

Members

Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
James M. Brown
Henry H. Lazenby, Jr.
John R. Potter
Janet C. Stevens
Mike Greenfield



Ex-Officio Member

Chief Justice Wallace P. Carson, Jr.

Executive Director

Peter A. Ozanne

Public Defense Services Commission Meeting

Thursday, February 10, 2005 – 9:00 a.m. to 12:00 p.m.

Office of Public Defense Services
Capitol & Gaines Building
1320 Capitol Street N.E.
Salem, Oregon

Agenda

1. **Action Item:** Approval of Minutes (*Attachment 1*) Barnes Ellis
2. OPDS's Monthly Report OPDS's Management Team
3. **Action Item:** A Service Delivery Plan for Multnomah County (*Attachment 2*) Peter Ozanne
Kathryn Aylward
4. **Action Item:** PDSC's Strategic Plan for 2005-07 (*Attachment 3*) Peter Ozanne
5. New Business Barnes Ellis
6. **Executive Session:** Discussion of the Executive Director's Annual Evaluation Barnes Ellis

Please note: Following the meeting, there will be a tour of OPDS's offices and a buffet lunch with staff

PUBLIC DEFENSE SERVICES COMMISSION

MINUTES

January 13, 2005 Commission Meeting
at
The Office of Public Defense Services
1320 Capitol Street N.E.
Salem OR

MEMBERS PRESENT: Barnes Ellis
John Potter
Chip Lazenby
Mike Greenfield
Wallace P. Carson

STAFF PRESENT: Peter Ozanne
Kathryn Aylward
Peter Gartlan
Ingrid Swenson
Laura Anson

TAPE 1, SIDE A

Executive Session: Evaluation of Executive Director

A closed execution session was held from 9:00 to 9:10 a.m.

001 Chair Barnes Ellis called the meeting to order at 9:10 a.m.

Agenda Item No. 2 OPDS's Monthly Report

010- [Tape 1; Side B]
-118

OPDS updated the Commission on recent developments involving the agency, including (1) the Emergency Board's release of \$7 million to PDSC's budget to offset the shortfall in funding caused by the failure of Ballot Measure 30, (2) the submission of budget binders by CBS to the Budget and Management Division of the Department of Administrative Services, (3) the impact of Blakely v. Washington on LSD's workload, (4) OPDS's progress in implementing the contractor site visit process and (5) proposed legislation for PDSC's approval. That proposed legislation includes LC 1055, an amendment to existing statutes in order to clarify that persons convicted of violations have no right to appointed counsel on appeal, which the Commission approved; and LC 1056, a proposed new statute confirming the legislature's authorization for PDSC to contract with consortia notwithstanding apparent or potential anti-competitive effects, for which the Commission reserved approval pending a determination of the status of the FTC's informal inquiry regarding Oregon's public defense contracting system.

Agenda Item No. 1 Approval of Minutes

028, 565 [Side A]

MOTION: Chief Justice Carson moved for approval of the minutes; M. Greenfield seconded the motion; **VOTE:** 4-0;

Agenda Item No. 3

A Service Delivery Plan for Multnomah County

120- [Tape 2; Side A]
- 294

The Commission reviewed OPDS's latest draft of a Service Delivery Plan for Multnomah County and directed OPDS to make the following changes: (1) at page 18, eliminate the last sentence in the first full paragraph – "OPDS cannot conclude from these anecdotal reports by observers without direct knowledge of crucial facts that a serious problem exists – as inconsistent with the rest of that paragraph; (2) the last paragraph on page 18 continuing on page 19, discussing ways to ensure more involvement by private attorneys in the court appointment process involving juvenile cases in Family Court, should include a reference to current non-profit public defenders and their potential capacity to handle some of these case; (3) Finding No. 6 on page 19 and recommendation No. 6 on page 23 need to be revised to correct the erroneous conclusion that the Commission agreed "not to deal with caseload shortages and preferences until it becomes a problem" and to add a correct statement that the Commission will address this issue at its next Retreat before the end of 2005; (4) at page 22, add language that communicates the Commission's objective to require MPD and other similarly situated contractors, who receive higher contract rates for unique services like training and technical support, to demonstrate to the satisfaction of PDSC the benefits of such services to other contractors and the local public defense system; and (5) to add text and a chart that explains the effect of PDSC's payment for in-house investigative services to MPD and MDI on contract rates and apparent variations in those rates in Multnomah County. The Commission directed OPDS to make the foregoing changes and to resubmit its draft Service Delivery Plan for the Commission's consideration final approval at its February 2005 meeting.

Agenda Item No. 4

PDSC's Strategic Plan for 2005-07

314- 595

The Commission reviewed OPDS's draft of PDSC's Strategic Plan for 2005-07 and directed OPDS to integrate PDSC's Performance Measures into the Plan. The draft will then be resubmitted to the Commission for its consideration and final approval at PDSC's February 2005 meeting.

Agenda Item No. 5

Follow-up on the PDSC's January 8, 2005 Retreat

620 – [Tape 2; Side B]
- 098

The Commission reviewed the discussion topics at its January 2005 Retreat, including the structure and organization of the Legal Services Division (LSD), alternative models for the recruitment and retention of lawyers at LSD and potential methods for the distribution by the Contract and Business Services Division (CBS) of the remaining funds in the Public Defense Services Account among PDSC's current contractors for work performed during the biennium.

Agenda Item No. 6

PDSC'S meeting schedule during the 2005 Legislative Session

108 - 183

The Commission will continue to meet on the second Thursday of the month throughout 2005, with the exception of July and December when the meetings will be rescheduled to coincide with OCDLA's conferences in those two months. OPDS will release PDSC's revised meeting schedule for 2005 as soon as possible.

The Commission also decided to develop its next Service Delivery Plan in Marion and Yamhill Counties during the first half of 2005, with OPDS's investigation of those counties to begin in March or April 2005, depending on the progress of the budget process in the current legislative session.

Agenda No. 7

New Business

185 -439

OPDS will analyze the comments it solicited from District Attorneys and Presiding Judges regarding its draft of PDSC's Proposed Guidelines for Early Disposition Programs and submit those comments and any appropriate revisions to that draft to the Commission at its March 2005 meeting.

450 [at 12:00 p.m.]

MOTION: Chief Justice moved to adjourn the meeting; J. Potter seconded the motion.
VOTE 4-0; hearing no objection the motion **CARRIED**.

February 1, 2005

MEMORANDUM

TO: The Public Defense Services Commission
FR: Peter Ozanne
RE: The Commission's Service Delivery Plan for Multnomah County

The attached Draft Service Delivery Plan for Multnomah County incorporates the comments of Commission members at our last meeting in January.

In particular, OPDS's Findings numbers 4 and 5 at pages 17 and 18 have been revised slightly. Item numbers 5 and 6 in the Proposed Service Delivery Plan at pages 23 and 24 have been revised extensively.

DRAFT

(February 09, 2005)

OPDS's Report to the Public Defense Services Commission on Service Delivery in Multnomah County (Region 1)

Introduction

Since the completion of its Strategic Plan for 2003-05 in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission of ensuring the delivery of quality public defense services in Oregon in the most cost-efficient manner possible. Recognizing that quality legal services promote cost-efficiency by reducing the risk of legal errors and the delay and expense required to remedy them, the Commission has concentrated on strategies designed to improve the quality of the state's public defense delivery systems and the services provided through those systems.

Foremost among these strategies is the Commission's "service delivery planning process," which is designed to investigate and improve the operation of local public defense delivery systems across the state. During the first half of 2004, the Commission undertook investigations of the local delivery systems in Benton, Lane, Lincoln and Linn Counties. Following those investigations, PDSC developed Service Delivery Plans in each county to improve the operation of public defense systems in those counties, as well as the quality of the legal services provided by their public defense systems.

This report, which examines the condition of Multnomah County's public defense delivery system, represents the first step in PDSC's planning process for Oregon's most populous county.

PDSC's Service Delivery Planning Process

There are four steps to PDSC's service delivery planning process. First, the Commission has identified seven Service Delivery Regions in the state for the purposes of reviewing local public defense delivery systems and the services they provide in Oregon, and addressing significant issues of quality and cost-efficiency in those systems and services.

