

Members

Shaun S. McCrea, Chair
John R. Potter, Vice-Chair
Thomas M. Christ
Henry H. Lazenby, Jr.
Per A. Ramfjord
Janet C. Stevens
Honorable Elizabeth Welch



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, January 21, 2016
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEETING AGENDA

1. **Action Item:** Approval of minutes - PDSC meeting held on December 12, 2014 (*Attachment 1*) Chair McCrea
2. PCRPA Annual Report (*Attachment 2*) Amy Miller
3. Washington County Service Delivery Review Update Paul Levy
4. PDSC Review of Contracting Process (*Attachment 3*) Commission
Caroline Meyer
5. Executive Director's Annual Report to the PDSC (*Attachment 4*) Nancy Cozine
6. Legislative and Budget Update (*Handouts*) Nancy Cozine
7. Best Practice Performance Indicators (*Attachment 5*) Nancy Cozine
8. **Action Item:** Commission approval of Payment Policies and Procedures – Updated GSA rates (*Attachment 6*) Angelique Bowers
9. **Action Item:** Commission approval of Case Manager Contracts (*Attachment 7*) Amy Miller
10. OPDS Monthly Report OPDS Staff

Please note: Lunch will be provided for Commission members at 12:00 p.m. The meeting location is accessible to persons with disabilities. Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting, to Laura Al Omrani at (503) 378-3349.

Next meeting: March 17, 2015, 10 a.m. – 2 p.m., at the Office of Public Defense Services, Salem, Oregon. Meeting dates, times, and locations are subject to change; future meetings dates are posted at:
<http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, December 10, 2015

1:30 p.m. – 4:30 p.m.

Mercy Corps

45 SW Ankeny Street

Portland, Oregon 97204

MEMBERS PRESENT:

Barnes Ellis
John Potter
Per Ramsfjord
Shaun McCrea
Chip Lazenby
Hon. Elizabeth Welch

STAFF PRESENT:

Nancy Cozine
Paul Levy
Amy Miller
Caroline Meyer
Billy Strehlow
Angelique Bowers
Ernest Lannet
Cynthia Gregory
Cecily Warren
Marc Brown

The meeting was called to order at 1:40 p.m.

Agenda Item No. 1

Approval of minutes – PDSC meeting held on October 23, 2015

Commissioner McCrea noted one correction to the minutes, correcting a word from the present to the past tense. Commissioner Potter then moved to approve the minutes. Commissioner McCrea seconded the motion. Hearing no objection, the **motion** carried. **Vote:** 5-0.

Agenda Item No. 2

Approval of Updated PDSC Schedule of Compensation effective 1/1/16

Caroline Meyer, OPDS Contracts Manager, presented an updated Schedule of Compensation for Commission approval. She explained that the updated amounts, which courts use in determining amounts to order defendants to pay for the cost of their court-appointed attorney, reflect increases in costs since the Commission first approved a schedule five years earlier. The new numbers also reflect moving the cost of investigation out of the “typical contract rate” and into “average expenses.” Ms. Meyer said no other policy issues or questions were reflected in the updated schedule. Paul Levy reminded Commission members that the schedule is a guide to judges in ordering payment of court-appointed attorney fees, but judges must take a defendant’s ability to pay and other factors into consideration when determining

the actual amount, if any, to impose. He said that OPDS will send judges a memorandum explaining how the schedule should be used.

The Commission approved a **motion** to adopt the updated schedule by a **vote** of 6-0.

Agenda Item No. 3 Approval of contract adjustments

Caroline Meyer asked the Commission to approve some minor revisions to the contracts that they approved at their October 2015 meeting. One change reflects a slight readjustment in the distribution of cases between the Public Defender of Marion County and the Marion County Association of Defenders. Both providers expressed satisfaction with the adjustment. The other changes were to the contracts of Jeffrey Ellis and Richard Wolf, who both provide services in capital cases. Ms. Meyer explained that they also share Capital Resource Attorney duties under the new contracts, and that the adjustment to their contracts reflects the corrected allocation of expenses for the resource attorney duties between the two providers.

MOTION: Commissioner Potter moved to approve the contract adjustments; Commissioner McCrea seconded the motion; hearing no objection the motion carried: **VOTE** 6-0.

Agenda Item No. 4 Washington County Service Delivery Review – Final Report

Paul Levy presented a proposed final draft of the Washington County Service Delivery Review. He explained that the concluding section of the report, which presents the Commission's intentions for the county, largely continues the existing plan, with the elimination of one contractor and the shift of some of its cases to the Oregon Defense Attorney Consortium. The plan also calls for OPDS to continue monitoring how the management of the Metropolitan Public Defender operates its Washington County office, and attention to other issues, including the apparent unwarranted use of shackles in juvenile delinquency cases.

Chair Ellis inquired about the letter the Commission received regarding private bar representation in juvenile dependency cases. Mr. Levy reminded the Commission that it had received a letter and testimony at its September meeting supporting continued private bar participation in those cases. He said the Commission's plan for Washington County continues its previously approved plan to maintain a private bar component to representation in dependency cases. He explained that in some counties there is virtually no private bar presence in juvenile cases, but that will not be the case in Washington County. He did clarify that under the new contracts for Washington County two of the best private bar attorneys would be receiving cases through ODAC.

The Chair also asked that the report be modified to reflect the Commission's concerns, as expressed at its September meeting by two guests, that practitioners receive adequate training and provide sufficient attention concerning cases with mentally ill clients. Other Commissioners agreed with this request. Paul Levy said he would make those changes to the report.

Deputy General Counsel Amy Miller explained, at Commissioner Potter's request, her efforts to address the shackling issue in the county. The updated report explained that she had provided information about the issue to the presiding juvenile court judge. She explained that she has not had a dialog with that judge, but that the providers in the county were working with the juvenile department on the issue and intended to work with the court as well. But she had no indication, she said, of how the court intended to proceed.

Paul Levy also explained the follow-up he had to the Commission's concerns about the conflict of interest issues discussed at the September meeting. The Chair agreed that OPDS staff could use their discretion to determine how best to address the issue. Commissioner

Ramfjord noted that the concern, as expressed by the director of the Metropolitan Public Defender, was not with the elected district attorney, who the director described as a good and honorable person, but with his deputies. Commissioner Lazenby asked that the Commission receive an update on the matter at the January 2016 meeting.

Satisfied that the final report would include the additions concerning representation of mentally ill defendants, the Commissioners expressed a desire to approve the final report.

MOTION: Commissioner Potter moved to approve the Washington County Service Delivery Review Final Report; Commissioner Lazenby seconded the motion; hearing no objection the motion carried; **VOTE:** 6-0.

Agenda Item No. 5

PDSC 2013-15 Biennial Report to the Legislature

Executive Director Nancy Cozine discussed the draft biennial PDSC report to the Legislature that the Commission received. She touched on the highlights of the past two years, including the launch of the Parent Child Representation Program, funding increases for public defense providers, and major changes in personnel and structure in both the administrative sections and the Appellate Division of the agency. Both Chair Ellis and Commissioner Ramfjord said the report was well done. Ms. Cozine said that Commission approval of the report was not required and so long as the Commissioners were fine with the report she would submit it to the Legislature.

Agenda Item No. 6

OPDS Monthly Report

Nancy Cozine began the monthly report by describing the membership of a new Juvenile Law Task Force, which is chaired by Justice David Brewer and includes a diverse group of legislators, judges, representatives of CASA and DHS, prosecutors, the Governor's office, Department of Justice lawyers, someone from the American Bar Association, and defense providers, including Ms. Cozine and Valerie Colas, from the OPDS Appellate Division. She said that invaluable support service is provided by Amy Miller, who is also receiving praise from task force members for her efforts to improve juvenile court representation. Ms. Cozine described two significant areas of interest for the task force: improving compensation for defense providers, and ensuring that DHS has legal representation at hearings.

Ernie Lannet gave an update on the Appellate Division of OPDS. He introduced Marc Brown, an attorney in the office since 2005, who is a Chief Deputy in charge of operations. Mr. Lannet reported that the Juvenile Appellate Section had hired Amelia Anderson, a recent law school graduate, and that the Criminal Appellate Section had hired Sara Werboff, who worked as a clerk for Justice Martha Walters and then worked for Janet Hoffman and Associates. He then provided information about upcoming Appellate Division arguments before the Oregon Supreme Court.

Paul Levy gave a quick update on a recent Court of Appeals case, *Handy v. Lane County*, concerning public meetings law. The good news, he said, is that the law is not violated if a quorum of the Commission privately discusses and even decides a matter, such as scheduling a meeting, that does not require a vote. The bad news is that the case reaffirms a principle, also announced in an earlier somewhat related trial court decision, that serial private communications among a quorum, such as through email or phone conversations, will violate the law if the subject is a matter upon which a vote should or will be taken. Mr. Levy said he would have a more comprehensive overview of government ethics in the New Year when a new commissioner joins the group.

Nancy Cozine said that the OPDS Compensation Plan approved by the Commission was presented, without objection, to the Legislature during their November legislative days. She said the Department of Justice's compensation plan ended up looking very different from

other executive branch agencies. Because of the way DOJ realigned their salary steps, she said, it appears that they are now compensating some positions 21% or more than equivalent positions at OPDS. She said this is something she will be pursuing further with the Commission and legislators. She also reminded the Commission that the AFSCME contract with AD lawyers has only a one-year duration. This is because it's the first contract for the agency and both sides didn't want to be locked into a longer contract if some things weren't working as planned. But that also means that new contract negotiations will begin again in May.

Cynthia Gregory told the Commission that the agency was recruiting for two positions, one for a vacancy in the financial services section and the other for a contract analyst position. She said the agency uses the State of Oregon's job recruitment system for these efforts. Commissioner Lazenby asked about the diversity of the applicant pool. Ms. Gregory said she expected a fairly diverse pool, although native peoples of Alaska and the continental US and Pacific Islanders are usually not represented well in the pool. The agency is also seeking to contract with more case managers in preparation for the expansion of the Parent Child Representation Program into Columbia County. She then reviewed with the Commission the process for completing Nancy Cozine's annual performance review, which will involve, as in previous years, a survey of the provider community conducted with the assistance of Commissioner Potter, a survey of OPDS staff, and then a meeting of the Commission with Ms. Cozine's direct reports and with her. It was decided that those meetings will take place at the Commission meeting in March.

Nancy Cozine then praised and thanked the OPDS managers for their excellent work.

Agenda Item No. 7

Strategic Planning – Commission Perspective

Geoff Guilfooy described the strategic planning process. He reminded the Commission of the meetings of the provider community at the October public defense management seminar and the report following that to the Commission. He has since met with OPDS management personnel and has plans to gather input from the rest of OPDS staff. He and Nancy Cozine will also be seeking input, in one-on-one meetings, from a wide variety of justice system stakeholders at the state and local level. Commissioners also identified other people who should be contacted. The plan is to complete the process at the Commission's April 2016 meeting in time for the budgeting process and other planning ahead of the 2017 legislative session.

Mr. Guilfooy then introduced the four questions that the Commission should address:

- What changes do you expect to see in Oregon's public defense system due to foreseeable developments in the law, performance standards, and the state's economic environment?
- What challenges will the Commission face in ensuring the provision of quality public defense services during the next three to five years
- What do you think the PDSC and OPDS could do to better understand client needs and better support the public defense community?
- What can the public defense community do better in working with other justice system stakeholders to enhance public defense services?

The Commission then began a wide-ranging conversation to address these questions. Chair Ellis began by identifying four challenges to effective public defense: how the defense community handle the increasing number of people in the system with mental illness; the consequences of the "urban rural divide" in Oregon, where vast parts of the state are sparsely populated; the increasingly diverse population of the state that will inevitably require greater diversity among public defense providers; and the inevitable increase in the population of the state. Other commissioners then "riffed" off those ideas. Commissioner Ramfjord added that the national momentum for sentencing reform will need to find expression in Oregon,

including among the defense community. He said technological changes, including the advent of body cameras worn by police and challenges to forensic evidence, will require increased time and resources by defense providers, as will the advent of grand jury recordation, when that finally arrives. Commissioner Potter added that a greater focus on holistic defense will require new thinking. And Commissioner McCrea said the increasing costs of operating a law practice will make the challenges to retain and recruit public defense providers even greater. Commissioner Ramfjord added that the manner of training lawyers will need to change as the subject matter of defense becomes wider. Commissioner Welch reminded the group that the vast majority of families involved with the juvenile dependency system are affected by drug and alcohol issues. She also said that public defense will need to do better making informed decision based upon data, which will require tracking and gathering it ourselves. Commissioner Ramfjord suggested that the budget challenges that the state and public defense regularly face could be eased by sentencing reform, including dropping capital punishment.

Moving to the challenges that the Commission itself would face, Chair Ellis emphasized the difficulty of bringing good, young lawyers into public defense when the pay is historically low and their costs, from law school and elsewhere, are great. He also said that the defense will need to specialize in order to handle particularly difficult cases, such as those involving sexual abuse allegations. Commissioner Welch emphasized again the need for identifying and capturing data in order to make informed decisions. Commissioner Lazenby suggested that the structure of some public defense providers may need to change for more deliberate training and advancement of career defenders. Paul Levy reminded the Commission that as Oregon-specific caseload standards are developed it is likely that defenders will be handling far fewer cases per attorney. This may require abandoning the per-case system of funding public defense and the development of a system that actually pays for the work the way it needs to be done. Jon Weiner noted that the opposite of the problem of defenders retiring is the problem of those who should but aren't retiring because they can't afford to. Not only is this a humanitarian crisis, but it's not a good picture for attracting new lawyers to the work.

The Commission then turned to the third question of what the PDSC and OPDS could do to better understand client needs and better support the public defense community. Chair Ellis suggested that the Commission should stay focused at the system level, and made particular note of the fact that, while providers have clients, the Commission does not, and expressed the view that the Commission should continue to get information about client representation through providers. Commissioner Ramfjord encouraged the development, adoption, and enforcement of performance standards that can be applied to all jurisdictions, including client surveys about things like time spent with the lawyer, as a key to improving services. Commissioner Welch emphasized again that getting data about services provided is a critical step. Commissioner Ramfjord noted that service delivery reviews could inquire more about how providers determine client satisfaction. He noted that in private practice there is a lot of emphasis on client satisfaction.

The Commission then talked about the process for contracting for public defense services. Chair Ellis and others noted that this had improved significantly with a more consistent approach to contracting and largely uniform rates. Others noted that providers at the October meeting shared frustration at being asked to do significant work on their contract proposals, but having little or no room for negotiation, and feeling like there was a lack of transparency. Ms. Cozine said that this has been a topic of internal discussions on how to improve the process. Caroline Meyer noted that the contract proposals do influence contracting. She explained that when themes are identified in contract proposals they are often built into the new contract, including in this contract cycle a separate Jessica's Law case credit and an additional credit for sibling representation in dependency reviews. She also noted that there was give and take during contracting, though not as significant as some might have preferred.

Next the Commission talked about what the public defense community can do to better work with other justice system stakeholders to enhance public defense services. Chair Ellis noted in particular that he thought there could be better communications by juvenile providers with the Department of Human Services. Commissioner Welch was not optimistic about such prospects. She said the lawyers are generally arrogant when they deal with DHS caseworkers and, in turn, DHS doesn't appreciate the role of the advocate for parents and children. Commissioner Potter said the Commission could be urging more participation by providers in local criminal justice advisory committees.

Agenda Item No. 8

Thank you to Barnes Ellis

Chair Ellis spoke about his 50 years of involvement in public defense, and the many great people he had the privilege and pleasure of working with as public defense evolved from a bunch of backbenchers in the old Portland police court to the modern, well-managed agency of today. He then turned the figurative gavel over to new Chair McCrea, who also reminisced about the development of public defense and the days when the State Public Defender worked in a building with holes in the roof. She talked about the creation of the current Commission and OPDS, and how that process succeeded under the leadership of Barnes Ellis. She then presented him with a plaque recognizing his 15 years of service as chair of the PDSC.

There was then a motion to adjourn. **MOTION:** Commissioner Potter moved to adjourn the meeting; Commissioner Ramfjord seconded the motion; hearing no objection the motion carried: **VOTE:** 6-0.

Meeting Adjourned

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, December 10, 2015
1:30 p.m. – 4:30 p.m.
Mercy Corps
45 SW Ankeny Street
Portland, Oregon 97204

MEMBERS PRESENT: Barnes Ellis
John Potter
Per Ramsfjord
Shaun McCrea
Chip Lazenby
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Paul Levy
Amy Miller
Caroline Meyer
Billy Strehlow
Angelique Bowers
Ernest Lannet
Cynthia Gregory
Cecily Warren
Marc Brown

The meeting was called to order at 1:40 p.m.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on October 23, 2015

0:15 Chair Ellis First of all, welcome everybody to Mercy Corps. This is my place of work and I am glad you could all come here. The first item is the approval of the minutes from October 23. Are there any additions or corrections?

0:36 S. McCrea Mr. Chair, I have a correction on page two, the last paragraph at about the middle of the page. The sentence beginning, I think it's 'Mahan reported that he has' and it says 'notice' and it should be 'noticed a decrease in client complaints.' I would just ask that we amend it to add the 'd' to the word 'notice.'

0:56 Chair Ellis Alright, again proof that you have read them. Is there a motion? **MOTION:** John Potter moved to approve the minutes; Shaun McCrea seconded the motion; hearing no objection the motion carried: **VOTE:** 5-0.

Agenda Item No. 2 Approval of Updated PDSC Schedule of Compensation effective 1/1/16

1:12 Chair Ellis Alright, Caroline, the updated PDSC Schedule of Compensation.

1:22 Chair Ellis Good afternoon. In 2010 this Commission approved the first Public Defense Services Schedule of Compensation. It just wasn't something that had been created up to that point, it was provided for in statute.

1:41 Chair Ellis This is where reimbursements are ordered?

1:43 C. Meyer Correct. Paul and Kathryn did a good job of explaining how that came about and why we were creating it and this would simply update the numbers to more accurately reflect what we are currently paying under contract. What you won't likely have is what the old schedule looked like. If you were to look at it you would see that the total costs, and it has been five years so there has clearly been an increase in each category. One of the things that we did was some shifting between the contract rate and expense categories because we have taken investigation out of the contract rates and that is now in the expenses column as opposed to the contract rate. For example, as I look at the old chart versus the new one it looks like the murder rate actually went down but it is simply because the amount of investigation that we took out of the rate went over to expenses.

2:48 Chair Ellis Were there any kind of policy questions or is this basically house cleaning?

2:53 C. Meyer It's house cleaning. Really it is going to serve two purposes, updating it to the current rates but we are also going to send out a memo to the courts which we did in 2010 that said 'here's how this gets used' and Commissioner Welch may know what I am talking about. I think most judges are aware of the schedule. There are some that I have spoken to that weren't aware of it at all, others that have their own version of it, which they have the discretion to do that and others that I think are waiting for an updated schedule that more accurately reflects it, so that will really take care of that purpose.

3:26 Chair Ellis Is there a motion to approve? **MOTION:** Per Ramfjord moved to approve the PDSC Schedule of Compensation; Chip Lazenby seconded the motion;

3:35 Chair Ellis Is there any further discussion? Mr. Potter, you look lost in thought.

3:37 J. Potter I just want to make sure I understand this that the expenses for the most part are investigation expenses?

3:44 C. Meyer It's all expenses, all non-routine expense requests that come through our office would be factored into that category, but a large chunk of it is investigation, yes.

3:54 J. Potter So on probation violations there is seven dollars, what were those expenses that might be within those seven dollars?

4:07 C. Meyer It could be discovery, it could, we certainly have heard from some providers that there is very little investigation on probation violations.

4:13 P. Levy This is the average number. On many, there are no expenses.

4:22 S. McCrea I didn't have a chance to go back and look at the statute. Is it correct that the total cost in each type of offense in the last column is what a judge can impose for reimbursement on a defendant?

4:40 C. Meyer I have a copy of it.

4:44 P. Levy Paul Levy, for the record. The statute that guides courts in ordering assessments for court appointed attorney's fees says that they can use this schedule as a reference and there are other pieces of the statute that are largely ignored. When they are ignored by the court they

are now consistently reversed by the Court of Appeals which directs them to consider ability to pay and other factors. It is a guide and what we explained to the Commission in 2010 is this was sorely needed and requested by the courts and others because the way in which courts were arriving at a cost that they might adjust for ability to pay was random and haphazard and often not accurate at all. The schedule of compensation is the best guide for courts and we will be explaining that to them again in a memo with this updated schedule, but this is by no means what a court should impose.

6:07 C. Meyer I certainly don't think we are aware of anyone that is imposing anything more than that, if that was the concern.

6:16 Chair Ellis Are we satisfied?

6:17 S. McCrea Yes.

6:20 Chair Ellis There was a motion and a second. All those in favor say 'I;' **MOTION:** hearing not objection the motion carried: **VOTE:** 6-0

Agenda Item No. 3 Approval of contract adjustments

6:28 Chair Ellis Okay, Caroline.

6:29 C. Meyer Yep, it's me again. Number three is also really a house keeping measure. We had just a few adjustments since the October meeting when we presented to you the summary of all the contracts and the amounts. So Marion County, there was just a minor shift between the two criminal providers and it was agreed upon.

6:51 Chair Ellis Just so we know what we are doing, what was it before relative to what we are looking at now?

6:56 C. Meyer Let me find my note here. Do I not have it; sorry I have the death penalty amounts. Billy do you remember?

7:11 B. Strehlow \$368,000.

7:13 Chair Ellis In which direction?

7:14 B. Strehlow So, the contract was \$368,000 for what was approved.

7:20 Chair Ellis Was that MCAD or?

7:23 C. Meyer The Marion County shift, it wasn't nearly that large.

7:26 B. Strehlow No, it was just a few hundred dollars difference.

7:28 C. Meyer It was shifting of misdemeanor and felony.

7:30 O. Thompson Mr. Chair?

7:31 Chair Ellis We have Mr. MCAD here.

7:34 O. Thompson The difference is under \$600. I don't remember if it was \$300 and change or \$500 and change and MCAD is completely in agreement.

7:42 Chair Ellis Tom is in the building but I don't see him. There he is.

7:48 P. Levy He's retired now.

7:49 T. Sermak I'm retired now judge, so I am pretty much fine with just about everything. I happened to have been involved in the negotiations for that contract. What they did was adjust the case distribution to increase the number of Measure 11 cases that the Marion County Public Defenders were taking. The actual monetary change was minor as you said.

8:16 Chair Ellis And then the other two, the death penalty one, what is going on there?

8:20 C. Meyer The death penalty amounts were simply listed inaccurately on the last summary in October. They were previously \$368,000 for both, but that did not take into account the Capital Resource Center, the fact that each of them is doing some work out of the Capital Resource Center. The new amount just reflects that, so I think for Mr. Ellis it was \$49,800 was the difference and for Mr. Wolf it was \$1,800.

8:48 Chair Ellis And again, for the record, I am not related, to my knowledge, to Jeffrey Ellis.

8:53 C. Meyer Just to clarify, the difference between the two, why those amounts are different is that there is a legal support person that works for both providers but is an employee of Mr. Ellis and so the money is going through his contract.

9:10 Chair Ellis Is there a motion? **MOTION:** John Potter moved to approve the contract adjustments; Shaun McCrea seconded the motion; hearing no objection the motion carried: **VOTE 6-0**

Agenda Item No. 4 Washington County Service Delivery Review – Final Report

9:20 Chair Ellis Now Paul, the Washington County Service Delivery Review Final Report.

9:27 P. Levy Yes, and we are moving along here on our agenda.

9:32 Chair Ellis That's what you do when you start late.

9:34 P. Levy You held a hearing in Hillsboro to consider a draft and receive testimony about the draft and about what was going on in Washington County in September. In October you had an updated draft report that incorporated what you had heard in September and in October the Commission spent a little bit of time talking about the report. I have included in this final report, which by no means must be final because if there are additional revisions that you want we can absolutely do those and should. The last section has a service delivery plan for Washington County and that is the only update to this draft that you have here and I hope that I have correctly discerned the Commission's direction. I was certainly guided by the discussion in October. In large part, the plan is to continue as we have in Washington County although we have eliminated a contractor and the Commission was aware of that in October. The Commission was also aware that those cases would be going to a new juvenile component in the Oregon Defense Attorney Consortium. Chair Ellis, you wanted the report to specifically direct our office, OPDS, to continue to keep an eye on how the Metropolitan Public Defender is operating with two offices and ensuring that their Washington County office was getting sufficient attention. That's in here. The next and final paragraph directs us to continue to track the areas of concern noted earlier in this report and specifically to continue efforts to deal with what appeared to be the unwarranted use of shackling in juvenile delinquency proceedings and I have noted in here the follow-up that the Deputy General Counsel Amy Miller did following the September meeting. She will and we will continue to work with Washington County on that issue.

12:18 Chair Ellis We received a letter and I forget the author but the issue was adequacy of the private bar and I noticed that Judge Bailey had a comment like that. Do we want to address that?

12:36 P. Levy Yes, the letter came from Howard Moran and he referenced a letter that the Commission received at your September meeting from Judge Raines that spoke about the continued value of the non-contract private bar in Washington County. Judge Bailey endorsed that letter and idea as well. We have had further correspondence since September with Mr. Moran concerned that we weren't heeding that wish for a viable private bar presence in Washington County. In fact, we are. When this report says that the Commission determined that the current service delivery plan should continue, that is a continuation of the plan that you endorsed in 2007. Now, that report went on in some length about the importance of private bar, but we are continuing and there will be a continued private bar presence in Washington County. In some counties there is virtually no non-contract private bar presence. There will be continued presence in Washington County. I think Mr. Moran's concerns are partly based on a misunderstanding of the maybe somewhat veiled references. I mean, he just didn't quite follow what was going on. There will be a continued private bar presence and he will undoubtedly continue to get cases.

14:30 Chair Ellis I am assuming the continued private bar presence, the private bar lawyers meet our qualifications and private bar cases are assigned because the PD or the consortium either have conflicts or lack capacity.

14:50 P. Levy In fact, there is juvenile work done by a number of other contractors. The Karpstein firm has a substantial juvenile component. The Ridehalgh firm does as well and I think Grant Burton's firm does too. Still, there will be room for private bar. They will and must meet our qualification standards. In fact, what is happening is a couple of the best private bar lawyers who had been getting cases are now part of the Oregon Defense Attorney Consortium. Those very strong juvenile court practitioners will be getting cases through the consortium now.

15:43 Chair Ellis Two of the witnesses, Penny Belt and Karen James, expressed concern with respect to mental health and whether the practitioners there are adequately trained and sensitive to that. Do you want to comment on that?

16:04 P. Levy I know the testimony that you are referring to and it's referenced in this report. That's largely because I didn't have direction to follow up on that in the last meeting. That is not mentioned specifically on the final section of the Commission's plan. I think that I am safe in saying that the providers are largely aware of the concerns that were expressed but if you would like the report to reflect direction to our agency to continue to focus on that issue and to follow up, we can do that.

16:53 Chair Ellis I would like that and we are going to have Geoff Guilfooy later today and you will hear that's an area that I think we can improve our focus. Did the rest of you share that concern?

17:08 J. Potter I do.

17:10 Chair Ellis Okay, so if you'll add that.

17:12 P. Levy Yes.

17:13 Chair Ellis There was one typo that I found on page 31. The first full paragraph after 'Gregg Scholl' you need a verb; it could be 'stated.' It's in the second line of the first full paragraph. You just need a verb after 'Gregg Scholl.' You pick it.

17:45 P. Levy If I get to pick it that will be a lot of fun, thank you.

17:49 Chair Ellis Any other questions or comments on the Washington County Report?

17:55 J. Potter Maybe Amy can answer the question, she was, according to the report, was providing additional information about shackling to the judges and she also followed up with the issue with the county juvenile department. What was the result of providing the information and the follow up with the juvenile department?

18:20 A. Miller Chair Ellis, Members of the Commission, my name is Amy Miller and I am the Deputy General Counsel. Commissioner Potter, I have had not had direct conversations back and forth with the court. I do know that the lawyer providers made some inroads with the juvenile department and so they are working with the juvenile department who, as you heard testimony at your meeting, had a policy that hadn't been strongly enforced but limited the use of restraints. So, they're working that angle currently starting in the new calendar year that they plan to proceed in working with the court directly, so they are starting with the juvenile department and moving towards the court. Jake Griffith who testified in front of you and I think said something to the extent of "I take the judges' comments as incentive to raise this issue with the court" is heading up that effort as well as Mary Bruington at MPD.

19:15 J. Potter So, you don't have any indication from the court yet as to how they are really thinking?

19:19 A. Miller I do not.

19:22 Chair Ellis Paul, did you have the chance to talk to District Attorney Hermann on the conflict issue?

19:28 P. Levy I did not because I thought where the discussion ended in October was rather than potentially throwing more gasoline on the fire, I would check with Lane Borg and see what he thought would be most helpful or unhelpful as far as resolving or de-escalating or avoiding continuation of the problem that he articulated to the Commission, which was that...

20:02 Chair Ellis I thought it was Scholl that had articulated?

20:06 P. Levy It was actually Lane who was the one that said he thought that Mr. Hermann's deputies were intentionally creating conflicts of interest.

20:16 Chair Ellis I thought we left that we weren't going to put in into the report and I think you accurately followed that, but you or someone was going to show DA Hermann that testimony as just a caution that he might want to think about because it did feel like you know, 'surprise, surprise' a conflict witness shows up in the jail shortly before trial.

20:47 P. Levy I apologize because I understood it differently. Rather than talk to Mr. Hermann and perhaps make matters worse, I would talk to Lane Borg and see what would be most helpful. That is what I did and I still think it might be unhelpful for us to draw...

21:13 Chair Ellis The testimony is going to be in the report.

21:16 P. Levy It is in the report.

21:20 Chair Ellis I am okay with you guys deciding how to handle it but I do think the DA ought to know that there's a question about that.

21:28 P. Levy What I heard from Lane Borg was that they had taken steps to be proactive and were now on guard and ...

21:39 Chair Ellis Telling their clients not to speak to the jailers?

21:41 P. Levy I am not sure what exactly what they are doing but that they are now forewarned and forearmed and that this is a circumstance that they would be avoiding and I am afraid that we

might be...as you noted and as was reflected in the report, there is a bit of a detente in the county right now.

- 22:04 Chair Ellis I am totally happy that that county felt so much better this time than five years ago when we were out there.
- 22:15 P. Levy If you are fine with us exercising our discretion on this I would be happy to do that.
- 22:21 Chair Ellis I am fine with that. Is everybody else okay with that?
- 22:24 P. Ramfjord I do think it is worth commenting down to the record that Mr. Borg also said the he did not believe the district attorney was himself encouraging or engaging in any of this conduct. He thought he is a good and honorable person and that it was just a question of whether or not the message had sort of percolated down to all of the right people. I'd be encouraged to hear if things go better, but I do think that is important for us all to bear in mind.
- 22:54 P. Levy I appreciate that and that is in the report. I am happy and would be quite interested to follow up periodically with MPD to see how this is coming along. I have usually found out and been involved when this has become an issue because it has happened on major cases.
- 23:21 C. Lazenby Don't let it percolate too long, maybe an update would cause some progress by our next meeting.
- 23:26 P. Levy Yes.
- 23:28 Chair Ellis Are there any other comments or questions? Is there a motion to approve with the addendum that we commented on?
- 23:37 P. Levy So, if you want to do that or if you would like me to come back with one more draft?
- 23:44 Chair Ellis No, I trust you'll put it in. Let's get it done. **MOTION:** John Potter moved to approve the Washington County Service Delivery Review Final Report; Chip Lazenby seconded the motion; hearing no objection the motion carried; **VOTE:** 6-0
- Agenda Item No. 5 PDSC 2013-15 Biennial Report to the Legislature**
- 23:54 Chair Ellis Nancy, the biennial report to the legislature.
- 24:03 N. Cozine Thank you Chair Ellis, members of the Commission. You have in your packet a draft copy of the biennial report to the legislature. As you'll see it outlines our accomplishments in the biennium and it also talks about some of the challenges moving forward. If you approve it today and think it is complete then I will go ahead and forward that on to the legislature. If you would like any pieces changed I can do that. I will say, it was a biennium of significant change and the highlights, as you well know, are the launch of the Parent Child Representation program, the funding increases for our non-profit public defense providers which will now be shared with the other public defense providers in the coming biennium and lots of successful change in our own office including the successful shift in the Contract and Business Services side of the office and the Appellate Division.
- 25:10 Chair Ellis I thought it was a very good report and it was written without too much patting ourselves on the back. It was informative, straightforward and didn't have a lot of jerk or tease in it so I was happy with it. Do others have comments or questions?
- 25:30 P. Ramfjord I would agree, I thought it was well done.
- 25:32 Chair Ellis Do you, that's not shown as an action item. Do you need anything from us?

