child.
  - Devote sufficient time to interviewing and counseling clients in a developmentally and culturally appropriate manner;
  - Seek pretrial release of all detained clients when the client so desires;
  - Assure a thorough, continuing, and independent review and investigation of the case is conducted;
  - Utilizing independent investigators and case managers/social workers/mitigation specialists, as appropriate, to provide comprehensive representation;

- Pursue all formal and informal avenues of discovery from the prosecution, the juvenile department, law enforcement, DHS, and OYA;
- Obtain and review all applicable recordings including, but not limited to, medical, dental, school, employment, military, and mental health records;
- Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case;
- Sufficiently prepare for all hearings, trials, and sentencings; and
- Endeavor to spend, on average, one-third of their time meeting with clients, one-third of their time on case preparation, and one-third of their time on court appearances and case-related meetings.

I. Post-Judgment Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- Seeking court orders or other remedies on behalf of a client if a term of disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- Filing a motion for new trial;
- Filing a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- Filing a motion for a review hearing under ORS 419C.626, as requested by a youth client;
- Consulting with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation; and
- Upon request, providing copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation.

**This Model Contract for Public Defense Services and related materials in this publication are available in electronic format, to facilitate adaptation by local jurisdictions. See [www.nlada.org/defender.htm](http://www.nlada.org/defender.htm) or contact NLADA, at (202) 452-0620 or [defender@nlada.org](mailto:defender@nlada.org).**

## Table of Contents

Preface and Acknowledgements	iv
Introduction	v
MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES	1
I. DURATION OF CONTRACT	1
II. DEFINITIONS	1
III. INDEPENDENT CONTRACTOR	3
IV. POLICY BOARD	3
V. AGENCY'S EMPLOYEES AND EQUIPMENT.	3
VI. MINIMUM QUALIFICATIONS FOR AGENCY ATTORNEYS	4
VII. PERFORMANCE REQUIREMENTS	5
VIII. VARIANCE	8
IX. ASSIGNMENT OF COMPLEX LITIGATION CASES.	8
X. ATTORNEY TRAINING.	9
XI. ATTORNEY EVALUATION	9
XII. COMPENSATION AND METHOD OF PAYMENT	9
XIII. REQUESTS FOR CONTRACT MODIFICATIONS	10
XIV. REPORTS AND INSPECTIONS.	11



XV.	ESTABLISHMENT AND MAINTENANCE OF RECORDS . . .	12
XVI.	HOLD HARMLESS AND INDEMNIFICATION . . .	13
XVII.	INSURANCE . . . . .	13
XVIII.	EVALUATION GUIDELINES . . . . .	15
XIX.	CORRECTIVE ACTION . . . . .	15
XX.	TERMINATION AND SUSPENSION . . . . .	16
XXI.	RESPONSIBILITY OF MANAGING DIRECTOR OF AGENCY .	17
XXII.	ASSIGNMENT/SUBCONTRACTING . . . . .	17
XXIII.	RENEGOTIATION . . . . .	18
XXIV.	ATTORNEY'S FEES . . . . .	18
XXV.	NOTICES . . . . .	18
XXVI.	THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT .	18
XXVII.	NONDISCRIMINATION. . . . .	19
XXVIII.	CONFLICT OF INTEREST . . . . .	19
	Worksheet A . . . . .	21
	Digest of Cases . . . . .	22
	NOTES AND REFERENCES . . . . .	25

## **CONTRACT FOR PUBLIC DEFENSE SERVICES**

The [City, County, State], referred to as “the Contracting Authority,” and [law firm or non-profit organization], referred to hereafter as “the Agency,” agree to the provision of public defense services as outlined below for the period [date] to [date]. The Contracting Authority Administrator is [ ], and the Managing Director of the Agency is [ ].

Following are the underlying bases for the Contract:

- [City, County, State] has a constitutionally mandated responsibility to provide public defender services which is specifically defined in [local ordinance or statute], and/or a [statutory/judicially-required] duty to provide [specify juvenile, civil commitment, etc. services].
- The Contracting Authority desires to have legal services performed for eligible persons entitled to public representation in \_\_\_\_ [City, County, State] by the Agency, as authorized by law.
- The Agency agrees to provide, and the Contracting Authority agrees to pay for, competent, zealous representation to its clients as required by the controlling Professional Responsibility [Rules or Code].
- The Contracting Authority and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to eligible clients of the Agency.

The parties agree as follows:

### **I. DURATION OF CONTRACT**

This Contract shall commence on \_\_\_\_\_ and terminate on \_\_\_\_\_, unless extended or terminated earlier in a manner allowed by this Contract.