Second, starting with preliminary investigations by OPDS and a report such as this, the Commission will review the condition and operation of local public defense delivery systems and services in each region by holding public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

Third, after considering OPDS's report and public comments in response to that report and during its meetings in the region, PDSC will develop a Service Delivery Plan for the region. That plan may confirm the quality and cost-efficiency of the public defense delivery system

and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's Service Delivery Plans will (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, OPDS will implement the strategies or changes proposed in the Commission's Service Delivery Plan for that region. Any Service Delivery Plan that PDSC develops will not be the last word on the service delivery system in that region, or on the quality and cost-efficiency of the region's public defense services. The limitations of PDSC's budget, the existing personnel, level of resources and unique conditions in each county, the current contractual relationships between PDSC and its contractors, and the wisdom of not trying to do everything at once, place constraints on the Commission's initial planning process in any region. PDSC's planning process is an ongoing one, calling for the Commission to return to each region of the state over time in order to develop new service delivery plans or revise old ones. The Commission may also return to some regions of the state on an expedited basis in order to address pressing problems in those regions.

Background and Context to the Service Delivery Planning Process

The 2001 legislation establishing PDSC was based upon an approach to public defense management, widely supported by the state's judges and public defense attorneys, which separates Oregon's public defense function from the state's judicial function. Considered by most commentators and authorities across the country as a "best practice," this approach avoids the inherent conflict in roles when judges serve as neutral arbiters of legal disputes and also select and evaluate the advocates in those disputes. As a result, while judges remain responsible for appointing attorneys to represent eligible indigent clients, the Commission is now responsible for the provision of competent public defense attorneys.

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

A range of strategies to promote quality and cost-efficiency. Service delivery planning is one of the most important strategies PDSC has undertaken to promote quality and cost-efficiency in the delivery of public defense services. However, it is not the only one.

In December 2003, the Commission directed OPDS to form a Contractors Advisory Group, made up of experienced public defense contractors from across the state. That group advises OPDS on the development of standards and methods to ensure the quality and

cost-efficiency of the services and operations of public defense contractors, including the establishment of a peer review processes and technical assistance projects for contractors and new standards to qualify individual attorneys across the state to provide public defense services.

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the Quality Assurance Task Force is planning site visits of the largest contractors in counties across the state, including Columbia, Jackson, Klamath, Multnomah and Umatilla Counties.

Numerous Oregon State Bar task forces on indigent defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC has undertaken a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers.

In accordance with its Strategic Plan for 2003-05, PDSC has developed a systematic process to address complaints over the behavior and performance of public defense contractors and individual attorneys. The Commission is also concerned about the “graying” of the public defense bar in Oregon and a potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services. Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission’s service delivery planning process. That process is aimed primarily at reviewing and improving the “structure” for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into “best practices,” recognize that careful attention to the structure of service delivery systems contributes significantly to the ultimate quality and effectiveness of public defense services.¹ A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and

¹ Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g., Spangenberg and Beeman, “Indigent Defense Systems in the United States,” 58 Law and Contemporary Problems 31-49 (1995).

judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC's other strategies to promote quality and cost-efficiency in the delivery of public defense services (which are described above) focus on the "performance" of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time-to-time in the course of the Commission's service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed through the Commission's deliberative processes. OPDS, with advice and assistance from its Contractors Advisory Group and others, is usually in the best position to address performance issues.

In light of the distinction between structure and performance in the delivery of public defense services and the relative capacities of PDSC and OPDS to address these issues, this report will generally recommend that, in the course of this service delivery planning process, PDSC should reserve to itself the responsibility of addressing structural issues with policy implications and assign to OPDS the tasks of addressing performance issues with operational implications.

Organizations currently operating within the structure of Oregon's public defense delivery systems. The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for "public" defenders and the advocates for "private" defenders. PDSC has repeatedly declared its lack of interest in joining this debate. Instead, the Commission intends to concentrate on a search for the most effective kinds and combinations of organizations in each region of the state from among those types of organizations that have already been established and tested over decades in Oregon.

The Commission also has no interest in developing a one-size-fits-all model or template for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to those proposals. As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

The following discussion outlines the prominent features of each type of public defense organization in Oregon, along with some of their relative advantages and disadvantages. This discussion is by no means exhaustive. It is intended to highlight the kinds of considerations the Commission is likely to make in reviewing the structure of any local service delivery system.

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys and the offices in which they work operate under contracts with PDSC and have organized themselves in the following ways:

- Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the attributes one normally thinks of as a government-run "public defender office," most notably, an employment relationship between the attorneys and the office.² Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized

² Spangenberg and Beeman, *supra* note 2, at 36.

internal training and supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

Because of the professional management structure and staff in most public defender offices, PDSC looks to the administrators of these offices, in particular, to advise and assist the Commission and OPDS. Boards of directors of public defender offices, with management responsibilities and fiduciary duties required by Oregon law, also offer PDSC an effective means to (a) communicate with local communities, (b) enhance the Commission's policy development and administrative processes through the expertise on the boards and (c) ensure the professional quality and cost-efficiency of the services provided by their offices.

Due to the frequency of cases in which public defender offices have conflicts of interest due primarily to cases involving multiple defendants or former clients, no county can operate with a public defender office alone.³ As a result, PDSC expects public defender offices to share their management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

- Consortia. A "consortium" refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC's RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for "succession" in the event that some of the consortium's lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

Consortia offer the advantage of access to experienced attorneys, who prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or

³ *Id.*

district attorney offices and larger law firms, but in which they no longer wish to practice law.

In addition to the access to experienced public defense lawyers they offer, consortia offer several administrative advantages to PDSC. If the consortium is reasonably well-organized and managed, PDSC has fewer contractors or attorneys to deal with and, therefore, OPDS can more efficiently administer the many tasks associated with negotiating and administering contracts. Furthermore, because a consortium is not considered a law firm for the purpose of determining conflicts of interest under the State Bar's "firm unit" rule, conflict cases can be cost-efficiently distributed internally among consortium members by the consortium's administrator. Otherwise, OPDS is required to conduct a search for individual attorneys to handle such cases and, frequently, to pay both the original attorney with the conflict and the subsequent attorney for duplicative work on the same case. Finally, if a consortium has a board of directors, particularly with members who possess the same degree of independence and expertise as directors of not-for-profit public defenders, then PDSC can benefit from the same opportunities to communicate with local communities and gain access to additional management expertise.

Some consortia are made up of law firms, as well as individual attorneys. Participation of law firms in a consortium may make it more difficult for the consortium's administrator to manage and OPDS to monitor the assignment and handling of individual cases and the performance of lawyers in the consortium. These potential difficulties stem from the fact that internal assignments of a law firm's portion of the consortium's workload among attorneys in a law firm may not be evident to the consortium's administrator and OPDS or within their ability to track and influence.

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) a special qualification process to receiving court appointments.

- Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defenders offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of

quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

The foregoing observations are not meant to suggest that law firms cannot provide quality, cost-efficient public defense services under contract with PDSC. Those observations simply suggest that PDSC may have less influence on the organization and structure of this type of contractor and, therefore, the quality and cost-efficiency of its services in comparison with public defender offices or well-organized consortia.

Finally, due to the Oregon State Bar's "firm unit" rule, when one attorney in a law firm has a conflict of interest, all of the attorneys in that firm have a conflict. Thus, unlike consortia, law firms offer no administrative efficiencies to OPDS in handling conflicts of interest.

- Individual attorneys under contract. Individual attorneys provide a variety of public defense services under contract with PDSC, including in specialty areas of practice like the defense in aggravated murder cases and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

This type of contractor offers an important though limited capacity to handle certain kinds of public defense caseloads or deliver services in particular areas of the state. It offers none of the administrative advantages of economies of scale, centralized administration or ability to handle conflicts of interest associated with other types of organizations.

- Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's and PDSC's Investigations in Multnomah County

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and

weaknesses of a local system in order to assist the Commission in determining the need for changing the structure or operation of that system and (2) identify the kinds of changes that might be needed and the issues that the Commission is likely to confront in implementing changes. PDSC's investigations begin with a review of OPDS's report on the strengths and weaknesses of the local public defense system.

These investigations serve two other important functions. First, they provide information to public officials and other stakeholders in local criminal and juvenile justice systems about the condition and effectiveness of those systems. The Commission has discovered that this function of "holding a mirror up" to local justice systems for all the community to see can, without any further action by the Commission, create its own momentum for reassessment and improvement. Second, the history, past practices and rumors in local justice systems can distort perceptions of current realities. OPDS's investigations of public defense delivery systems can correct some of those local misperceptions.

Over the past four months, PDSC has held public meetings in Multnomah County to (a) consider the results of OPDS's investigations in the county, (b) receive comments from contractors, prosecutors, judges and other justice officials regarding the quality of the county's public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Multnomah County.

Earlier drafts of this report provided a framework to guide the Commission's discussions regarding the condition of public defense in Multnomah County and the range of policy options available to the Commission — from concluding that no changes are needed in the county to significantly restructuring the county's delivery system. These draft reports also offered guidance to PDSC's contractors, public officials, justice professionals and other stakeholders in Multnomah County's criminal and juvenile justice systems about the kinds of information and advice that could assist the Commission in improving the county's public defense delivery system.