25:37 N. Cozine I don't, you don't need to approve it. I just wanted to make sure that you were alright with it and didn't need any changes. As long as you approve *of* it as opposed to approve it.

25:50 Chair Ellis Alright. Stay up there because the next is the OPDS monthly report.

Agenda Item No. 6 OPDS Monthly Report

25:57 N. Cozine Yes, and I would invite others to join me because we will be giving updates on various sections of the office. One thing that I wanted to report on was the activity of the new Juvenile Law Task Force. This is a task force that grew out of the 2015 session and is continuing to look at different representation models across the state and barriers to effective and efficient outcomes in our dependency system. The new composition of this committee is interesting, it has grown. The last iteration did not have any legislative members which I think was a challenge for the task force. This new version we have Justice Brewer, serving as the Chair; Judge Murphy out of Linn County and he is one of the judges in our pilot program; Judge Crain from Jackson County; Leola McKenzie who heads up the juvenile division for the courts; Senator Kruse who is an Oregon Legislator/Senator and he's from Eugene...

27:00 Chair Ellis And he's not from Texas.

27:02 N. Cozine He's not from Texas, and he is a big supporter of representation for parents and kids; Representative Stark from down in Grants Pass; Representative Taylor from Southeast Portland and then from the Department of Justice we have Joanne Southey and Fred Boss; and we have a member of the American Bar Association who heads up the Parent Representation program for the American State Bar. She came to the first meeting in person and has been participating by phone and has brought a really great perspective to the task force. Lois Day is participating for the Department of Human Services; for the District Attorneys we have Matt Shirtcliff out of Baker County, Rod Underhill and Lori Fellows out of Multnomah County; The CASA's are represented by Lynn Travis; for defense providers who represent parents and kids we have Valeria Colas who is a member of the Appellate Division in our office, myself and Angela Sherbo; and I will say as an honorary member we have Amy Miller because she does a really great job pulling information together and she has supported all of our work in this task force to such a significant degree that I just want to make sure that she gets a shout out for that. I have heard everyone on the committee tell me that they appreciate her work in the juvenile arena and it's remarkable that we have her talents. That committee has met several times. We will meet again on Monday here in Multnomah County where we will take an opportunity to watch a dependency proceeding. There seems to be a significant commitment, this is staffed by the Governor's office by Adrian Smith, there seems to be a significant commitment to two things: one, improving the way we compensate defense providers and two, improving the way that the state is represented for the Department of Human Services. There are many hearings where caseworkers come without a lawyer and there are some judges in the state who feel that that continues to create some barriers, so primarily we are working on those two issues, but all the connected issues as well. With that, I will turn it over to Ernie.

29:23 Chair Ellis First of all, Ernie I thought you did a great job and you displayed more humor than I ever thought your entire division had. I just want to commend you for that and if you've got a really hard case, try the joke.

29:46 E. Lannet Thank You. When I argued *State v. Partain* at the Oregon Supreme Court at Lewis and Clark I did get to make a crack at Justice Gillette's expense that no attorney in the room was older than the precedent that was being challenged than him.

30:05 Chair Ellis How did that go?

35:06 E. Lannet It went over great. Chair Ellis, members of the Commission, Ernie Lannet. First, I want to take an opportunity to introduce Marc Brown who is sitting in the back. He is the third Chief Deputy; he is in charge of operations. He has been with the office since 2005 so he has just rounded out his tenth year at the office and he is back from Milton Freewater. Shannon asked me to update the Commission that they have selected a new juvenile attorney who will start in January.

30:46 Chair Ellis This is out of the 70 applicants?

30:48 E. Lannet Yes. Amelia Anderson, she came very highly recommended. She is a recent grad from the University of San Francisco and she worked on dependency issues through law school so they are very excited to be seeing her. On the criminal side in February we are getting a new deputy, Sara Werboff is going to be joining us. She graduated from Lewis and Clark School of Law several years ago. She spent two years clerking for Justice Martha Walters and then has spent the time since then at Janet Hoffman and Associates and also is on the Advisory Committee for the Oregon Justice Resource Center which is the partner for the Oregon Innocence Project where she has been writing amicus briefs in cases too, so we are excited to see her come.

31:43 Chair Ellis Good, those are good credentials.

31:45 E. Lannet Awesome personnel right now. We had a bunch of arguments in November and we are getting ready for three arguments in January at the Oregon Supreme Court. All three of them happen to have pretty interesting issues. The first one is whether the jury should be able to see video tape of an interrogation where a detective repeatedly told the suspect that he is lying and that the victim is telling the truth. Another case deals with...

32:18 Chair Ellis Is that in the context of the admission being admitted?

32:24 E. Lannet No, actually, in that particular case the defendant maintains his innocence throughout the whole thing and the state wanted to put this on and I believe that defense counsel is able to keep some of it out but not all of it out.

32:39 Chair Ellis The way you describe it it sounded pro-defense.

32:43 E. Lannet Except for the detective saying 'I found out about this case and I've interviewed people and so I know when you are lying and so I know what to look for.'

32:53 Chair Ellis So, it's really the detective giving his own testimony?

32:56 E. Lannet Yes. The other one deals with whether the police can enter your home to find evidence of DUII as in giving you a blood test or breath test. In this case, there are actually two cases and one is being handled in our office and the other one is being handled by Jess Barton outside of our office but they are being consolidated for argument, whether the exigency of dissipation of alcohol evidence is such that they can enter your home to do...

33:29 Chair Ellis I take it no warrant?

33:31 E. Lannet No warrant.

33:32 Chair Ellis Is it hot pursuit?

33:33 E. Lannet No, it was just that they knew he was in there. Yeah, it's really interesting stuff. The third case deals with the automobile exception. It is really dealing with the break line rule, whether the officers need to encounter the vehicle while it's moving in order to rely on the exception

and we are also making a pitch that the days of having an automobile exception on per say exigency rule has passed.

- 34:01 Chair Ellis Go back to that second case that does kind of intrigue me. Most breathalyzers I thought were consent of the driver.
- 34:12 E. Lannet Yes.
- 34:13 Chair Ellis I thought most of them were concurrent with an arrest and so they are incident to the arrest.
- 34:19 E. Lannet Absolutely.
- 34:20 Chair Ellis And you got neither of those.
- 34:22 E. Lannet Right, we have someone withdrawing into their house trying to not interact with police and the police following them in.
- 34:28 Chair Ellis Alright, well we expect a favorable outcome.
- 34:30 E. Lannet We hope so. That's the news from here.
- 34:32 Chair Ellis Alright, any other questions for Ernie?
- 34:37 E. Lannet Thank You.
- 34:46 P. Levy I have a short report and a preview for the next meeting. As you know, I have updated the Commission periodically on government ethics law and government law generally. I wanted to alert you to a case that I will spend a little bit more time on at our January meeting where I will do a general overview of government ethics law and also we will have a new Commissioner at that meeting and this person will have the benefit of this information. I hope it is helpful. I have discussed a couple of years ago a case that never made it to the Court of Appeals out of Lane County having to do with the county commissioners and their violations as found by the trial court of public meetings law. A spin off of that case made it to the Court of Appeals and was decided a couple of weeks ago. Very quickly, it's a 50 page opinion and I am just going to give you a couple of highlights. The good news out of this case which is *Handy v. Lane County* is that it does not violate the public meetings law for a quorum of a public body to talk among themselves without having an actual public meeting concerning scheduling a meeting. That is because that is not a matter that requires a vote and its matters that require a quorum that need to be held in a public meeting. The other good news I suppose is that you can get together let's say later this afternoon after this meeting and all of you can chat about public defense. All of you can talk about public defense and issues of concern about how public defense is run as long as you are not actually deliberating on a matter that is up for a vote. There was an earlier case that said this too and it was in a context of a restaurant. The bad news about this case, and this is something that we were aware of and we have avoided and tried to avoid and I am here just to say that we should continue to avoid it, is that serial private conversations through email or otherwise of a quorum of a public body on a matter that is subject of a vote would violate the public meetings law. So, if Commissioner Potter emailed Commissioner McCrea about something and then if you emailed each other a quorum that addressed an issue that would violate the public meetings law. So, we will continue to try to not invite you into that trap and I will have more on this in January.
- 38:10 C. Lazenby So, does that mean what happened in the original situation where they went around in non-quorum groups to discuss and then they started with serially with non-quorum groups under this ruling they would find that that whole sequence of meetings violated...

38:25 P. Levy The trial judge in that original case said that it violated public meetings law and imposed a fine on Mr. Handy and this time around the commissioners were talking about how to deal with Mr. Handy's idea of how he would repay some money he owed as a result of that fine and he sued Lane County for a violation of public meetings law on the theory that was used against him. Those of you from Lane County know this saga.

39:02 Chair Ellis Okay, thanks.

39:03 N. Cozine Alright, I wanted to talk quickly about the November legislative session. We had, very quickly, legislative days, I shouldn't call it a session, they were legislative days, and it was our opportunity to present our compensation plan to the legislature. It all went through without a hitch, no concerns. Interestingly the Department of Justice put through their changes and they were substantially different than what other executive branch agencies approved who were AFSCME represented and they, by dropping steps, adding steps and by having a larger percentage increase than the other agencies which actually end up I think 21% ahead of some of our positions again. We may want to work on that in February and I have started to have a few conversations but I will be bringing information to you in January once we've made a little bit more progress on how we want to proceed. We have a contract with our represented lawyers that runs through May and it was a one year contract. As you know, we had agreed to that one year term because it was the first contract that we have ever been in and I think all of us wanted a chance to test it out to see what worked well and what didn't so we wouldn't be locked into something for two years if we needed to make adjustments. We will be having contract negotiations starting again in May; I suppose it expires probably closer to July. As I said, I will be back to you in January with more information on that. I think Cynthia has a few things. And, you all know that December is a special time and I am sure you're all thinking what I am thinking - that it's special because it is always the launch of my review.

41:07 C. Lazenby I was thinking eggnog.

41:15 N. Cozine Usually in December we talk about what that process is going to look like and Cynthia has been handling that and she is here to give you an update on a few personnel matters in our office and then start that discussion.

41:27 C. Gregory Right, we have two recruitments open currently. We had a vacancy come up in our financial services section. So, Angelique has an accounting technician two position open which closes the 23rd of December. Visibility of the position is good; we've got about 36 applicants as of today.

41:46 Chair Ellis So when you say it closes that means?

41:48 C. Gregory That means the time for people to apply. Currently we have about 36 applicants, my cursory review about two thirds of those individuals will qualify to be considered for interview. Caroline is also looking for a contract analyst, the research contract analyst for the individual that we had hired a little over a year ago that left to go to law school full time. With Tyson's departure we are recruiting for a contract analyst with emphasis on research so that we can get some data out. That position closes next Tuesday for applicants. We have six applicants currently and about half of them will be considered at this point for interview.

42:36 Chair Ellis How broadly do you send the announcements?

42:42 C. Gregory These announcements we are sending out through what's called NEOGOV which is the State of Oregon's job recruitment system. We have also sent out feelers to the universities for the research position because there might be some individuals there...

43:00 Chair Ellis In state?

43:01 C. Gregory In state, so we don't cast farther than outside the State of Oregon for most positions. We are finding that we are getting good response and that we are getting some well qualified applicants. I am assisting Amy Miller, we are looking for more case managers, so we have spread the net a little wider with that to find case managers. We look at each position to make a determination where we need to recruit.

43:34 Chair Ellis It sounds like you are getting pretty healthy responses.

43:37 C. Gregory I believe we are.

43:40 Chair Ellis Any questions.

43:42 C. Lazenby Do you have any sense on how diverse your pool is?

43:44 C. Gregory I typically don't look at that until we're getting a little closer to the end but I am seeing a wide variety of diversity again similar to what I reported to you last year. We continue to see some deficiency in recruiting applicants from the Native peoples of Alaska or of the Continental US, and Pacific Islanders, that tends to be a very low field in which to find folks, but we search and we are doing adequate. There is always room for improvement.

44:21 Chair Ellis Do you want list the other questions or outline the process for?

44:26 C. Gregory Process for the performance review for our executive director I need your direction to begin doing that. That starts usually with a survey that Commissioner Potter and I will coordinate on. Will you be doing your portion again this year?

44:40 J. Potter Absolutely.

44:41 C. Gregory What I would like to do is send to you the information that we had asked last year so that you have a chance to take a look at that.

44:48 Chair Ellis That is to the provider community and then I take it the entire staff gets a chance to weigh in?

44:56 C. Gregory Yes.

44:57 Chair Ellis Plus or minus whatever they want. What other steps?

45:03 C. Gregory I think that has been pretty much it for the last two years unless we want to do something different.

45:09 N. Cozine The other piece of it is simply timing. It takes some time, or at least it has, to actually do the review process and so the question simply is whether you would like to have that in January or March. We've done it at both times and it really is what fits best into the Commission's schedule. In January we will have a new Commission member.

45:35 Chair Ellis This is really my successors issue but two other pieces that we have done in the past: one is one on one interviews with your direct reports and one is time with you.

45:49 N. Cozine As Nancy's performance, her self-assessment.

45:55 Chair Ellis Do you want to take over on this one?

45:58 J. Potter I was just going to suggest that March might be a better time frame than January.

46:07 Chair Ellis Okay?

46:08 C. Gregory Okay, thank you.

46:12 N. Cozine I wanted to follow up on the comment that we were hiring for or looking for more case manager just to note that we are expanding the Parent Child Representation program in January to Columbia County. Amy has been working hard on that. That is why we need additional case managers. In closing on the OPDS staff update, I just wanted to say, and I swear this is not because I am going into the review period...I had a six week leave of absence and I just think it is remarkable not a single thing slipped through the cracks. Everyone at OPDS in management positions did an amazing job and I am terribly grateful at the hard work that everyone puts in every single day. Everyone asks the right questions and they do the right thing and they are so committed to this office and to the work. So, again I want all of you to know that we are very fortunate and I am very fortunate so there you have it.

47:35 Chair Ellis We are very glad you are back. You look well.

47:40 N. Cozine Thank You. It is good to be back. Alright, there are two more agenda items and I want to just say that on the strategic planning piece Geoff Guilfooy is here and we envisioned that this would take some time, that it would take a large chunk of time and we don't want to give it short shift.

47:58 Chair Ellis We are going to do it next. You and I talked about this, it is all decided.

48:05 N. Cozine You are the Chair, not for much longer.

48:08 Chair Ellis I do think we should do it next because there are people here for whom this is significant that may not be here all day. Why don't we take a five minute, not to exceed, break. The restrooms are over in the corner there and then we will resume with Geoff.

48:30 N. Cozine Do we want to reconfigure it all? Sometimes when we do the strategic planning discussion we try and make it into a less formal structurally...

48:39 Chair Ellis Anything you want.

48:40 N. Cozine Alright.

48:44 Chair Ellis On furniture movement.

48:47 N. Cozine Thank you.

Agenda Item No. 7 Strategic Planning – Commission Perspective

57:17 Chair Ellis Alright, let's resume and those that are outside will just be embarrassed by being late. Geoff Guilfooy, we had the occasion in Bend to hear some of what your process is up to, so we will start from there and tell us what you need.

57:55 G. Guilfooy Great, well that would be a great place to start Mr. Chair, thanks. As you all know in October we had the session with the OCDLA folks at the management conference and we got some very good information from them and from their perspective. Since that time, in November we had a series of meetings with OPDS leadership and the management teams to look at issues that they have from their perspective as well. Now what we want to do today would be to do the same thing with you all to try to get your perspective. So, what we are going to try to do is have this be a conversation among you all and not so much just a back and forth between us.

58:36 Chair Ellis I assume if anybody out there has something they want to contribute I can...

58:45 G. Guilfooy However you want to do this Mr. Chair is fine with us. The idea would be to tap as much thinking as we can today and again, not necessarily solve issues as just identify what the issues are that we anticipate in these areas. Moving forward, in January we will continue to summarize this information that we have been getting from these different venues that we've had. In February, the plan is to do two things; one is to meet with OPDS staff at large and get some good input from them, we want as much input in this process as possible; also in February we want to meet with the Chief Justice of the Supreme Court, the Chief Judge at the Court of Appeals and legislators to get their perspective and to also brief them on this process. In March we will continue with one on one meetings with the governor's public safety advisor, the public safety team, presiding judges, DHS, child welfare, DOJ, DA's, OYA, community corrections directors, to really talk about emerging issues systemwide in the public defense system. We'd be interested if the Commission has anyone else besides those groups that you would like us to talk to let us know so that we can put them into the schedule, but February and March will be a heavy series of those external meetings.

1:00:16 J. Potter Can you read that list again?

1:00:18 G. Guilfooy Sure, I'll go slower this time. In February the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals and legislators. In March one on one meetings with the governor's public safety policy advisor and the public safety team.

1:00:31 Chair Ellis Pause for a second, when you say one on one who from our side is meeting?

1:00:35 G. Guilfooy Two on one.

1:00:39 N. Cozine I would say too, Department of Justice is on the list and will want to meet with several people from DOJ because we interact with them in different ways and in different contexts and so we will want the Appellate Division and we will want leadership and legislative. I have already actually reached out to several of these entities.

1:00:58 Chair Ellis and the DA's association?

1:01:00 N. Cozine Right, I have reached out to Gary Meabe who was, when I saw him in November, acting as the executive director. I think he still is, he had just taken over from Doug Harcleroad.

1:01:14 Chair Ellis There's one you don't have on the list that I think would be helpful is the Federal Defender because they end up doing the PCR work on the cases that come through our system and of course they are experts in defense so they might have a lot of good comments.

1:01:37 G. Guilfooy We will add them to the list. I'll go through the list for whoever asked me, John asked me to do this. The governor's policy advisor, public safety team, presiding judges, DHS, Child Welfare, DOJ, DA's, OYA, juvenile directors, community corrections directors, enterprise technology services division, and anyone else that you all would consider important.

1:02:04 C. Lazenby What about the Criminal Justice Commission and Mike Schmidt? They're doing a lot of criminal justice planning, they are doing the rankings on the sentencing grids, they are sort of future think folks.

1:02:20 G. Guilfooy Okay, so we will add that as well too. Does anybody else come to mind? You can certainly email us or Nancy if there is someone else that comes up. What we hope to get out of this is not just a series of conversations but to really get the issues that are going to matter. The idea then is in April we will be finalizing all of this information and we will be working with OPDS Leadership team to start to draft some preliminary goals, things we would like to see happen over the next two biennia and bring that to the Commission at your April 29th meeting for you all to have more discussion around that and get those finalized. That really sets it up

very nicely to be in time if there are going to be any legislative concepts that need to come out of any of this work and it also sets it up in terms of the budget planning process. That's the goal to by the first part of April or end of May to have this totally wrapped up. We have a lot of work still to do but today will be an important part of that, and then moving over into that conversation we put together four questions. These questions are almost the same questions that we asked over in Bend but we wanted to get it again from your perspective and to have you all really do this as a conversation among yourselves and so we are looking at the first question externally. When we look at what's changing and what is likely to continue to change in the system, what are some of the issues that are going to come out that? We added for you all also the state's economic environment because that not only includes the funding that you all can expect to have but it will include other things like the PERS issues and some of the things that will be very difficult and contentious budget issues this time around. The second thing we are going to ask you is to talk about the challenges that the Commission itself will face; you are going through a transition with Chair Ellis' departure and you will also have a lot to deal with as it continues to be difficult to provide these public defense services at the level of quality that you all will want to keep seeing improving. Then, what can you all do and OPDS from your frame of reference do to better understand client needs and better support the community at large? You all have been very active in getting out among and around the state at different venues and so forth but there are probably more things there. Finally, what can the community at large do better? As partners in success what can the community at large do? Why don't we just take these one at a time and Nancy and I will sort of inject on this but why don't we take the first question and have you all just talk about what changes do you expect to see in the public defense system because of changes in the law and your own performance standards and the economic environment.

- 1:05:24 Chair Ellis I'll kick it off. I think we are going to find that law and criminal defense begins to treat mental health differently. I think it has become increasingly clear that many of those who come through the system have as much of a mental health issue as they have of a correctable behavior issue and I think the standards are likely to change. I think the expectation of defense providers is going to change and I think a lot more is going to be expected of our system to deal with that in both a sensitive and a fair way. I would put that high on my list.
- 1:06:16 G. Guilfooy Do you see a difference between mental health in the general population and mental health in the veterans population?
- 1:06:27 Chair Ellis I am not qualified to say that they're different because PTSD probably happens to people either in the military or not but I know in my own awareness, which is pretty low, I am beginning to become increasingly aware that that is what is driving a lot of system involvement. I am not trying to predict how that would be handled but I think we have not done nearly as good of a job in getting defenders sensitive to that and able to recognize those issues. Diversion is obviously a big part of the solution where that applies. You ask what areas in the next ten years that we will focus on; I think that is a big one. I also think within Oregon the urban rural divide is something we need to watch. It has always been a challenge for us to have a single system but on the one hand you are dealing with population centers that collectively are in the millions and then you are dealing with very disperse population centers. I am not sure where that will take us but I think that divide is increasing not diminishing. I think diversity is very much a factor in the upcoming period. I think the state is becoming more diverse and I think we've got to push ourselves really hard to reflect that diversity in the defense system. The last is just general population increase . I think our system has worked well but that has been a million, it started at two million when I started and it is now at three million so there has been a 50% increase from the time that I have been active and that does present challenges. It is the frog in the warming pot, you don't see it abruptly and suddenly but I think we need to watch how we deal with that because with the contracts system that can be a real challenge over time. So, those are the four items that struck me.
- 1:08:58 G. Guilfooy Those are great and this is exactly what we were hoping to get is this kind of information.

- 1:09:02 B. Strehlow What was the second one?
- 1:09:04 G. Guilfooy The second on that was on the list was the urban-rural divide and the population and the fact that you have concentrated populations and disperse populations and how does that work in terms of one single system.
- 1:09:21 N. Cozine One interesting note on that urban-rural divide issue is I noticed that it sounds like the legislature may be considering implementing minimum wages based on regions.
- 1:09:34 Chair Ellis I saw that. I saw as someone who is interested in that and I don't think that I have ever seen a state law like that. It used to be you'd have laws that would apply to cities over 500,000; I don't think I have seen something like that.
- 1:09:52 N. Cozine I haven't either.
- 1:09:53 C. Lazenby There is going to be a lot of crowded conversations over the years around compensation and what is adequate compensation for health care and things like that based on where people live and there are some efforts administratively to sort of address that.
- 1:10:06 N. Cozine When we look at our own funding structure we have been moving towards this regional thought but one of the challenges that we have is that there isn't a state entity that collects the data in the way that you would want to be able to compare. We've done it ourselves but if the state were to move in that direction it could actually be easier to access that kind of information so that we could better define our regions, perhaps.
- 1:10:39 C. Lazenby The mental health piece and you also mentioned veterans courts as well. Part of what we need to be sensitive to is that as we get more specialized it calls for a different kind of advocacy than we've traditionally seen where we adjust to the defendant's rights as opposed to rethinking what those outcomes are without sacrificing our principals. I don't know what that looks like. I am not a technophobe but I increasingly have concerns about how technology will have a tendency to make the criminal systems sloppier when it comes to the individual rights and how we train lawyers and how we train practitioners to be aware of that and to advocate effectively in the face of quick technological disposition of people's matters. I was struck when we were going into the economic downturn, and I probably got this wrong, but it seemed to me that somebody very generally said 'yes the pattern is counterintuitive, when things get really bad and we have bad economic times crime drops too.' So, is the opposite of that also true? If we are looking to come out of an economic swamp and start to rise are we going to be looking at increased crime and what is that going to do to our contracting system and our service provision and the other things that we need? I don't know what we are going to do without you Barnes; I just riff off the things you said.
- 1:12:21 P. Ramfjord And I am going to riff off of some of your things. I think that, and this is kind of double riff, because I think on the mental health issues it's actually going to be broader issues regarding sentencing reform and alternative ways of sentencing and more forms of treatment as opposed to just incarceration. I think that it does require different forms of advocacy as you were saying. I also think that on the technology side, the increased use of body cameras by police officers is going to become more offensive, I mean when used by police in other words to record things, to record arrests, record drive-by identifications, record all kinds of things that they haven't recorded before. That is going to alter discovery. It's going to mean that you are going to have more instances where you'll need lots of time to review hours and hours of video that you haven't had to review in the past. I think that could make a difference and I think there could be other technological changes when it comes to forensic evidence. Certainly, with different types of challenges to evidence and the different types of challenges to eye witness testimony which have been evolving over time. Along those same lines I think that we will finally get a bill that provides for the recording of grand jury testimony and that

will require a little bit higher level of advocacy when it comes to challenging indictments and the like, so there will be more time spent on that. Those are a few things that come to mind.

1:31:43 J. Potter

I'd like to triple riff if I could. I would put some of what we are talking about under this notion of holistic defense. We are going to focus more on this holistic defense with the client, clearly body cameras, clearly I think the grand jury is going to effect, Shaun and I were talking on the way up here about custody release decisions. Right now it is a pretty secretive process. People do not have a good understanding of what goes into the factors for custody release. That is going to be challenged and there will be some repercussions out of that.

1:14:31 S. McCrea

At least in Lane County. Everything that you guys said, I totally agree with. I had the mental health issues written down; I had the technology written down and the police body cams. I think that all of these things create a more fundamental issue that we know that we are going to have to deal. That is twofold; one is how we are going to retain the providers that we have and how we are going to recruit new providers with the greying of the defense bar. As somebody who is in private practice, the cost of overhead just keeps going up and up and the requirements of technology to be on the cutting edge to be able to provide the holistic defense to your clients is going to become ever more critical. At the meeting that we had in October, somebody suggested that maybe an attorney could use a paraprofessional or paralegal to be reviewing things like body cams, but the problem is that when you get down to it to do a really good job the lawyer has to be involved. Any time where you start having these steps that distances the lawyer from what the discovery is there are more and more opportunities for something critical to be missed. I am not suggesting that we should not use paraprofessionals but what I am saying is I see one of the fundamental things that we are going to have to deal with is the old parity issue, getting sufficient money for our providers that they can provide the kind of quality representation that we need and want and that is our mandate. I see that everything ties into that.

1:16:37 P. Ramfjord

I also think that raises training issues which is going to be needing continuing education on a wider variety of topics.

1:16:45 C. Lazenby

And to pick up on another piece that Barnes dropped about diversity and how the state is becoming more diverse and for a new form of advocacy. A key part of doing adequate advocacy is being sensitive to those diversity issues. The custody release piece is really sort of a mystery. Maybe it is really subjective, maybe look at that data and how often are you seeing that people of color are being kept in jail and not people of color are being released and is that systemic and who is contributing to and supporting that? I think you don't get bats on unless you start advocating for more people of color on juries at the trial level and the pre-trial stage about the disparities that occur on the basis of race. That should be as much of a professional piece of advocating especially in criminal law work where people of color are over represented. I think that's much more important of competent advocacy as challenging police seizure.

1:17:53 J. Welch

First of all, I agree with what everybody has said. There are just a couple of things that I would I would like to make more like curly-ques rather than additional issues. Drugs and alcohol haven't been mentioned and the reality is as somebody who worked in the mines is if you looked at juvenile dependency jurisdiction of the court they're literally 100% of the families that go through that system have, certainly there are studies all over the country it is something that they are horribly disparate and not very helpful, but the good ones say that 80% of the parents have mental health issues and developmental delay which is not something we talk about very much. So, when you talk about mental health courts what you are really talking about are people that aren't okay and they are not going to be okay, the issue is only whether you can sort of soften the situation and get them some help and give them some protection and get them somewhere they will be safer and other people will be safer too.

- 1:19:21 Chair Ellis What do you think the impact on our profession will be with more wide spread use of marijuana?
- 1:19:31 J. Welch I don't have an opinion about that but there appears to be some recognition in some pretty odd places. One of the problems with being retired is that you read so much that you can't remember where you read what you read.
- 1:19:49 C. Lazenby You don't have to be retired to have that happen.
- 1:19:51 J. Welch There appears to be some sort of dawning recognition on the part of people that you wouldn't expect to recognize it that we are over doing the way with deal with drugs and alcohol, that we are too punitive, that we are too interested in locking people up and the numbers are still horrifying you know how many people that are in prison for things that are not a threat to the community. That whole subject kind of gets lost. The reality is that mental health and drugs are not distinct issues, they are very much overlapping. The other thing that is always a frustration for us as long as I have been involved in this organization is that we don't have enough information. As a society, we don't keep track of all sorts of things that we want to know. If we as an organization want to know who out there is in this situation or that situation and how many people there are and so forth we are going to have to find a way to keep track of it ourselves. It is certainly nothing about the new systems that are out there that are in the public domain of the state that are going to tell us most if not all of the things that we really need to know. We are guessing still too much about who is out there and what they look like and what they are doing.
- 1:21:26 P. Ramfjord One last little follow up on what you are saying, to think that all of these kinds of reforms when it comes to sentencing and treatment or other options for dealing with people will be looked at with much more of a budgetary eye. What is interesting is that the reason why sentencing reform is taking hold is because people oddly on the republican side are seeing that it's costing too much money to have these people in jail all the time. I think there will just be a greater focus over time on what is the most economically efficient way to handle a lot of these problems and that will require advocacy from us a group about needing to spend enough money to make things work but it will also require people having individual lawyers being able to advocate solutions that will be effective to their clients.
- 1:22:16 Chair Ellis Where you are going to see that, and I think it is going to come in the next two to three years, is when capital punishment gets put back before the voters and we spend a million dollars a month. Whatever you're philosophic in, is that the best use of that money? Alright, anybody else?
- 1:22:42 G. Guilfoxy This is great. One thing we didn't talk a lot about is the state's economic environment and should there not be substantial new money or even the money that has been there, do you think that will cause any major changes in terms of how the Commission having to function?
- 1:23:05 Chair Ellis I think we will always be less well funded than we should be. That's just a reality. We are so much better off now than the system was 15 years ago but it is always going to be less than it should be. I am not sure there is an answer for that other than I think we have made great progress with the legislature in the last ten years of giving them confidence in that the money they do appropriate for us is well spent. I think we do have a great relationship there and we need to perpetuate that, but there probably isn't going to be some bolt of lightning out of the sky with huge incremental new funding.
- 1:23:55 P. Ramfjord I would suggest that if the budget gets tighter that the money may come out of other things like dropping capital punishment or perhaps sentencing reform that doesn't require building additional prisons. We are already seeing one prison that you are already having in those states that don't put more people in jail right now because it is going to require us to add on to

this prison if you do that. I think that there may be more pressure in those areas than there will be on funding for our core functions.