### **II. DEFINITIONS**

The following definitions control the interpretation of this Contract:

- A. Eligible client means a defendant, parent, juvenile, or person who is facing civil commitment or any other person who has been determined by a finding by the Contracting Authority or Court to be entitled to a court-appointed attorney, pursuant to [relevant state statute, court rule, and constitutional provision].
- B. Case; Case Completion: A Case shall mean representation of one person on one charging document. In the event of multiple counts stemming from separate transactions, additional case credit will be recognized. Completion of a case is deemed to occur when all necessary legal action has been taken during the following period(s): In criminal cases, from arraignment through disposition, from arraignment through the necessary withdrawal of counsel after the substantial delivery of legal services, or from the entry of counsel into the case (where entry into the case occurs after arraignment through no fault of the Agency) through disposition or necessary withdrawal after the substantial delivery of legal services. Nothing in this definition prevents the Agency from providing necessary legal services to an eligible client prior to arraignment, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below. In other cases, [define according to type of case—juvenile, family, etc.].
- C. Disposition: Disposition in criminal cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) imposition of sentence, or 5) deferral of any of the above coupled with any other hearing on that cause number, including but not limited to felony or misdemeanor probation review, that occurs within thirty (30) days of sentence, deferral of sentence, or the entry of an order of deferred prosecution. No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held within 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal, if applicable. Nothing in this definition prevents the Agency from providing necessary legal services to an eligible client after disposition, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below. Disposition in other cases shall mean: [define according to type of case—juvenile, family, etc.].
- D. Representational Services: The services for which the Contracting Authority is to pay the Agency are representational services, including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Agency do not include extraordinary expenses incurred in the representation of eligible clients. The allowance of extraordinary expenses at the cost of the Contracting Authority will be

determined by a court of competent jurisdiction in accordance with [relevant state statute, court rule, and constitutional provisions].

- E. Complex Litigation Cases: Complex Litigation refers to: 1) all Capital homicide cases, 2) all aggravated homicide cases, 3) those felony fraud cases in which the estimated attorney hours necessary exceeds one hundred seventy (170) hours, 4) cases which involve substantial scientific information resulting in motions to exclude evidence pursuant to controlling caselaw emanating from *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), and *Daubert v. Merrell Dow*, 113 S.Ct. 2786 (1993), or similar opinions, and 5) other cases in which counsel is able to show the appropriate court in an *ex parte* proceeding that proper representation requires designation of the case as complex litigation.
- F. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Agency, including expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate courts by motion and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in Capital cases is included in this category.
- G. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.

### **III. INDEPENDENT CONTRACTOR**

The Agency is, for all purposes arising out of this Contract, an independent contractor, and neither the Agency nor its employees shall be deemed employees of the Contracting Authority. The Agency shall complete the requirements of this Contract according to the Agency's own means and methods of work, which shall be in the exclusive charge and control of the Agency and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

### **IV. POLICY BOARD**

Oversight of the Agency in matters such as interpretation of indigent defense standards, recommendation of salary levels and reasonable caseloads, and response to community and client concerns, shall be provided by the Policy Board. The Policy Board shall be [appointed/designated] by the Contracting Authority and shall consist of [3-13] diverse members, a majority of which shall be practicing attorneys, and shall include representatives of organizations directly servicing the poor or concerned with the problems of the client community, provided that no single branch of government shall have a majority of votes, and the membership shall not include prosecutors, judges or law enforcement officials. The Agency will meet regularly with the Policy Board.

## **V. AGENCY'S EMPLOYEES AND EQUIPMENT**

The Agency agrees that it has secured or will secure at the Agency's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract.

## **VI. MINIMUM QUALIFICATIONS FOR AGENCY ATTORNEYS**

- A. Every Agency attorney shall satisfy the minimum requirements for practicing law in [state] as determined by the [state] Supreme Court. Seven hours of [each year's required or (where CLE is not otherwise required) yearly] continuing legal education credits shall be in spent in courses relating to criminal law practice or other areas of law in which the Agency provides legal services to eligible clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
- B. Each Agency attorney representing a defendant accused of a [\_\_\_\_ (e.g. Class A)] felony, as defined in [relevant local statute], must have served at least two years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in 5 felony cases that have been submitted to a jury.
- C. Each staff attorney representing a juvenile respondent in a [\_\_\_\_ (e.g. Class A)] felony, as defined in [relevant local statute], shall meet the qualifications of (B) above and demonstrate knowledge of the practices of the relevant juvenile court, or have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, assigned to the prosecution or defense of accused persons in juvenile court, or have demonstrably similar experience, and handled at least 5 felony cases through fact finding and disposition in juvenile court.
- D. Each staff attorney representing a defendant accused of a [\_\_\_\_ (e.g. Class B or C)] felony, as defined in [relevant local statute], or involved in a probation or parole revocation hearing, must have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been sole trial counsel of record in five misdemeanor cases brought to final resolution, or been sole or co-trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury alone or of record with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury.

- E. Each attorney representing any other client assigned as a part of this Contract shall meet the requirements of (B) above or work directly under the supervision of a senior, supervising attorney employed by the Agency, who meets the requirements of (B) above. Such direct supervision shall continue until the attorney has demonstrated the ability to handle cases on his/her own. Should the caseload under this Contract require 10 or more FTE attorneys, the Agency will provide one FTE supervising attorney for every 10 FTE caseload attorneys.
  
- E. Notwithstanding the above, each Capital case assigned to the Agency will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven years of criminal law experience and training or experience in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience
  
- F. Notwithstanding the above, each Capital case assigned to the Agency will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven years of criminal law experience and training or experience in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience
  
- G. Notwithstanding the above, each Complex Litigation case assigned to the Agency other than a Capital case shall be staffed by one FTE attorney with at least seven years of criminal law experience, or the equivalent of one half-time (.5 FTE) attorney with seven years of criminal law experience and one half-time (.5 FTE) attorney with five years of criminal law experience.
  