In the final analysis, the level of engagement and the quality of the input from all of these stakeholders may be the single most important factor contributing to the quality of this report and the Commission's Service Delivery Plan for Multnomah County. OPDS received four written comments on behalf of the Commission. They are included in Appendix "A."

John Connors' initial written comments for the Multnomah County Office of MPD outlined the office's accomplishments and its unique contributions to the county's public defense and justice systems. Judge Ed Jones's comments questioned the wisdom and fairness of the differentials in contract rates between MPD and other contractors in Multnomah County, and challenged the soundness of the rationale set forth in this report to justify those differentials. Paul Petterson, the director of MDI, presented comments containing a proposal for a new felony caseload for his office. John Connor supplemented his initial comments in November in order to address issues raised and comments made during PDSC meetings regarding its Service Delivery Plan in Multnomah County. Joanne Fuller, Director of Multnomah County's Department of Community Justice (DCJ), submitted

written comments regarding the many positive contributions that MPD has made to the justice system in the county in order to provide a broader perspective than DCJ's staff had provided to OPDS in earlier drafts of this report.

PDSC invited three Circuit Court Judges, the District Attorney and the Director of MPD's Multnomah County Office to present their comments regarding the delivery of public defense services to the Commission at its September 9, 2004 meeting in Portland. Relevant excerpts of the minutes of that meeting are attached as Appendix "B."⁴ These five guests agreed that the issues identified by OPDS's findings in this report represent the most important challenges to the quality and cost-effectiveness of Multnomah County's public defense system.

The Chief Criminal Judge for Multnomah County's Circuit Court, Julie Frantz, emphasized the importance and difficulty of managing late withdrawals and substitutions of defense attorneys on the basis of conflicts of interest and breakdowns in attorney-client relationships. Judge Frantz urged the Commission and the defense bar to pay special attention to the need for early and regular communications between defense attorneys and their clients in order to reduce the number of late withdrawals and substitutions. Judge Frantz also emphasized the importance of fair and adequate compensation for PDSC's contractors and the need to identify additional qualified expert psychologists for preparation of timely reports and evaluations.

Judge Elizabeth Welch, the Chief Family Court Judge in Multnomah County, described the many steps in the Court's juvenile dependency proceedings and the extraordinary demands the Court places on the Commission's juvenile law contractors. Judge Welch expressed the view that the experience and effectiveness of those contractors are outstanding, and that the quality of advocacy and law practice before the Family Court is exceptional. However, Judge Welch emphasized the immediate need for additional experienced and competent juvenile practitioners for the Family Court's appointment list, and the threat to the fairness of guardianship proceedings in Probate Court due to the unavailability of volunteer legal counsel and the absence of a legal right to court-appointed counsel in those proceedings.

Judge Ed Jones elaborated on his written comments in Appendix "A" with regard to the unfairness to defense contractors and their clients due to differences in the compensation and contract rates that the Commission pays contractors in Multnomah County. Although he praised the dedication of MPD's attorneys, staff and management, he criticized the logic of the rationale offered for that office's higher rates and urged the Commission to (a) attach monetary values to all legal services that are discretionary or that do not involve direct services to individual clients in pending cases and (b) entertain contract bids from other contractors to deliver those services.

⁴ Other persons who attended PDSC's September 2004 meeting offered shorter public comments in the time available. They were assured of an opportunity to present further comments at the Commission's October and November 2004 meetings. All of those comments are set forth in the Commission's minutes of its monthly meetings.

District Attorney Mike Schrunk expressed his personal views regarding the importance of the defense function, the need for prosecutors, defense attorneys and the Circuit Court to work closely and cooperatively together in order to ensure the quality of justice in Multnomah County, and the special demands on defense attorneys and acute need to compensation them at levels comparable to the salaries of deputy district attorneys. Mike emphasized the importance of special efforts by defense attorneys to identify conflicts of interest early on in criminal proceedings. While generally satisfied with most defense attorneys' requests for non-routine expenses, he also highlighted the problem of delays in obtaining expert psychologist reports and evaluations once requests for these non-routine expenses are approved by OPDS. However, he recognized that a major part of the problem of untimely expert reports and evaluations for both defense attorneys and prosecutors is the unavailability of qualified experts; and he urged the Commission to work with his office and other prosecutors in the state to address this problem.

John Connors elaborated on his written comments (set forth in Appendix "A") regarding the achievements and special contributions of MPD to the county's public defense and justice systems. John urged the Commission to avoid imposing new requirements to establish the monetary value of the special services for which MPD receives no direct compensation and to support the unique mission and contributions of public defender offices like MPD. John also reserved time at a subsequent PDSC meeting to present more support for these positions and to address the Commission's requests for additional information regarding contract rates, costs of services and economies of scale.

At the request of the Commission, OPDS has attached additional information to this report. Appendix "C" contains a comparison of the rates public defense contractors are paid in Multnomah County. Appendix "D" presents a comparison between the average salaries paid to attorneys in the county's not-for-profit public defender offices and the average salaries of attorneys in the Multnomah County District Attorney's Office. Appendix "E" includes an analysis of issues relating to the management of conflicts of interest in the county, which is likely to be applicable to other Oregon counties as well. Appendix "F" sets forth a discussion before PDSC at its November 2004 meeting concerning practical reasons why some variations in PDSC's contract rates among contractors and caseloads are justifiable.

A Demographic Snapshot of Multnomah County

Multnomah County is the most populous county in Oregon with a 2001 population of 666,350.⁵ As the home of numerous institutions of higher education, the county's residents are well-educated, with 20 percent of its adult population holding a Bachelor's Degree and 11 percent with a post-graduate degree. Forty-five percent of the county's high school graduates enroll in college.

⁵ This demographic information was compiled by Southern Oregon University's Southern Oregon Regional Services Institute and appears in its Oregon: A Statistical Overview (May 2002) and Oregon: A Demographic Profile (May 2003).

Multnomah County is the leading center for commerce and industry in the state. As a result, the county historically has had relatively low rates of unemployment. It also has had a relatively high proportion of professionals, scientists and managers in its workforce (11.4 percent in 2000, compared to the state's average of 8.9 percent) and the third highest per capita personal income in Oregon (at \$31,419 in 2000 compared to Washington County at \$31,891 and Clackamas County at \$33,362).

Multnomah County is one of Oregon's most diverse counties, with non-white and Hispanic residents making up 23.5 percent of its population, compared to 16.5 percent for the state. The percentage of the county's residents living in poverty is 12.7, compared to 11.6 percent in Oregon and 12.4 percent in the United States.

With a population of juveniles (18 years or younger) at 22.3 percent, Multnomah County's "at risk" population (which tends to commit more criminal and juvenile offenses) is smaller than the state's at-risk population of 24.7 percent. Nevertheless, the county had the third highest index crime rate in the state in 2000 74.8 index crimes per 1,000 residents, compared to Lane County at 57.9, Marion County at 58.5 and the state average of 49.2).⁶

The public defense caseload in Multnomah County is approximately 24 percent of the statewide total.

OPDS's Findings in Multnomah County

The following findings by OPDS are based upon (a) PDSC's discussions and the public comments the Commission has received since assuming the responsibility for administering the state's entire public defense system in 2003, (b) discussions and negotiations between public defense contractors in Multnomah County and OPDS staff over the past two years, (c) interviews of the county's public defense contractors by OPDS's Executive Director over the past 18 months, (d) interviews by the Executive Director of the stakeholders in the county's justice system over the past four months, including public officials on the Local Public Safety Coordinating Council and the Circuit Court's Criminal Justice Advisory Council, Circuit Court Judges, senior staff of the District Attorney's Office and the Department of Community Justice, and representatives of the Citizens Review Board and the Court Appointed Special Advocates program (CASA), and (e) public comments by guests and others in attendance at PDSC's monthly meetings in the county.

1. The general quality and cost-efficiency of public defense services in Multnomah County are high. In general, Multnomah County's public defense system appears to be delivering quality, cost-efficient legal services at a level equal to or greater than any other county in the state. In fact, a number of stakeholders observed that the quality of public defense practice is among the best in the state, particularly in the areas of juvenile law and the

⁶ For the purposes of this statistic, "index crimes" are those crimes reported by the Oregon State Police as part of its Oregon Uniform Crime Reports, and include murder, rape and other sex offenses, robbery, aggravated assault, burglary, theft, including auto theft, and arson. Oregon: A Statistical Overview at p. 122.

defense of Ballot Measure 11 cases. Judges on the Circuit Court are generally satisfied with, and frequently complementary of, the performance of most public defense contractors in Multnomah County. Some members of the senior staff in the District Attorney's Office are critical of individual attorneys and law offices. They are also concerned about such chronic issues as the expenditure of non-routine expenses, the untimely and apparently unjustified withdrawal of defense counsel in criminal cases and appointments of defense counsel for apparently ineligible defendants. Nevertheless, these prosecutors are favorably impressed with the level of commitment and the quality of advocacy and service provided by the county's public defense contractors. Finally, PDSC's contractors generally regard each other as skilled and experienced lawyers who are committed to their common goal of providing high quality public defense services.