- 1:24:28 C. Lazenby I am getting maybe a little too philosophical about it, but part of the problem is that we just lapsed into it there. We talked about funding our operations right after we had a conversation about how mental health and drug and alcohol and child abuse and all these other systems feed into us. So, if we could and we won't take a more comprehensive view of that where we are saying 'look, we are going to fund things that adequately treat and track people who are abused and people with drug and alcohol histories and their families and mental health problems and treat it as a coherent system' there will probably need to be a smaller need for criminal defense lawyers becomes where all those people flow because there are those systems to support them and help them get healthier. But, we aren't going to get there and I don't know if we are the people to break that cycle and say you need to look at this more comprehensively, but that I think that is the difficulty with that question of are we adequately funded. Well, what else is out there? What else is serving our clients other needs other than fighting about whether they go to jail or not?
- 1:25:36 G. Guilfooy Yeah, you are not drivers of caseloads you are the people who have to deal with them.
- 1:25:42 C. Lazenby Right, and I have said before and I will say it again that with capital punishment, the reason why we have so many people on death row here in Oregon is because in Washington the DA's have to look at their budgets and decide whether or not they can afford to prosecute you for the death penalty whereas here it is a free ride. They get to get the political plus of saying 'we are seeking the death penalty against all these people' and we get to pay for it.
- 1:26:07 J. Potter It will take a complete re-think of how services are provided to people who are in need and that is a big broad category. Right now, the only service delivery system that, we are the only service delivery system that anybody turns to whether or not you have mental problems or you are a veteran, it all comes into the defense system and that has got to change. I tend to agree with Chip, it won't change in our lifetime. I would temper the chair's remarks a little bit. While we have made tremendous progress in many areas, I think the defense bar is better educated and better trained, I think they are as dedicated if not more dedicated than there were a few years ago but I am not sure we have made great progress in paying them anymore. When you look at inflation and you look at comparisons to their counterparts.
- 1:27:01 Chair Ellis Some of these things I was going to say on later topics.
- 1:26:07 G. Guilfooy Do you want to move onto the next question then?
- 1:27:10 Chair Ellis The profile of a defender, at least when MPD got started, it was able to function by having young lawyers at low pay who did it for four to six years to get learning experience and then moved on and then you replaced them with young lawyers at low pay. There is no doubt in my mind that what has evolved at least at the various public defender groups, but I think it is also true of the consortium bar and the defense bar, we are seeing lawyers for whom this is now a full career which is a positive thing. But you are right, it does put enormous pressure on and fairness says that those people shouldn't cap out at too low of level. So, I am going to side with John on that one.
- 1:28:10 C. Lazenby Prosecutors too, prosecutors take a very long time now.
- 1:28:14 Chair Ellis Yeah, same thing.
- 1:28:17 J. Welch It's more than they used to.
- 1:28:19 J. Potter When MPD was first started, I think this is fair to say, now lawyers are settled with debt loads and bar exams...

- 1:28:29 Chair Ellis That is also on my list of later questions we can address.
- 1:28:33 G. Guilfooy Well, let's move to the second questions which is what challenges will you as a Commission face in ensuring the provision of quality public defense services over the next three to five years? So, what challenges do you think will be the ones that will come to you that you will have to figure out and deal with?
- 1:28:50 Chair Ellis Picking up where Shaun spoke a little while ago, I think we do have some very key providers in difficult to staff areas that are retiring. The Jim Arnesonses and the Jack Morrisises are hard to find and I don't mean to limit it to them but they are examples of what Shaun and I are talking about. The flip side of that is the student debt problem. It is just very frustrating to see these. Who is the young one we had from MPD two years ago, young, bright and motivated...
- 1:29:36 P. Ramfjord Josh Crowther.
- 1:29:38 Chair Ellis That's who it is, loved the defense practice. In all indications he was really talented, but as he explained 'I love this work and I would stay with this work but I want to have a family. I want to buy a home and get married and have children and all those other things that people tend to do.' I don't think that the ways that the existing student debt has been addressed has been very effective at all. Some get public service credit but it is pretty marginal what has been available federally under that federal program. Some law schools have stepped up and said that if you spend time in public service work that they will contribute. But, I think that we have had a whole generation that the good news is a lot of people didn't have access to education including legal education have had access to it. The bad news is that there is a whole generation of people who could've figured significantly to their family members who went through higher Ed and legal Ed who said 'well I don't have to.' I think the other piece of that, and I am not saying it is necessarily true in any of the three Oregon law schools, but I think that law schools and colleges could just feel that 'man we have got a demand curve that is totally elastic, we can keep raising the rates because it gets paid for.' I really feel, I am not sure this Commission can solve this problem but you ask what are the challenges, that is one of the big ones. Another one that I see is the continuum on specialization and in my life time of observing criminal defense, and I will have some comments on this later day. We have made great progress of getting away from the general practitioner for whom criminal defense is kind of a sideshow to a bar and your group has done a great job of this, John. They are specialists in criminal defense law. A high percentage of the ones that contract with us are full-time whether they are at a PD or a consortium or are private. One thing that I have observed is that DA offices tend to have specialization within their group. We haven't had it that much and I think that is an area that I would encourage, up to a point: I don't want somebody becoming so specialized they don't think they can do other things. There are cases such as sexual abuse cases that are very complicated. Somebody who hasn't done it before and just walks in and says I am going to do one, I am not sure that is as good as it should be. At least in our larger groups, I'd like to see us channel people within those groups to more specialized practice.
- 1:33:10 G. Guilfooy Okay, good. What else comes to mind?
- 1:33:15 J. Welch A lot of the same things that we have already talked about, I think that is a reason why this is a little bit daunting on us. What was said, what are the changes that we would expect, we really didn't talk about changes so much as what the challenges are. To me, the whole issue of identifying and capturing data that is needed to support any of the things that we want to accomplish, we have to do that.
- 1:33:49 C. Lazenby Given, what people have talked about dealing with people staying in criminal defense or law for a whole career, but we continue to bemoan the greying of the bar without accepting that this is the new model so let's start doing some deliberate things to build in a pipeline for

people to progress and get training so they can see it as a clear career path. Right now, we just sort of sit back and let MPD or MDI or Lane County Metro or the consortia attract people to come and do that and then they do it for as long as they can within their individual circumstances based on what is there right now. If we could begin thinking and I don't know what it looks like, but if we could begin thinking about how we develop a system where somebody coming out of law school can look and say 'gosh, I go into this slot and I can see what the future and progression looks like.' This will be very unpopular, and that's only because there are 67 days until pitchers and catchers reports, I think about farm systems. So, maybe in the metro area MDI is the farm system for MPD. You don't just get hired right away at MPD but you go through MDI and progress and get trained for a period of time before you are ready to move onto to MPD. We can impose that to some extent by contract in the way that what we pay for and the kind of experience that we expect in people being there. I think something like that will give a lawyer who is considering this as career objective so that they can look at it and say 'I can see the path, I can look and see how my tuition is going to be paid off, I can see how I can have a family and maybe buy a house, or an apartment or a condo or a shed.' We need to be more deliberate, that's my point. We need to be more deliberate about structuring the profession so that people entering it can see a path to a career in it and we don't do that right now. I think the baby steps to get that system set up is something that if want to be conscious about we can do in the next three to five years. There are maybe other models and certainly other ideas out there as to how to accomplish that but right now it is just haphazard. We don't have any way of attracting people to the business and we don't have any way of doing retention in the business with people too.

- 1:36:35 J. Potter It's a tough call when you are dependent upon state dollars and there is no guarantee that that person seeing the path that you created will be able to follow the path because the funding could come out from underneath us. So, if you were real cynic you could say that part of our job should be to make sure that they knew about wills and neck and back injury and other avenues of law that they could fall back on should this path get road blocked.
- 1:36:54 C. Lazenby Yeah, I suppose. Although, I kind of look around the room and I remember when John Potter and I both had hair and Hazarabedian too and we have been at this...
- 1:37:08 J. Potter That's a long time.
- 1:37:11 C. Lazenby We've been at this for a long period of time through the ups and downs. Now, I've been out of it but I know a lot of practitioners who have stayed in the business over the years with all those ups and downs. People do get into this business because they are committed to doing it but I think there is more that we can do despite the ups and downs to be conscious of deliberating a clear path. That is what is happening under our feet right now. Just say it Shaun.
- 1:37:45 S. McCrea I am just taking in what you are saying Chip, I am not disagreeing with you. Paul?
- 1:37:50 P. Levy If I could just contribute and remind you what comes under your one or two and this was raised at the October meeting by providers. Speaking of data, as we progress on our intention to develop Oregon specific and evidence supported caseload standards which nationally is a focus of public defense whether lawyers are asked to handle too many cases, as we develop these standards it is entirely likely that we will be seeing, because this is what has happened elsewhere where standards have been developed, that lawyers should be handling fewer cases than they are now. Right now our major way of funding public defense is on a per case basis. That is not going to work when we say that you are not going to get as many cases as we're giving people now and the Commission is going to be challenged to develop an entirely different way of funding that is not pegged to a per case basis. What you will find yourself challenged to do is actually pay for the cost of the work the way it should be done which is undoubtedly going to be more than what we are paying now.

- 1:39:16 C. Lazenby I'd hate to see us lapse into what we have been seeing stories about, you know you make a bad right turn and it's a \$90 ticket but with all the fees attached to it its \$500 and the last dollar of it goes to funding indigent defense or something like that. That's untenable I think in Oregon.
- 1:39:35 P. Ramfjord That does point out though, funding does remain a big issue overall. I think it's not only funding for attorneys, keeping up with the prosecutors, the same issues that we have faced all along, funding for training in some of the new areas that we talked about before, and funding to accommodate evolving standards. I think there will be other ways in which data will be sliced and diced in the future to create new standards and compliance with those new standards will mean both gathering the data and providing funding to provide the services necessary to comply with those standards as they evolve.
- 1:40:17 S. McCrea I'm sorry John, can I just say one more thing? It's not like you intentionally left them out but it's also the investigators because we have to rely on them and that is such an important part of the case to get the data for any particular story and client about their issues with holistic defense.
- 1:40:43 J. Weiner Chair Ellis, Jon Weiner here. Chair Ellis you mentioned the problem being people are retiring. A bigger problem I would posit are the people who are not retiring because they can't and they are hanging out because they have worked a low paying job for 20, 30, 40 years and so they are just hanging on trying to do this job as long as they can. That impacts you people that you maybe try to get into the community and they think 'what do I have to look forward to? Why would I sign up for 30 years of that?' So, we have this humanitarian crisis with all of these people who are dyed in the wool defense providers for 20 or 30 years and are not able to retire, of course that creates multiple issues. It affects the younger people and the attractiveness of our training. It clogs up the system so there are not enough new spaces for the people to come into. I really wish that the Commission would think about something; they do it at Intel, they do it at Nike and all the other major corporations. They need to change their workforce so they provide some kind of parachute and I know it wouldn't be golden and it might be cardboard. I was talking to Rob Harris and the more I thought about it, it was brilliant, we figured it would be about four or five million dollar...
- 1:42:06 Chair Ellis Buy out their contract?
- 1:42:08 J. Weiner Just say it however you want to call it. Generally, just tell people they are not going to work anymore and you give them some amount of compensation, something to just sort of get them started. You can't afford to give them \$100,000 or anything, but something to help motivate them to leave and in a way that is at least some kind of bump above social security. I think it is about a four or five million dollar problem and then as a couple of years ago it is going to be smaller and smaller because that big group of people will be out. I think it is going to be really hard to attract people when they see the end game. The end game sucks and we have to change that.
- 1:42:54 J. Potter Do we have to list anything fiscal to that idea?
- 1:43:03 C. Lazenby Are you thinking of sort of an emeritus/consulting resource? Continuing on that sort of thing where there is no active caseload but the font of knowledge is still being compensated on in a lesser basis?
- 1:43:19 J. Weiner That's another common one in employment law where they will keep somebody on as a consultant for some number of years. Then, you can have that person hang around and do mentoring which we will also need. That would dovetail.
- 1:43:32 Chair Ellis The other approach is try to build in pension planning so that those people in their more productive years can save something and have a retirement package to fall back on. I know

that's hard to do for everybody. I know some of the PD's are doing it. I doubt anything at the consortium level has done it other than the individuals, but they aren't going to do it.

1:43:58 J. Weiner

Going forward, I think that would be great but it's hard for people that are 62. At this point you can't afford it.

1:44:04 Chair Ellis

Right, starting late.

1:44:07 G. Guilfoxy

Let's move on to the next question. These questions as they evolve they sort of blend too, so we may have covered something in the first question that could also be covered in the third question. The third question is as you think about both PDSC, the Commission and the office, are there some things that you can do to better understand client needs and better understand and support the community going forward? We have so far talked about changes in the law, issues that are out there beyond everyone's control such as mental health that will drive this. You have talked about the silver tsunami that is coming and the ageing of the bar. Do you see and do you anticipate a need to change how you all are going about understanding and keeping your understanding?

1:44:58 Chair Ellis

I have a question for you. I read that question and I thought it provoked a very interesting set of issues in my mind. When you say 'client' who are you talking about? I thought about it, I think the legislature is our client, I think the courts are our client. I think from the Commission's point of view the provider community is our client, I think the general public are our clients. But, the group that I have not felt were the Commission's clients but maybe I should are the defendants. I thought the question needed definition when you refer to clients.

1:45:48 G. Guilfoxy

I think what you're also pointing is something of the nature of the beast who you serve, many people, some are primary people that you serve which may be your contractors and people that you need to directly support.

1:46:02 Chair Ellis

I thought they served us.

1:46:04 G. Guilfoxy

I think it's a two way street. You've got legislators who are certainly stakeholders but not necessarily your primary customers. Nancy, do you have some thoughts about this?

1:46:15 N. Cozine

I was just going to say that the list that you named I would call those our constituencies. I think clients really are the people that we serve even if it's through contractors. We serve clients directly on the appellate level. I think part of the question is do we need to better connect with the people that really we are serving at the trial level and at the appellate level, or is what we are doing now sufficient? Really what we do is get information about our clients through our providers, but is there something more that we could do or should do? I think that you could add constituencies into the question.

1:47:01 Chair Ellis

I think the Commission has done a good job of not just being the voice of the defense bar and we shouldn't just be the voice of the defense bar. I don't mind advocating for those things that ought to be advocated for on the defense bar. But, I think the Commission has maintained a separation and should because if you go back to our statute there is a clear division: quality of defense, national standards and at the lowest reasonable cost which is sort of the legislative piece of that.

1:47:47 C. Lazenby

I think one of the important things we've done over the last ten years beginning when Peter was in your seat was to start to develop and impose some objective standards of quality on the industry and that has been a major element of what role we have played. I think that is important so maybe one of the answers to this third question is to keep doing that but given all the challenges we identified in the first question like changing advocacy, resources and all of these other things, keep doing that but refine it and keep it fresh and updated so that we are imposing the best standards and we are setting what those standards are. I think that is really

the appropriate role in that balance between best quality service for the best price. It's defining what quality service means. This is where we can play an important role and have an impact.

- 1:48:49 P. Ramfjord Going back to what Paul was saying about the evolving standards on the national level, one of the things that really has been taken into account is the actual time spent with your client, measuring and putting into place standards for time spent with clients and putting into place standards to get trainings that are relevant to understanding your client like mental health, drug and alcohol issues or maybe other issues, maybe its unconscious bias on diversity issues, to make sure that we are putting in place some minimum criteria that will help support a better understanding of our clients' needs.
- 1:49:29 C. Lazenby Coming from the land of Hans Linde, I don't think that we ought to treat federal standards as a ceiling. It should be a floor and if we can improve on that and empirically show that there is a better way of doing it than the minimum federal standards then we ought to be pioneering that too.
- 1:49:47 G. Guilfooy When you look at the services that you all have typically provided you've got a stewardship role that you carry out and this is being accountable in making sure that the funds that you do have responsibility for are well spent and achieving the purpose that they were intended to do. You've got an operational role that you play in the sense in making sure that there is a system in place that works and works well and has standards of performance and expectations and all those kinds of things, but then you also have this leadership role as the people who drive the thinking about what public defense should look like and should be. Do you see over the next three to five years that mix changing? Do you see emphasizing one of those areas over another? Sometimes it's really easy just because of the funding situation to get the bright lights in the eyes so bright that you don't have time and you can't really think about some of these kinds of things but as you think about some of these changes that are happening some of the things you identified in the first question, does that change that mix that you all have? Do you anticipate there will be a change?
- 1:50:57 Chair Ellis I think we have the luxury of not being in the environment that we had in 2003. It was crisis management. We are beyond that. I don't feel like we are in a crisis management mode. Maybe that will descend upon us again. I think we are in a period where we are able to look out and try to steer the ship in a good direction so I am going to agree with where you were in the beginning.
- 1:51:39 J. Potter Are you still asking what should we do differently as a Commission?
- 1:51:42 G. Guilfooy Yeah, are you satisfied that the way that the Commission is functioning is the way that it will need to function to continue to be successful and to continue to grow and improve the system?
- 1:51:57 J. Potter I think Nancy said it, if the client is not the provider but the clients the providers serve then we are getting our information for the most part from the providers about the clients. So, it seems like if we are trying to get more information about the client we have to take a more active role of reaching out to see and talk to the clients. That would be sea change. We do it to the degree that when we do service reviews some of us go out and see the providers and we go into the courtrooms and we see the clients being served, but we are not talking to the clients.
- 1:52:39 Chair Ellis I am not sure that I agree that that would be good.
- 1:52:46 J. Potter I am not putting a value...
- 1:52:47 Chair Ellis I had thought that our role was to improve a system and have not really thought our role was to connect with the people that were going through that system. The way the statute is written

and the way that it is structured it is very clear that those individuals are clients of the lawyer in either trial or appellate that they are related to. The last thing that we should be doing is trying to get into that. So, maybe I am misreading what you are saying.

- 1:53:23 J. Potter I am not advocating for it I am trying to get clarity on the question. If that is the question then its direct understanding the clients better, then how do you understand the clients better? I wouldn't advocate that. I wouldn't want to go and try to talk to clients and gather information. That would be a totally different role.
- 1:53:49 Chair Ellis Maybe I misunderstood what you were suggesting.
- 1:53:51 C. Lazenby I think that some of the things that we have tried to do that kind of get at this issue that I think are totally appropriate that we did, but somebody could argue that it was maybe beyond what we should do; counsel for juveniles in the counties that we've been very staunch advocates. When we have gone especially in rural areas and we are saying 'you've got to give kids lawyers. You can't tie it that the parents don't want to pay for it, they need to have counsel.' That is a system advocacy piece that we've done. The shackling piece that we are attacking is a systems adequacy. That is advocating on behalf of this public defense community and the environment in which they live and I think that it is totally appropriate for us to continue to attack those when we find that there are racial disparities in custody and treatment bias in the system and the way people of color are treated. I think it's appropriate, who else is going to do it? It's our role as a funder of those services to advocate that we don't want to be a part of a system that does that.
- 1:54:54 Chair Ellis It really comes back to an issue that we discussed and I think that we have a policy on it; when do we take a legislative advocacy position? It's not every issue that might help the defense but its system related issues and that's the line that I am trying to draw.
- 1:55:15 P. Ramfjord I love the service reviews that we do and I think that we can get an awful lot of benefit out that. But, I also think that we are often dealing with what are local problems that are associated with bringing things up to a more acceptable standard. I sometimes feel that maybe if there is something that we could do it is doing something that is more directed at trying to define what we think are appropriate standards in ways that will move the whole level of advocacy forward. That goes to these issues, like trying to get in place standards with respect to time with clients. I think that if you survey the clients they would tell you that 'no I didn't have enough time with my lawyer,' I expect that that's the case. I think that's the case with 99% of criminal defendants or certainly with defendant's who are being represented by public defenders because they don't have that time. But, you know that if you put in that standard you are going to get a better result in terms of the relationship between the lawyer and the client and that will lead to a better result for the client and that will lead to a more satisfied client. Are there other kinds of ways in which we as a group can focus on things that we can do to move that needle a little bit in the right direction? That would be one thing that I think we need to spend more time on and we are doing it. I think we have changed a little bit in that way and I think we are doing more of that and I would encourage us to more.
- 1:56:56 J. Welch I think the answer to question number three is back to data again. I think we need to decide what we need to know. What do we need to know about how the process works? Who are these people? What happens to them? That is a big job in and of itself and perhaps beyond the resources of the organization to pay for. If we are not, and I certainly agree with what Barnes said, I don't think our job is to be interviewing the candidates, but it is our job to know who they are and what happens to them and getting the working people in the system to tell us what happened. What are the bad things that happened to your clients? What are the things that happened before or with the lawyer and somehow put it together and I think that's a tremendous challenge but I don't think that we can do any of this stuff without having at least more information.

- 1:58:06 G. Guilfooy Nancy, you had a comment earlier.
- 1:58:08 N. Cozine It was along the same lines. Thinking about the way that we have approached our contracting and trying to build in our standards and then also thinking about the way to get information about clients, I was sort of heading in the would it be worthwhile to think about requiring something like a satisfaction survey so that consistent data points are collected by our providers that builds the picture? There are probably ways that we could learn about our clientele that don't involve us interviewing people. I think the question really is do we know enough and I think you touched on it largely, both of you.
- 1:58:45 P. Ramfjord Even as a part of the service reviews that we do to ask more questions just on what have you done to determine the level in what ways you can serve the clients better? What are your plans for serving your clients better in the future? I can tell you that working in a private law firm we are hounded by the notion of serving our clients better because we are out breaking a very competitive system and if we don't do it somebody else is going to do it. I think that I don't have the right questions to ask coming at this from the top of my head but more thinking along those lines to try and gather some of that information would be useful.
- 1:59:28 G. Guilfooy One of the comments that we heard over in Bend particularly surrounding the contracting process and this kind of gets back to something that somebody said about better relationships with PDSC and the contractors translates into better relationship between contractors and their clients. That is the byproduct of that. One of the issues that we heard was the lack of transparency surrounding the RFP process in particular, not that the Commission isn't visible and getting...
- 1:59:55 Chair Ellis You should've seen it ten years ago.
- 1:59:57 G. Guilfooy Oh yeah, I do remember that from back then. But, do you see changes in any of that in the sense of a different way of interacting with providers surrounding making the deal with contracts?
- 2:00:13 P. Ramfjord We were talking about having analysts visit the localities. I thought that was a really interesting comment and I really hadn't thought about that before. That makes a lot of sense.
- 2:00:24 J. Potter I heard that, that it would be very helpful for analysts to know what we're doing out in Burns, what we are doing down in Klamath Falls and to get out there more and understand it. But, I also heard was that this last contracting process that there was an RFP that required a fair amount of information, the contractors provided it and there was no negotiation. It did go back to ten years ago when people were complaining that it is a take it or leave it deal. I am not sure that this is addressing the question but you took us off on a tangent here. That is a transparency deal and it's something that is solvable and fixable. We can change that. We can change it one way or another. We can either say 'RFP is just, if you've already got a contract tell us you want another one. That's all you have to do and turn it in and we will tell you how much money we are going to give you' or it's 'RFP, tell us all your needs and why you need more money and why it might be different than my neighbor over here and we will negotiate with you and we will divide up the pie after we hear all this information.' It's not just based on a raw number of cases.
- 2:01:43 Chair Ellis I thought we had a big issue ten years ago on disparity. The contracts were not coming up contemporaneously and A was saying well B got more than I did for the same work and we moved to a cycle that had all contracts coming up at the same time, at least those in the same market. We tried to be more consistent. There are other things to talk about than just the amount of money, but I want to put a note of caution that I don't think we want to go back to a volcanized system.

- 2:02:26 J. Potter It's interesting, you're absolutely right and I agree with you and now we're at a flat rate. Everybody, pretty much, in this last cycle the rates were standardized. Investigators were pulled out and everybody is getting the same amount of money supposedly. But, there are differences and people argued the differences in their RFP and said 'I need more money because of this circumstance in my county,' a charging practice or whatever it happened to be and they weren't getting that addressed because we have standardized the system. That's the flipside. We have gone from one side to the other in my mind.
- 2:03:03 C. Lazenby Just my gut reaction to this that ten years ago that argument about there being a lack of transparency was very valid and it resulted in there weren't disparities in what people got and they have finally figured it out. What has happened is now we have kind of gone to one big pie system and there is a limited amount of pie. People see that there are still disparities even though they can see how it happened and that's an echo from the past that doesn't exist and it's not transparent. It's really an argument about 'I didn't get as much money as I want.' It is sort of a historic echo that doesn't really, I don't know how we can be more transparent unless we want to go to a completely communistic system where we just divide the pie and everybody gets the same piece of pie whether it's adequate or not.
- 2:03:57 S. McCrea That's not what John is saying. What he is saying is, and I am putting words in your mouth here John but we did talk about this on the way up...
- 2:04:04 Chair Ellis She's bailing you out.
- 2:04:06 S. McCrea No, we talked about it on the way up and it basically is fundamentally unfair to make the contractors sit down and do an extensive and time consuming RFP if there is no possibility that they will be able to negotiate. Why make them go through that process? That's kind of the policy question. Is there a reason to have them do that? Do we want to change it so there is an ability to negotiate? Do we want to call it something different such as your legislative wish list that you're wanting us to implement as policy, or should we just say 'if you want a contract and you have one then tell us you want it and we will tell you what we can pay you?' It is kind of interesting to me, and this is just a little bit of a digression but it's similar I guess I am sensitive to this RFP thing, because now to be renewed on the federal CJA panel Lisa Hay has instituted a new form that you have to fill out which was like 11 pages and for someone who has been on the panel for 20-30 years, I got to skip a bunch of questions but they were like 'what kind of awards did you get in college?' I am thinking, I have to go back to what I got in college? They required writing samples and recent cases and trials that you had done and who the prosecutor was and I was like 'okay.' But, I am expecting that somebody is going to be looking at that and they are going to be using it to make a decision and I think that is what is unfair about the RFP is that if it doesn't do anything then we might want to think about changing our requirement.
- 2:06:03 N. Cozine I would like to offer that we have actually had internal discussions, doing a little bit of our own thinking about transparency and the RFP process. I think internally we are actually very interested in looking at the RFP and trying to make it more targeted toward the areas where we want to see improvement, shrink it down if we can and have it be an easier process without the 'tell us everything you want' because unless we think there is a limitless pot then we are asking people to put down a lot of information that ultimately isn't necessarily useful except that we do list it out and we do look at it. It gives us a sense of what people really want, but to the extent that it's work that they have to put down and then feels fruitless...
- 2:06:53 C. Lazenby It's a lose-lose for you because you're saying no to everybody.
- 2:06:56 N. Cozine Right. On the other side of the RFP process we have, since I joined the agency, have had the executive session to talk about our contracting plan. There may be pieces of that we can actually do on the public record. So, taking a close look at that and really pulling out anything that we can that can be put on the public record. I don't know that we, I guess what I am

saying is that we can take a close look at that because if people want more transparency and they are not feeling that it's there then we want to be able to take a look at that.

2:07:39 Chair Ellis

I am feeling like a contrarian today. If you don't have that executive session...

2:07:45 N. Cozine

Oh no, we need an executive session.

2:07:47 Chair Ellis

I don't think there is nearly the level of candor that we need to inform what we do.

2:07:55 N. Cozine

Right, I am not suggesting that we eliminate the executive session, we have to have the executive session, but is there information shared in executive session that could also be on the public record? I guess that is what I am saying. There are things that are, it's a contract, and there are things that cannot be discussed on the public record. But, from our side we are willing to take a look at that to determine whether or not there are themes that can be discussed outside of that setting. I am not saying there is something; I am just saying we are willing to take a look at it because it is worth taking a look at as we look at the RFP process.

2:08:30 C. Meyer

Nancy, can I add something really quick? One of the things, some of the negotiation that we are talking about actually happens in our big contract group process and I realize it is not direct negotiation with a contractor but we are sort of negotiating internally about what we can do with the funds and what makes sense. Some of that is a direct result of what they put in there, so we are going through and looking at them. Two changes we made this time, one was to add a Jessica's Law case type and then a juvenile review credit where we are giving them an extra juvenile review credit when children are in separate placements. Those were a direct result of many contractors listing that. Just so we know that it's not all completely for not. But, I do agree that there is more that we can do.

2:09:09 N. Cozine

I am saying we are willing to look at it and come back with some proposals if we can identify them.

2:09:15 G. Guilfooy

Should we move onto the fourth question? The fourth question is now thinking about the community at large, because we are also going to be talking to some others as well, are there some things that can work better in the system at large to bring the parties together? One of the things that came up in Bend that was an issue was 'I need to go see my client at the jail and I may end up spending an inordinate amount of time waiting for them to get my client ready for me.' That is sort of an example of almost a siloed approach. This is our job over here and this is your job over here and there is not necessarily a connection. So, what we are trying to think about is: are there some better connections at large in the public defense community that can be made so that we are dealing with it more holistically?

2:10:05 Chair Ellis

I had two areas that this question popped up in my mind. One is I don't know how many counties that we have been to where we are told that the issue of scheduling an appointment requires multiple appearances by multiple lawyers. Some counties have dealt with it effectively and some have not but you talk about wasted time which is part of what's involved here. On relationships, and I don't pretend to be particularly knowledgeable in the area, but every time I hear the lawyers on the juvenile side talk I feel like there is not good communication with DHS. Now that doesn't mean they should be totally collaborative but the welfare of the child is the driving thing in juvenile court and I have just had the impression that there are people here that know much more about this than I that DHS is viewed as kind of the adversary and there ought to be, both on the determination of parental rights and the juvenile delinquency and particularly the juvenile dependency piece, better communication than we have had. I think we are getting it with the defense and DA's. It has been interesting to me to observe how that, I mean sure you're still representing a different interest but the communications that are going on there in most regions seem to be good. I would just flag it that the DHS relationship is something I hope we work on.

2:11:57 J. Welch Okay.

2:11:59 C. Lazenby Everybody looked at you.

2:12:00 Chair Ellis Here's somebody that really does know what she's talking about.

2:12:03 J. Welch What I don't know is if things have gotten any better since I have retired and since I quit doing Plan B. But, I had a conversation at your gathering earlier and it sounds like things were kind of the same as there were nine years ago when I retired. The problem about intersystem communication, I want to say what my conclusion is that it isn't worth our focusing on. It's an impossible challenge. Have you ever as a lawyer or as a policy person tried to tell a judge how to do their job? How do decide a case? It is not a good idea.

2:12:58 Chair Ellis That's a judge, not an administrator.

2:12:59 J. Welch What I am talking about is in a well-run system in each judicial district there would be a committee and they have them. They would meet and they would actually talk about stuff. I was on one of those committees for many, many years and nobody tells a judge how to do their job. Nobody tells a judge who to release and who not to release because the judge won't listen. Nobody can tell a deputy district attorney how to make a charging decision. Try it. It's a big, big battle, I can tell stories for an hour easily. It's not that people aren't people, it is that everybody is very sure of themselves and there isn't any authority to tell somebody else what to do. The trouble between juvenile court lawyers and DHS is a big problem and the main source of it is, Mr. Potter, the lawyers and particularly young ones are arrogant and inappropriate and they brow beat DHS caseworkers so that caseworkers don't want anything to do with them. So, there is no communication either way after a while. There are exceptions like there always are people who behave themselves and who are respectful and kind and listen and recognize that maybe that social worker actually knows what they are talking about and of course they do. I have been to so many, I used to do a lot of training at DHS and the issue always was 'why do those lawyers say all those stupid things in court?' What they are talking about is the lack of understanding of the role of an advocate. They don't understand that as a lawyer that you are not supposed to get up and tell the court what really ought to happen in the best of all possible worlds. That is not the issue, the issue is what does your client want and what does the law allow and how do you navigate the most effective and appropriate response? Making the system work better requires the people in it to want to work with each other and I think that that's an area that we will not be very successful in.

2:15:44 Chair Ellis Anyone besides Judge Welch that agrees with what I said?