- H. Failure on the part of the Agency to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.

## **VII. PERFORMANCE REQUIREMENTS**

The Agency agrees to provide the services and comply with the requirements of this Contract. The number of cases for which such services will be required is the amount specified on Worksheet A, subject to the variance terms specified in Section VII (Variance). Any material breaches of this agreement on the part of the Agency or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension).

The Agency agrees to provide representational services in the following types of cases: [ ]

The Agency agrees to staff its cases according to the following provisions:

- A. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Agency agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Agency from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- C. The Agency agrees that an attorney will make contact with all other clients within 5 working days from notification of case assignment.
- D. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Agency agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the Contracting Authority when a conflict is discovered. The Agency will refer to the [state] Rules of Professional Conduct, as interpreted by [the (state or other relevant) Bar Association and /or] opinions of the state judiciary, and to the American Bar Association Standards for Criminal Justice in order to determine the existence and appropriate resolution of conflicts.
- E. It is agreed that the Agency will maintain average annual caseloads per full time attorney or full time equivalent (FTE) no greater than the following:

Felony Cases	150
Misdemeanor Cases	400
Juvenile Offender Cases	200
Juvenile Dependency Cases	60
Civil Commitment Cases	250
Contempt of Court Cases	225
Drug Court Cases	200
[Appeals	25]

These numbers assume that the attorney is assigned only cases that fit into one category. If, instead, a FTE attorney spends half of her time on felony cases and half of her time on misdemeanor cases, she would be expected to carry an annual caseload no greater than 75 felonies and 150 misdemeanors. If the same attorney works less than full time or splits her time between Contract cases and private business, that attorney would be expected to carry a maximum caseload proportional to the portion of her professional time which she devotes to Contract cases. All attorneys who split their time between Contract work and private business as well as work under this contract must report the quantity of hours they devote to private business to the Contracting Authority so that Agency caseload levels may be accurately monitored.

It is assumed that the level of competent assistance of counsel contemplated by this Contract cannot be rendered by an attorney who carries an average annual caseload substantially above these levels. Failure on the part of the Agency to limit its attorneys to these caseload levels is considered to be a material breach of this agreement.

Complex Litigation is considered to be outside of the normal caseload and is handled as described in Section VI. G. below.

- F. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel at the caseload levels described above. The parties agree and expect that at a minimum the Agency will employ support staff services for its attorneys at a level proportionate to the following annual caseloads:

One full time Legal Assistant for every four FTE Contract attorneys  
One full time Social Service Caseworker for every 450 Felony Cases  
One full time Social Service Caseworker for every 600 Juvenile Cases  
One full time Social Service Caseworker for every 1200 Misdemeanor Cases  
One full time Investigator for every 450 Felony Cases  
One full time Investigator for every 600 Juvenile Cases  
One full time Investigator for every 1200 Misdemeanor Cases

In addition, attorneys must have access to mental health evaluation and recommendation services as required.

It is expected that support staff will be paid at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work in public agencies in the jurisdiction. The Agency may determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to insure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.

- G. If the Agency is to be responsible for representing defendants in Complex Litigation cases, the following provisions apply. Complex Litigation cases occupy the full time or FTE of one attorney and the half time of one investigator prior to completion, except for Capital cases which typically require 2 FTE attorneys and the FTE of one investigator, as well as the services of a mitigation specialist. Aggravated homicide cases are considered Capital cases until such time as an irrevocable decision is made by the [Prosecuting Attorney/District Attorney] not to seek the death penalty in the case.

Complex Litigation cases remain pending until the termination of the guilt phase and penalty phase of the trial, or entry of a guilty plea. Upon entry of a verdict or guilty



plea, such cases are complete for the purposes of accepting additional Complex Litigation cases. Payment for post-conviction, pre-judgment representation shall be negotiated.

Other special provisions of this Contract which relate to Complex Litigation are found in Section V (Minimum Qualifications) and Section VIII (Assignment of Complex Litigation).

- H. Sexual Predator Commitment Cases: "Sexual predator commitment" cases shall be handled as Complex Litigation cases.
- I. The Agency may use legal interns. If legal interns are used, they will be used in accordance with [citation to State Admission to Practice Rules].
- J. The Agency agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all of its staff.

#### Significant Changes

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Agency's responsibility within the terms of this Contract. Any requests by the courts for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the agency and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

### **VIII. VARIANCE**

The Agency and the Contracting Authority agree that the actual number of cases assigned under this contract may vary from the numbers agreed on Worksheet A by the following levels:

Monthly Variance	20%
Quarterly Variance	15%
Semi-Annual Variance	15%
Yearly Variance	5%

Any deviation in the number of cases assigned that is within the limits above shall not result in alteration of payment owed to the Agency by the Contracting Authority and shall not be the cause of renegotiation of this Contract except as provided in Section XII (Requests for Modifications). The Contracting Authority agrees to make good faith efforts to keep the number of cases assigned within the variance level. In no event shall the Agency be required to accept cases above the level of the variance, even for extra compensation, if doing so would imperil the ability of the Agency's attorneys to maintain

the maximum caseload standards provided in Section VI (Performance Requirements). The Contracting Authority shall provide the Agency with quarterly estimates of caseload to be assigned at least one month prior to the beginning of each calendar quarter and shall make available, upon request, the data and rationale which form the basis of such estimate(s).