Although there appear to be many accomplished lawyers providing public defense services in Multnomah County, some of the larger contractors have gained statewide and national reputations. Metropolitan Public Defender Services, Inc (MPD) and the Juvenile Rights Project (JRP) have been cited over the years as national models for the delivery of public defense services. The Portland Defense Consortium (PDC) is regarded throughout the metropolitan area as a collection of some of the most experienced and ablest lawyers in the state's criminal defense bar. Multnomah Defenders, Inc. (MDI) has generated a large corps of distinguished graduates and a reputation for providing quality defense services in juvenile and misdemeanor cases. Perhaps the greatest challenge for the Commission will be to find ways in the face of flat or declining state funding to maintain the quality and cost-efficiency of public defense services in Multnomah County and to ensure that this level of quality and cost-efficiency remains consistent among all of the county's contractors.

Management and line staff of the Department of Community Justice (DCJ), which is responsible for administering corrections supervision and programs in Multnomah County, provided their perspective on the delivery of public defense services and the performance of contractors and defense attorneys in the county. Although parole and probation officers are sometimes in an adversarial relationship with defense attorneys, DCJ staff recognized the special legal and ethical obligations of defense attorneys and were generally complementary of the quality of PDSC's contractors and the defense attorneys in Multnomah County. They emphasized that the most effective defense attorneys establish cooperative working relationships with parole and probation officers and collaborate with those attorneys as much as possible in exchanging information relevant to the appropriate sentence and corrections programs for public defense clients. They also noted that the least effective lawyers were unnecessarily adversarial in their dealings with DCJ staff, engaged in personal attacks on parole and probation officers, used information from private conversations and negotiations against them in judicial hearings, and failed to offer creative dispositional alternatives and other ideas to further the interests of their clients. DCJ's management and line staff were enthusiastic about the idea of holding joint training programs with defense attorneys and corrections staff to share perspectives on their respective roles and the latest information on local corrections policies, procedures and programs.

2. Some variations in the contract rates paid to PDSC's contractors in Multnomah County should be reduced. Variations in rates of payment among PDSC's contracts for the same kinds of cases or to contractors who appear to be similarly situated seems to be the most common concern of justice system stakeholders in Multnomah County. PDSC is also well aware of this issue as a result of the many complaints expressed by the county's public defense contractors to OPDS and during Commission meetings over the years. However, the concern is not limited to PDSC's contractors in Multnomah County. Judges and prosecutors have expressed the view that some of the ablest and most experienced defense attorneys in the county are unfairly treated and may leave public defense practice due to the relatively low rates they are paid under PDSC's contracts.

As the table entitled "Multnomah County Rate Comparison" attached as Appendix "C" indicates, variations in the rates paid for public defense cases in Multnomah County do in fact exist. And, in a few cases, they are significant.

The possible causes of these variations in rates are numerous. One cause could be that, over decades of arms-length contract negotiations with the state, some contractors may have benefited from persistent attention to those negotiations and to planning for changes in their operations; while others may have suffered from inattention to those matters due to the size of their staffs and the demands of their law practices. Another cause might be that some contractors have developed significant infrastructure, including staffs of in-house paralegals, investigators, interpreters and social workers, which accounts for some of the differentials. From the state's perspective, these features appear to be cost-efficient methods of providing services that the state would otherwise have to pay for in the form of non-routine expenses. In any event, PDSC has inherited these differentials, and many stakeholders in Multnomah County perceive this problem as the largest threat to continued effectiveness of the county's public defense system.

Unfortunately, solutions for eliminating these differentials in rates may not be easy to come by, particularly in an environment in which Oregon's voters disagreed with the Legislature's proposed method of balancing the state's budget by rejecting Ballot Measure 30 last November. In addition to the shortfall in the state's public defense budget caused by the failure of Ballot Measure 30, the 2003 Legislature specifically directed PDSC not to raise its contract rates during this biennium. This harsh reality apparently leaves the Commission with the unappealing option of taking money from some contractors, thereby risking the dismantlement of established public defense offices and the disruption in the careers of dedicated lawyers, in order to give more money to other contractors.

Assuming that PDSC finds no justification for continuing variations in the contract rates in Multnomah County and determines that such variations pose a threat to the stability of the public defense delivery system in the county, the Commission may wish to consider the following interrelated approaches to addressing this issue:

- Recognize that variations in contract rates is a problem that can only be resolved over several contract cycles or biennia by adjusting rates upward or downward on an incremental basis;

- In accordance with PDSC’s normal practices and procedures, changes in contract rates should ordinarily be part of the normal contract negotiation process, which is administered by OPDS and subject to the review and approval of the Commission;
- Acknowledge that strict uniformity in contracts rates is not feasible, and that differences in rates of payment for similar cases or contractors who appear to be similarly situated may be justifiable as long as the bases for such differences are rational and coherent; and
- In order to properly structure the administrative discretion of OPDS, consider establishing criteria or guidelines to support differences in contract rates and require OPDS to articulate the bases for any differences in accordance with those guidelines. The following list contains examples of rationale that have been offered to justify higher contract rates:
 - Differences in caseloads in terms of the relative difficulty and complexity of cases;
 - the existence of internal infrastructure that would otherwise be performed by a contractor’s attorneys or through other contracts, such as paralegals, investigators and interpreters;
 - the capacity to handle high volume caseloads (though this factor could also lead to efficiencies that call for lower rates);
 - the capacity to handle unique caseloads or participate in special court programs;
 - an effective management structure that increases service quality, including financial controls governing internal business operations, administrative processes facilitating dealings with OPDS, personnel management and staff evaluation systems and an actively engaged board of directors;
 - training programs with access and capacity to train other public defense attorneys in the contractor’s county or region;
 - the capacity to raise legal challenges and handle test cases having widespread implications for the general development of criminal law and procedure;
 - an institutional presence on behalf of the public defense community on policy-making bodies, such as the Local Public Safety Coordinating Council and the Criminal Justice Advisory Council;
 - participation with other agencies in programs and policy initiatives that advance the interests of public defense or promote the effectiveness of the criminal justice system in ways that are consistent with the interests of public defense clients;
 - other benefits provided to the county’s or region’s public defense contractors or justice system.

Based upon public comment and PDSC’s discussions at the Commission’s recent meetings, the Commission may want to consider attaching monetary values to these

rationales on a one-time, selective basis. This effort, while unlikely to generate precise figures and too burdensome to repeat on a regular basis, could assist the Commission in determining as a general matter whether the higher rates associated with the foregoing rationale are justified.

As one example of the unique services and benefits that some Multnomah County contractors provide, the Department of Community Justice's management and line staff reported long and productive working relationships with MPD and MDI in designing and administering special corrections and court programs like a Drug Court, a Mental Health Court and Drug Treatment and Early Disposition Programs. On the other hand, they also reported their frustration from time-to-time with a lack of cooperation by public defense attorneys and contractors in the county. For example, DCJ worked closely with MPD over a number of years to design and develop a post-adjudication Drug Court,⁷ including travel out-of-state to visit model programs. Nevertheless, some of DCJ staff perceived that MPD failed to cooperate in the operation of the program and, as a result, its effectiveness has been compromised. MPD no doubt has a different perspective on the matter.

Whatever the truth may be regarding this particular episode, MPD has indeed been involved in many interagency projects and policy-making groups that have generated benefits for the county's public defense and justice systems over the years; and its managers and employees have made significant contributions to the public defense and criminal justice systems in Multnomah County. Given the many expressions of interest and willingness by other contractors to perform these services, however, the Commission should at least consider directing MPD to form a steering committee of local contractors to facilitate their input on matters of policy and to share the burdens and benefits of participating in policy-making activities and interagency programs and projects. Furthermore, if these kinds of activities by any contractor are to serve as a basis for higher contract rates, the Commission must ensure that these activities provides unique and measurable benefits to the local public defense or justice system.