2:15:51 J. Potter It's a downer to suggest that, but I don't dispute it. It's a tough thing to do. On the other hand, I don't think we should not be advocating to be participating in CJACs and criminal justice advisory committees and bringing the players together in a room and have them talk to each other. I don't think you are suggesting that, but that is the kind of thing in the past suggested. I think we should continue to suggest it. Every time we go on site reviews we ask 'do you have some sort of coordinating council?' or whatever you want to call it, and some jurisdictions have and our presence has stimulated that. Whether or not there's a result of having it, I am not sure.

2:16:35 J. Welch What do they talk about is the question.

2:16:38 J. Potter Maybe we should do more follow up with that.

2:16:46 Chair Ellis Alright, I think we are done.

2:16:47 N. Cozine Could I ask one more question?

2:16:50 G. Guilfooy Number five, this is a bonus question.

2:16:54 N. Cozine I wanted to read what our, you brought up legislative advocacy and I thought it would be helpful to read what our current procedure plan says just to see if it still resonates with this committee and that is something we will want to build into our strategic plan.

2:17:09 P. Ramfjord Ever the good executive director, it is on your phone.

2:17:13 N. Cozine It is on my phone. I read it every night before I go to bed. 'PDSC views its role in appearing before the Oregon Legislative Assembly and committees of the assembly to be limited to: providing information and response to requests from legislators and legislative staff, advocating for a state budget sufficient to ensure the delivery of quality public defense services in a manner consistent with state and federal constitutions and national standards of justice, and the continuing availability of competent and dedicated public defense counsel, and informing legislators of the fiscal impact on the public defense system of proposed legislation or existing laws relevant to public defense, and any potential constitutional or other problems that might occur as a result of an enactment, implementation or amendment of legislation. As a general matter, PDSC does not view its role before the Legislative Assembly to include advocacy for changes in criminal, juvenile, mental health or other areas of substantive law or procedure. The Commission may decide to take a position before the Legislative Assembly with regard to a particular legislation proposing changes in substantive law or procedure only if such legislation is likely to substantially affect the quality of public defense services in the state, the cost efficient operation of the state's public defense system, the continuing availability of competent dedicated public defense counsel, or the fundamental fairness of Oregon's justice system.'

2:18:18 J. Potter That's a nice broad exception.

2:18:42 Chair Ellis That's a brilliant statement. I remember when we drafted it.

2:18:46 N. Cozine It then goes on to say 'PDSC does not intend this policy to affect the ability of OPDS' appellate division or its attorneys to advocate for positions before the Legislative Assembly that are designed to protect or promote the legal rights or interests of AD's clients.'

2:19:01 P. Ramfjord The second point when you are talking about standards, the second issue there, getting compliance with evolving standards of defense services involves having better functioning relationships with other agencies, having better communication, having better training of lawyers to deal with some of those issues that involve the other agencies.

2:19:28 Chair Ellis So have you got what you wanted?

2:19:30 G. Guilfooy yeah, we've gotten everything that I think we need. Thank you all very much.

2:19:32 J. Welch more than you bargained for.

2:19:33 G. Guilfooy No, no this was exactly what we were hoping to get. The list is getting longer of things to think about in the planning process but thank you all very much for your time today.

Agenda Item No. 8 Thank you to Barnes Ellis

2:19:49 N. Cozine There is one more agenda item.

2:19:52 Chair Ellis Well, hang on.

2:19:53 J. Potter He's still the chair.

2:19:57 Chair Ellis Because there are some things I want to say, and she might not let me say them. I have made it known that I will be stepping down and I wanted to explain why. I decided this is the right time to do that. The first thing is the agency is in excellent shape which makes this a good time for transition. I would feel very differently if we were in a period of crisis or stress. I think, Nancy, that you have assembled and absolutely first class group of managers and I am going to probably forget somebody and I apologize in advance but, Paul and Cynthia and Angelique and Ernie and Caroline and Billy and Amy and Cecily and Shannon, that is a first class group and I think you have done a wonderful job on that. I think you are a really good leader, so that helps. Secondly, our legislative relations, as I had indicated earlier today, are really darn good and I go back to how it felt ten years ago and Chip you've been around that body a bunch of years where they look at you with eyes of glass and not have any sense of 'why should we have to pay for the other side, aren't we the state?' and that has changed. I think the biggest reason for that is Nancy and her predecessors, Kathryn did a great job on this. Peter did a great job. Ingrid did a great job. Paul, you've don't a lot of this, of building a level of trust with the legislators that we interact with. It has made the whole relationship different. When the last two or three sessions that I have appeared there you felt welcome. You felt like they really shared your view or your vision, so that part is in good shape. The third part of this 'things are good so it's an okay time to have a transition,' I think the provider community is really quite strong in the state now. I think the mix of public defender and consortia, especially private bar, is about right. I think the providers have upped their game meaningfully and a lot of that is OCDLA. I think your CLEs and your mutual support, I don't know of another area of practice of law where the providers are as supportive of each other as the criminal defense bar is. It's a remarkable statement. There is still work to be done but I think things there are also good. My first statement is that I think on all the major structural areas things are in good condition. Secondly, I am a believer that leadership in any enterprise needs to be refreshed. It's not a smart thing for people who have been at it for a long time to stay too long. Per knows I had the same experience retiring from the law firm, I had been there a very long time. But, there does come a time you ought to move on and someone made reference to making room for new blood to come along. I got concerned last summer when I made the decision that this was probably the right time. I looked around the Commissioner group, John and Shaun have been here as long as I have. I think you're both younger than I am but you've been in the Commission that long. You two have been here almost as long.

2:24:31 C. Lazenby I was on the original Commission.

2:24:33 Chair Ellis Okay, put that in the first.

2:24:38 C. Lazenby I didn't show up for the first year.

2:24:42 S. McCrea I am glad we have trained you well.

2:24:44 Chair Ellis Per is the rookie, but anyways, I got concerned that what was foreseeable is, and we have had a wonderful continuity on this Commission and the Commissioners have attended the meetings and they have been focused and they care about it, but I got concerned that we'd end up with a sudden large group all wanting to leave at the same time. That was not good, so I have wanted to see us transition in a more orderly way. So, those are two things that lead to the decision that I have made. Now, for a few minutes I want to reflect on what has happened in the criminal lifetime. That is a lot longer than some of you think it is.

2:25:43 J. Potter It could be a lot longer than a few minutes.

2:25:46 Chair Ellis Because, I have been a witness to it. I have been fortunate that I have been involved with it, but really my involvement is really a witness to what our culture has achieved. I graduated from law school of when the Gideon case come out and that really was a remarkable decision and in my early years as a young lawyer, I thought you ought to do criminal work as well as civil work. Of course, I was like all young lawyers at that time who do it to get experience,

which is fine for me but I am not so sure it was so good the class. I observed the system as it existed and immediately post-Gideon and things didn't change overnight. Down the street here as where what was then the Portland Municipal Court operated and you knew what was happening because as you entered the building there was a big sign over the top that said Police Headquarters, and it was called the Police Court and for good reason. I am not trying to be critical of anybody but it was the system that we had. It was very much a revolving door. There was a drug tank and a holding center and people would just come in and be cranked out rather quickly. If they were given legal representation it was either rookies like myself or old people in the back of the court room, the has beens and the never weres, the people who needed the work because nobody else was prepared to retain in. that was a terrible system. We have made huge progress since then. It was my privilege to be involved with the formation of the first public defender. It's a litter incestuous because I was on the law enforcement commission that appropriated the money that was granted to the Multnomah Bar which I think went around and became part of the committee to take the grant it was all of \$10,000 but that was a princely sum at the time and formed what was then to be a pilot project dealing with this city police court. We hired a brash young and some of you don't know this, red headed, young guy named Jim Hennings. He really, I don't think we have given Jim enough credit because he really started with just very little to work with but he had a broad vision. I think all of us involved had a broad vision. We modestly entitled the new enterprise Metropolitan Public Defender Services Inc., we have never had to change that. We went from contracting with the city court to contracting with Multnomah County to contracting with Washington County to contracting with Clackamas County to contracting with the federal court because we were the only place that this concept of a professional defense bar was emerging. We lost our monopoly over time. Clackamas County decided that they wanted to do it their own way and the feds restructured and went away, but the rest of this has held together. Ultimately the city court got blended into the state court so that ended that. That was a heavy period of time when you could just feel like you were a part of a significant social change, significant legal systems structural change and it was just the right thing to do. Of course Jim did a terrific job of hiring some of the best lawyers this state has had. I remember ten years ago he said 'well we now have 25 of our alumni are judges.' Think of it, criminal defense, 25 had become judges. It's probably a larger number now but that is a reflection of the quality and the idealism, the optimism of a lot of people coming out of law school who began to realize that this was a career path they would really like to follow. The next kind of glimpse of how the system evolved was in 1981 I commissioned on the judicial branch and I had the privilege of chairing that. We could see at that point that the cost of indigent defense was just bankrupting counties and they were rapidly going to come to a point where the counties were going to just rebel. They weren't excited about the idea of funding this to begin with. Gideon kind of imposed it on them. So, that commission did make the move and I think we're exactly right to do it to move the funding from county by county to what we are doing here today which is state funding. We screwed up. There were some great people on that commission, and we did a lot of things right but what we didn't do was develop any kind of real structure to administer this new funding that was going to be assumed by the state and presumably provided. We went through a period, and Chip probably remembers a lot of this, that I was chair of the MPD board and it was just remarkable that we would be a year and a half into a biennium doing what you had always done but you didn't have contract yet. From the state court administrators level who were the group that this was dumped on, Ann Christian just did a remarkable job in the circumstances that she faced. How did they do this? It was virtually anybody who was willing to put in a proposal would get funded eventually and it was just rag tag.

2:32:55 C. Lazenby

Any kind of cases were coming then. We were still working but we didn't have a contract.

2:33:03 Chair Ellis

Right. So, there was a period of about three years when an attempt to do a commission with some really good people. George Reeves was on this commission, Sid Lezak was. But, they weren't funded. There was just very limited funding. Eventually that got disbanded and it went to the state court administrator's office. Then, in 1999 enter John Potter and OCDLA

and our great friend Ross Shepard and there was a lot of thought about finding a better way to structure all of this and make it really work. There was a lot of concern by the OCDLA people that if you do that then the Chief Justice won't be as big of a spoke's person for you as he has been, and there were lots of questions about it but that bill did, now it got passed after a two year study commission that several of us were one. That was a great experience for me because we looked at the big issues. We didn't talk today about FTE versus contract but that was the biggest single issue that we looked at. I remember a group came in from Colorado where they were just enthusiastic about the FTE system and I know Iowa was very enthusiastic about there's, but I think there was a pretty strong consensus view that top down state employed FTE lawyers at the trial level wasn't what we wanted because there's a risk they aren't really integrated into the community, that they can be quickly out of touch, they can become bureaucratic, lots of issues. So, we stayed with the contract system but only if we could with this Commission develop standards and make people really up their game. So, from my point of view, and we have talked about it in a discussion with Geoff, the work this Commission has achieved at this point has been really gratifying. Everybody has put their shoulder to the wheel to try and make this system something we are all proud of. Thank you, I have really enjoyed it. There you go. At this point I think the protocol is that I am to hand Shaun a gavel but I don't have a gavel so this will be a theoretical gavel and the only other thing I will do is remind you of Lord Acton's admonition of the corrupting influence of absolute power.

2:36:24 S. McCrea

Alright, that's fair. Well, Barnes I get a second shot at you at another venue so I am going to try and be very brief in what I say at this point but I think it is important to say a few words at this time. I am going to start with myself of course, because back in the nineties, now that I am the chair and I have all the power, back in the nineties when I was the chair of the state public defender committee and the head of the agency was not Pete Gartlan or Ernie or anyone who is here, the head of the agency was coming to us saying they had given money back to the legislature. We met in the library of the state public defender office in Salem and I remember at one meeting looking up at a pigeon who was perched in the rafters because there was hole in the ceiling looking down at us. I remember that the contractors would be in a tizzy at the OCDLA conferences because they would be trying to get together and talk about what their contract numbers were only nobody wanted to tell anybody else because they didn't want things to get worse. Then, we had the study commission as you say and then we ended up sitting in a room in Salem with Geoff Guilfoxy with the blank papers trying to meld these two separate very intense agencies, the state court administrator and the state public defender, into some bigger entity that was going to sail the ship of public defense into the future. You Barnes have led us in the past 15 years in this endeavor. It has not been easy. It has been tumultuous at times but I remember particularly after our interviews of the executive director candidates when we picked Peter Ozanne, all of us had this feeling of triumph because we all came together, we all worked hard and we had such hope and optimism rightly so and that was because of your leadership Barnes, because of your dedication, your commitment and your preservation. You led us in building this arc or this ship if you will and it's not perfect but it's afloat and we are so much farther along than we were at the beginning. I will reserve my other comments for another venue, but we do want to say Thank you, Barnes. We have this plaque for you presented to Barnes Ellis in recognition of your contributions as Chairmen of the Public Defense Services Commission 2000-2015.

2:39:34 Chair Ellis

Thank you.

2:39:35 S. McCrea

Thank you. Now is there anything else you'd like to say?

2:39:56 Chair Ellis

Whatever you allow. I will make one other comment, that I am keenly aware that what really makes this defense system work is not the seven of us around this table. It is the people in the trenches both at the trial level, the appellate level and the juvenile level that are working every single day with real people going through the system. I have always felt that our role is to

make it possible for them to play their role but there isn't any doubt where the strength in the system comes from. That is part of the thank you.

2:40:46 S. McCrea

Any other business for the good of the organization? **MOTION:** John Potter moved to adjourn the meeting; Per Ramfjord seconded the motion; hearing no objection the motion carried: **VOTE:** 6-0.

Meeting Adjourned

Attachment 2

Annual Report 2014-2015

PARENT CHILD REPRESENTATION PROGRAM



Parent Child Representation Program

Annual Report 2014-2015

Contents

Introduction	2
Summary.....	4
Notable Observations	4
PCRP Program Goal: Competent and Effective Legal Representation Throughout the Life of the Case	7
I. Indicator: Immediate and consistent access to multi-disciplinary staff	7
II. Indicator: Reasonable caseloads	10
III. Indicator: Representation out of court	10
PCRP Program Goal: Meaningful Representation of Parents and Children at all Proceedings.	13
I. Indicator: Shelter hearing representation.....	13
II. Indicator: Case resolution	14
PCRP Program Goal: Improved Outcomes for Children and Families	17
I. Indicator: Quality representation decreases time to safe permanency	17
II. Indicator: Client satisfaction.....	21

Introduction

The Parent Child Representation Program was developed by the Office of Public Defense Services, and initially funded by the Oregon State Legislature in 2013, to enhance the quality of legal representation for parents and children in juvenile dependency and termination of parental rights cases. The program aims to ensure competent and effective legal representation throughout the life of the case by ensuring reduced attorney caseloads, the provision of specialized support services, and adherence to best practices for attorney performance. The goal of the program is to achieve positive outcomes for children and families through the reduction of the use of foster care and reduced time to permanency for children. Repeated studies show that when parents are represented by attorneys with reasonable caseloads, the attorneys spend more time with parents and, as a result, both parents and children have better experiences with the child welfare system.¹

The PCRCP is a pilot program modeled on the highly successful Washington State Parent Representation Program (PRP) which, over the past 15 years, has increased the speed at which children achieve permanency and reduced the use of foster care. According to a 2011 study, the children served by the Washington PRP reach reunification one month sooner and other permanency outcomes one year sooner than those not served by the program.²

¹ Laver, *Improving Representation for Parents in the Child-Welfare System*, American Bar Association Children's Rights Litigation (2013).

² Courtney, Hook & Orme, *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes*, 34(7) Children and Youth Services Review 1337 (2012).

The focus of the Oregon PCRCP is on providing high quality representation, including a caseload limit of 80 cases, additional oversight and training requirements, and multidisciplinary collaboration. The PCRCP began in Linn and Yamhill counties in August 2014.

Initial PCRCP results are encouraging, and significant improvements have been achieved in the first year of the program. One immediate gain was representation for parents and children at shelter hearings, the preliminary hearing in the case that occurs within 24 hours from the time a child is removed from a parent's custody. Prior to implementation of the PCRCP, parents and children were without an advocate during the initial, often traumatic, portion of the case. This was, in large part, due to excessive caseloads. In Yamhill County, prior to the PCRCP, attorneys handled caseloads that included up to 100 juvenile cases, in addition to many other case types. Due to high caseloads in both counties, attorneys were not consistently present at shelter hearings and initial client meetings were delayed. As a result of the PCRCP, parents and children in Yamhill and Linn counties are now consistently represented at initial shelter hearings by attorneys who have access to discovery and, in many cases, meet with their clients before the hearings.

Cases are also resolving more efficiently because attorneys with reasonable caseloads are requesting fewer continuances due to scheduling conflicts. PCRCP attorneys are able to maintain regular and consistent client contact throughout the life of the case.³ Case managers, part of the legal representation team on 10-15% of cases, are

³ The attorneys within the PCRCP program report monthly time and activities to OPDS. The PCRCP contract addendum suggests attorneys dedicate approximately 1/3 of their time to meeting with clients, 1/3 of attorney time on case preparation, and 1/3 to court appearances and meetings.

working closely with attorneys on difficult cases to assess and address client needs, motivate parents, develop alternative safety and visitation plans, model appropriate behaviors, and identify solutions to expedite permanency for children. Attorneys report that they have time to identify, research, and adequately litigate legal issues. And, attorneys are more frequently conducting an independent investigation early in the case, prior to the hearing to determine whether the court should establish jurisdiction over a child.

In conjunction with the first anniversary of the implementation of the PCRCP, the Office of Public Defense Services (OPDS) began development of an annual PCRCP report. Creating an annual report is the first step toward establishing benchmarks, identifying trends, and initiating data-driven quality improvement principles to guide the growth of the PCRCP.

Shortly after the initial development of the PCRCP report, the American Bar Association Center on Children and the Law (ABA), in partnership with the Administration for Children Youth and Families (ACYF), released the *Indicators of Success for Parent Representation* evaluation tool.⁴ The evaluation tool, which was developed, tested, and validated by the ACYF Federal Region IV states over a three-year period, is intended to be used to measure the impact of a rule, policy, or practice change on parent representation within a jurisdiction. The tool contains fourteen indicators, each with suggested measures and data sources intended to provide guidance for benchmarking and quality improvement.

⁴ *Indicators of Success for Parent Representation*, American Bar Association Center on Children and the Law, http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/Indicators-of-Success.authcheckdam.pdf (2015).

In creating the structure of the PCRCP annual report, OPDS relied heavily on the indicators of success recommended by the ABA while following the ABA's guidance to appropriately adapt the measures to apply to jurisdiction-specific programs. According to the developers of the tool, there are four prioritized measures that will most assist jurisdictions in assessing the effectiveness of representation. The measures are: reasonable caseloads, access to multi-disciplinary staff, representation out of court, and quality representation decreases time to safe permanency.⁵ The PCRCP annual report contains these priority indicators described above as well as a number of other measures intended to assist OPDS and policy-makers in determining whether the changes being made as a result of the PCRCP are having positive effects for parents and children.

In their own words: Case Manager Perspective
I am so lucky to work as a case manager for this program. Many of my clients think it is very important for them to have a case manager outside of DHS. So far I found many clients who have a hard time trusting their DHS caseworker and find working with me is helpful. In many cases, it is about communication and trust. Having a third party reduces the tension a bit, and they become able to start working together towards the goal. As we know, many studies have found that family engagement is the key for successful reunification. Sometimes the parents and the caseworkers hear better from me than from each other. I love watching my clients slowly learning what works and what does not. Some take a long time and some learn quickly.
—Chiho Gunton, LCSW

⁵ *Id.* at 1.

Summary

This annual report provides detailed data on seven key indicators and fifteen measures. Data within the report is from a number of sources, both internal and external to the PCRCP.⁶ The data is intended to show the quality of legal representation provided, and to assess whether the PCRCP's system changes are associated with positive effects. Caution should be used when interpreting the data described within the report; the PCRCP is in its infancy and there are a number of factors, in addition to the quality of legal representation, which could impact the measures contained within the report.⁷

The report is organized by program goals: to provide competent and effective legal representation throughout the life of the case; to provide meaningful representation of parents and children at all proceedings; and to improve outcomes for children and families. Each goal is divided into indicators and, in some cases, the indicators have a number of associated measures. Within each measure, the particular data source is identified and, when appropriate, described in further detail. At times, the PCRCP counties are compared with statewide metrics, similarly-sized

⁶ OPDS expresses sincere appreciation to the Oregon Judicial Department and the Department of Human Services for assistance in providing some of the data contained within this report.

⁷ The juvenile dependency system is incredibly complex. Cases may have many parties and typically involve a number of state and local agencies, the court, and non-profit service providers. Improvement initiatives and system changes, in addition to those promulgated by the PCRCP, likely impact data and outcomes. Factors that may have influence on data measures include: staffing levels within the local Department of Human Services Child Welfare office; the role of the Attorney General and the District Attorney in prosecuting dependency cases; changes in judicial officers; the rollout of Differential Response in Linn County in April 2015; court data system conversion; and other initiatives occurring within the counties.

counties, or with counties with a similar percentage of children in foster care. These comparisons are provided in order to better educate the reader on variances and where the PCRCP counties fit within these variances.

In their own words: Attorney Perspective

I feel that what the PCRCP program provides to our clients is phenomenal. As a result of the program, I have more time to handle the legal needs of clients which is where my training, expertise and experience are needed and best utilized. And, collaboration with case managers provides invaluable assistance in assessing legal strategies and needed services. The success of the program results from a team effort: lawyers, case managers, and local partners.

–Susan Isaacs, Attorney, Yamhill County

Notable Observations

The PCRCP is intended to serve as a vehicle for improved legal representation. However, improving representation is a process that takes time and consistent focus. The heightened expectations of the PCRCP and the change in the way OPDS contracts for legal services in PCRCP counties have required that program attorneys make rapid practice changes. Stakeholders within the PCRCP counties have also had to adapt to culture changes including improved advocacy, lawyers attending shelter hearings, and multi-disciplinary representation through case managers.

Recognizing that data interpretation should be done cautiously, three promising themes arise from the initial PCRCP data: improved quality of representation through practice changes, preservation of families through reunification and guardianship, and a reduction in the use of foster care.

Improved quality of legal representation has been achieved through the use of case managers, the appropriate use of investigators and experts, caseload limits, a focus on time spent with clients, and increased attorney participation in case-related meetings.

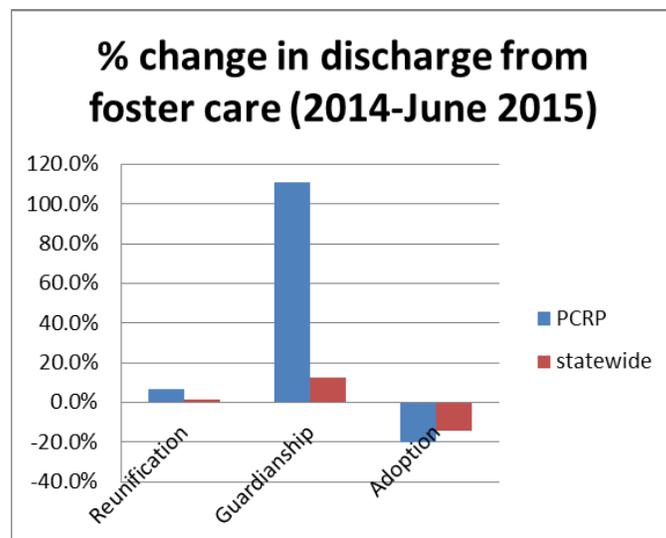
Because of the workload limitation of 80 open cases, the attorneys within the program now have adequate time to prepare cases for trial. PCRCP attorneys have embraced their obligation to investigate the facts of each case and, in 2014, used investigators nearly five times more frequently than non-PCRCP attorneys. PCRCP attorneys utilize experts ten times more frequently than non-PCRCP attorneys. Case managers are available to all PCRCP attorneys and have provided direct service to 150 clients within the first six months of implementation.

In addition, PCRCP attorneys are expected to spend one-third of their time in client contact outside of court. The PCRCP attorneys are spending closer to one-fourth of their time in out-of-court client contact, but when combined with case manager client contact hours, the legal representation team of case manager and lawyer spends over 70 hours per month in direct client out-of-court contact. Attorneys with reasonable caseloads have increased availability to attend the many case-related meetings necessary to ensure quality representation for parents and children. Lawyers are attending approximately twelve meetings per month, and the increase in meeting participation has been noted by stakeholders in both counties.

The Department of Human Services records the reason children are discharged from foster care. The reasons for discharge are reunification,

guardianship, adoption, discharge without attaining permanency, and unknown.⁸

From 2014 to June 2015, the statewide rate of change in children exiting foster care to reunification was 1.7% while in the PCRCP counties over the same time period the average rate of change was 6.5%. From 2014 to June 2015, the statewide rate of change in children exiting foster care to guardianship was 12.5% while in the PCRCP counties over the same time period the average rate of change was 111%. And, while the percentage of children discharged to adoption is decreasing within the PCRCP counties and across the state, the rate of decrease in the PCRCP counties is greater than it is across the state.⁹



On December 31, 2014, there were 7539 children in foster care in Oregon, including 118 in Yamhill County and 255 in Linn County. By June 30, 2015, there were slightly more children in foster

⁸ Reunification is defined as “discharged to reunification including living with relatives.” Oregon Child Welfare Data See report CM.05 Discharge Reason (of those discharged), https://rom.socwel.ku.edu/Oregon_Public/MyReports.aspx.

⁹ For raw data and a graphical representation of the rate of change in discharge reason for those children leaving foster care, See Indicator: Case resolution, p 14 of this report.

care within the state (7571) but substantially fewer in Yamhill (105) and Linn (214) counties. The decline in the foster care population in Linn and Yamhill counties began in 2013, but the rate of decline has increased since the start of the PCRCP.

In summary, initial indicators from the PCRCP are encouraging. Although the indicators do not

establish a causal relationship between improved representation for parents and children and the metrics within this report, it is evident that the manner of legal representation of parents and children in Linn and Yamhill counties has changed for the better.

In their own words: Client Perspective

As soon as I became aware I had a daughter, I realized my life had to change. I straightened out, got clean, stopped running from the police and took responsibility for my actions. I worked hard to change my behavior so I could provide a safe home for my daughter.

If I could give advice to any parents in the child welfare system it would be to talk to your lawyer. My lawyer knew exactly what to say to the court to make the judge understand my circumstances and my wishes in the case. She knew what to ask for in order to have my daughter placed with me as soon as possible. When I arrived at that first court hearing, it was scary and overwhelming. I wondered whether I even had a valid argument to make. My lawyer listened to me, explained my rights and the court process, and right away gave me the confidence to ask to have my daughter placed with me. I was overjoyed knowing that I did have a leg to stand on and getting my daughter returned to me was realistic.

Today, a few months after dismissal of the case, my daughter and I live with my parents. They provide a lot of support and encouragement for me and babysit my daughter at night while I go to work. It is a struggle to be a single father caring for an active toddler but I wouldn't trade it for the world. It is amazing how my daughter has impacted my life. I think about her before I make any decision. She is the most important thing in my life.

—Former Client, McMinnville

PCR Program Goal: Competent and Effective Legal Representation Throughout the Life of the Case

I. Indicator: Immediate and consistent access to multi-disciplinary staff

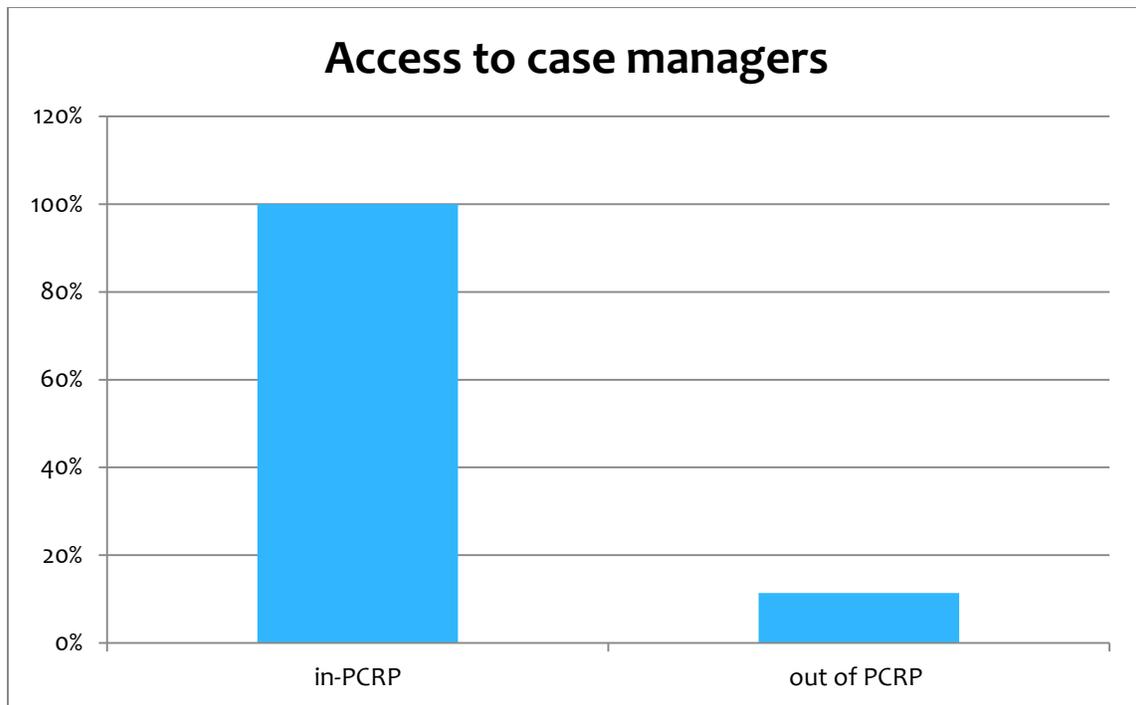
a. Access to and use of case managers

Measure: Percentage of attorneys that have access to case managers as part of the legal team and percentage of cases in which a case manager is used.¹⁰

Explanation: When lawyers and social workers collaborate to help parents succeed in reunifying with their children, the entire child welfare system benefits. Case managers, who fulfill a function similar to a social worker, are working closely with PCR attorneys to assess and address client needs, motivate parents, develop alternative safety and visitation plans, and identify solutions to expedite permanency for children. Case managers are a limited resource, and typically help resolve issues during a particularly difficult stage of a case, rather than throughout the entire case.

Data: In the PCR, case managers work as part of the legal team on 10-15% of open cases and are available to work with clients from the moment an attorney is appointed. From January through June 2015, PCR case managers served 150 clients.

During 2014-2015, 100% of the PCR attorneys had access to case managers as part of the legal representation team. During 2014, 11% of the public defense attorneys who represented parents and children in dependency cases statewide had readily available access to social workers or case managers.



Note: A limited number of public defender offices maintain a social worker on staff. The Klamath Defenders, the public defense provider in Klamath and Lake counties, utilize case managers in a role similar to that of the PCR.

¹⁰ Data sources: PCR attorney activity reports, case manager assignment spreadsheet, OPDS contract analysts.