## **IX. ASSIGNMENT OF COMPLEX LITIGATION CASES**

[If assignment of Complex Litigation cases is contemplated by this Contract,] the Agency will designate a full time or FTE attorney for that purpose. Thereafter, the Agency shall accept all Complex Litigation cases assigned to it by Contracting Authority subject to the following special provisions:

- A. The Contracting Authority shall not assign further Complex Litigation cases while the Agency has a pending Complex Litigation case, unless the Agency has available qualified staff and the Contracting Authority provides the necessary resources.
- B. In the event the Agency attorney designated to handle Complex Litigation is not occupied with a Complex Litigation case, Contracting Authority may increase the assignment of other felony cases up to 12.5 per month.
- C. Should the services of an additional FTE attorney be required due to the pendency of a Capital case, the Contracting Authority and the Agency will negotiate a reduction in Agency caseload or provision of extra compensation to provide for the services of that attorney.
- D. Once a Complex Litigation case has proceeded for two months, Contracting Authority may request a review of the case, including but not limited to hours spent by the agency attorney(s) and the expected duration of the case. Such review may result in reclassification of the case or modification in payment structure to ensure that the requirements of Sections V.G. and VI. G above can be met.

## **X. ATTORNEY TRAINING**

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Agency shall provide sufficient training, whether in-house or through a qualified provider of CLE, to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules. If an attorney is transferred to a particular type of case (*e.g.* a Capital case or other Complex litigation after having participated in the required seven hours of annual CLE required in Section V.A, the Agency shall require additional training in the particular type of case, as necessary.

## **XI. ATTORNEY EVALUATION**

If the caseload in this Contract requires the services of two or more attorneys, the Agency director, or his/her designee, shall evaluate the professional performance of Agency attorneys annually. Evaluations should include monitoring of time and caseload records, review of case files, and in court observation. The Agency shall make available to Contracting Authority its evaluation criteria and evidence that evaluations were conducted, although all evaluations are to be confidential between the Agency's director and the Agency attorney.

## **XII. COMPENSATION AND METHOD OF PAYMENT**

- A. For the term of this contract, the Contracting Authority shall pay the Agency a rate of \$\_\_\_\_\_ for the caseload specified on Worksheet A, plus or minus the variance agreed to in Section VII (Variance). Payments will be made on a monthly basis. It is possible that the actual amount of compensation will vary according to other terms of this Contract. The parties contemplate that attorneys working under this Contract will be compensated comparably to prosecutors of similar experience and responsibility.
- B. The Contracting Authority shall provide the Agency with a certification of case assignments 10 working days after the close of each calendar month. The Agency shall return the signed certification within 10 working days of receipt. The Contracting Authority will pay the Agency by the 8th working day of the following month.
- C. If services in addition to those called for by this Contract are required because of unexpected increases in annual caseload(s), the Contracting Authority shall provide supplemental funding to the Agency at a rate to be negotiated which is commensurate with the rate paid under this Contract (or, in the event that new categories of cases (*e.g.* Capital cases or other Complex Litigation) are added, commensurate with the rate prosecutors receive for similar work) and the actual cost to the Agency of providing the extra service. This provision in no way limits the right of the Agency to refuse to accept cases in excess of the agreed caseload and variance as described in Section VII (Variance).
- D. If the number of cases assigned by the Contracting Authority falls below the agreed caseload and variance, the Contracting Authority will remain liable for the full rate agreed unless it has complied with the provisions in Section XII (Request for Modifications).
- E. In the event of Agency failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination as provided in Section XIX of this Contract.

### **XIII. REQUESTS FOR CONTRACT MODIFICATIONS**

The Contracting Authority shall evaluate the number of cases assigned to the Agency and make projections as to the number of cases that will be assigned to the Agency in future months. These projections will be provided to the Agency on a quarterly basis as specified in Section VII (Variance). If the projection indicates that the cases assigned to the Agency will exceed the variance, the Contracting Authority will negotiate with the Agency for supplemental funding to cover the increased caseload, commensurate with the rate paid in this Contract and the actual cost of providing representation. The Agency shall have the right without penalty to refuse to accept additional cases beyond the agreed caseload and variance in order to preserve its ability to manage the caseloads of its attorneys as specified in Section VII (Variance).

If the Contracting Authority determines that forces beyond its control such as an unexpected decline in availability of cases for assignment will require the number of cases assigned to the Agency to drop below the agreed caseload and variance, the Contracting Authority may request renegotiation of the rate to be paid under this contract in writing no less than 30 days prior to the date that any change would become effective. Both parties agree in these circumstances to negotiate in good faith for a new rate proportionate to the rate paid under this Contract, taking into account the expenses incurred by the Agency and the Agency's opportunity to realize cost savings and devote resources to other work.