3. The county's processes for managing conflicts of interest should be further analyzed in order to identify greater cost-efficiencies. The state's process of paying for public defense cases in which the defense attorney discovers a conflict of interest and is required by professional ethics to withdraw has been a source of ongoing controversy and frustration in Multnomah County. The challenge for the state has been to strike a balance between (a) fairly compensating attorneys who, with due diligence, have discovered a conflict of interest (e.g., a prosecution witness turns out to be a former client of an attorney's law office and that former client's interests will be adversely affected in the course of defending the present case) and who have expended substantial amounts of time and energy to prepare a defense in the case, and (b) avoiding an incentive for attorneys to hold on to cases until the last minute and lighten their caseloads by raising conflicts of interest,

⁷ In a post-adjudication Drug Court, offenders must plead guilty to a criminal offense before gaining access to a drug treatment program, as opposed to a Drug Court diversion program in which offenders' pleas of not guilty remain in effect and their charges are dismissed upon successful completion of treatment. The considerations of defense attorneys and the interests of their clients may be quite different in these two programs.

knowing that they will receive payment for the case. That balance has been elusive. The result has frequently been double payments for the same case: one for the attorney who discovers a conflict of interest withdraws; and one for the attorney who is subsequently substituted into the case.

This problem is by no means unique to Multnomah County. But, perhaps because the large number of cases and defense attorneys makes the problem more visible, the process for handling conflicts of interest in Multnomah County has been a perennial source of criticism and complaint. Prosecutors and judges are obviously concerned about last-minute withdrawals and substitutions, and the delays they cause in court proceedings.

Defense attorneys frequently complain about the problem too. Several PDSC contractors have claimed that a virtual “gray market” in conflict cases has existed for years in the county, with a few contractors augmenting their caseloads and income with conflict of interest cases that demand little work and generate full payment. Whether or not this claim has any validity, the issue of how conflict cases in Multnomah County are handled may be a good example of past history and practices distorting current perceptions of reality. In 2003, the Indigent Defense Services Division (IDSD) of the State Court Administrator’s Office took steps that may have solved or significantly reduced the underlying problem. IDSD encouraged a group of individual lawyers and law firms who had previously contracted with state to gather together and form the Portland Defense Consortium (PDC). PDC now handles most of the serious criminal cases involving conflicts of interest in the county, without the kinds of disruptions and double payments that Multnomah County experienced in the past. Because the consortium is not considered a “firm unit” by the Oregon State Bar for the purposes of determining conflicts of interest, attorneys in PDC can transfer cases among themselves without disqualifying the entire consortium or all the attorneys in it from handling such cases. Furthermore, OPDS does not provide double credits or double payments for cases assigned to the consortium.

Yet problems in managing conflict of interest cases cost-efficiently apparently persist and still deserve the Commission’s attention – if for no other reason than the scale and visibility of those problems in Multnomah County present unique opportunities to identify and test solutions applicable to other counties throughout the state. Therefore, OPDS recommends that the Commission take steps in this service delivery planning process to resolve or further reduce these problems.

Fortunately, the Commission has access to the talents and experience of Ann Christian in addressing this issue. As part of her contract with PDSC to expand the Application/Contribution Program across the state, Ann agreed to analyze the issues arising from conflicts of interest and to propose strategies or processes to manage conflicts of interest in Multnomah County more cost-effectively. Her preliminary analyses and recommendations are set forth in Appendix “E.”

4. The problem of unnecessary withdrawals and substitutions of attorneys in the county should be addressed in the course of identifying more cost-efficient processes to manage conflicts of interest. A significant number of prosecutors and defense attorneys gave

anecdotal reports of instances in which defense attorneys in Multnomah County have been allowed to withdraw relatively late in cases without declaring a conflict of interest or providing any other apparently valid reason to justify a withdrawal. These observers speculated that such instances might be commonplace, particularly in less serious “run-of-the-mill” cases.

The Commission adopted a Substitution Policy in June 2004, which was mandated by the 2003 Legislature and called for the courts to confer with OPDS in certain instances when a motion to withdraw has been granted and the court is about to substitute one lawyer for another. The purpose of this policy is to reduce costs to the Public Defense Services Account caused by the repetitive withdrawals of court appointed attorneys in criminal cases. Under the policy, OPDS and the courts may agree to exempt particular categories of cases from the policy’s “meet and confer” requirement.

To the extent that “run-of-the-mill” cases in Multnomah County may have been exempted from this requirement under PDSC’s Substitution Policy, a significant number of withdrawals without apparently sufficient reasons may not be coming to OPDS’s attention. PDSC’s Substitution Policy and its enabling legislation do not authorize OPDS to participate in or influence a judge’s decision to grant an attorney’s motion to withdraw on ethical grounds. Nevertheless, further investigation and conversations with the Circuit Court are likely to uncover the nature and extent of this problem, and may offer OPDS an opportunity to inform individual judges of the budget implications for withdrawals and substitutions. This issue should be included in future studies by Ann Christian regarding more cost-effective methods to manage conflict of interest cases.

5. PDSC should provide Multnomah County with greater access to competent juvenile defense attorneys. Although nearly all of the observers and participants in Multnomah County’s juvenile justice system considered that system among the best in the state, they also recognized opportunities for improvement. During her presentation to PDSC, Chief Family Court Judge Elizabeth Welch emphasized the immediate need for more lawyers willing and able to handle court-appointed cases in Family Court due to an increasing demand in recent years for competent juvenile law practitioners, especially in dependency cases. Furthermore, in the course of OPDS’s investigations in Multnomah County, the legal services delivered by one of PDSC’s current juvenile law contractors were generally rated as substandard or worse by nearly everyone interviewed by OPDS. In OPDS’s experience, that same contractor has also persistently failed to comply with the administrative procedures required to efficiently administer its contract.

In order to increase the Family Court’s access to public defense attorneys in Multnomah County, PDSC should evaluate the capacity of its current contractors to accept additional juvenile cases without significantly increasing the number of conflicts of interest in Family Court. In order to increase the local public defense system’s capacity to handle conflict of interest cases in Family Court, PDSC should also consider establishing a new court-appointment process similar to the one now being developed by the Commission in Lane County, including more aggressive recruitment efforts with rigorous admission standards, or a new consortium modeled after effective consortia currently under contract with PDSC.

6. Priorities for the allocation of caseload shortages and preferences for retaining full caseloads among PDSC's contractors in the county should only be established if and when a substantial cut to PDSC's budget appears likely. In light of the calamity experienced by PDSC's contractors in 2003 as a result of cuts to the state's public defense budget and steps the Chief Justice and his Budget Reduction Advisory Committee (BRAC) were forced to take in response, PDSC is also well aware of the desire of some contractors to have "preference clauses" in their contracts. These clauses would establish preferences for retaining full caseloads and priorities for the allocation of caseload shortages among PDSC's contractors in the event of a precipitous drop in caseloads as a result of a substantial cut to PDSC's budget.

Because another budget crisis like the one experienced in 2003 is only a relatively remote possibility at this point, OPDS recommends that the Commission avoid the time and effort associated with negotiations between OPDS and PDSC's contractors over preference clauses before the need becomes apparent. In the event it appears likely that PDSC will face budget cuts comparable to 2003, the Commission can at that point establish a fair and open process to address the allocation of caseloads among contractors. Such a process would include (a) Commission deliberations on the record at its regular public meetings regarding contractor preferences for allocations of caseloads, (b) an opportunity for full and fair comment by PDSC's contractors and other stakeholders, and (c) the establishment of explicit rules or guidelines that would be subject to public comment before their adoption.

The most OPDS would suggest that the Commission consider at this time is a set of general principles governing the determination of contractor preferences for the allocation of the overall caseload in the event of caseload shortages. For example, on numerous occasions over the past two years, PDSC has discussed the possibility of giving non-profit public defender offices a preference for full caseloads in the event of a drop in overall caseloads. Such a preference would be justified on the grounds that public defender offices are dependent on full caseloads due to restrictions on the ability of their attorneys to engage in other types of law practice and provide special services that other contractors are unwilling or unable to provide. The Commission has also discussed giving particular consortia a higher priority in the allocation of full caseloads than other contractors, but with authority for OPDS to adjust their caseloads downward due to the presumed ability of a consortium's lawyers to engage in other types of law practice. Finally, the Commission has considered the possibility of assigning lower priorities for the allocation of full caseloads to individual contractors and lawyers on court-appointment lists due to a greater ability to rely on a private law practice.⁸ While this process would involve substantial time and effort by OPDS and PDSC's contractors, the process could be justified on the grounds that PDSC's contractors are entitled to a clearer picture of the business risks they are assuming by contracting with PDSC in order to develop business plans and decide whether or not to recruit new employees.

⁸ Some public defense contractors and attorneys do not agree that they could realistically generate a sufficient number of retained cases in a short period of time to allow them to survive a state budget crisis.