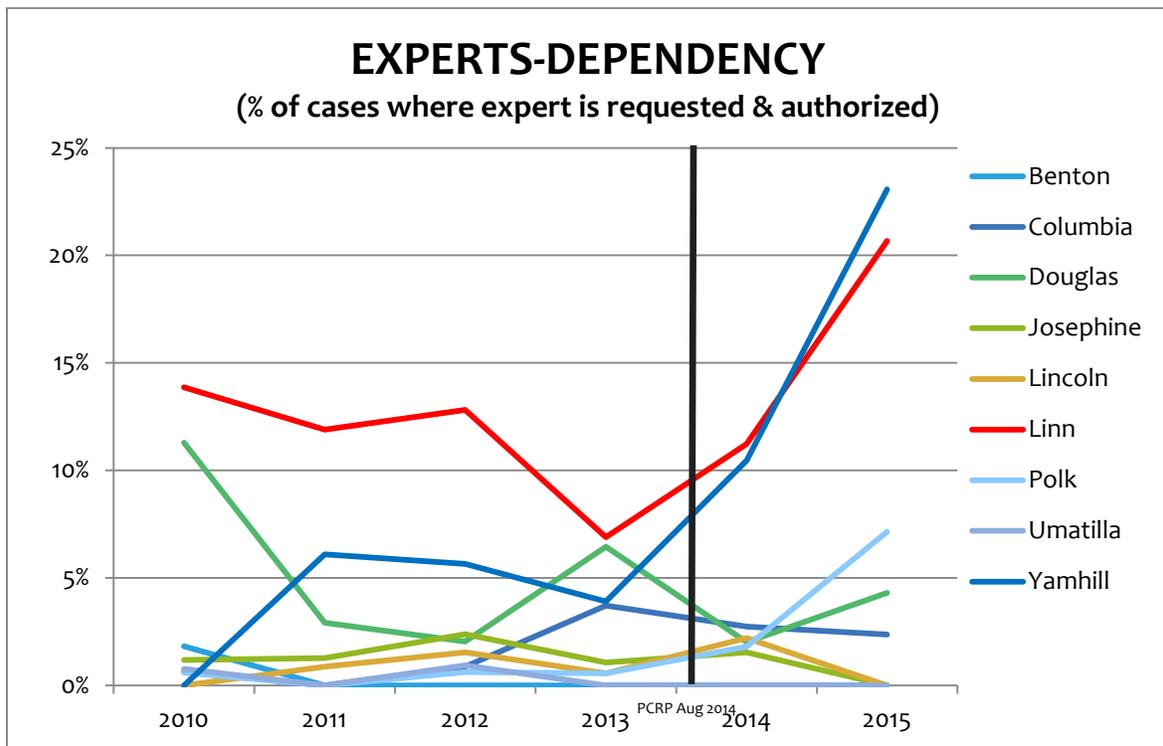
b. Access to and use of expert witnesses

Measure: Percentage of attorneys that have access to expert witnesses and percentage of cases in which an expert witness is requested and determined by OPDS to warrant funding as a necessary and reasonable expense.¹¹

Explanation: Each attorney must have access to independent expert analysis to assess and present the client’s case and to challenge the state’s case. The right to court appointed counsel at state expense includes necessary and reasonable fees and expenses for the investigation, preparation, and presentation of the case.¹²

Data: All juvenile public defense attorneys have access to non-routine expense funds for case investigation, preparation, and presentation. In order to receive funding authorization, the attorney must document that the funds are both necessary and reasonable in the case at issue.

During 2014, in comparable counties, an expert was requested and authorized by OPDS in an average of 1% of the juvenile dependency cases. In the first six months of 2015, this number is 2%. In contrast, during 2014, in PCRP counties, an expert was requested and authorized by OPDS in an average of 11% of the juvenile dependency cases. In the first 6 months of 2015, this number is 22%.



¹¹ Data sources: PCRCP attorney activity reports, OPDS non-routine expense data, OPDS case credit reports.

¹² ORS 135.055(3)(a) (2014).

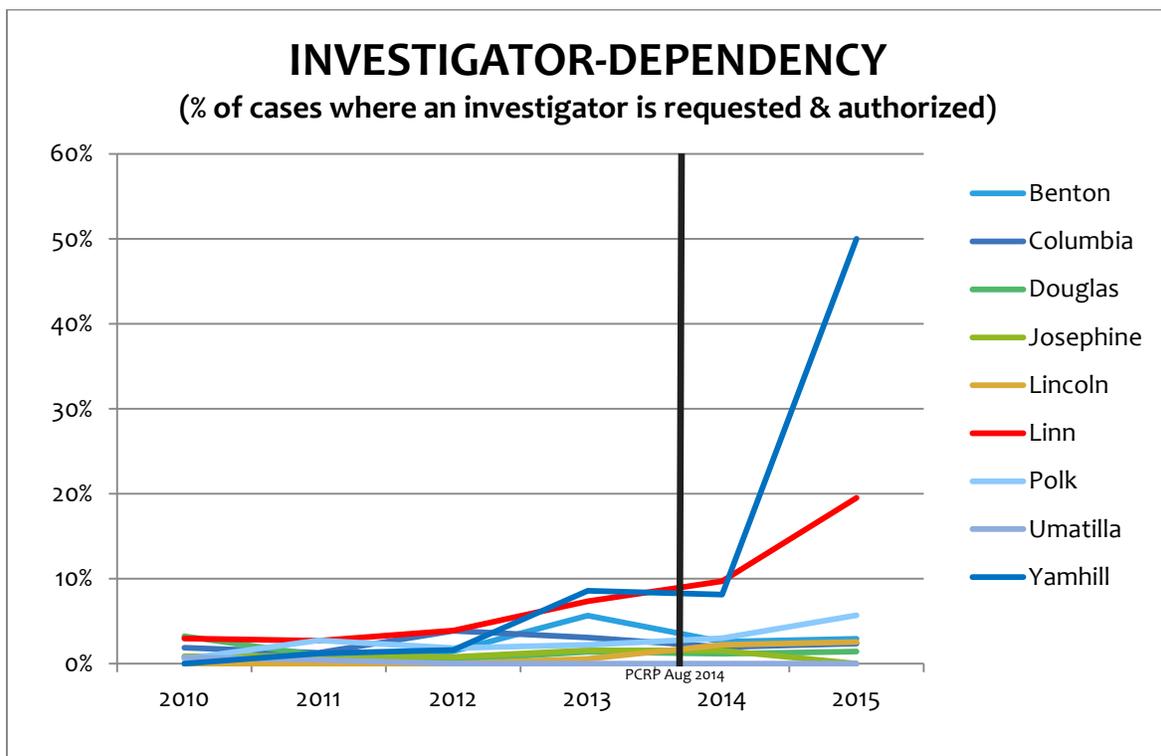
c. Access to and use of investigators

Measure: Percentage of attorneys that have access to investigators and percentage of cases in which an investigator is requested and determined by OPDS to warrant funding as a necessary and reasonable request.¹³

Explanation: Each attorney must independently investigate the state’s allegations and seek evidence that challenges the state’s case. The right to court appointed counsel at state expense includes necessary and reasonable fees and expenses for the investigation, preparation, and presentation of the case.¹⁴

Data: All juvenile public defense attorneys have access to non-routine expense funds for case investigation, preparation, and presentation. In order to receive funding authorization, the attorney must document that the funds are both necessary and reasonable in the case at issue.

During 2014, in comparable counties, an investigator was requested and authorized by OPDS in an average of 2% of the juvenile dependency cases. In the first 6 months of 2015, this number is 2%. In contrast, during 2014, in PCRP counties, an investigator was requested and authorized by OPDS in an average of 9% of the juvenile dependency cases. In the first 6 months of 2015, this number is 35%.



¹³ Data sources: PCR attorney activity reports, OPDS non-routine expense data, OPDS case credit reports.

¹⁴ ORS 135.055(3)(a) (2014).

II. Indicator: Reasonable caseloads

Measure: Caseload limit for full- and part-time PCRCP attorneys; percentage of PCRCP attorneys who fall within the limit.¹⁵

Explanation: A reasonable workload allows attorneys to provide standards-based legal representation and meet their ethical obligations. Lawyers within the PCRCP are expected to have frequent client contact, attend all case-related meetings, conduct independent investigations throughout the life of the case, and advocate at all court and CRB hearings at every stage of the case.

Data: Within the PCRCP, attorneys are limited to a full caseload of no more than 80 open cases. The PCRCP caseload limitation requires attorneys to limit the number of non-PCRCP cases they handle, including privately retained work, so that they remain within the case limit.

During 2014-2015, juvenile attorneys in two of Oregon's counties, Linn and Yamhill, were subject to a caseload limit of 80 open cases. In the remainder of the counties, attorneys did not experience caseload limits imposed by OPDS.¹⁶

Another way of examining the scope of caseload limits is to compare the number of children in foster care represented by attorneys within the PCRCP with those children represented by non-PCRCP attorneys. On the last day of 2014, there were 373 children in foster care, approximately 5%, represented by attorneys in counties with caseload limits. The remaining 7166 children were represented by attorneys in counties without caseload limits.

III. Indicator: Representation out of court

a. Time spent in contact with clients outside of court hearings

Measure: Time spent with clients, outside of the courtroom, as reported by the PCRCP attorneys and PCRCP case managers.¹⁷

Explanation: Establishing and maintaining a relationship with the child client is the foundation of representation. It is often more difficult to develop a relationship of trust with a child client than with an adult. Meeting with the child personally and regularly allows the lawyer to develop a relationship with the client and to assess the child's circumstances. The child's position, interests, needs, and wishes change over time. A lawyer for a child must develop a relationship through frequent contacts.¹⁸

¹⁵ Data source: PCRCP attorney activity reports, Oregon Child Welfare Data Set report CM.02 Count of Children in Foster Care by Placement Type-Last Day of Period, https://rom.socwel.ku.edu/Oregon_Public/MyReports.aspx.

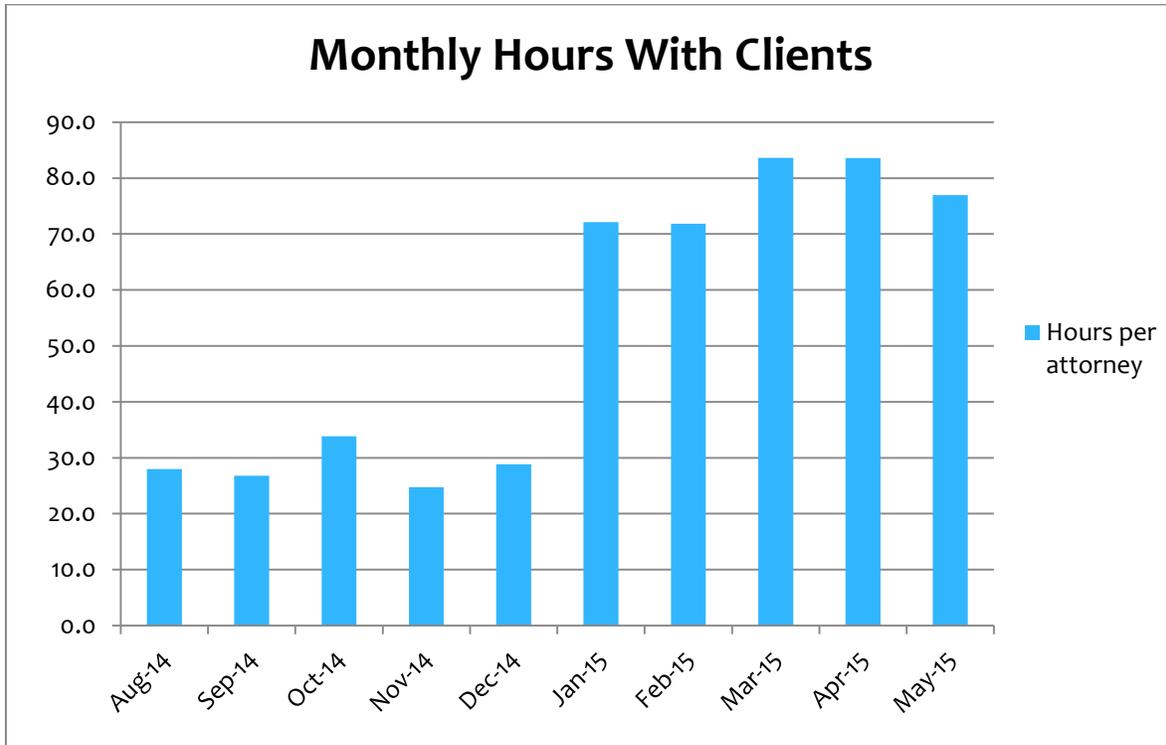
¹⁶ The issue of high caseloads for public defenders has been repeatedly identified as a concern. See *Public Defense Services Commission Retreat Agenda and Objectives* (March 20, 2014) <http://www.oregon.gov/OPDS/docs/Agendas/03-20-14.pdf>. The Joint Interim Task Force on Juvenile Court Dependency Proceedings raised this issue during their meetings in 2014. Task Force members discussed the issue of caseloads, noting that in many counties, lawyers representing children and parents have well over 100 cases at any given time. And because there can be multiple children in each case, lawyers representing children can have many more clients than cases. See *Joint Interim Task Force on Juvenile Court Dependency Proceedings Final Report*, (December 3, 2014) <https://olis.leg.state.or.us/liz/201311/Downloads/CommitteeMeetingDocument/41222> (DRAFT COPY).

¹⁷ Data source: PCRCP attorney activity reports, PCRCP case manager activity reports.

¹⁸ Oregon State Bar Report of the Task Force on Standards of Representation in Juvenile Dependency Cases, *The Obligations of the Lawyer for Children in Child Protection Proceedings with Action Items and Commentary*, Standard 2-Relationship with the child client (2014).

Gaining a parent client’s trust and establishing ongoing communication are two essential aspects of representing the parent. The job of the lawyer extends beyond the courtroom. The lawyer should be a counselor as well as litigator. The lawyer should be available to talk with the parent to prepare for hearings, and to provide advice and information about ongoing concerns.¹⁹

Data: The goal of the PCRCP is for attorneys to spend 1/3 of their time with clients outside of the courtroom. Since the inception of the PCRCP, attorneys report spending closer to 1/4 of their time with clients. However, beginning in January 2015, case managers worked with clients as part of the legal representation team. As a result of case manager involvement, time spent with clients, per attorney team, has increased by an average of 172% over the average time spent with clients in the first five months of the program.



b. Attorney presence at key case non-court events

Measure: Number of case-related meetings attended; time spent in case-related meetings. Attorney presence at case-related meetings from a stakeholder perspective.²⁰

Explanation: Lawyers should actively engage in case planning, including attending substantive case meetings, such as initial treatment planning meetings and case reviews of treatment plans.²¹

¹⁹ Oregon State Bar Report of the Task Force on Standards of Representation in Juvenile Dependency Cases, *The Obligations of the Lawyer for Parents in Child Protection Proceedings with Action Items and Commentary*, Standard 2-Relationship with the parent client (2014).

²⁰ Data source: PCRCP attorney activity reports, April 2015 PCRCP Stakeholder survey results.

²¹ Oregon State Bar Report of the Task Force on Standards of Representation in Juvenile Dependency Cases, *The Obligations of the Lawyer for Parents in Child Protection Proceedings with Action Items and Commentary*, Standard 4-General principles governing conduct of a case (2014).

Many important decisions in a case are made outside of the courtroom in case-related meetings. Advocacy at case planning meetings is an essential part of effective legal representation. PCRCP attorneys are expected to attend case-related meetings unless a court appearance is scheduled at the same time.

Data: From August 2014-May 2015, PCRCP attorneys attended a total of 1255 case-related meetings, an average of 12 meetings per month. At times, a staff assistant or case manager may attend a case-related meeting at the attorney's request. However, for purposes of this report, only attorney attendance at meetings is reported.

Interestingly, although attorney participation in case-related meetings is significant, a number of system partners within the PCRCP counties report it is insufficient to meet case planning needs. In April 2015, OPDS surveyed juvenile court stakeholders within both counties. When asked about attorney participation in case-related meetings, 63% of respondents in Linn County and 18% in Yamhill County found the level of participation to be sufficient. But, in both counties, respondents noted an increase in the level of participation since the beginning of the PCRCP. In Linn County, 41% of respondents noted a participation increase; in Yamhill, 75% noted a participation increase.

PCRP Program Goal: Meaningful Representation of Parents and Children at all Proceedings

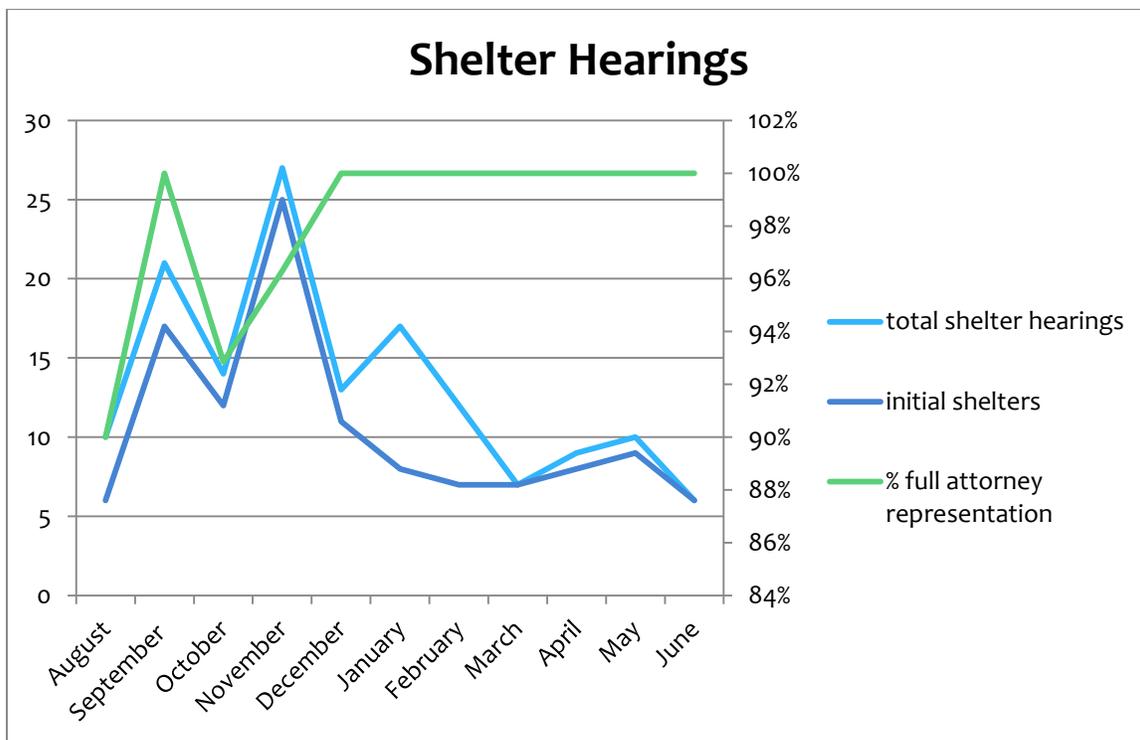
I. Indicator: Shelter hearing representation

Measure: Percentage of parties represented by an attorney at shelter hearings.²²

Explanation: PCRP attorneys are required to provide representation at the initial hearing, called a shelter hearing, in each case. Prior to the PCRP, attorneys in Linn and Yamhill counties were not consistently present at shelter hearings and, as a result, parents attended these hearings, where children were often removed from their care, without an advocate. And children, who have their own legal rights and often substantial needs, had no voice in the proceeding.

As a result of the PCRP, parents and children are now consistently represented at initial shelter hearings by attorneys who have access to discovery and, in many cases, meet with their clients before the hearings. Research underscores the importance of early engagement in juvenile court cases. Families are more likely to be reunified when parents, mothers in particular, and attorneys are present and involved in early stage hearings.²³ The direction a case takes early on often predicts whether a child will return home.²⁴

Data: Between December 2014 and June 2015, PCRP attorneys have been present, on behalf of all parties, at shelter hearings.



²² Data source: PCRP attorney activity reports, Oregon e-Court case information system.

²³ National Council of Juvenile and Family Court Judges, *Effects of Parental and Attorney Involvement on Reunification in Juvenile Dependency Cases*, PPCD Research Snapshot (2011), http://www.ncjfcj.org/sites/default/files/Parental%20Involvement%20One%20Pager_Final_0.pdf.

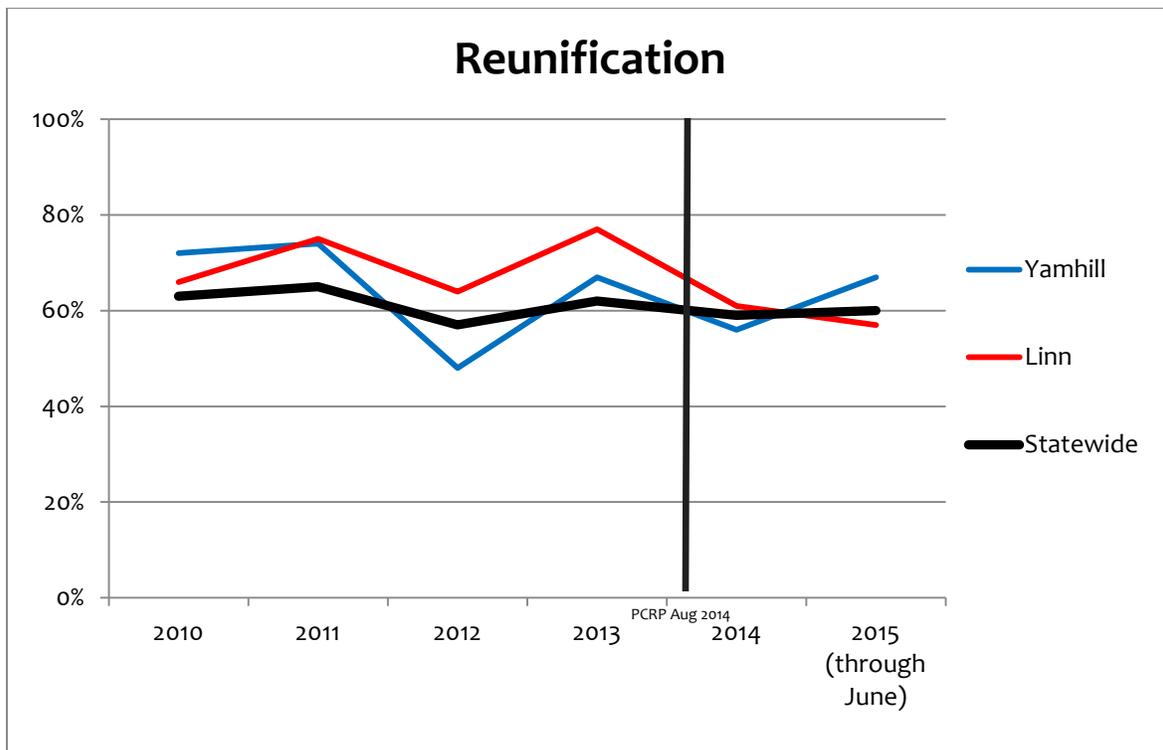
²⁴ Cohen and Cortese, *Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families*, ABA Child Law Practice (2009).

II. Indicator: Case resolution

Measure: Discharge reason for those children leaving foster care.²⁵

Explanation: High-quality legal representation for parents, in which attorneys have adequate time to devote to their client's case, and parents have access to independent social workers as part of their legal team, has been shown to reduce the time children spend in foster care.²⁶ Washington state's Parent Representation Program, which began in 2000 and is similar to the PCRCP, has increased safe reunifications by 36%.²⁷

Data: Reunification: The State of Oregon expresses a strong preference that children live in their own homes with their own families when possible.²⁸ Since 2012, the statewide percentage of children who were reunified with a parent upon discharge from foster care has averaged 60%. From 2014 to June 2015, discharge to reunification increased by 1.7% across the state. In the PCRCP, over the same time period, the percentage of children leaving foster care to reunification increased by an average of 6.5%.



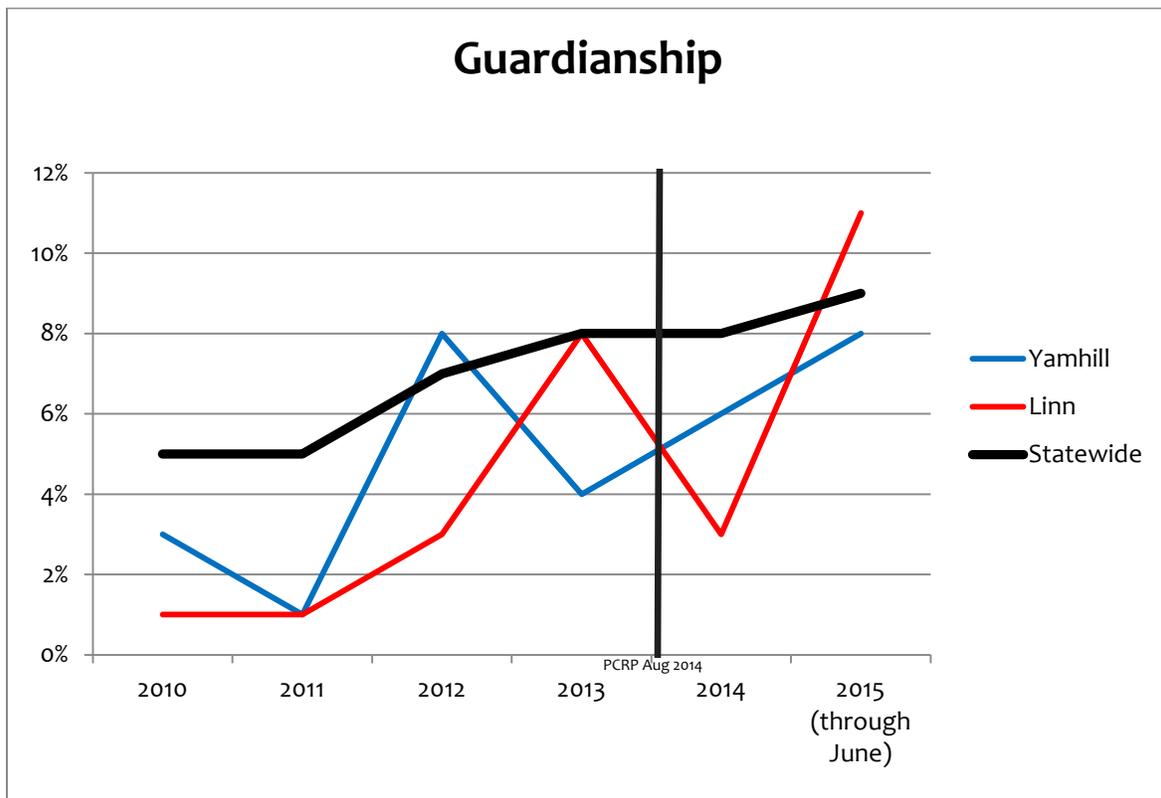
²⁵ Data source: Oregon Child Welfare Data Set report CM.05 Discharge Reason (of those discharged), https://rom.socwel.ku.edu/Oregon_Public/MyReports.aspx.

²⁶ Courtney, Hook & Orme, *supra* n.2.

²⁷ American Bar Association, *National Project to Improve Representation for Parents Fact Sheet*, <http://schubert.case.edu/files/2014/02/ABAFactsheet.pdf>.

²⁸ ORS 419B.090(5) (2015).

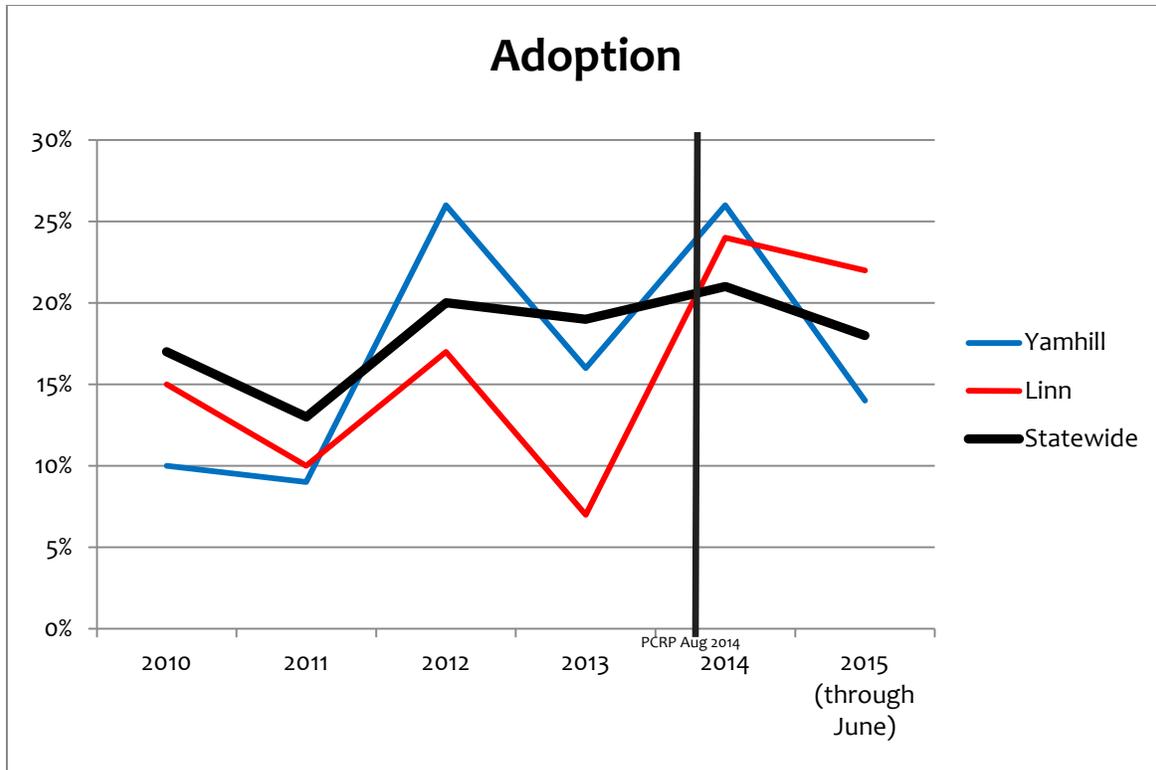
Guardianship: Guardianship is an important measure of permanence which allows children to be discharged from foster care and has the added benefit of maintaining the legal parental relationship between the child and his or her birth parents.²⁹ The statewide percentage of children who entered a guardianship upon leaving foster care has been increasing steadily since 2010. In 2010, 5% of children entered guardianships, and by June, 2015, the number has increased to 9%. In the PCRCP counties, for 2014, both counties had a guardianship rate below the statewide average (Linn 3% and Yamhill 6%). However, the rate of guardianship has increased substantially since the inception of the PCRCP in August 2014. From 2014 to June, 2015, the statewide rate for discharge to guardianship increased from 8% to 9%, an increase of 12.5%. Within the PCRCP, over the same time period, the average rate for discharge to guardianship increased from 4.5% to 9.5%, an increase of 111%.



²⁹ Guggenheim and Sankaran, *Representing Parents in Child Welfare Cases* 303 (American Bar Association 2015).

Adoption: Children have a legal right to permanency with a safe family.³⁰ Adoption is the most permanent alternative for children after reunification. However, the termination of parental rights, while necessary in some cases, can have severe negative consequences for a child.³¹ Between 2012 and 2014, the statewide percentage of children who discharge from foster care to adoption has averaged 20%. In the first 6 months of 2015, the statewide percentage decreased to 18%, a decrease of 14.3% over 2014. In the PCRCP counties, the percentage of children who discharge from foster care to adoption has been decreasing at a rate higher than the statewide average.

In 2014, in the PCRCP counties, an average of 22.5% of children leaving foster care exited to adoption and in the first half of 2015, an average of 18% of children leaving foster care exited to adoption. From 2014 to June, 2015, the average percentage decrease in adoption as a discharge reason in Linn and Yamhill counties is 20%.



³⁰ ORS 419B.090(2) (2015).

³¹ Guggenheim and Sankaran, *supra n.29*, at 311.