In addition, the Agency may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Agency finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Agency budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Agency within 30 days of the finding of the request that the supplemental funds shall not be available.

### **XIV. REPORTS AND INSPECTIONS**

The Agency agrees to submit to the Contracting Authority the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

#### **A. Position Salary Profile**

The Agency shall submit to the Contracting Authority on the last working day in January and by the 15th day of the first month of each subsequent quarter, a profile of Full-Time

Equivalent (FTE) positions for both legal and support staff who perform work on this Contract, distributed by type of case. The report will designate the name and salary for each FTE employee in a format to be provided. The Contracting Authority will not release this information except as required by law. If the employee splits his/her work between work under this Contract and other business, the report will indicate the amount of time that employee devotes to private matters compared to work under this Contract.

B. Caseload Reports

By the seventh day of the month, the Agency will report the number of cases completed in the past month, separated by category, to the Contracting Authority Administrator.

C. Expenditure Reports

Within 20 days of the last day of each calendar month, the Agency will certify to Contracting Authority a monthly report of the prior month's expenditures for each type of case handled, in the format to be provided. Expenditure reporting shall be on an accrual basis.

D. Annual Subcontract Attorney Use Report

If the Agency uses any subcontract attorneys in accordance with Section XXI (Assignment and Subcontracting), the Agency shall submit to Contracting Authority a summary report.

E. Bar Complaints

The Agency will immediately notify the Contracting Authority in writing when it becomes aware that a complaint lodged with the [state Bar Association/disciplinary body] has resulted in reprimand, suspension, or disbarment of any attorney who is a member of the Agency's staff or working for the Agency.

F. Inspections

The Agency agrees to grant the Contracting Authority full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the Contracting Authority may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the Agency shall provide to the Contracting Authority right of access to its facilities, including those of any subcontractor, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the Agency in a way that allows access by the Contracting Authority without breaching such confidentiality or privilege. The Agency agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Contracting Authority agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this

paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The Contracting Authority will respect the attorney-client privilege.

## **XV. ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The Agency agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Agency on each case.
- B. The Agency agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Agency shall have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July. The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

## **XVI. HOLD HARMLESS AND INDEMNIFICATION**

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Agency to Agency employees or others by reason of the Contract. The Agency shall protect, indemnify, and save harmless the Contracting Authority, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from Agency's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract..

- B. The Agency agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Agency, its officers, employees, representatives or agents.
- C. The Contracting Authority shall indemnify and hold harmless the Agency and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the Contracting Authority, its officers, agents, and employees, or any of them, relating or arising out of the performance of this Contract. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Agency, the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Agency and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

## **XVII. INSURANCE**

Without limiting the Agency's indemnification, it is agreed that the Agency shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

### **A. General Liability Insurance**

The Agency shall maintain continuously public liability insurance with limits of liability not less than: \$250,000 for each person, personal injury, \$500,000 for each occurrence, property damage, liability, or a combined single limit of \$500,000 for each occurrence, personal injury and/or property damage liability.

Such insurance shall include the Contracting Authority as an additional insured and shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. The Agency shall provide a certificate of insurance or, upon written request of the Contracting Authority, a duplicate of the policy as evidence of insurance protection.

### **B. Professional Liability Insurance**

The Agency shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Agency which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

Such professional liability insurance shall be maintained in an amount not less than \$1,000,000 combined single limit per claim/aggregate. The Agency further agrees that it

shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Agency shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of the Contracting Authority. The Agency shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Agency and the Contracting Authority.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. The Agency shall provide certificates of insurance or, upon written request of the Contracting Authority, duplicates of the policies as evidence of insurance protection.

C. Automobile Insurance

The Agency shall maintain in force at all times during the performance of this contract a policy or policies of insurance covering any automobiles owned, leased, hired, borrowed or used by any employee, agent, subcontractor or designee of the Agency to transport clients of the Agency.

Such insurance policy or policies shall specifically name the Contracting Authority as an additional insured. Said insurance coverage shall be primary insurance with respect to the Contracting Authority, and any insurance, regardless of the form, maintained by the Contracting Authority shall be excess of any insurance coverage which the Agency is required to maintain pursuant to this contract.

Automobile liability as stated herein shall be maintained at \$500,000 combined single limit per accident for bodily injury and property damage.

D. Workers' Compensation

The Agency shall maintain Workers' Compensation coverage as required by the [state statutory reference].

The Agency shall provide a certificate of insurance or, upon written request of the Contracting Authority, a certified copy of the policy as evidence of insurance protection.

## **XVIII. EVALUATION GUIDELINES**

The Contracting Authority will review information obtained from the Agency to monitor Agency activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work,



training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

## **XIX. CORRECTIVE ACTION**

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The Contracting Authority will notify the Agency in writing of the nature of the breach.
2. The Agency shall respond in writing within five (5) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The Contracting Authority will notify the Agency in writing of the Contracting Authority's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency's corrective action plan will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Agency to implement an appropriate corrective action plan.

In the event that the Agency does not respond to the Contracting Authority's notification within the appropriate time, or the Agency's corrective action plan for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part pursuant to Section XIX (Termination and Suspension).