A Proposed Service Delivery Plan for Multnomah County

PDSC devoted most of its September, October, November and December 2004 meetings to receiving public comments and engaging in discussions concerning the issues that could ultimately become the subject of the Commission's first Service Delivery Plan for Multnomah County. Based upon those comments and discussions, the Commission generally agrees with the foregoing findings of OPDS and the six issues that OPDS identified in those findings as appropriate subjects for PDSC's Service Delivery Plan. Accordingly, the Commission adopts the following components of a Service Delivery Plan for Multnomah County:

1. Major changes in the structure and operation of Multnomah County's public defense service delivery system are unnecessary in light of the high quality and cost-efficiency of the services delivered in the county. PDSC finds that Multnomah County's public defense system and the county's public defense contractors provide some of the highest quality and most cost-efficient legal services in the state. This finding is especially significant in light of the fact that the county's public defense caseload is the largest in the state. As a consequence of the high quality of the county's public defense system and services, the components of this Service Delivery Plan for Multnomah County are designed to maintain and enhance the county's public defense system, rather than to restructure that system or reorganize its contractors.

In addition to other incremental changes proposed in this Plan, the Commission accepts MDI's proposal to represent existing clients on felony charges, as well as the on the misdemeanor charges that MDI's attorneys ordinarily handle. PDSC agrees with MDI's assertion in the proposal that the continuity of service that this proposal offers is likely to increase the quality and cost-efficiency of legal services MDI provides to its clients. This arrangement is also likely to provide greater opportunities for MDI's attorneys to develop their advocacy skills, which will help MDI retain able and ambitious lawyers and recruit new ones.

PDSC is also willing to consider MDI's proposal to represent former clients charged with felonies after the original criminal charges handled by MDI's attorneys have been resolved. The Commission needs additional information, however, before making a decision on this proposal. PDSC directs OPDS to provide an analysis to the Commission at its March 2005 meeting concerning the potential impact this proposal would have on the total felony caseload in Multnomah County, as well as on the other contractors in the county that currently handle felony cases. MDI and any other contractor in the county are encouraged to provide relevant information to OPDS and the Commission regarding these potential impacts.

2. The Commission directs OPDS, in the course of negotiating future contracts in Multnomah County and subject to PDSC's review and approval, to make appropriate adjustments in contract rates over time in order to eliminate variations in compensation

among contractors that cannot be explained by differences in their caseloads, operations or other relevant circumstances. As the comparison of the rates paid to PDSC's contractors in Appendix "C" indicates, there are variations in contract rates in Multnomah County.⁹ Further analysis by OPDS, which is set forth in Appendix G, reveals that these variations are relatively few in number and are concentrated within particular categories of cases, as indicated in Appendix G, when the value of investigation is removed from the rates of contractors that provide staff investigation. Therefore, using the approaches outlined by OPDS in its Finding No. 2, above, these variations can and should be reduced over time, to the extent they cannot be justified by differences in the caseloads, operations or other relevant circumstances of the contractors involved.¹⁰

The Commission's concern over variations in the rates it pays to some of its contractors in Multnomah County raises at least three implications for the state's entire public defense contracting system. First, any incremental adjustments over time that involve increases in contract rates paid to some contractors, without corresponding reductions in the rates paid to other contractors, will reduce the total funds available in PDSC's budget to service the state's public defense caseload and, in the absence of increases in that budget, prevent PDSC from compensating attorneys to service that caseload for an entire biennium. In light of these consequences, PDSC has only delegated its authority to OPDS to negotiate rates with individual contractors subject to written policy guidelines and to the Commission's review and approval of proposals by OPDS to change rates.

PDSC recognizes that such a process reduces the role of an unregulated marketplace in establishing appropriate prices for public defense services. The Commission rejects the view that a competitive market, which simply awards contracts to the lowest bidder, is capable of ensuring a level of quality, cost-efficient legal services "consistent with the state and federal constitution and state and national standards of justice." ORS 151.216. Therefore, PDSC must establish a "baseline" level of necessary and reasonable service quality and cost-efficiency through formal and objective quality assurance processes, like new eligibility standards for qualified attorneys to do business with PDSC and contractor site visit and evaluation processes that OPDS is currently implementing. The Commission must also establish systematic methods to justify and articulate the basis for any contract rate increase like the process described below.

Second, in the process of adjusting contract rates, PDSC needs to confirm its commitment to managing the state's public defense budget wisely and cost-effectively. Since public defense contractors have historically delivered competent legal services to their clients, despite the fact that public defense contract rates have significantly and consistently lagged behind the private market for such services, any adjustments in rates that result in increases should also result in added benefits to the public defense system and its clients.

⁹ Of course, there are even more extreme variations between the rates paid to public defense attorneys and the salaries of prosecutors in Multnomah County, as indicated by the comparison in Appendix "D" between the salaries of MPD's attorneys and the salaries of Deputy District Attorneys in the county.

¹⁰ For a discussion before PDSC regarding differences in contractors' caseloads or operations that can explain rate variations, see the excerpts from the Commission's November 2004 meeting minutes set forth in Appendix "F."

Therefore, OPDS's policy guidelines should require contractors seeking increases in rates to demonstrate to the satisfaction of the Commission that a rate increase will either (a) improve the quality or cost-efficiency of a contractor's services or operations to a significant degree or (b) to ensure the continuation of essential public defense services.

Third, PDSC must establish a mechanism to ensure that contractors who are paid relatively higher contract rates are providing added services or benefits that contribute significantly to the quality and cost-efficiency of public defense services or to the effective operation of the local service delivery and justice systems. Therefore, PDSC may request individual contractors from time-to-time to provide objective information, including a contractor's best estimate of the dollar value of the unique services it delivers, in order to ensure that higher contract rates produce those kinds of added benefits.

MPD's efforts to inform PDSC during its recent meetings of the unique services MPD has provided over the years (e.g., in-house investigation and alternative sentencing services, professional training, improved law office technologies, representation in innovative court programs, public service and education, and policy development) demonstrates the difficulty of quantifying the added benefits produced by such services and, therefore, of explaining the higher rates paid for them. While these kinds of services are no doubt valuable and beneficial, the Commission is unable to fully understand or explain the extent to which MPD's higher contract rates are justified by the value of the services and added benefits they provide. If for no other reason than maintenance of the credibility of PDSC and its contracting system, the Commission must be able to articulate more precisely the reasons for higher contract rates for MPD or any other contractor with higher contract rates. Therefore, PDSC needs better information than it has received thus far regarding the value of the added services and benefits that MPD provides in Multnomah County.

The Commission also needs assurances that any unique service provided by PDSC's contractors in exchange for a higher contract rate produces benefits for other contractors or local public defense or justice systems. Therefore, the Commission directs OPDS to obtain reports confirming those benefits before renewing contracts with contractors who receive higher rates for unique services.

3. OPDS shall contract with Ann Christian to conduct a study and further analysis of more cost-efficient processes and best practices to manage conflicts of interest in Multnomah County in order to reduce the associated costs to the courts and the public defense system. Ann Christian completed an initial report on the management of conflicts of interest in Multnomah County for the Commission's consideration at its November 2004 meeting. That report contains an analysis of the issues and problems involved and suggests possible strategies and processes to address them. (See Appendix "D.")

In light of the skill, experience and insight reflected in this excellent report, OPDS is directed to contract with Ann Christian to conduct a more detailed study of the relevant issues and problems and to propose more effective methods to manage conflicts of interest in Multnomah County. While this study will focus on Multnomah County, the Commission expects that it will have widespread application in counties across the state.

The Commission also expects Ann to form a task force of local contractors to collaborate with her in the development of a written report to the Commission, which should be completed by the Commission's June 2005 meeting. A draft of the report should be distributed to OPDS's Contractor Advisory Group in time to incorporate the input of its members before the Commission's June 2005 meeting.

4. Ann Christian's study to improve PDSC's management of conflicts of interest in the county shall include the identification of methods to better manage the problem of untimely and unnecessary withdrawals and substitutions of public defense attorneys in order to reduce the costs to the county's public defense and justice systems. Based on OPDS's findings and PDSC's own investigations, the Commission concludes that Chief Criminal Judge Julie Frantz and her Circuit Court colleagues have undertaken extraordinary and largely successful efforts to reduce the number of untimely and unnecessary withdrawals and substitutions of defense attorneys in criminal cases in Multnomah County. Nevertheless, in order to promote the cost-efficiency of the county's public defense and justice systems, as well as the Commission's credibility as a responsible manager of an integral function of the justice system, PDSC must ensure that it has made every reasonable effort to reduce untimely and unnecessary withdrawals by public defense attorneys. Therefore, OPDS shall negotiate a provision in Ann Christian's contract for her study of conflicts of interest that directs her to include in the study's report to the Commission analyses and recommendations regarding methods to manage withdrawals and substitutions of public defense counsel more effectively.