PCRP Program Goal: Improved Outcomes for Children and Families

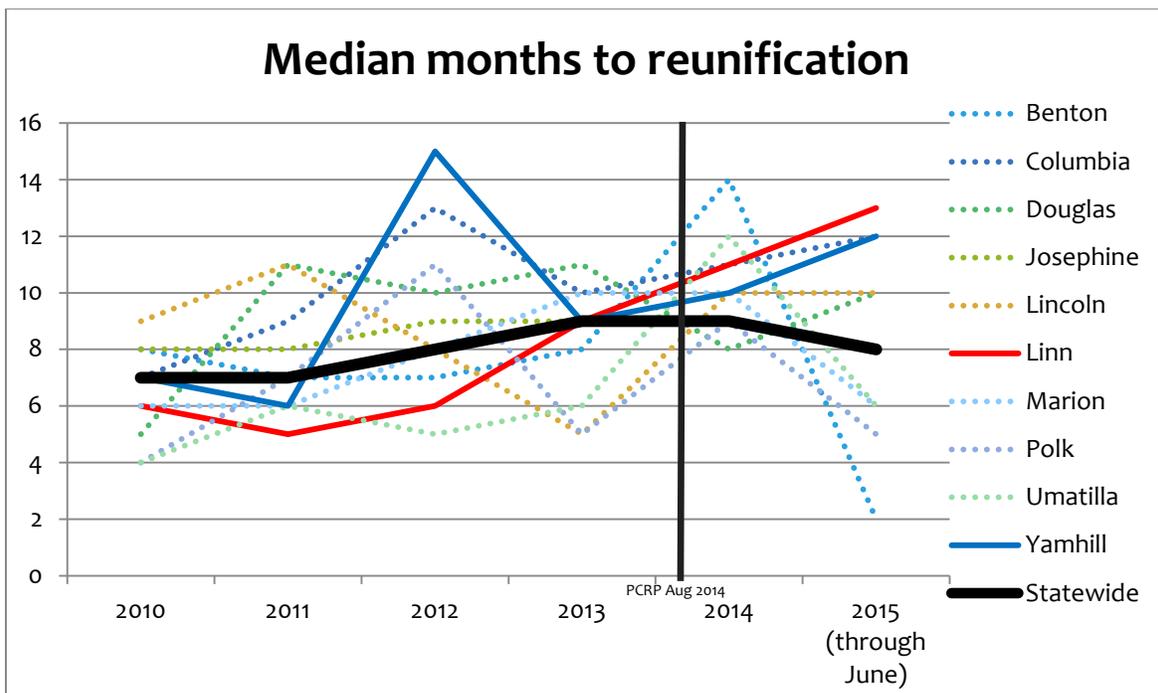
I. Indicator: Quality representation decreases time to safe permanency

a. Median time to reunification

Measure: Median months of those reunified within the time period sampled.³²

Explanation: Reunification occurs when children leave foster care to be reunified with parents or families. In 2014, 58.5% children who left foster care were reunited with families.³³ An attorney's advocacy for frequent visitation, parent engagement, and the right service plan helps steer the case toward early reunification.³⁴

Data: Statewide, between 2010 through June, 2015, the median number of months to reunification averages 8 months. Beginning in 2013, both Linn and Yamhill counties have seen an increase in the median number of months to reunification. In 2014 and, through June of 2015, the number of months to reunification is well above the statewide average. And, it appears that time to reunification continued to increase after the start of the PCRP. When compared to similarly-sized counties, Linn County's 13 months for 2015 is the highest.



b. Median time to adoption

Measure: Median months of those adopted within the time period sampled.³⁵

³² Data source: Oregon child welfare data set report FO.01.2 Median Months to Reunification-of those reunified, https://rom.socwel.ku.edu/Oregon_Public/MyReports.aspx.

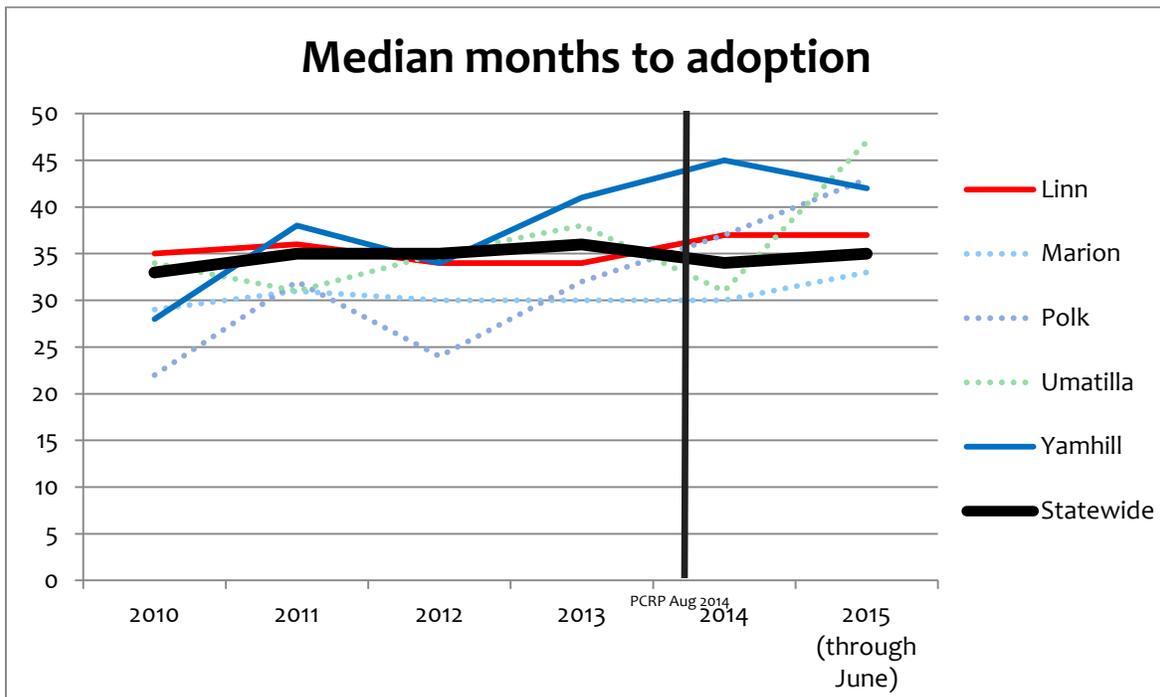
³³ Department of Human Services, 2014 Child Welfare Data Book (2014).

³⁴ Cohen and Cortese, *supra* n. 24.

³⁵ Data source: Oregon child welfare data set report FO.02.2 Median Months to Adoption-of those adopted, https://rom.socwel.ku.edu/Oregon_Public/MyReports.aspx.

Explanation: Focused advocacy by attorneys for children and parents is needed to expedite the achievement of permanency for children. Research conducted on Washington State’s parent representation program has found that the availability of adequate legal representation speeds reunification with parents, and for those children who do not reunify, it speeds achieving permanency through adoption and guardianship.³⁶

Data: Since 2010, the statewide average is 34.6 months. Linn and Yamhill counties have seen an increase in the median months to adoption since 2013. In 2013, the median months to adoption in Linn and Yamhill counties was 34. For the first half of June, 2015, Linn County had a median of 37 months and Yamhill 42 months. In Yamhill County, since the start of the PCRCP in 2014, median months have declined by 6.6%. Linn County remains unchanged at 37 months. When compared to similarly sized counties with a similar foster care population percentage, the time to adoption is remaining steady or falling while the comparison counties show a sharp rise in the median months to adoption.



c. Time to achieve permanency

Measure: Percentage of children who achieved permanency within 24 months of removal.³⁷

Explanation: When consistent with the client’s interests, the lawyer should take every appropriate step to expedite proceedings. Delaying a case often increases the time a family is separated and can reduce the likelihood of reunification.³⁸ Research shows that the effectiveness

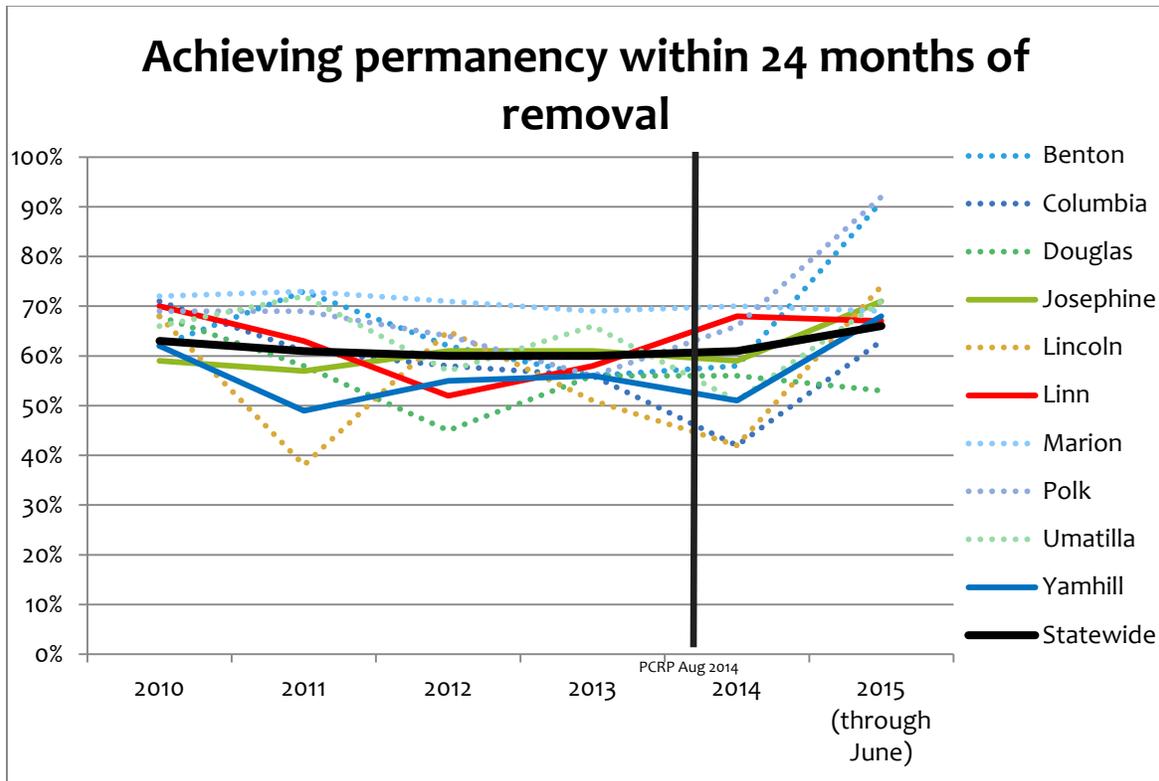
³⁶ Courtney, Hook & Orme, *supra* n.2.

³⁷ Data source: Oregon child welfare data set report PO.02. Permanency in 24 mos-of those entered care 24 mos ago, https://rom.socwel.ku.edu/Oregon_Public/MyReports.aspx.

³⁸ Oregon State Bar Report of the Task Force on Standards of Representation in Juvenile Dependency Cases, *The Obligations of the Lawyer for Parents in Child Protection Proceedings with Action Items and Commentary*, Standard 4-General Principles Governing Conduct of a Case (2014). Oregon State Bar Report of the Task Force on Standards of Representation in Juvenile Dependency Cases, *The Obligations of the Lawyer for Children in Child Protection Proceedings with Action Items and Commentary*, Standard 4-General Principles Governing Conduct of a Case (2014).

of foster care diminishes over time. The longer children remain in foster care, the less effective foster care is in meeting children's needs.³⁹

Data: From 2010 through 2014, the statewide average hovered at 61%. In the first half of 2015, the statewide average increased by 8.2%. Before the start of the PCRCP, both Linn and Yamhill counties had rates lower than the statewide average. However, the percentage of children who achieve permanency within 24 months has been increasing in the PCRCP counties; for the first six months of 2015, both counties have rates higher than the statewide average.



d. Rate of re-entry after discharge from foster care

Measure: No re-entry into custody of those discharged 12 months ago.⁴⁰

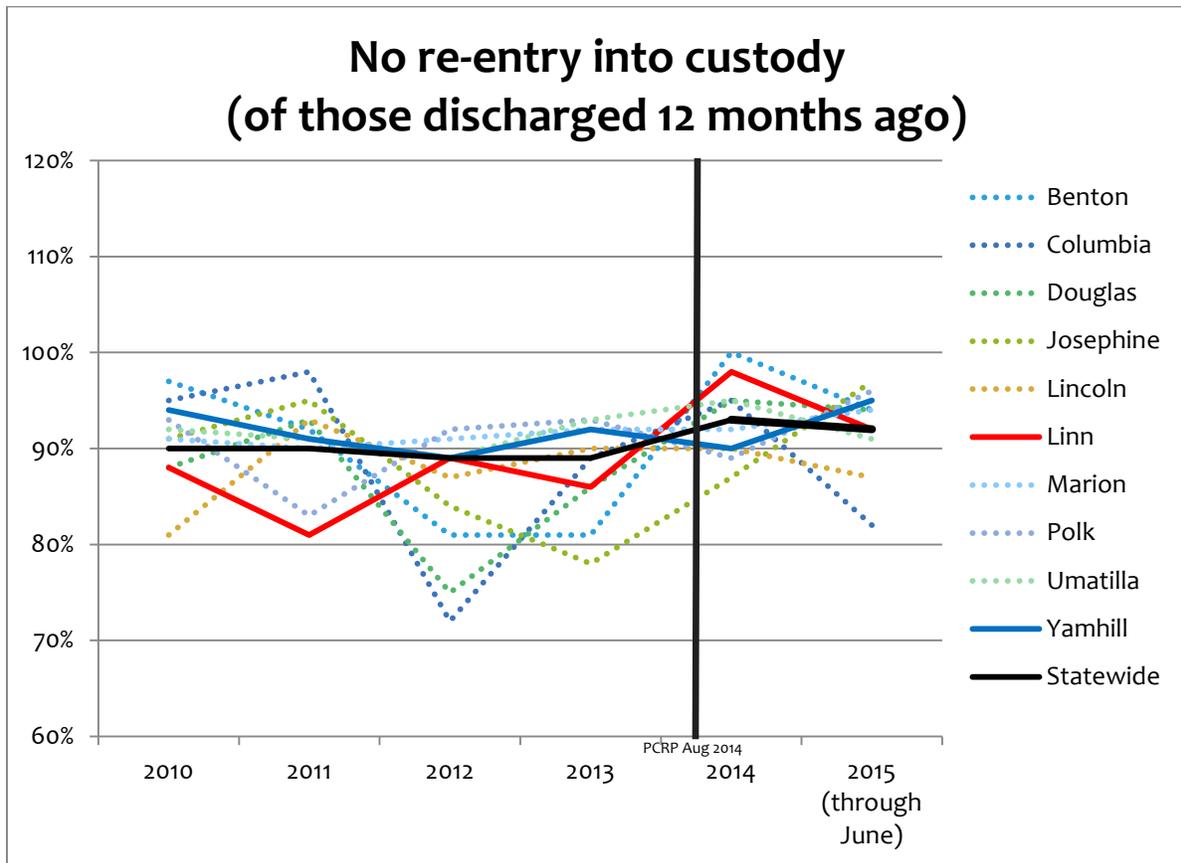
Explanation: Safe reunification, as shown by no re-entry into custody within 12 months of discharge from foster care, is a necessary measure when determining whether cases have resolved appropriately, whether parents have remediated the issues which led to foster care placement, and whether services provided to families were appropriate and effective.

Data: Between 2010 and 2014, the statewide percentage of children who were safely reunified (or placed into guardianship or adoption) upon discharge from foster care hovered between 89% and 90%. In 2014 and the first half of 2015, the percentage of children who were discharged from foster care and did not re-enter foster care within twelve months of discharge increased to 93% in 2014 and 92% in 2015.

³⁹ Joint Interim Task Force on Juvenile Court Dependency Proceeding Final Report (December 3, 2014), <https://olis.leg.state.or.us/liz/201311/Downloads/CommitteeMeetingDocument/41222> (DRAFT COPY).

⁴⁰ Data source: Oregon child welfare data set report CM.06 No Re-entry into Custody-of those discharged 12 mos ago, https://rom.socwel.ku.edu/Oregon_Public/MyReports.aspx.

In 2014, Yamhill County had a safe reunification rate of 90%, below the statewide average. In the first half of 2015, the percentage of safe reunification increased to 95%, well above the statewide average. On the other hand, Linn County's rate was 98% in 2014, and during the first half of 2015 is consistent with the statewide average.



e. Number of children in foster care

Measure: Count of children in foster care by placement type.⁴¹

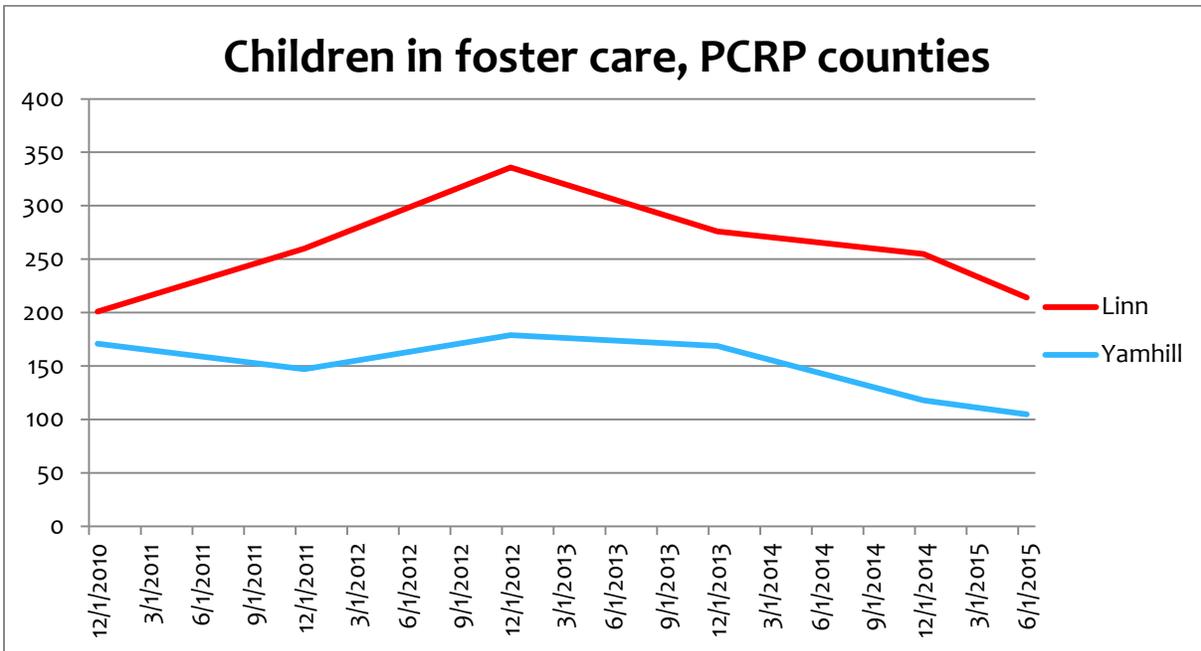
Explanation: According to Partners for Our Children, a Washington state research and policy organization, jurisdictions that want to improve parental representation and potentially shorten the time children are in foster care should consider a program focused on improved legal representation similar to Washington's parent representation program.⁴² Reducing the use of foster care is a goal of the Parent Child Representation Program.

Data: Across the state, the number of children in foster care has been steadily declining from 2010 (8722 children in care on December 31, 2010) to June, 2015 (7572 children in care on June 30, 2015). From 2013-2014, the number of children in foster care decreased by 4.33%, and from January 2015-June 2015, there was an increase of .44%.

⁴¹ Data source: Oregon child welfare data set report CM.02 Count of Children in Foster Care by Placement Type-Last Day of Period, https://rom.socwel.ku.edu/Oregon_Public/MyReports.aspx.

⁴² Courtney, Hook & Orme, *supra n.2*.

In Linn and Yamhill counties, the number of children in care has been declining since the end of 2012. On December 31, 2012, there were 336 children in foster care in Linn County and 179 in Yamhill County. By June 30, 2015, there were 214 children in foster care in Linn County and 105 in Yamhill. Although the number of foster children had been declining even prior to the start of the Parent Child Representation Program, the *rate* of reduction has increased since the PCRCP began and, the rate of reduction has outpaced the statewide rate. The average rate of reduction in children in foster care for PCRCP counties was 19% in 2014 and 13% for the first six months of 2015. In contrast, the number of children in foster care statewide decreased by 4.33% in 2014 and increased by .44% between January 2015 and June 2015. The graph below reflects the number of foster children in Linn and Yamhill counties over the past 5 years.



II. Indicator: Client satisfaction

Measure: Percentage of former PCRCP clients who report overall satisfaction with the representation provided by their attorney.⁴³

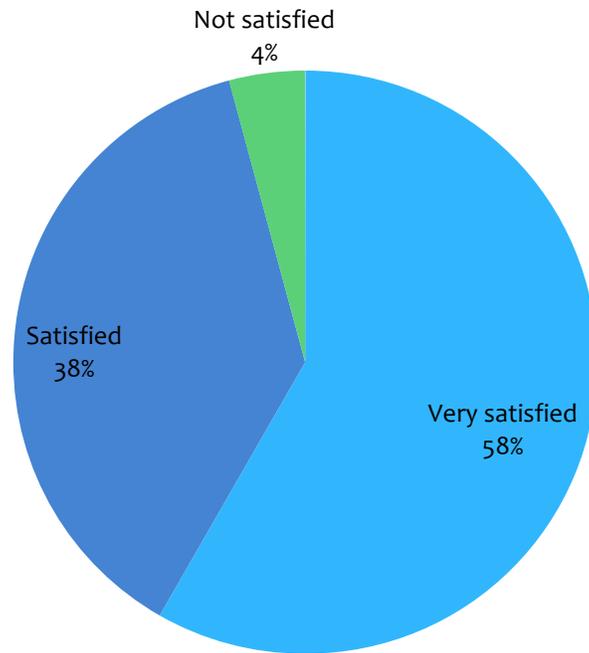
Explanation: Client satisfaction, trust and participation are important elements of any successful legal representation. Without these elements, there is a high probability that the client will not fully cooperate with or confide in his or her attorney and could jeopardize the effectiveness of the client's defense.⁴⁴ Client satisfaction is an important component in assessing attorney competence and effectiveness. Within the PCRCP, an attempt is made to contact each former client regarding their experience.

Data: Former clients are asked questions related to attorney responsiveness, thoroughness, communication, and investigation. Client satisfaction surveys began in April 2015 and, as of September 2015, 24 former clients have completed the survey with the majority reporting being very satisfied with the quality of representation.

⁴³ Data source: PCRCP client satisfaction survey.

⁴⁴ Washington State University, *Hamilton County Customer Satisfaction Pilot Project* (May 31, 2010), http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_3d_%20janet_moore_indig_def_ref_proj.authcheckdam.pdf.

Overall client satisfaction



Attachment 3

PDSC Contracting Process

Task	Description	Timeline
OPDS Issues Request for Proposals (RFP)	Contractors have 6-8 weeks to respond	Early May (odd years)
RFP Deadline	Date all responses are due	June
Contract Analysts Review Proposals and Project Caseload	Contract analysts review individual proposals, identify and document specific requests, and project statewide caseload	June
Contracts Team Meetings	Contracts team discusses common requests, funding priorities, and creates statewide contracting plan	June/July
Present Statewide Contracting Plan to PDSC in Executive Session	Analysts present overview of counties, and review confidential responses to RFP with PDSC	July/August
Contract Negotiations	Analysts contact all proposed contractors with proposed contract terms or explanation to those not receiving a contract; contractors sign and return contracts	August /September
PDSC Contract Approval	Contracts Manager presents signed contracts to PDSC for approval	October
Contracts Fully Executed	Executive Director signs all contracts; fully executed contracts sent to contractors and court	November
Contracting Debrief	Contracts team discusses contracting process; PDSC provides input on contracting process	December/January

Attachment 4

Public Defense Services Commission

The Executive Director's 2015 Annual Report (January 2016)

Introduction

The Public Defense Services Commission, with the help of the Oregon State Legislature and system partners at both the state and local levels, celebrated another year of success in its effort to achieve incremental improvements in client representation across the state. Of particular note are four accomplishments. First, the Parent Child Representation Program (PCRP) entered its second year of service in Yamhill and Linn Counties, and in addition to improving representation in those counties, the Program generated enough savings throughout the previous biennium to allow expansion of the Program into a third small county – Columbia County – in January 2016. Second, plans for a Public Defense Resource Center in the Multnomah County Courthouse, focused on improving clients' access to justice, were more fully developed and continue to move forward. Third, the office took steps toward improving its ability to make data-driven decisions by beginning development of a case management system for use in the juvenile appellate division (JAS) and PCRP counties. Finally, the 2015 legislative session ended with approval for permanent funding for administration of the PCRP, and additional funding to permit consistent case rates for different types of public defense providers (non-profit public defender, law firm, and consortium).

The PDSC also moved through change within Office of Public Defense Services' Appellate Division. Peter Gartlan, Chief Defender and a public defender in Oregon for over 25 years, retired in April 2015. With Mr. Gartlan's retirement came the need to select a successor. Ernest Lannet assumed the role of Chief Defender of the Criminal Appellate Section in April 2015. Shannon Storey continued in her leadership of the Juvenile Appellate Section, a separate section of the Appellate Division. Both Mr. Lannet and Ms. Story are responsible for the day-to-day management of their sections, and report directly to the Executive Director. They bring tremendous experience, dedication, and expertise to their sections, and have continued the excellent leadership demonstrated by their predecessor.

In the final quarter of the year, the PDSC launched the start of a strategic-planning process to help build a strategy for continued achievements through 2020. The Commission also saw the retirement of long-time PDSC Chair and public defense advocate, Barnes Ellis, who dedicated over 50 years to the advancement of legal services for those who could not afford representation. Mr. Ellis was honored by the Oregon State Bar on December 10, 2015, for his countless hours of volunteer and public service work.

PDSC's Accomplishments in 2015

1. The Commission

The PDSC held eight meetings in 2015, including two meetings in central Oregon, two in Portland, one in Hillsboro, and three in Salem. The first Salem meeting, in January 2015, included a Service Delivery Review in Marion County. The Commission was pleased with the level of service provided by practitioners in Marion County, and applauded providers for working well together to meet the needs of clients and system partners. The Commission held a second Service Delivery Review, in Washington County, during its September meeting. Again, the Commission was pleased with the work of the majority of providers and the overall functioning of the public defense system in that county.

The February meeting, held in Portland, allowed Commission members to get detailed information regarding the planned Multnomah County Courthouse with a collocated Public Defense Resource Center. Commission members passed a resolution in support of the project, and later in the year, submitted a letter of interest for a similar project in Lane County.

During the course of the year, Commission agendas included information on a variety of topics. Some of the subjects were continued throughout the year, including representation of veterans, national trends in public defense, Parent Child Representation Program updates, legislative updates, government ethics, workload standards, and representation trends in Oregon delinquency cases.

The Commission Chair and OPDS staff also focused on the budget and the 2015 legislative session. There were three days of budget hearings before the Joint Committee on Ways and Means Public Safety Subcommittee of the Oregon State Legislature during its regular session, which ended in July 2015. The hearings were launched by Chief Justice Balmer and Commission Chair Barnes Ellis, as required by ORS 151.216(1)(e), and included letters of support and testimony from the Oregon State Bar, judges, public defense providers, District Attorney Walt Beglau, the Attorney General's office, CASA, and individuals who had been represented by a court appointed attorneys. These hearings demonstrated, once again, that public defense is a critical component of Oregon's justice system.

With the budget established in early July, the Commission began evaluating contract proposals. In October the Commission completed the process and approved a statewide contracting plan to begin January 2016.

The Commission's December meeting focused on strategic planning and, as noted above, the retirement of longtime PDSC Chair, Barnes Ellis.

2. Statewide Contract and Financial Services

A. Contracts

In 2015, OPDS analysts managed 107 statewide contracts. Total contract payments for 2015 were approximately \$92,257,000, with representation provided in approximately 167,581 criminal and juvenile case proceedings. In 2015 there were 11 new death penalty cases filed, adding to the number already in the system pending resolution in the trial courts, in post-conviction proceedings and in the state appellate courts.

In 2015, OPDS received funds through two different policy option packages to improve public defense funding beyond the current service level. Policy Option Package #100 provided partial funding to bring consortia and law firm rates up to the same level as public defender offices. This package also allowed OPDS to direct \$161,700 toward mileage reimbursement for providers in rural counties. This was a direct result of input from contractors across the state, who indicated that their contract rates were insufficient to cover the high cost of mileage required to visit clients and court hearings.

A primary area of continued concern for most contractors is the lack of predictability in funding for public defense work, and the inability to be competitive with the DA's office. When fixed costs such as rent, technology, health insurance, and professional expenses continue to increase, compensation based exclusively on low case rates becomes a bigger challenge. Policy Option Package #101, requested by OPDS to address these further inequities in public defense funding, was not funded, but conversations around this topic continue, and the OPDS remains committed to pursuing improvements. Additionally, contractors are very concerned about their inability to recruit and retain qualified lawyers given the low rates, especially when coupled with the high loan debt new lawyers face upon graduation from law school. OPDS has also seen an increase in the number of complaints arising when contract lawyers have a medical incident and are unable to meet their professional obligations. And, while recruiting and retaining good lawyers to work in public defense continues to be a challenge because of low compensation compared to other areas of practice, OPDS is increasingly informed of problems with some lawyers continuing to take public defense cases largely because they cannot afford to retire. In addition, OPDS is increasingly aware of lawyers challenged to meet professional obligations when faced with unanticipated medical incidents.

B. Financial Services

Contract and hourly providers, as well as experts retained by counsel, must submit information to the Office of Public Defense Services in order to be paid for their work. The Financial Services unit processed 19,593 non-routine expense requests and 40,578 billings in 2015. Each expense requested, and billing submitted, is reviewed before authorized to ensure that expenses are necessary and reasonable for defending the case.

3. Quality Assurance

OPDS General Counsel Paul Levy, in collaboration with Deputy General Counsel Amy Miller and others at OPDS, continued to pursue a number of quality assurance measures in 2015.

In 2015, General Counsel planned and staffed a peer review of the public defense provider in criminal cases in Clackamas County. The review team included administrators of four other public defense contractors, a senior judge, an attorney in private practice, and a lawyer handling criminal cases in the OPDS Appellate Division. OPDS intends to follow up on the review with a Commission service delivery review in Clackamas County in 2016.

In July 2015, the OPDS Executive Director, along with an OPDS analyst and PDSC Commissioner John Potter, conducted interviews with justice system stakeholders in Washington County, as a follow-up to the 2014 peer review of providers in that county. The Commission conducted hearings and finalized that review during meetings in September, October, and December 2015.

As in preceding years, in early 2015 General Counsel conducted a statewide survey of public defense performance. He then participated in follow-up contacts, along with OPDS Analysts, to speak personally with survey respondents who provided their name and expressed specific concerns about public defense services in their counties. General Counsel reported to the Commission on survey results at its March 2015 meeting. For 2016, OPDS plans to launch a revised survey, which will seek more specific information about provider performance, and to do so later in the year after providers have worked for a number of months under new contract terms and conditions.

As in previous years, OPDS received complaints about public defense services from provider clients, judges, prosecutors, and others. In many instances, these complaints concern problems with attorneys not responding to requests for case information and assistance. General Counsel, or Deputy General Counsel if the complaint concerns a juvenile case, is able to quickly resolve these matters through telephone or email contact with the appointed attorney and/or the administrator of the contract entity with whom the attorney works. However, both General Counsel and Deputy General Counsel devoted significant time to several matters that required substantial investigation and other efforts to resolve the matter.

General Counsel also continued to serve on the Oregon State Bar Disciplinary Board, actively participating on a trial panel in 2015.