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Agency which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken or completed as described in Section XI (Compensation and Method of Payment).

## **XX. TERMINATION AND SUSPENSION**

- A. The Contracting Authority may terminate this Contract in whole or in part upon 10 days' written notice to the Agency in the event that –
  1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract;

2. The Agency engages in misappropriation of funds; or
3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract pursuant to Section XIX. A.1, the Contracting Authority shall provide the Agency written notice of termination, which shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the Contracting Authority within 10 working days from the date of the Contracting Authority's notice. If the Agency elects to submit a written response, the Contracting Authority Administrator will review the response and make a determination within 10 days after receipt of the Agency's response. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Contracting Authority Executive. In the event the Contracting Authority Executive reaffirms termination, the Contract shall terminate in 10 days from the date of the final decision of the Contracting Authority Executive. The Contract will remain in full force pending communication of the Contracting Authority Executive to the Agency. A decision by the Contracting Authority Executive affirming termination shall become effective 10 days after it is communicated to the Agency.

- B. The Agency reserves the right to terminate this Contract with cause with 30 days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Agency terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Agency shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contracting Authority Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.
- C. In the event of the termination or suspension of this Contract, the Agency shall continue to represent clients that were previously assigned and the Contracting Authority will be liable for any payments owed for the completion of that work. The Agency will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Contracting Authority Administrator may request that the Agency attempt to withdraw from any case assigned and not completed. Should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency on behalf of any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Agency upon judicial verification that continued representation is required.

- D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Agency shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the Contracting Authority.
- E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- G. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees.

## **XXI. RESPONSIBILITY OF MANAGING DIRECTOR OF AGENCY**

The managing director of the Agency shall be an attorney licensed to practice law in the State of \_\_\_\_\_. The managing director of the Agency shall be ultimately responsible for receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment provided pursuant to this Contract.

## **XXII. ASSIGNMENT/SUBCONTRACTING**

- A. The Agency shall not assign or subcontract any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Agency in writing not less than five days prior to the date of any proposed assignment or sub-contract, provided that this provision shall not apply to short-term personal service contracts with individuals to perform work under the direct supervision and control of the Agency. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract.
- B. The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under the Contract to clients of the Agency.
- C. The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but is not limited to counseling services, consulting services, social work services, investigator services and legal services.

## **XXIII. RENEGOTIATION**

Either party may request that the provisions of this Contract be subject to renegotiation. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

#### **XXIV. ATTORNEYS' FEES**

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

#### **XXV. NOTICES**

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

1. In writing; and
2. Directed to the Chief Executive Officer of the Agency and the director/manager of the Contracting Authority department/division specified on page 1 of this Contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

#### **XXVI. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT**

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

#### **XXVII. NONDISCRIMINATION**

During the performance of this Contract, neither the Agency nor any party subcontracting with the Agency under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

The Agency shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

## **XXVIII. CONFLICT OF INTEREST**

### **A. Interest of Members of Contracting Authority and Agency**

No officer, employee, or agent of the Contracting Authority, or the State of \_\_\_\_\_, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Agency.

### **B. Interests of Agency Directors, Officers, and Employees**

The following expenditures of Contract funds shall be considered conflict of interest expenditures and prima facie evidence of misappropriation of Contract funds without prior disclosure and approval by the Administrator of the Contracting Authority:

1. The employment of an individual, either as an employee of the Agency or as an independent consultant, who is either: (a) related to a director of the Agency; (b) employed by a corporation owned by a director of the Agency, or relative of a director of the Agency. This provision shall not apply when the total salary to be paid to the individual pursuant to his employment agreement or employment contract would be less than \$1500 per annum.
2. The acquisition or rental by the Agency of real and/or personal property owned or rented by either: (a) an Agency officer, (b) an Agency director, (c) an individual related to an Agency officer or Agency director, or (d) a corporation owned by the Agency, an Agency director, an Agency officer, or relative of an Agency officer or director.

Agreed:

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Contracting Authority

Date:\_\_\_\_\_

Date:\_\_\_\_\_

# Attachment 7



To: Per Ramfjord, Chair, Public Defense Services Commission  
Paul Solomon, Vice-Chair, Public Defense Services Commission  
Members, Public Defense Services Commission

From: Eric Deitrick, General Counsel

Cc: Jessica Kampfe, Executive Director

Re: PDSC Bylaws

Date: February 6, 2023

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These proposed bylaws were previewed at the November 17, 2022 PDSC meeting, at which time there was discussion and feedback. The attached draft has two changes from November based on that feedback:

- It establishes a succession plan for periods in which the agency lacks an executive director;
- It clarifies that the PDSC chair may create commission subcommittees, and that the executive director may create working groups or advisory committees. There are public meeting implications for this distinction, which I can explain at the meeting.

Proposed Motion: I move to adopt the proposed bylaws as governing bylaws of the PDSC.

# BYLAWS OF THE PUBLIC DEFENSE SERVICES COMMISSION

## Article 1 AGENCY NAME AND MISSION

The Public Defense Services Commission (“PDSC”), established by ORS 151.213, is an independent agency in the judicial branch. The agency is governed by a commission and its mission is to establish and maintain a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution, Oregon and national standards of justice, and Oregon statute.