5. OPDS shall develop and propose to the Commission methods to increase the supply of competent juvenile defense attorneys in Multnomah County. OPDS must identify ways to increase the supply of competent juvenile defense attorneys to handle cases in Multnomah County's Family Court involving conflicts of interest with PDSC's current contractors. Through OPDS's regular process for issuing Requests for Proposal, the Commission expects OPDS to receive credible proposals from the private bar to participate in the Family Court's appointment system or to form a consortium of attorneys to contract with PDSC to provide representation in cases before the Family Court. In the event OPDS does not receive credible proposals through its RFP process, the Commission will need to consider recruitment strategies and incentives to increase the pool of juvenile attorneys in Multnomah County. Furthermore, OPDS should determine the capacity of its current contractors to accept additional juvenile cases without significantly increasing the number of conflicts of interest in Family Court.

6. OPDS should develop general principles and guidelines regarding the allocation of caseload shortages and preferences for full caseloads among PDSC's contractors for consideration by the Commission at its 2005 Retreat. The Commission agrees with OPDS's observation that now is not the time to devote the necessary effort and staff resources to establish preferences for retaining full caseloads and priorities for the allocation of caseload shortages among PDSC's contractors. But PDSC does not agree with OPDS that this effort should be postponed until there is another crisis in public defense funding. The Commission's contractors are entitled to a clear understanding of the risks they are assuming by contracting with the State of Oregon in order to plan their

business operations and determine their staffing needs. Therefore, at its next Retreat in November or December 2005, the Commission and OPDS will develop general principles and guidelines governing contractor preferences among PDSC's different types of contractors (i.e., non-profit public defenders, consortia and law firms) for the allocation of caseloads and caseload shortages in the event of a substantial cut in PDSC's budget.

February 1, 2005

MEMORANDUM

TO: The Public Defense Services Commission
FR: Peter Ozanne
RE: The Commission's Strategic Plan for 2005-07

The attached Draft of PDSC's Strategic Plan for 2005-07 has been changed to incorporate comments by Commission members at our last meeting in January.

In particular, I have added approved language from the last draft regarding the availability of "competent and dedicated" public defense counsel in the Plan's Vision and Mission Statements at page 1. Starting at page 7, the strategies and their commentaries have been extensively revised or expanded and PDSC's Performance Measures have been incorporated where relevant.

DRAFT

(02/09/05)

PUBLIC DEFENSE SERVICES COMMISSION'S Strategic Plan for 2005-07

Vision

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

Mission

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

Values

- **Quality** - PDSC is committed to providing the quality public defense services required by Oregon law and the state and federal constitutions.
- **Cost-Efficiency** - PDSC is also committed to providing quality public defense services because quality also promotes cost-efficiency by reducing the chances of legal error and the need for appeals, retrials, and other costly remedial actions.
- **Leadership** - PDSC is a responsible leader and cooperative partner with other state and local agencies in the development of justice policy and the administration of justice in Oregon.

- **Accountability** - PDSC and OPDS are results-based organizations with employees and managers who hold themselves accountable by establishing performance standards and outcome-based benchmarks and who implement those measures through regular performance evaluations and day-to-day best practices.
- **Stewardship** - PDSC and OPDS are responsible stewards of taxpayer dollars and constantly seek the most cost-efficient methods to deliver and administer public defense services.
- **Fairness** - PDSC and OPDS administer public defense services contracts in an open, even-handed and business-like manner ensuring fair and rational treatment of all affected parties and interests.
- **Respect** - PDSC and OPDS treat everyone with whom they deal with respect. In particular, PDSC and OPDS treat members of the public as valued constituents, and contractors and employees as valued partners in the delivery of public defense services.
- **Competence** - PDSC strives to provide direct and contract legal services that meet prevailing standards of professional competence and promote the sound administration of justice in Oregon.
- **Opportunity** - PDSC seeks opportunities for its capable and diverse employees and contractors to experience fulfilling careers and engagements in public service.
- **Advocacy** - PDSC is a vigorous advocate for adequate public funding to support Oregon's public defense system.
- **Credibility** - PDSC and OPDS are credible sources of information and expertise about public defense and justice policies, practices and their implications, for the benefit of the public, the Oregon Legislature, the media and other justice agencies and professionals.

Organization and Decision Making

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

OPDS is comprised of two divisions: the Legal Services Division (LSD), which provides appellate legal services to indigent criminal defendants in the state; and the Contracts and Business Services Division (CBS), which administers the state's public defense contracting and payment systems.¹ Each division is headed by a chief operating officer—the Chief Defender at LSD

¹ See PDSC's and OPDS's organization chart in Appendix A.

and the Contracts and Business Services Director at CBS—both of whom report to OPDS’s Executive Director.

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

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

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

PDSC intends to devote most of its time and energy to developing policies that will guide the shape and direction of the state’s public defense system and will improve the overall quality and cost-effectiveness of public defense services in

Oregon, and to overseeing implementation of the strategies set forth in this Strategic Plan. Accordingly, PDSC will undertake a detailed, in-depth review of the terms and conditions of an individual public defense contract at a regular monthly meeting only if (a) requested to do so by the Executive Director or (b) requested to do so in writing by a contractor or prospective contractor and, in the opinion of a majority of PDSC members in attendance, the request justifies such a review.

ORS 151.216 also directs PDSC not to

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

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

PDSC will develop many of the foregoing management, performance and quality assurance requirements and standards in the course of overseeing OPDS's delivery of direct legal services through LSD. PDSC has approved the Executive Director's delegation to the Chief Defender of his authority to directly manage LSD and directly supervise its attorneys and staff.

Standards of Service

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

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

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

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

Legislative Advocacy

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

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

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

PDSC does not intend this policy to affect the ability of OPDS's Legal Services Division (LSD) or its attorneys to advocate positions before the Legislative

Assembly that are designed to protect or promote the legal rights and interests of LSD's clients.

Goals and Strategies for 2005-07²

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

Strategy 1: In cooperation with the courts and other criminal justice agencies—especially state and local law enforcement authorities, and in collaboration with public defense attorneys and PDSC's contractors across the state, prepare informational and budget presentations to Oregon legislators which communicate the consequences to public safety of reductions in PDSC's budget for 2005-07.

- A. PDSC's informational and budget presentations should emphasize two points in particular: (1) Oregon's criminal and juvenile justice systems are made up of interrelated process and are served by interdependent agencies. Therefore, legislators must be aware of the importance of balanced funding for those systems and agencies (e.g., cuts to public defense budgets prevent police, prosecutors and corrections officials from carrying out their law enforcement functions); and (2) Reductions in PDSC's budget will have their greatest impact on rural areas of the state, where the supply of attorneys is extremely limited and the consequences to public safety will be most pronounced.
- B. OPDS has already begun to implement this strategy in the following ways:
 - 1) OPDS has joined with the Judicial Department, other criminal justice and law enforcement agencies and the Legislative Fiscal Office to develop informational presentations for members of the Senate and House Judiciary Committees and the Ways and Means Committee over three days at the beginning of the 2005 legislative session. These presentations will emphasize the importance of balanced funding and the rural interests at stake.

² The remainder of this document has mostly been adapted from PDSC's Strategic Plan for 2003-05, and most of the "Goals" remain the same. OPDS anticipates that the Commission will want to focus first on the establishment of goals for its 2005-07 Strategic Plan. "Strategies" in the plan will obviously be critical and deserve lengthy discussion at the Commission's Retreat and over the coming months. However, the goals will provide the structure and framework for the PDSC's Strategic Plan for 2005-07 and the direction and guidance to OPDS over the next two years about what kinds of strategies to develop, propose and implement. As the members of OPDS's Management Team develop their personal performance goals and management plans for 2005 over the next few months, and as they revise and update them over the next two years, OPDS will propose new or revised strategies to carry out the Commission's goals. This is particularly true with respect to Goals III, IV and V, which address issues of agency administration, and Goal VI, which depends on what the 2005 Legislature directs PDSC to do.

- 2) OPDS has contacted other organizations like the Oregon State Bar and Portland's Citizens Crime Commission to assist in this educational process and to participate in selected presentations.
- 3) OPDS has secured the agreement of law enforcement officials across the state to appear at PDSC's key budget presentations.

Strategy 2: Follow-up on the foregoing informational and budget presentations with individual meetings with legislators in collaboration with the Oregon Criminal Defense Lawyers Association.

- A. OPDS is in regular contact with OCDLA to share information and coordinate our budget advocacy strategies.
- B. OPDS's Executive Director will devote the first three months of the 2005 legislative session, or whatever time period is necessary, to contact individual legislators, beginning with legislative leadership and the members of the Joint Ways & Means and Judiciary Committees.