General Counsel continued to work closely with the OPDS analyst for death penalty cases to identify the appropriate assignment of counsel for new capital cases. He also worked closely with assigned counsel and others to address specific challenges that arise in those cases.

General Counsel continued work with the Oregon Criminal Defense Lawyers Association Education Committee, which plans seminars for the organization. He also participated, along with OPDS Executive Director and others, in the planning for the annual public defense management seminar, and worked closely with Norman Lefstein, who presented at the program and to the Commission on the subject of establishing jurisdiction-specific caseload standards. Work on creating such standards for Oregon will continue in 2016.

General Counsel also planned and produced the 2015 OPDS Diversity Program, entitled *Our Evolving and Diverse Community: Understand the Role of Immigration Law and Policy*.

The primary work of Deputy General Counsel Amy Miller is management of the Parent Child Representation Program which, as noted above, is expanding to include Columbia County in 2016. This work requires frequent meetings, usually on site, with participating attorneys, the court, deputy district attorneys, DHS, CASAs, and case managers. She has other quality improvement responsibilities focused on monitoring and improving the quality of legal representation of parents and children in juvenile court cases statewide. She investigates and resolves complaints related to juvenile matters, handles all juvenile non-routine expenditure requests, and regularly consults with trial practitioners statewide.

As she did in 2014, Ms. Miller coordinated planning for the 2015 Juvenile Law Training Academy. She serves on the OCDLA Juvenile Law Committee and has contributed articles to the Juvenile Law Reader.

Reviewing funding requests for non-routine expenses is an important component of monitoring attorney performance, and is a function shared by General Counsel, Deputy General Counsel, and the contract analysts. From this review, OPDS staff gain information about the quality of case investigation and preparation conducted by attorneys and can address specific concerns that come to light during the review of funding requests. The review also assists in cost containment efforts and in predicting cost trends related to the preparation of particular case types.

General Counsel continued his responsibility for reviewing certificates of attorney qualification submitted by lawyers wishing to provide public defense services. In conjunction with the Executive Directive, Deputy General Counsel, and OPDS analysts, General Counsel also led a review and revision of the General Terms of the PDSC Public Defense Legal Services Contract. The review included a major reorganization and revision of the quality assurance provisions. Prior to the Commission's adoption of contract revisions, the proposed changes were reviewed and discussed by the OPDS Public Defense Advisory Group, and were also discussed and commented upon by contract providers at PDSC meetings.

Finally, General Counsel tracked and reported to the Commission developments in litigation outside of Oregon concerning the responsibility of public bodies to provide constitutionally sound public defense services. Such information is important for OPDS staff and the Commission to understand the public defense challenges facing other

jurisdictions, how those challenges are being met, and to measure our work in Oregon in light of those developments.

4. Appellate Division

The Appellate Division (AD) is comprised of the Criminal Appellate Section (CAS) and the Juvenile Appellate Section (JAS). The division provides legal representation in the state appellate courts on direct appeal in criminal cases, parole appeals, juvenile dependency appeals, and appeals from the termination of parental rights. Peter Gartlan was the Chief Defender and manager of the Appellate Division until his retirement on March 31, 2015. Ernest Lannet assumed the role of Chief Defender of the Criminal Appellate Section upon Mr. Gartlan's departure. Shannon Storey became the Chief Defender of the Juvenile Appellate Section.

Appellate Division managers meet regularly with the Chief Judge of the Court of Appeals and the Solicitor General of the Department of Justice to advance and promote practices that improve the appellate process without prejudicing the rights of clients. In addition, representatives from AD, the Attorney General's office, and appellate court operations meet quarterly to address operational issues that affect system efficiencies.

The division provides ongoing support to the trial level juvenile and criminal defense bar. AD lawyers sit on the executive committees of the Oregon State Bar's criminal law, juvenile law, constitutional law, and appellate law sections, as well as the executive and educational committees for the Oregon Criminal Defense Lawyers Association (OCDLA). AD lawyers regularly present at continuing legal education (CLE) seminars sponsored, for example, by the Oregon State Bar and the Oregon Criminal Defense Lawyers Association. The division's attorneys field email and telephone inquiries from the juvenile and criminal defense trial bar on a daily basis and provide briefing and memoranda to trial practitioners.

The Appellate Division produced its annual "Holidaze" half-day CLE program, which included a review of the new mandatory elder abuse reporting requirement for attorneys, an update on the 2015 legislative session, and practical and ethical considerations regarding dealing with media inquiries. The office also held several "PD Coffee, Pastry, and Chit-Chat" sessions featuring judges from the Court of Appeals and Supreme Court.

A. Criminal Appellate Section

The Criminal Appellate Section (with 37 attorneys) is significantly larger than JAS (5 attorneys). CAS represents individuals on direct appeal in misdemeanor and felony criminal cases (including capital cases), parole appeals, denial of applications for DNA testing, and victim's rights challenges, and acts as a resource for mandamus actions. All CAS attorneys work in one of six teams, led by a senior attorney. The teams meet weekly to review pending cases, discuss briefs, and prepare for oral argument.

Three Chief Deputy Defenders support the Chief Defender in the management of the section. Each Chief Deputy primary responsibilities fall into one of three areas: outreach, operations, and office development. The four managing attorneys meet at least weekly to address the section's needs and determine courses of action. They train, supervise, and regularly evaluate the 34 non-management attorneys, set caseload expectations, allocate and redistribute manageable individual caseloads, and maintain documentation of workflow.

Filing Dates. The Criminal Appellate Section's Key Performance Measure (KPM) is the median age to file an opening brief past record settlement. In February 2014, at AD's request, the legislature reduced the KPM from 210 days to 180 days.

The median filing date during the fiscal year (FY) ending in June 2014 was 227 days. The Criminal Appellate Section had reduced the median filing date during FY 2015 to 223 days. The median filing date for the first half of FY 2016 is 210 days. Two entry-level attorneys joined the section in 2015, replacing two of the section's most experienced attorneys. An additional 11 CAS attorneys have less than five years of experience in the section. CAS expects that the median filing date will continue to decrease as those newer attorneys gain experience.

Case Referrals. During 2015, CAS processed 1,482 incoming criminal case referrals (versus 1,574 in 2014) and filed 1,080 notices of appeal (versus 1,058 in 2014).

In 2015, the section filed 662 merit briefs in the Court of Appeals. By comparison, the section filed 779 merit briefs in 2014, 807 merit briefs in 2013, 720 merit briefs in 2012, and 654 merit briefs in 2011.

Supreme Court Practice. CAS has an active practice in the Oregon Supreme Court, with a record number of accepted cases in 2015. 16 CAS attorneys filed briefs in 23 cases in the Oregon Supreme Court (21 cases in which CAS represented a party and 2 cases in which AD appeared as amicus at the Court's request). During the same period, the Court issued 15 opinions in cases litigated by 11 different CAS attorneys (12 cases in which CAS represented a party and 3 cases in which AD appeared as amicus at the Court's request).

The Court's requests for AD to appear as amicus signal its recognition of AD's institutional role in the appellate system and the Court's confidence in AD's practice.

Practices and Procedures Manual. CAS management revised its Manual of Practice and Procedure and released it to the Criminal Section in November 2015. The 155-page manual is a desktop resource for CAS employees and management. It describes the office structure, provides the section's policies and procedures for routine issues confronting CAS attorneys, and identifies attorney performance expectations.

Outreach. CAS continued its current practice of contacting the trial attorney when a new case is assigned, a brief is filed, and a written opinion is released.

CAS attorneys have regular contact with the criminal defense bar and the public. A designated “officer of the day” is available to field inquiries from the trial bar and the public every business day; attorneys participate on OCDLA’s “pond” listserv exchanges; several AD attorneys telecommute several days a month at Public Defender firms in Portland and Eugene and provide occasional noon-time “brown bag” CLE presentations at the firms; and CAS considers whether the issuance of a media release is warranted when the Oregon Supreme Court announces its opinions.

Criminal Appellate Section attorneys present regularly at the annual Oregon State Bar (OSB) Criminal Law Section CLE, the OSB’s Appellate Section CLE, the OCDLA annual conference, and at various OCDLA-sponsored CLE programs. CAS attorneys regularly submit an appellate perspective column for the OCDLA bimonthly journal, “The Oregon Defense Attorney.”

In June, the section sent Chief Deputy Marc Brown to the 2015 National Forensic College at the Cardozo School of Law at Yeshiva University in New York City, a weeklong seminar cosponsored by the law school and the National Association of Criminal Defense Lawyers (NACDL).

Legislative Activity. Senior Deputy Shawn Wiley served as a resource to OCDLA’s substantive lobbyist and stayed current with the Department of Justice’s legislative agenda through meetings with DOJ’s legislative director Aaron Knott.

B. Juvenile Appellate Section

The Juvenile Appellate Section consists of five attorneys and two support staff. JAS represents parents on direct appeal in juvenile dependency and termination of parental rights cases and serves as a resource for trial attorneys representing parents. Attorneys in this section work in a highly collaborative team environment led by the JAS Chief Defender. The team meets weekly to review pending cases, discuss briefs, and prepare for oral argument.

The JAS Chief Defender manages all areas of the JAS including outreach, operations, and office development. The Chief Defender trains, supervises, and regularly evaluates the JAS attorneys, sets caseload expectations, allocates and redistribute manageable individual caseloads, and maintain documentation of workflow.

Case Referrals and Briefing. During 2015, the JAS processed 376 referred cases (versus 312 in 2014), filed 300 notices of appeal (versus 258 in 2014), and filed 97 opening briefs (versus 102 in 2014). Due to the sharp increase in juvenile case referrals over the last five years, an additional attorney position will be assigned to the Juvenile Appellate Section in 2016.

Juvenile dependency cases are on an expedited appellate timeline. The Oregon Rules of Appellate Procedure allow a maximum 42-day limit per party for filing the appellate briefs.

The expedited schedule produces a frenetic pace for the unit, particularly in those cases where the exhibits are not timely made available.

Supreme Court Practice. In 2015, the JAS filed one brief in the Oregon Supreme Court.

Outreach and Legislative Activity. The juvenile section attorneys regularly serve as a resource to the trial bar, providing daily consultation and support. Because most dependency cases are ongoing at the trial and appellate levels, the JAS often consults with trial attorneys and, on occasion, drafts motions and memoranda for trial attorneys. The unit has worked successfully with trial counsel in several cases to obtain favorable outcomes in the trial courts that obviate the need for appeal.

JAS attorneys are recognized leaders in the juvenile dependency community. They presented at various CLE presentations in 2015, including the Oregon State Bar Juvenile Law CLE, the OCDLA annual juvenile conference, and the annual OCDLA Juvenile Law Training Academy.

In 2015 JAS Chief Defender, Shannon Storey, served on the Oregon Law Commission's Juvenile Records Task Force, the Executive Committee the Oregon State Bar's Juvenile Law Section, the Editorial Board of the Oregon State Bar's Juvenile Law Book, and the planning committee for the Juvenile Law Training Academy. JAS Deputy Defender, Sarah Peterson, served as the Chair and Conference Coordinator of OCDLA's Juvenile Law Section. Finally, in 2015, Governor Kate Brown appointed JAS Deputy Defender, Valerie Colas, to serve on the "Task Force on Legal Representation in Childhood Dependency."

Appellate Panel. By February 2014, OPDS established a panel of independent juvenile appellate practitioners to represent parents in overflow and conflict cases that did not remain in the JAS and to supplement Youth Rights and Justice's (YRJ's) representation of children. Like the criminal panel, the juvenile panel members are pre-approved to serve on the panel and are compensated pursuant to a prescriptive administrative model that reflects case type and transcript length. As an important quality control measure, every two years the juvenile panel members must obtain re-approval to serve on the juvenile appellate panel. The juvenile panel's first reapplication process concluded on December 31, 2015, with all of the original panel members having applied for re-approval.

5. Executive Director

The Executive Director's responsibilities are set forth in ORS 151.219. In addition to completing the tasks outlined there, the Executive Director coordinated meetings of the Public Defense Services Commission, participated in several work groups and conference planning committees, convened or participated in regular meetings at both state and local levels, and stayed in regular communication with Oregon Criminal Defense Lawyers Association, Oregon Youth Authority, Department of Justice, Criminal Justice Commission, CASA, Governor's office, courts and legislative leadership and members who had an interest or question about public defense services.

The Executive Director's committee work focused primarily on system improvements. She was part of two Oregon Law Commission projects - the Collateral Consequences Work Group, which drafted a legislative concept that did not pass during the 2015 session, and the Juvenile Records Work Group, which continues to improve the language around access to juvenile court records in the new eCourt environment. That committee will have further recommendations ready for the short 2016 legislative session. The Executive Director also serves as an external member of the Oregon Judicial Department's Audit Committee, and is a member of the Oregon State Bar's Bar Press Broadcasters Council, the National Legal Aid and Defender's Systems Development and Reform Committee, and the Multnomah County Courthouse User Group planning committee. She also participated in regular meetings of the Governor's public safety team, All Agency Directors meetings, Juvenile Court Improvement Program meetings, and regular meetings with the Chief Justice. Finally, she attended two Justice Reinvestment Summits, and the office continues to work with providers to encourage use of the state's prison-diversion programs.

The Executive Director convened regular meetings within the Office of Public Defense Services, as well as with contract providers, in order to keep Oregon's public defense system running smoothly. The OPDS Executive Team met almost weekly, OPDS All Staff meetings were held every-other month, and the Public Defense Advisory Group met twice during the year to provide their perspectives on the provision of public defense services across the state and to help plan upcoming peer reviews. The Executive Director also participated in planning for the Juvenile Law Training Academy and the OCDLA Public Defense Management Conference.

6. Staff

In addition to ensuring excellent services to all of our clients and constituents, OPDS staff members continue to play an active role in supporting Oregon communities. Gracious and committed employee volunteers guide the agency's charitable fund drive, food drive, and toy drive. As noted in last year's report, these activities bring staff together in an effort to support Oregon's more vulnerable populations outside the legal context.

Challenges for 2016

During the Commission's October meeting, providers from around the state shared their thoughts on challenges they expect to encounter over the next four years. The list included

- the need to reduce caseloads, as the amount of work necessary to resolve each case and meet professional standards of practice increases;
- additional training and oversight, especially for newer public defense lawyers;
- more staff support to manage large volumes of electronic discovery and sophisticated software systems necessary for efficient management of a law practice;
- adoption of new technologies to better manage cases, and assistance with implementation, efficient use, and on-going technology training;

- the need for increased OPDS visits to individual counties in order to increase understanding of contractor challenges, and assist contractors with system challenges in their communities;
- improved communication and transparency during the contracting process and an improved funding structure that accounts for increasing provider costs;
- improved community support through education and outreach; and
- funding to address recruitment, retention, and succession planning.

In addition to developing strategies to address these provider challenges, the agency must continue to develop specific performance indicators to help the agency quickly identify potential problem areas. It must also continue to develop evaluation and support tools for the Parent Child Representation Program, which continues to offer many lessons regarding strategies to improve public defense representation.

As always, adequate funding remains a challenge at both the trial and appellate levels. The agency will continue to work with the Commission, the Legislature, and interested stakeholders to ensure continued support for improvements in public defense funding and compensation.

Conclusion

In addition to managing daily operations in the new year, the Public Defense Services Commission and OPDS managers will be working to identify efficiencies and opportunities as it works toward a new strategic plan for the agency. While much has been accomplished, the agency recognizes that it must continually assess its strengths and weaknesses in order to preserve excellence and enhance its services each year.

Attachment 5

**The Committee for Public Counsel Services
Answering Gideon's Call Project (2012-DB-BX-0010)**

**Final Report:
National Recommendations**

December 2014



**Ziyad Hopkins, Esq., Committee for Public Counsel Services
Melissa Labriola, Ph.D, Center for Court Innovation**

Acknowledgements

The Committee for Public Counsel Services (CPCS) and Center for Court Innovation (CCI) wish to recognize the many people who participated in this strategic planning and capacity building project generously funded by Bureau of Justice Assistance of the U.S. Department of Justice through *Answering Gideon's Call: Improving Indigent Defense Delivery Systems Program* (2012-DB-BX-0010). First, we express gratitude to the scores of trial attorneys, investigators, social service advocates, social workers, and support staff across CPCS' trial court offices throughout the Commonwealth of Massachusetts, all of whom contributed time and thought into reflecting on the importance of their work in representing poor people facing deprivations of liberty. Second, the Senior Management team at CPCS was extremely supportive of this work and was essential in facilitating the process. The Senior Management team members are Anthony Benedetti, Chief Counsel; Lisa Hewitt, General Counsel; Susan Burstein, Chief Financial Officer; Daniel Saroff, Chief Information Officer; Nancy Bennett, Private Counsel Division (adult criminal); Joshua Dohan, Youth Advocacy Division; Mike Dsida, Child and Family Law Division; Randy Gioia, Public Defender Division; Mark Larsen, Mental Health Litigation Division; and Donna Leete, Human Resources. In addition, the National Legal Aid and Defender Association provided encouragement and aid, including sharing the efforts and experiences, formally and informally, of other jurisdictions through the Research Development and Analysis subcommittee and its members. Finally, we would like to thank our additional partners at the Center for Court Innovation for their invaluable assistance throughout this project, including Norman Reiss, Christine Sisario, Valerie Raine, and Michael Rempel. This project would not have been possible without the support of the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect the positions or policies of the U.S. Department of Justice. For correspondence, please contact Ziyad Hopkins at zhopkins@publiccounsel.net.

Table of Contents

Acknowledgements.....	i
I. Introduction	1
II. Project Setting: The Committee for Public Counsel Services.....	2
III. Identifying Performance Indicators through Best Practices	3
IV. Data Collection Systems	8
V. Evaluation Recommendations.....	12
VI. Workload Assessment	17
VII. Conclusion.....	21

I. Introduction

In accordance with current trends promoting the greater use of evidence-based practice in the criminal justice system, the Bureau of Justice Assistance of the U.S. Department of Justice recently funded several public defender agencies to take concrete steps towards improving the quality of indigent defense services. Among those funded, the Committee for Public Counsel Services (CPCS), which serves as Massachusetts' statewide public defender agency, partnered with the Center for Court Innovation (CCI) to complete a statewide strategic planning and capacity building project. The project was designed to combine the interdisciplinary expertise of public defenders regarding known best practices in indigent defense representation; researchers regarding the translation of best practice knowledge into quantifiable performance indicators; and technology experts regarding the needs of public defender management information systems.

Specifically, the current project sought to build capacity within four distinct indigent defense practice areas: (1) adult criminal defense; (2) juvenile delinquency proceedings; (3) child care and protection; and (4) mental health. For each practice area, the project pursued six goals:

1. Identify and articulate best practices;
2. Identify key performance indicators that correspond to the best practices;
3. Assess the capacity of existing CPCS case tracking, case management, and other data collection systems to collect and report on the identified performance indicators;
4. Craft a proposal for improving or replacing existing case tracking, case management and other data collection systems, as needed;
5. Propose an evaluation plan for CPCS indigent defense delivery systems that takes into account the above findings, including both substantive need and practical feasibility; and
6. Develop a case weighting system for the purpose of more accurately evaluating the capacity of an attorney to provide high-quality representation in each practice area (and also to provide high-quality representation for different case types within each area).

The project includes six specific products reflecting these six goals: two final documents respectively presenting best practices and performance measures; and four reports respectively addressing CPCS' current data collection systems; recommendations for future systems; evaluation plans; and methods and findings from an original case weighting study.¹ The current report consolidates the major methods, lessons, and recommendations from the six more in-depth products. The goal is to aid other indigent defense agencies in implementing their own self-assessment process. Moreover, we do not assume that other agencies will reach identical conclusions as CPCS. Rather, we assume that the current undertaking might provide a valuable model for other agencies interested in similar self-reflection.

¹ All products of this project, *Answering Gideon's Call Project* (2012-DB-BX-0010), are on file with the Committee for Public Counsel Services. Selected documents are also available at <http://www.publiccounsel.net/cfo/bja-gideon/>.

II. Project Setting: The Committee for Public Counsel Services

In Massachusetts, the Committee for Public Counsel Services (CPCS) coordinates the delivery of both criminal and certain noncriminal legal representation to indigent persons throughout the state. Representation is provided by salaried public counsel (staff attorneys) and certified private attorney bar advocates (private counsel). In total, CPCS oversees approximately 450 staff attorneys and over three thousand private counsel, handling a total of approximately 250,000-300,000 cases per year in ten distinct areas of law: trial and appellate work for individuals facing criminal charges originating in district, superior and juvenile courts (including youthful offender cases and grant of conditional liberty proceedings); child welfare or termination of parental rights cases (care and protection); status offenses cases (CHiNS, now CRA); mental health civil commitments; mental health guardianship proceedings; sexually dangerous person commitments; sex offender registry proceedings; as well as an immigration impact unit, and a federally funded innocence program.

The focus of the current project was on four umbrella practice areas in which staff attorneys represent clients: (1) adult criminal, (2) juvenile delinquency (including youthful offender); (3) child care and protection (including status offenses); and (4) mental health (including both civil commitment and guardianship cases). Over the thirty year agency history, CPCS has well established best practice standards for each of these four practice areas. However, at the outset of the current project, the agency found that it had a compelling need to finalize best practice and performance indicator lists and associated documentation; as well to implement data collection systems to better inform and guide self-assessment efforts and statewide policy advocacy. Moreover, agency-wide data collection is currently limited, fragmented and not conducive to the meaningful evaluation and self-assessment necessary to ensure quality representation.

III. Identifying Performance Indicators through Best Practices

Recommendation #1: The iterative process of identifying measurable and quantifiable performance indicators about quality indigent representation is an opportunity to reflect on, and coalesce around, values, ideals and standards that drive a practice. Using the methodology and framework in Massachusetts, more jurisdictions should engage in the process of selecting best practice indicators and share their work in this area to work towards national indicators to ensure quality representation.

Like many other indigent representation organizations, CPCS has developed and established best practice standards for conducting indigent defense representation. The challenge in identifying performance indicators that reflect these standards is to ensure that while there is a framework for structured decision-making, each individual attorney is empowered and entrusted to exercise professional judgment. Even within each legal discipline, the variation in clients, facts and circumstances impact the appropriate course of action. Nonetheless, our guiding premise was that individual variations in what a client needs should not preclude establishing general standards and performance indicators that, while not applicable in each and every case, provide an apt description in most cases of what public defenders are seeking to achieve in their work.

Accordingly, the team engaged in a multi-pronged approach to identify meaningful performance indicators in general as well as within each of the four practice areas of interest.

1. The team reviewed existing standards and best practices with in-house experts at CPCS who work within the four major practice areas: (1) adult criminal, (2) juvenile delinquency, (3) child care and protection, and (4) mental health. See, Committee for Public Counsel Services, Assigned Counsel Manual (www.publiccounsel.net).
2. The project team met with leading trial attorneys from each of the practice areas to discuss their work, identifying their approach to their clients and cases, including the motivations and reasons behind their activities, as well as the logistical factors that present challenges to meeting best practices.
3. The team compared best practice standards from other jurisdictions and national organizations to CPCS standards to ensure that the CPCS standards were comprehensive and reflected the insight—and indeed even wording—of other jurisdictions, including the National Legal Aid and Defender Association’s Compendium of Standards for Indigent Defense Systems.
4. The team incorporated insight from the vast array of training materials (including checklists to identify and address certain issues, client and case intake interview forms, sample motions, mock examinations, and other practice aides) for each of the practice areas.
5. The team looked to the various internal protocols used by supervisors for staff and private attorney qualitative evaluations.

The main challenge that emerged from the discussions in all practice areas was the difficulty in quantifying work that is both qualitative in nature and inherently contextual. Many of the markers of quality representation cannot be quantified—the non-judgmental client interview; the precise cross-examination; the development of positive relationships with court personnel. The complex social and legal circumstances of CPCS clients, including different court practices from county to county, coupled with a client-centered and directed approach to case strategy impact staff activity and case results. For example, in the care and protection context, a parent client may choose not to argue for reunification—often assumed to be the desired legal outcome-- if the client believes the children should actually be raised by a member of the extended family. Similarly, a criminal defendant may choose a trial leading to a sentence much longer than was offered in an attractive plea offer or accept a plea offer in a strong defense case. In a civil commitment case, the effects of a long past verdict of “not guilty by reason of insanity” linger in a court’s fact finding.

Performance Indicators

When turning to articulate a final list of best practices of indigent representation, the project team identified eight common principles that cross each practice area, establishing a common foundation to link all of the case types, both within and across the practice areas. The team used this rubric to draft, in consultation with each practice area, performance indicators. It also identified a number of data points about caseload, staff activity and outcomes to provide insight into the extent to which CPCS can understand and provide quality representation. In anticipation of assessment and evaluation needs, the final version of the performance indicators included two additional categories of data elements about clients and their cases at *intake* and *post-representation* for a total of ten categories of data to assess and evaluate quality indigent representation.²

The principles of best practice were created to encompass a wide variety of case types. Some—perhaps many—of the individual indicators may be relevant outside of Massachusetts. However, what is thoroughly generalizable beyond Massachusetts is the process undertaken: a systemic process of reflection to develop indicators helps to coalesce a community of indigent defense practice. The tables below summarize the eight best practices and some of the suggested data points and indicators agencies could use to measure those practices.

Nurture the attorney client relationship	
Explanation	Each attorney must strive to establish and maintain a collaborative and trusting relationship with the client so that s/he can meaningfully participate in developing, and continually re-assessing, the most persuasive case strategy, including a theory of the case and a theory of disposition and/or post-case plan.

² The full document, *Best Practices, Objectives and Performance Indicators* (November 2014), is available at <http://www.publiccounsel.net/cfo/bja-gideon/>. *The Committee for Public Counsel Services Assigned Counsel Manual* is available at <http://www.publiccounsel.net/assigned-counsel-manual/>.

Suggested Data and Indicators	<ul style="list-style-type: none"> • Time from court appointment of counsel³ to first (face to face) private client contact • Ratio of out of court, private in person client contact to in court dates for client • Ratio of any client contact to in court dates for client • Time between out of court, private in person client contacts • Time between date of disposition in court to most recent in person private client contact before disposition
--------------------------------------	---

Protect and promote the client(s) during the pendency of the case	
Explanation	Each attorney, in consultation with the client, must minimize the harm of a pending case to the client by protecting the client's immediate liberty interests as well as promoting the client's interests in collateral matters that impact the course or outcome of the case strategy.
Suggested Data and Indicators	<ul style="list-style-type: none"> • Results from initial decisions that impact client's liberty⁴ position • Time (and ratio to length of case) in altered liberty status during pendency of case • Clients with defense team that includes social service advocate⁵ • Number of collateral contacts (made on behalf of client)

Evaluate the government's case	
Explanation	Each attorney must understand and analyze the government's case to develop the most persuasive theory of the case, ensuring that any affirmative requests for additional information, formal or informal, align with the case strategy.
Suggested Data and Indicators	<ul style="list-style-type: none"> • Time to receipt of discovery items and/or to completion of government discovery obligations⁶ • Number of court events involving discovery issues

³ In Massachusetts, counsel is appointed and present at the client's first appearance in court, either as a result of a summons, filing of petition or arrest. This measure assumes that the appointment of specific attorney (or office) is made at least by the commencement of legal proceedings in the court of jurisdiction. Physical presence of counsel at, and participation in, the first appearance is a best practice for indigent representation.

⁴ The immediate liberty interest at stake for cases involving criminal charges is pre-trial detention while for cases involving allegations of child abuse or neglect, it is the child placement decision. In civil commitment cases, the right to choose one's own medical treatment is at stake.

⁵ CPCS attorneys work with staff social service advocates and/or social workers. They are considered part of the defense team. Other jurisdictions may use different job titles for a person whose function is to identify and facilitate access to services designed to address a client's need and/or capitalize on the client's strength with the intent to impact the legal outcome of the client's case(s).

⁶ In Massachusetts, for care and protection cases, discovery is ongoing, although there are certain items and regular reports which should be provided to counsel in a timely fashion. Counsel in these cases may have to advocate for disclosure.

	<ul style="list-style-type: none"> • Types of discovery [categories of witnesses (police, civilian); forensics; seized evidence; statements; identification procedures; records]
--	---

Independently investigate the government’s case
--

Explanation	Each attorney must independently seek evidence that challenges the government’s case to develop the most persuasive theory of the case.
Suggested Data and Indicators	<ul style="list-style-type: none"> • Number cases with investigator and days to engagement of investigator (for criminal cases) • Number of witnesses interviewed by defense team • Number of records collected (third party, relating to allegations) • Number of cases with discovery providing to government/opposing party

Initiate challenges to the government’s case

Explanation	Each attorney must identify procedural, jurisdictional, statutory, common law and constitutional challenges to limit the strength of the government's case and pursue them to the extent that they align with the most persuasive case strategy.
Suggested Data and Indicators	<ul style="list-style-type: none"> • Number of Motions to Dismiss with court ruling • Number of Motions to Suppress with court ruling (for criminal cases)

Develop a theory of disposition
--

Explanation	Each attorney must develop the most persuasive dispositional, or post-case, plan by investigating the client's background and by counseling and assisting the client to work towards reasonable dispositional, and/or post-case, goals.
Suggested Data and Indicators	<ul style="list-style-type: none"> • Number of clients with defense team social service advocate • Number of records collected (belonging to client, relating to dispositional theory) • Number of dispositional reports/sentencing memorandum provided to court • Number of cases disposed by plea before first trial date

Fully prepare to persuade the finders of fact/law to adopt the theory of the case
--

Explanation	Each attorney must strive to persuade the finder of fact/law to accept the theory of the case, and, if applicable, a theory of disposition.
--------------------	---

Suggested Data and Indicators	<ul style="list-style-type: none"> • Number of cases dismissed without trial/admission on trial date • Number of cases disposed by plea/stipulation on trial date • Number of trials/hearing on the merits • After trial/hearing on the merits, number of acquittals (by charge and case for criminal cases); no violation (for probation cases); dismissals (for care and protection cases); denials (for civil commitment cases) • Sentence lengths (in absolute terms and as proportion of maximum sentence); Child custody orders (for care and protection cases)
--------------------------------------	--

Affirm the continuing duty of loyalty	
Explanation	Each attorney must ensure that the client understands the ramifications of the legal outcome of the case and offer guidance, support and assistance for the client's post-case goals.
Suggested Data and Indicators	<ul style="list-style-type: none"> • Number of cases with post-disposition client contact • Number of clients with post-dispositional court filings

IV. Data Collection Systems

Recommendation #2: A better supported defense-oriented data collection system, with access to data held by other stakeholders in the justice system, will enhance the ability to collect and analyze more relevant data efficiently.

Recommendation #3: Increase funding to develop and implement affordable and sustainable web-based case management systems to improve and maintain data quality about indigent representation.

The ability to collect and analyze data efficiently for self-assessment and evaluation will improve with a unified case management system that contains a user-friendly interface for data entry and that can also automatically import data held by other stakeholders in the justice system. CPCS, like many large and fast growing organizations, uses a variety of data collections systems, including various software applications and practices resulting in a patchwork of procedures and tools. Data is collected and managed on a purpose-specific basis. Even within CPCS, the same data is often collected for different purposes and kept in redundant locations. The data sprawl is compounded, additionally, by the fact that unlike some jurisdictions, CPCS has limited direct access to data from other stakeholders in the justice system (trial courts, jails, prisons, police departments, and prosecutors), resulting in additional duplicate data entry if CPCS wishes to track case processing basics like charges, dispositions, sentences, release status, and key dates throughout the processing of each case. The *Gideon* Project technology team determined that the ideal case management system, applicable to other indigent defense organizations, should be based on the following ten principles listed in the table below.