## Article 2 COMMISSION AND MEMBERSHIP

**Membership:** Membership is defined by ORS 151.213.

**Appointments:** Appointments are made by the Chief Justice of the Oregon Supreme Court as outlined by ORS 151.213.

**Termination and Resignation:** A member may be removed by order of the Chief Justice pursuant to ORS 151.213. If a member of the PDSC seeks to resign, written notice shall be provided to the Chief Justice, the Chair of the PDSC, and the executive director of the Office of Public Defense Services (“OPDS”).

## Article 3 ROLES AND GOVERNANCE

**Public Defense Services Commission:** The PDSC is responsible for oversight of the OPDS, pursuant to the requirements of ORS 151.216. The primary responsibilities of the PDSC are (1) appointing an executive director and evaluating that director’s performance, (2) approving agency policies, procedures, plans, standards, guidelines, and budget as required by ORS 151.216, and (3) approving proposed contracts for public defense services.

**Chair, Public Defense Services Commission:** The Chair is the public liaison of the PDSC. The Chair shall lead and manage PDSC meetings and shall coordinate the planning of PDSC meeting agendas with the Executive Director of OPDS.

**Vice Chair, Public Defense Services Commission:** The Vice Chair shall lead and manage



PDSC meetings when the Chair is unavailable and support the Chair in furtherance of their responsibilities as requested.

**Office of Public Defense Services:** OPDS is responsible for agency administration and operations, and it performs its actions through the authority of its executive director, as defined by ORS 151.219.

**Executive Director, Office of Public Defense Services:** The Executive Director is the chief executive officer for OPDS, the public liaison for OPDS, and the primary liaison between OPDS and the PDSC. In the absence of an executive director, the deputy director shall perform this function, unless the PDSC names a separate acting director. No member of the PDSC may serve as the acting director.

## Article 4 MEETINGS

**Public Meeting Law:** All meetings shall comply with ORS Chapter 192.

**Agendas and Planning:** The PDSC shall meet at least quarterly. PDSC meeting agendas will be finalized by the OPDS Executive Director and the Chair of the PDSC. OPDS shall publish the agenda and meeting materials at least 48 hours in advance of a meeting, with a goal of publishing those materials one week in advance of each meeting. Meeting times and dates will be scheduled on a yearly basis and can be changed at the discretion of the Chair.

**Conducting Meetings:** A quorum of voting members of the PDSC is required to conduct a meeting. The Chair shall lead and manage the meeting, or the Vice-Chair in the Chair's absence. Public comment may be allowed and shall be posted on the agenda when authorized. Deliberation of issues will only be conducted by PDSC members, but the PDSC may authorize OPDS staff or members of the public to provide information on any topic.

**Action Items:** All action items shall be identified as such on the agenda, and no PDSC action can be taken unless the proposed topic is published on the agenda. All action items shall include time for discussion before a vote occurs. A majority of voting members of the PDSC is required to endorse an action item, unless these bylaws provide otherwise.

**Motions:** Any voting member of the PDSC may make a motion regarding a posted action item, and that motion must receive the endorsement of a second voting member of the PDSC before a vote can occur. Once a motion has been made and received an endorsement from a second PDSC member, there shall be a period for discussion.

Following the discussion, the motion must be voted upon unless (1) the member who made the motion withdraws the motion, or (2) the member who provided the second endorsement withdraws that endorsement and the motion fails to get another second endorsement.

**Voting:** PDSC members must be present to vote. The Chair shall ask if any of the present members of the PDSC object to the motion. If no objections are made, the motion will pass, and it will be recorded as endorsed by all PDSC members present. If any member of the PDSC objects to the motion, a roll call vote will be held.

**Conflicts of Interest:** Members of the PDSC shall comply with the government ethics provisions of ORS Chapter 244. Conflicts of interest occur when a PDSC member has competing interests or loyalties in a matter being presented for discussion or vote.

If a member has an actual financial or personal interest in any matter coming before the PDSC, the affected member shall disclose the nature of the interest and withdraw from any discussion or voting on the matter.

If a member has a potential or perceived conflict of interest in any coming before the PDSC, the affected member shall disclose the nature of the interest and may continue to participate in discussion or voting upon declaring their ability to remain unbiased. The minutes of meetings at which such votes are taken shall record such disclosure, abstention, and rationale for participation.

#### Article 5

#### SUBCOMMITTEES, ADVISORY COMMITTEES, AND WORKGROUPS

The PDSC Chair, in consultation with OPDS and members of the PDSC, may create subcommittees to advise the PDSC. A subcommittee must have at least three members and meetings of subcommittees must comply with ORS Chapter 192.

Additionally, the Executive Director may create advisory committees and workgroups as needed.

#### Article 6

#### AMENDMENTS

These bylaws may be amended by a two-thirds vote of the PDSC at any meeting provided the topic is posted as an action item and the proposed language is provided to all members of the PDSC one week prior to the meeting.