Principle	Explanation
Interoperability	Open data standards provide consistent meaning to data shared among different information systems, programs, and agencies throughout the court system. The data in a system must be structured and defined to ensure the capacity to exchange information with databases outside CPCS in a secure and reliable manner (e.g., courts, prisons, jails, prosecutors’ offices), as well with CPCS private counsel billing system.
Modularity	The system should be built using three modular components: the database; a user interface; and a clear set of technical rules (or “APIs”) to exchange data between the database and the user interface (as well as any relevant external systems). The technology choice(s) for the components can then be made independently, providing flexibility in the continued maintenance and development of the system.
Centralization	The system must have a well-documented, with on-going training and improvement, workflow for all of the roles and responsibilities of the

	various staff members so that it can be used organization-wide and across all practice areas, limiting ‘double entry’/duplication of data, both for user ease and data quality.
Security	Access to the system must be tightly controlled and restricted to authenticated users, which will require a system administration component to create, edit, and manage account IDs and passwords using industry standard protocol. Security should also include an ability to limit and audit user access to various parts of the system.
User permissions	The system should allow for different levels of direct data access based on user role and permissions. Given the complexity of CPCS’ internal structure and conflict/ethical concerns, designated, non-technical staff should be able to manage user settings and permissions to allow for rule-based and <i>ad hoc</i> partitioning and sharing of data.
Remote Access	The interface must allow for effective remote access for field staff (managers, attorneys, investigators, social service advocates/social workers), including specific design for mobile interface on smartphones and tablets.
Document Management	It should contain full document storage, search, and production capacity for multiple file types (including audio and video); template management; document creation; workflow processes (including e-filing and capacity to securely share documents with users and non-users); and metadata about each document to search for documents within the system, as well as to report on certain indicators.
Practice aids	The system should include built in, or links to, practice area and litigation resources (e.g., training, case law, statutes, maps, vouchers, word processing, email, calendar, etc.).
Reports	Staff will be encouraged to use the system if it can display robust, dashboard-driven analysis and reports on performance indicators and workload (including case weighting).
Sustainability	The particular platforms and technology choices for the new system must be made with the assumption that the system will need to be maintained and developed by a revolving staff with a varied skill set. Any system must contain clear documentation for incoming IT staff. Technology choices should include consideration of future workforce availability as well. On-going training and documentation for users is essential to ensure data quality.

There are two essential avenues for improving public defender information systems, each with important advantages and shortcomings: (1) adapting an existing off-the-shelf system (which typically involves purchasing it from a private, often for profit, consulting agency); or (2) creating an entirely new system either in-house or through the use of consultants (which can increase customization but may take far more time and labor costs to produce).

Prospects for Adapting Off-the-Shelf Database Solutions

While there are private vendors who offer solutions to case management it is difficult for many organizations to receive committed funding to purchase these products, which include a necessary investment, also, of time and staff resources to customize the software. Local staff must be recruited to identify and describe the most efficient workflow practices in the constraints of each jurisdiction. In addition, each jurisdiction's leadership must work with other local justice partners for inter-agency planning and project management around data sharing agreements and protocols. While these systems can be cost-prohibitive, they are generally relatively quick to implementation assuming the capacity of indigent organizations to meaningfully participate in the implementation process.

Prospects for Developing an Entirely New Database Solution

While taking more time, the alternative to a customizable off the shelf system is to develop internal applications for data collection. In the course of the team's assessment of CPCS' data collection systems, other similar organizations shared their experiences in developing or adopting effective case management systems. For those with internally developed systems, various public defender organizations have offered to share their own systems, but often they are built, or integrate, proprietary software. As an alternative to a customized system that includes proprietary components, a true open source indigent defense case management community could work towards offering low cost solutions to organizations across the country, including the standardization of data across jurisdictions. Open source programming offers a number of advantages, including tapping otherwise unavailable resources. The code of open source software is made publicly available for any indigent defense organization to use.

An advantage of developing a data management system on the open source model (i.e., through a new system that does *not* depend on or integrate any proprietary or for-profit components) is that, in the long run, it is likely to be the most economical. With a commitment to open source programming, the "tech community" can be engaged—namely, the open source community and civic programmers in particular. There already exists a vibrant community of individuals lobbying to open up the government in the sense of open standards and open source. To date this has been embraced most vigorously by the executive branch of the federal government. *See*, e.g., <http://www.whitehouse.gov/open/about>. Municipalities have followed motion on the federal level, and partnerships have been forged between government and civic-minded programmers. *See*, e.g., <http://codeforamerica.org/about/>. The justice system, however, has lagged behind. However, open law movements like "Law.Gov" are working to bring about better access to legal materials and the justice system through the use of technology. *See*, e.g., <https://law.resource.org/index.law.gov.html>. The *Gideon* Project has found that, students and faculty from CPCS area universities—Northeastern University School of Law's [NuLawLab](#), Suffolk University Law School's [Institute on Law Practice Technology & Innovation](#), and Harvard University's [Berkman Center for Internet & Society](#), Wentworth Institute of Technology, Massachusetts Institute of Technology—are more apt to join an open source based approach to improving an essential government service. An open source approach structurally and philosophically maximizes resources by appealing not only to the limited mission of the indigent representation, but also to those motivated by open source ideals. An open source case

management system based on open standards can serve multiple missions, however its success depends upon making these clear and leveraging them to recruit and grow a community of developers (technology specialists and attorneys) committed to its realization.

As this discussion makes clear, an original customized database solution that is expressly designed to meet the needs of CPCS specifically or of comparable public defender organizations generally has great long-term advantages. Nonetheless, production of such a solution is a potentially long-term undertaking. In short, there remain real trade-offs between developing a new open source solution and adapting an extant off-the-shelf product.

V. Evaluation Recommendations

Recommendation #5: A small group of performance monitoring measures will focus data collection efforts, allow for meaningful self-assessment and prepare for future impact evaluation of indigent representation.

Recommendation #6: Each indigent representation organization should articulate a select group of action and outcome measures that can be internally reviewed and analyzed with the goal of improving the quality of indigent representation.

The ability to perform program evaluation has been lacking in the operation of indigent defense systems across the country. In the past, indigent defense has focused on measuring the resources available to attorneys to perform their work, such as access to investigators or attorney workloads. While these efforts have been valuable, they have fallen short, because they do not measure indigent defense processes and outcomes. Moreover, it is difficult, if not impossible, to identify best practices or quantify the benefits of indigent defense to the court system or the community without identifying and quantifying system outcomes. We may find out how many investigators indigent defense attorneys use, how often these attorneys make various types of motions or applications, and how often attorneys meet with clients at various stages of the process, but we also want to test how these processes relate to positive legal case outcomes and/or positive personal outcomes for the clients. In short, *we want both to identify the indigent defense practices that we think are important, based on prior knowledge about what makes for high quality representation—and then we want to test to what degree different practices truly prove to be important empirically.*

Action Research

Performance monitoring includes “*action research*,” the routine tracking of the most essential performance indicators for a program or agency. Such monitoring is designed to provide immediate and useful feedback about everyday program operations and performance. Even with limited resources, agencies can use data productively to monitor their everyday operations, identify areas of success, and bring to light problem areas or ways to improve. A recommended format for presenting information is a regular statistical report that simply includes core quantitative data on performance measures of interest (i.e., it is not necessary for any staff member to write an accompanying narrative). Through regular reporting, trends over time can also be identified. Management staff can then discuss the implications of the data through in-person management/performance review meetings or other forms of consultation and deliberation.

Researchers from CCI worked closely with CPCS attorneys in identifying the key indicators (based on best practices) that they would like to prioritize for data collection and evaluation

purposes. While the full best practices and associated performance indicators document is extensive and inclusive, the task for the performance monitoring component was to narrow down that larger list of indicators to only indicators with the greatest priority. Each practice area extracted key indicators in the areas of caseload, client profile, case processing, in-court action, and out-of-court action.⁷

Action Research	
Intake Data	<ul style="list-style-type: none"> • Volume by type of case (#) • Disposed at arraignment/initial hearing (%) Volume by client (#) • Client demographics (% by race/ethnicity, age, sex) • Interpreter needed (%)
Staff Activity (court and case specific related best practices)	<ul style="list-style-type: none"> • Distribution of number of days from first appearance to assignment of attorney (#) • Average days from assignment to first (private, in person) contact (#) • Same attorney from first <u>assignment</u> by CPCS through disposition (%) • Result of first appearance, (detained/placed outside home)(%) • Average days of pretrial detention/out of home placement (#) • Average age (in days) of pending cases (#) • Motions (including responses/oppositions) (# and % of cases) • Trials <ul style="list-style-type: none"> ○ Bench (# and % of cases) ○ Jury (for criminal/juvenile cases) (# and % of cases) • Open cases with investigator involved (staff or hired) <ul style="list-style-type: none"> ○ Witness(es) interviewed (%) ○ Visit crime scene (%) ○ Testifies in court (%)
Staff Activity (client related best practices)	<ul style="list-style-type: none"> • Client Contacts <ul style="list-style-type: none"> ○ Out of court, in-person client contacts by any CPCS staff member <ul style="list-style-type: none"> ▪ Office (#/%) ▪ Detention/placement location (#/%) ▪ Home (of client) (#/%) ▪ Other Face to face (#/%) ○ Out of court, NOT in-person contacts (email, phone, text, etc.) (#/%) • Clients for whom Social Service Advocate (SSA) engaged <ul style="list-style-type: none"> ○ Client contacts from SSA (#/%)

⁷ The full report, *Evaluation Proposal* (November 2014), is available at <http://www.publiccounsel.net/cfo/bja-gideon/>.

- | | |
|--|--|
| | <ul style="list-style-type: none">○ External to CPCS collateral contact from SSA (e.g., school, work, health care, family, etc.) (% of cases)○ Client contacts from SSA (#/%) and collateral contacts by attorney |
|--|--|

With proper data collection tools, analyses can be done in-house and most frequently would use purely descriptive methods—i.e., reporting the numbers or percentages of cases where the various events took place that are indicated in the performance measures sampled above or listed in the appendices. Choosing objectives and performance indicators that are easy to collect and important for the agency can provide immediate and useful feedback about everyday program operations and performance. Analyzing this data over a period of time can provide a snapshot of how and where practices might be changing. The analysis would reveal the current state of CPCS—or any indigent representation practice, including variation in best practices. We recommend a quarterly or bi-annual report for each practice area that presents this information that can be easily disseminated to attorneys in the agency for review, as well as for use to inform other justice stakeholders about the needs and opportunities for quality indigent representation.

Case Outcome Research

Case outcome research works in parallel to, and is another component of performance monitoring—except that it focuses solely on case outcomes—i.e., the desired results that flow from the work performed by the defense team. It should be emphasized that, if there are occurrences of system performance failure, it does not mean that the failure is the fault of the individual attorney. Individuals work within a system, and there are many factors that influence system outcomes that are beyond the control of the individual. Even more pertinent, system problems often require system-level solutions. The identification of these system problems, however, is a necessary first step. These can be both short- and long-term outcomes. In basic outcome monitoring, it can be useful to look at trends over time. We recommend that this type of data collection and evaluation be done jointly with the collection of action indicators to provide a full picture of best practices. Senior staff at CPCS narrowed down key case outcomes of interest.

The case outcome indicators are quantitative in nature. Similar to the process indicators, the first step is to ensure that proper data collection and tools are determined and finalized so that each practice and each attorney can easily and consistently input this information. Again, similar to performance measures, with proper data collection tools, data analysis can be done in-house and would be purely descriptive methods. We recommend these indicators be included in any quarterly or bi-annual report. It would be possible to also present this information by case type to see if different types of cases are receiving different outcomes based on various variables, such as court of origin, office, or executive branch agency. As procedures for data collection, analyses and dissemination are finalized; exact methods for how the data will be displayed and analyzed will be determined. These indicators can provide immediate and useful feedback about everyday program operations and performance, including the variation in best practices.

Outcome Research	
Case Specific	<ul style="list-style-type: none"> • Client not detained pre-trial/Placement decisions about children (%) • Charge(s)/petitions dismissed prior to trial(#/%) • Charges acquitted/dismissals/denials after trial (#/%) • Pleas/admissions to reduced charge(s)/stipulations/uncontested hearings (#/%) • Sentences (% each of custody, probation/community based supervision)/Child custody orders

Impact Research

Impact research measures the difference between what happened with the program or its activities and what would have happened without it. It answers the question, “How much (if any) of the change or positive outcomes observed in the target population occurred because of the program or particular (e.g., indigent defense representation) activities of interest?” Rigorous research designs and research expertise are needed for this level of evaluation. It is the most complex and intensive type of evaluation, incorporating methods such as random selection, control and comparison groups. Impact evaluation efforts follow from consistent and sustained data collection for the purposes of action and outcome research.

Although most of the impact items on this list are quantitative in nature, in Massachusetts, there was widespread agreement that a key goal of quality indigent representation is to provide a client with a voice. This idea encapsulates the theory of procedural justice. Procedural justice suggests that how litigants regard the justice system is tied more to the perceived fairness of the *process* than to the perceived fairness of the *outcome*. In other words, even litigants who “lose” their cases rate the system favorably if they feel that the outcome is arrived at fairly. The influence of procedural justice on litigant perceptions and future behavior has been analyzed in a variety of court contexts—drug courts, community courts, family courts, and small claims courts⁸. The findings from these studies have been consistent: Courts that exhibit procedural justice elements produce more satisfied and compliant litigants. This research raises several important questions: What is the role of defense attorneys in procedural justice? How can attorneys enhance procedural justice? Are there specific practices that attorneys can implement in order to improve perceptions of fairness?

Impact Research	
Public Defender Division and Youth Advocacy Division	<ul style="list-style-type: none"> • Client satisfaction with representation • Clients not under any criminal justice/juvenile supervision • Clients not incarcerated past minimum sentence/projected GCL date (suggests successful parole)

⁸ See: Thibault, J.W. and L. Walker. 1975. *Procedural Justice: A Psychological Perspective* Hillsdale, NJ: Lawrence Erlbaum; Tyler, T.R. 1990 *Why People Obey the Law*. Yale University Press New Haven: London; Tyler, T. R. 1997. “Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform”. *American Journal of Comparative Law*, 45: 871-904; Tyler, T.R. and Y.J. Huo. 2002. *Trust in the Law*. New York, NY: Russell Sage Foundation.

	<ul style="list-style-type: none"> • Clients without new arrests • Clients without new admissions/convictions • Clients engaged in pro-social activities post disposition/incarceration • Reduce erroneous legal outcomes • Reduce collateral costs • Safer communities
Children and Family Law Division	<ul style="list-style-type: none"> • Client satisfaction with representation • Clients not under juvenile/criminal justice supervision • Clients without subsequent care and protection petitions • Clients not involved in child welfare system (beyond expressed wishes) • Reduce erroneous legal outcomes • Reduce collateral costs • Safer communities
Mental Health Litigation Division	<ul style="list-style-type: none"> • Client satisfaction with representation • Clients without subsequent petitions (re-commit or new) • Clients not supervised by criminal justice system • Re-commitment petitions filed upon expiration of commitment order • New commitment petition (e.g., new petition after discharge) • Re-hospitalized (voluntary) after discharge • Reduce erroneous legal outcomes • Reduce collateral costs • Safer communities

For the most part, the quantitative dependent and independent variables needed for an evaluation of this kind will be collected as part of the action and case outcome reporting. With consistent and accurate data collection, experience reviewing and analyzing regular reports, indigent defense organizations will be able to work with researchers to develop additional research questions of interest and identify key variables and methodologies for analyses.

For example, in researching the role of defense counsel in promoting procedural justice, the indicators that are qualitative in nature, such as client satisfaction, will in turn lead to a different collection method. Collection methods may include one-on-one interviews with management and/or on the ground attorneys, investigation management and staff, legal support staff, operations personnel, and clients. We also recommend focus groups or roundtable discussions with various groups of interest. Qualitative methods are commonly used in evaluations in order to explore specific facets of programs and to give voice to participants' experiences. These methods provide in-depth information that can enhance the quality of programs or services.

VI. Workload Assessment

Recommendation #4: With the growing body of workload studies from around the country, technical and financial assistance should be provided to indigent defense representation organizations to engage in workload assessments relevant to local conditions.

The *Gideon* Project team conducted a workload assessment to develop a case weighting model for the purpose of more accurately evaluating the capacity of an attorney to provide high-quality representation. CPCS needed a foundation to understand the reasonable work capacity of its staff.⁹ The primary goals of the workload assessment were to:

- Develop a clear measure of attorney workload in all public defender offices throughout the four key practice areas (over five different office types);
- Provide a basis to understand the allocation of attorney resources; and
- Establish a transparent model to use in assessing the levels of attorney resources necessary to provide effective assistance of counsel to clients of all Massachusetts public defender offices and appointed private counsel.

Based on previous work done by the National Center for State Courts, the team used a multi-faceted, iterative, and highly participatory data collection strategy. The model was anchored in two components:

1. A time study based on private counsel billing data designed to assess the amount of time attorneys currently spend on cases of various types and on key tasks that apply to each type of case—in other words, a measure of current practice.
2. A systematic qualitative review process used to elicit expert opinion on how current practice can be adjusted to better enable attorneys to provide effective assistance of counsel to indigent clients across Massachusetts. This review process included a time sufficiency survey administered to staff attorneys and Delphi groups made up of current staff attorneys, including some who had practiced as private bar advocates.

The first project component (the time study) utilized hard empirical data to determine, empirically, the quantity of time public defenders are spending right now to represent each of 16 distinct types of cases on a per case basis. (The 16 case types are indicated in the table below.) However, public defenders at CPCS made clear to the research team that, in general, they believe that they at times are unable to afford cases the quantity of time that might truly merit in an ideal world, due to staffing and resources shortages. Therefore, in order to determine how much time attorneys *should* spend on each of the same 16 case types, the estimates obtained from empirical data were used as a starting point—but modified based on the results of a representative survey of CPCS attorneys and, ultimately, based on Delphi groups that brought together select attorneys

⁹ The full report, *Answering Gideon's Call Project: Attorney Workload Assessment* (October 2014), is available at <http://www.publiccounsel.net/cfo/bja-gideon/>

for a highly focused in-person discussion designed to yield consensus on revised time estimates. (Delphi groups are not the same as focus groups in that Delphi groups do not allow for an open-ended discussion; instead, they involve a highly focused and heavily moderated discussion, coupled with multiple rounds of secret ballot voting, designed to zero in on and yield concrete consensus conclusions by the assembled experts—in this case, CPCS public defenders.)

Importantly, in a traditional “time study,” attorneys would be asked to document their time in five-minute intervals over a period of time. Instead of this method, which proved practically unfeasible, we produced the preliminary case weights based purely on quantitative billing data from the private counsel with whom CPCS contracts to represent a large number of indigent defendants within each practice area. We essentially summed all annual case-related time entered by private attorneys and divided that by the number of annual closed cases.

The preliminary case weights generated during the modified time study provide a baseline time that CPCS private attorneys currently spend defending various types of cases. As noted above, researchers wanted to take this one step further and provide CPCS a range of case weight time to incorporate how much time attorneys *should* allocate for each case type. To assess whether current practice allows adequate time for quality performance, Delphi Groups were convened. The purpose of Delphi groups is to reach a consensus about case weights from an experienced team of attorneys during a structured discussion that included a review of the data from the preliminary case weight analysis. The case weights are expressed in terms of the average amount of time an attorney needs to complete representation for each of the case types. The following table illustrates the preliminary and quality adjusted case weights. (Quality adjusted case weights are, essentially, adjusted based on consensus decisions reached in the Delphi groups.)

Case Type	Preliminary Case Weight (hours)	Quality Adjusted Case Weight (hours)
PDD-District		
Bail Only	1.39	2.19
Probation- District	6.12	8.26
Misdemeanor	11.98	16.78
OUI	15.96	19.69
Concurrent Felonies 265	16.24	24.13
Concurrent Felonies not 265	12.81	19.12
PDD-Superior		
Probation - Superior	8.98	9.17
Nonconcurrent Felonies 265	54.57	76.36
Nonconcurrent Felonies not 265	29.69	42.25
Youth Advocacy Division		
Bail Only	1.39	2.3
Probation - Juvenile	8.24	16.25
Non-Presumptive YO	13.98	34.77
Presumptive YO	57.36	112.4
Child and Family Law Division		
Status Offenses	19.88	22.51
Care & Protection	59.64	84.45
Mental Health Litigation Division		
Civil Commitments	10.16	16.97
Murder was included in Superior Court felony and not adjusted separately.		

Next, the total annual case time available to attorneys was calculated. FTE attorney year value was calculated to yield the number of full caseload attorneys (FCA) required to handle the practice area’s caseload.¹⁰ FTE of 1,662 hours was determined by summing the number of work hours available in each year for direct case related work.

The team analyzed the ratio of case types in the staff attorney caseload for Fiscal Year 2013 (July 1, 2012 through June 30, 2013), the same period from which the time study data was analyzed, in order to arrive at a weighted average case weight for each practice area. In order to arrive at a weighted average for a practice area caseload, the total hours needed for each case type opened in the fiscal year was summed and then divided by the total number of cases. By understanding the ratio of case types within each division, it is possible to project the number of cases that can be handled by CPCS staff attorneys. Based on this weighted average derived from the Fiscal Year 2013 caseload, CPCS can monitor caseloads to ensure that assignments do not exceed levels which ensure quality representation. The actual number of cases any individual attorney handles, however, may differ based on the particular mix of case types in an individual caseload. Given that CPCS oversees an effective and experienced panel of private attorneys, the agency has the capacity to spread cases over a cadre of attorneys, public and private to ensure that attorneys have sufficient time to provide quality representation. The following table, based on 1,662 case available hours over the course of a year, shows the number of new cases an attorney could be assigned based both on the preliminary and quality adjusted case weights:

Case Available Hours for a Full Caseload Attorney (FCA): 1662		
Practice Area	Prelim. Case Weight (based on FY13 case ratios)	Annual New Cases/FCA
CAFL	43.26	38
Mental Health	10.16	164
PDD District	11.61	143
PDD Superior	31.54	53
YAD	14.98	111
Practice Area	Quality Adjusted Case Weight (based on FY13 case ratios)	Annual New Cases/FCA
CAFL	58.95	28
Mental Health	16.97	98
PDD District	18.03	92
PDD Superior	53.57	31
YAD	33.35	50

The workload assessment provides CPCS with an empirically based, state specific documented model that can be used to estimate staffing needs and caseload ranges from which departures can be understood. Based on qualitative assessments of individual caseloads, supervisors can adjust

¹⁰ A full time attorney may not be assigned a full caseload based on other job responsibilities, such as training or supervision, so the number of attorneys will be greater than full caseload attorneys.

caseloads to reflect best practices. Caseload targets based on the range of each case type weight can be used to ensure resource equity between offices and practice areas. Additional data collection could also provide more insight into the factors that impact quality representation, including case types, client characteristics and staff workflow that might suggest a reduction or increase of case assignments.

The process of case weighting allowed CPCS and its practice areas to reflect on best practices as well as workplace satisfaction as it seeks to ensure quality representation within its budgetary constraints. A manageable caseload for each attorney encourages talent retention, helping to bring down the costs of training as well as case processing. Nevertheless, any caseload protocol should be used as a guide, not a rule. During the course of this process, it has become clear that there can be multiple individual factors which impact the workload.

Different jurisdictions have engaged in a similar case weighting exercise and workload analysis.¹¹ Each jurisdiction offers varied case weights, reflective of local practice and circumstances. The growing body of time-based case weight studies from around the country provides a frame of reference to plan for quality representation by controlling caseloads. Based on the premise that a healthy and vibrant indigent defense bar is civic value, the workload of attorneys is an important measure of quality representation. The *Gideon* Project team's national recommendation is that technical and financial assistance should be provided to indigent defense representation organizations to engage in workload assessments.¹²

¹¹ American Bar Association, *The Missouri Project: A Study of the Missouri Defender System and Attorney Workload Standards* (2014); Rand Corporation, *Case Weights for Federal Defender Organizations* (2011); National Center for State Courts, *Virginia Indigent Defense Commission Attorney and Support Staff Workload Assessment-Final Report* (2010); Neely, Elizabeth, *Lancaster County Public Defender Workload Assessment*, University of Nebraska Public Policy Center (2008); National Center for State Courts, *A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorney's Offices, and the New Mexico Public Defender Department- Final Report* (2007); and National Center for State Courts, *Maryland Attorney and Staff Workload Assessment* (2005).

¹² Trial courts throughout the United States, and indeed even different courts within a single jurisdiction, benefit from workload assessments. See, e.g., <http://www.ncsc.org/Topics/Court-Management/Workload-and-Resource-Assessment/Resource-Guide.aspx> (a resource compiling over one hundred workload assessments conducted for trial courts in the United States by the National Center for State Courts).

VII. Conclusion

The goal of the larger project that the Center for Court Innovation and Committee for Public Counsel Services embarked upon was to review and improve data collection, performance monitoring, and evaluation capacity at the CPCS. Multiple deliverables have been created, including performance indicators, data reports, workload analysis report and an evaluation proposal. Finalizing performance indicators was a necessary first step in achieving both a realistic assessment of data capacity as well as evaluation capacity. We believe that the first step is for CPCS, and other similarly situated indigent representation organizations, to develop a quarterly or annual statistical report that lists out the very most critical performance measures and outcome indicators of the data that can most readily be collected, tracked and analyzed for the purposes of self-assessment. The next step is then to enhance data collection capacity to collect more indicators that are critical to a fuller understanding of the practice, and to advance plans to evaluate which indicators—or which concrete indigent defense representation activities—truly comprise evidence-based practices. We believe the lessons learned during this intensive self-reflective process provides invaluable recommendations to the field as a whole as indigent defense services embark on similar journeys.

Attachment 6

EXHIBIT 3. SCHEDULE OF GUIDELINE AMOUNTS

ATTORNEY FEES - TRIAL AND APPELLATE LEVEL CASES		
Non-capital Case	\$46 per hour	Includes juveniles charged with aggravated murder.
Capital Case, Lead Counsel	\$61 per hour	See definition in section 2.1.2
Capital Case, Co-counsel	\$46 per hour	Initial cap of 300 hours for trial-level cases. See definition in section 2.1.2.
Out-of-State	\$46 per hour	Or the minimum public defense hourly rate of the state in which the attorney resides, whichever is more.
NON-ATTORNEY FEES (Must be preauthorized by OPDS)		
Paraprofessional	\$10 per hour	
Transcription	\$3.00 per page for original	Electronic submission-no postage paid.
Guardian Ad Litem	\$45 per hour maximum	For attorney and non-attorney providers
Handwriting Expert	\$90 per hour	
Forensic Expert	\$90 per hour	Mileage paid without specific preauthorization.
Investigator	\$29 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Fact Investigator - Capital Case (See definition for capital case in section 2.1.2)	\$40 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Mitigation Investigator - Capital Case (See definition for capital case in section 2.1.2)	\$45 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Psychiatrist, Psychologist, Physician, Other Expert	\$110 per hour	Travel expenses must be specifically preauthorized.
Polygraph Exam	\$200 - in office \$300 - in custody, in county \$350 - all others	Flat fee for exam and report.
INTERPRETER FEES (For attorney/client communication, does not require preauthorization by OPDS)		
Qualified Interpreter	\$25.00 per hour	Travel time at one-half the hourly rate and mileage at the guideline rate.
Certified Interpreter	\$40.00 per hour	
ROUTINE CASE EXPENSES FOR COUNSEL & INVESTIGATORS (Preauthorization not required)		
Blank CD/DVD, case and label	\$1.00 each	For media, case and label
Film Developing/Photograph Production, In-house and Vendor	Actual cost if vendor. Photos in-house at \$0.40 for 3 x 5 or 4 x 6. \$1.20 for full page.	Receipt required if produced by vendor.
Photocopies and Scanning, In-house	Maximum \$0.05 per page	Also applies to in-coming faxes.
Photocopies and Scanning by Vendor	Maximum \$0.10 per page	Receipt required.

Photocopies, State Court/Other Government Entities	Maximum \$0.25 per page	Certification costs also paid if necessary. Receipt required.
Mileage from 1/1/11 to 4/16/12 From 4/17/12 to 12/31/2012 From 1/1/2013 to 12/31/2013 From 1/1/2014 to 12/31/2014 From 1/1/2015 to 12/31/2015 From 1/1/2016 to present	Maximum \$0.51 per mile Maximum \$0.555 per mile Maximum \$0.565 per mile Maximum \$0.56 per mile Maximum \$0.575 per mile Maximum \$0.54 per mile	Excludes counsel's trips between office and courthouse unless specifically authorized.
Parking - routine travel	Actual cost	If trip qualifies for mileage payment. Receipt required if over \$10 per period.
Telephone	Actual cost	Long-distance charges, including those for faxes, and charges for collect calls from client held at an institution.
Discovery	Actual cost when supported by a receipt	Material obtained from district attorney, DHS or county juvenile department.
Postage	First-class mail	
Computerized Legal Research	Actual cost when supported by receipt or \$0.40 per minute	Only actual on-line usage paid. No payment for monthly service fees. Provider may submit log of actual on-line time.
OJIN Online Searches	\$0.25 per minute of usage	When provider has subscription for OJIN.
Service of Process	\$30 per location of service	Use of sheriff's office is encouraged.
Special Delivery	UPS, Federal Express, USPS Express mail, messenger service	Explanation and receipt required. See Section 3.2.2 of policy for details.
Other Items		See Section 3.2.2 of policy for details.
TRAVEL EXPENSES (Must be preauthorized by OPDS)		
Meal Allowance Amounts - When on overnight business and departure and return times are not reported	\$20 for first day of travel \$19 for last day of travel \$39 for each full day between first and last	May qualify for additional allowance for first and last day depending on time of departure and return if traveler notes times on worksheet. <u>Receipts are not required.</u>
Breakfast - When on overnight trip	Maximum \$9.00	If leaving home or office prior to 6:00 a.m. or return is after 9:00 a.m.
Lunch - When on overnight trip	Maximum \$10.00	If leaving home or office prior to 11:00 a.m. or return is after 2:00 p.m.
Dinner - When on overnight trip	Maximum \$20.00	If leaving home or office prior to 5:00 p.m. or return is after 8:00 p.m.
Mileage (other than routine mileage for counsel, investigators and forensic experts)	See date ranges and rates listed above.	Must be preauthorized for providers other than attorneys, investigators and forensic experts.
Parking	Actual cost	Receipt required if over \$10.
Rental Car	Various	Mid-size vehicle plus fuel with submission of original receipts. Insurance costs will not be reimbursed.
Airfare	Various	Through state contract. Contact OPDS.

LODGING, MAXIMUM PER NIGHT, INCLUDING TAX (Must be preauthorized by OPDS for all providers)

Maximum \$90			Maximum \$100		Maximum \$110	
Baker	Jefferson	Sherman	Clackamas	Jackson	Lincoln Multnomah	
Benton	Lake	Umatilla	Clatsop	Josephine		
Crook	Linn	Union	Columbia	Klamath		
Douglas	Malheur	Wasco	Coos	Lane		
Gilliam	Marion	Wallowa	Curry	Tillamook		
Grant	Morrow	Wheeler	Deschutes	Washington		
Harney	Polk	Yamhill	Hood River			
Out-of-state Lodging	A rate for a standard room that would be within the guidelines for in-state lodging and for which the cost would be deemed reasonable for the area. Traveler should request government or commercial rate.					
Non-commercial Lodging	\$25 allowance when traveler uses alternative accommodations. Provide a short written explanation.					

Attachment 7

Public Defense Contracts (Parent Child Representation Program Case Manager) Recommended
for Approval by the Public Defense Services Commission at its
January 21, 2016 Meeting

COUNTY	PROPOSED CONTRACTOR	CASE TYPE	SERVICE PROVIDED	VALUE (up to)	EXPIRATION DATE
Columbia	Debra Agee	juvenile	case management	\$74,400	12.31.2017
TOTAL				\$74,400	