# BYLAWS OF THE PUBLIC DEFENSE SERVICES COMMISSION

## Article 1 AGENCY NAME AND MISSION

The Public Defense Services Commission (“PDSC”), established by ORS 151.213, is an independent agency in the judicial branch. The agency is governed by a commission and its mission is to establish and maintain a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution, Oregon and national standards of justice, and Oregon statute.

## Article 2 COMMISSION AND MEMBERSHIP

**Membership:** Membership is defined by ORS 151.213.

**Appointments:** Appointments are made by the Chief Justice of the Oregon Supreme Court as outlined by ORS 151.213.

**Termination and Resignation:** A member may be removed by order of the Chief Justice pursuant to ORS 151.213. If a member of the PDSC seeks to resign, written notice shall be provided to the Chief Justice, the Chair of the PDSC, and the executive director of the Office of Public Defense Services (“OPDS”).

## Article 3 ROLES AND GOVERNANCE

**Public Defense Services Commission:** The PDSC is responsible for oversight of the OPDS, pursuant to the requirements of ORS 151.216. The primary responsibilities of the PDSC are (1) appointing an executive director and evaluating that director’s performance, (2) approving agency policies, procedures, plans, standards, guidelines, and budget as required by ORS 151.216, and (3) approving proposed contracts for public defense services.

**Chair, Public Defense Services Commission:** The Chair is the public liaison of the PDSC. The Chair shall lead and manage PDSC meetings and shall coordinate the planning of PDSC meeting agendas with the Executive Director of OPDS.

**Vice Chair, Public Defense Services Commission:** The Vice Chair shall lead and manage

PDSC meetings when the Chair is unavailable and support the Chair in furtherance of their responsibilities as requested.

**Office of Public Defense Services:** OPDS is responsible for agency administration and operations, and it performs its actions through the authority of its executive director, as defined by ORS 151.219.

**Executive Director, Office of Public Defense Services:** The Executive Director is the chief executive officer for OPDS, the public liaison for OPDS, and the primary liaison between OPDS and the PDSC. In the absence of an executive director, the deputy director shall perform this function, unless the PDSC names a separate acting director. No member of the PDSC may serve as the acting director.

## Article 4 MEETINGS

**Public Meeting Law:** All meetings shall comply with ORS Chapter 192.

**Agendas and Planning:** The PDSC shall meet at least quarterly. PDSC meeting agendas will be finalized by the OPDS Executive Director and the Chair of the PDSC. OPDS shall publish the agenda and meeting materials at least 48 hours in advance of a meeting, with a goal of publishing those materials one week in advance of each meeting. Meeting times and dates will be scheduled on a yearly basis and can be changed at the discretion of the Chair.

**Conducting Meetings:** A quorum of voting members of the PDSC is required to conduct a meeting. The Chair shall lead and manage the meeting, or the Vice-Chair in the Chair's absence. Public comment may be allowed and shall be posted on the agenda when authorized. Deliberation of issues will only be conducted by PDSC members, but the PDSC may authorize OPDS staff or members of the public to provide information on any topic.

**Action Items:** All action items shall be identified as such on the agenda, and no PDSC action can be taken unless the proposed topic is published on the agenda. All action items shall include time for discussion before a vote occurs. A majority of voting members of the PDSC is required to endorse an action item, unless these bylaws provide otherwise.

**Motions:** Any voting member of the PDSC may make a motion regarding a posted action item, and that motion must receive the endorsement of a second voting member of the PDSC before a vote can occur. Once a motion has been made and received an endorsement from a second PDSC member, there shall be a period for discussion.

Following the discussion, the motion must be voted upon unless (1) the member who made the motion withdraws the motion, or (2) the member who provided the second endorsement withdraws that endorsement and the motion fails to get another second endorsement.

**Voting:** PDSC members must be present to vote. The Chair shall ask if any of the present members of the PDSC object to the motion. If no objections are made, the motion will pass, and it will be recorded as endorsed by all PDSC members present. If any member of the PDSC objects to the motion, a roll call vote will be held.

**Conflicts of Interest:** Members of the PDSC shall comply with the government ethics provisions of ORS Chapter 244. Conflicts of interest occur when a PDSC member has competing interests or loyalties in a matter being presented for discussion or vote.

If a member has an actual financial or personal interest in any matter coming before the PDSC, the affected member shall disclose the nature of the interest and withdraw from any discussion or voting on the matter.

If a member has a potential or perceived conflict of interest in any coming before the PDSC, the affected member shall disclose the nature of the interest and may continue to participate in discussion or voting upon declaring their ability to remain unbiased. The minutes of meetings at which such votes are taken shall record such disclosure, abstention, and rationale for participation.

## Article 5

### SUBCOMMITTEES, ADVISORY COMMITTEES, AND WORKGROUPS

The PDSC Chair, in consultation with OPDS and members of the PDSC, may create subcommittees to advise the PDSC. A subcommittee must have at least three members and meetings of subcommittees must comply with ORS Chapter 192.

Additionally, the Executive Director may create advisory committees and workgroups if needed.

## Article 6

### AMENDMENTS

These bylaws may be amended by a two-thirds vote of the PDSC at any meeting provided the topic is posted as an action item and the proposed language is provided to all members of the PDSC one week prior to the meeting.