Strategy 3: Develop and refine Performance Measurements which assure the Legislative Assembly that PDSC and OPDS are spending and managing state funds cost-effectively.

- A. OPDS appeared before JLAC in August 2004 to present draft performance measures that were approved by PDSC with the expectation that the Committee would have suggestions for additional measures. It did. The Committee directed OPDS to appear before the Joint Committee on the Judiciary in October. PDSC presented additional performance measures for contract services to the Judiciary Committee in accordance with JLAC's suggestions. Those measures received the support and approval of key members of the Judiciary Committee. These new performance measures build upon the work of the Quality Assurance Task Forces and its site visit process. They are designed to report the level of our contractors' adoption of and compliance with "best practices" in public defense management that are identified through the site visit process.
- B. OPDS returned to JLAC in December 2004 to submit PDSC's new and revised performance measures, which received JLAC's approval and support. OPDS must continue its efforts to develop and refine performance measures since they are likely to play a central role in the Legislature's budget decisions in 2005.

Goal II: Assure the Quality of Public Defense Services.

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

- A. OPDS's Quality Assurance Task Force has established a site visit process to monitor, evaluate and improve the management and operations of public defense contractors throughout the state. The first visits have involved larger, well-established offices whose managers have volunteered for a visit. The site visits involve teams of experienced public defense attorneys and managers who (1) survey conditions in the contractor's county, (2) interview criminal and juvenile justice stakeholders regarding the performance of the contractor, (3) interview the contractor's management and staff about the office's operations and (4) report to the manager of the office and OPDS's Executive Director on their findings and recommendations for improvements.
- B. Without disclosing the contents of individual site visit reports, OPDS's Executive Director will report to the Commission at least every six months on the general problems, accomplishments and best practices identified by the site visits. Best practices, such as systematic employee evaluations, active boards of director or advisory boards with outside members and state-of-the-art case management and accounting practices, will form the bases for PDSC's performance measures of the public defense contracting system.
- C. OPDS and the Quality Assurance Task Force will develop a plan to increase the number of site visits in 2005-07 in order to bring this quality assurance program "up to scale." OPDS will measure its progress in accordance with the following Performance Measures:

Performance Measure #6: Percentage of contractors that have implemented best practices and resolved problems relating to the quality and cost-efficiency of their services, which are identified by OPDS's site visit process and the process's "360 degree" evaluations.

Related Goal: Improve the quality of representation.

Objective: To share training, advice and management expertise between contractors, and to assist the PDSC in decision-making regarding methods to ensure the quality and cost-efficiency of services.

Status:

2014 Target	Data				
	2001	2002	2003	2004	2005
100%	N/A	N/A	N/A	N/A	N/A

Snap Shot: Total through June 30th of each year

Data Source: PDSC Executive Director's reports on the results of site visits and 360 degree evaluations.

Definition/Explanation: Contractors with ten or more attorney employees are subject to review.

Performance Measure #7: Percentage of complaints regarding attorney performance determined to be founded.

Related Goal: Improve the quality of representation.

Objective: To reduce the number of founded complaints by providing training and peer review to contractors, and by restructuring the private bar appointment process and establish new qualification standards for court-appointed counsel. To address complaints in a timely manner.

Status:

2014 Target	Data				
	2001	2002	2003	2004	2005
<10%	N/A	N/A	N/A	N/A	N/A

Snap Shot: 12-month period preceding June 30th of each year

Data Source: Complaint Database

Definition/Explanation: Founded complaints may result in the PDSC taking action up to and including suspension of an attorney from court appointments. In addition, PDSC will record data to monitor the length of time to resolve complaints and the outcome and action taken on founded complaints.

- D. Reports of the Oregon State Bar’s indigent defense task forces identified the need to improve the quality of juvenile defense services across the state. The quality of defense representation in juvenile and family law cases is critical to the health and safety of Oregon’s communities. Therefore, PDSC has made the improvement of juvenile public defense services one of its highest priorities. OPDS in conjunction with the Judicial Department has convened a work group to develop a juvenile law training curriculum, which will be offered in modules throughout the state and which may lead to the establishment of a juvenile law training academy and training requirements in PDSC’s contracts.
- E. OPDS will develop and present to PDSC new standards and processes for determining the eligibility of attorneys for court-appointments. These standards and procedure will be based upon OPDS’s experience in developing the Commission’s new court-appointment process in Lane County, the operation of LSD’s new appellate panels, and best practices from across the country. Priority will be given to the court-appointment process in death penalty cases.
- F. PDSC has approved a formal complaint policy to permit OPDS to address complaints from clients and other interested parties about the quality and cost of public defense representation. OPDS will continue to work with contractors and the Oregon State Bar to ensure that the complaint process operates fairly and effectively, avoids duplication with the Bar’s processes and protects the confidentiality of privileged information.

Strategy 2: Continue a Service Delivery Planning Process that addresses problems with the quality and cost-efficiency of local public defense services and with the methods of delivering those services.

- A. PDSC has identified Service Delivery Regions of the state for the purposes of scheduling its reviews and evaluations of local public defense services and service delivery systems in Oregon.
- B. Following the Commission's investigation and review of public defense services and the service delivery systems in each county within a particular Service Delivery Region (which includes input from all public defense contractors and criminal justice stakeholders and officials in a county), PDSC will develop a "Service Delivery Plan" for each county or region. The Service Delivery Plan will (a) take into account local conditions, practices and resources unique to a county or region, (b) outline the structure and mission of the local delivery system and the roles and responsibilities of PDSC's local contractors and (c) become incorporated or reflected in local public defense contracts.
- C. PDSC will encourage practices and procedures in a region that promote (a) technical assistance and administrative support for contractors in the region, (b) specialized training for local public defense attorneys (c) sharing of information and improvement of communication with the Commission (d) accountability of public defense managers and boards of directors for the quality of their services and the performance of their lawyers and staff and (e) public outreach and legislative relations in the region.
- D. PDSC plans to visit the following regions or counties in the state during 2005:
 - 1) Marion and Yamhill Counties. Beginning in March or April 2005, depending on the Legislative Assembly's progress in adopting PDSC's budget for 2005-07, OPDS will begin investigating the condition of the service delivery system in these two counties.
 - 2) Jackson County. At the conclusion of PDSC's service delivery planning process in Marion and Yamhill Counties in July or August 2005, OPDS will begin investigating the condition of the service delivery system in this county.

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

- A. The Executive Director will continue to meet with existing boards of directors to encourage their active engagement and will continue to urge

public defense contractors to establish boards of directors or advisory boards.

- B. OPDS will devote a substantial portion of its 2005 Public Defense Management Conference to a work shop involving members of boards of directors and advisory boards from across the state.
- C. PDSC should consider directing OPDS on a case-by-case basis to require boards of directors or advisory boards with outside members as a condition of contracting with the Commission.

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

- A. During its 2003 Retreat, PDSC identified the following policies and practices to encourage public defense attorneys to practice in areas of the state experiencing a shortage of public defense services:
 - 1) Identify and actively recruit defense attorneys in the offices of current contractors, who have approximately three to five years of experience and are interested in establishing law practices in underserved areas of the state;
 - 2) As a primary incentive, offer these attorneys four-year contracts with guaranteed caseloads, supplemented by appellate and PCR cases if necessary;
 - 3) Advocate for the forgiveness of student loans and housing allowances as additional incentives;
 - 4) Recruit interested law students and, in cooperation with larger contractors' offices, provide apprenticeship training upon graduation, in exchange for a commitment to practice in underserved areas;
 - 5) Offer technical and administrative support for new offices in these areas; and
 - 6) Assign FTE from OPDS to fill gaps in services and to provide technical support in underserved areas of the state.
- B. OPDS will continue to explore incentives for public defense attorneys to practice in underserved areas of the state and to evaluate the feasibility of the foregoing incentives when a particular need arises. OPDS is considering pilot projects to test the feasibility of such incentives in

Lincoln County, pursuant to the Commission’s Service Delivery Plan for that county, and in Klamath County, where OPDS has received initial expressions of interest in an incentive program. OPDS has also scheduled a meeting with the Oregon State Bar’s Access to Justice Committee to explore this strategy.

Strategy 5: Continue efforts to reduce LSD’s backlog of cases in the state’s appellate courts.

- A. LSD will continue its efforts to manage LSD’s appellate caseload and measure its progress in accordance with the following Performance Measure:

Performance Measure #1: Number of cases in the Legal Services Division (LSD) backlog.
Related Goal: Reduce delay in processing appeals.
Objective: Minimize the delay of justice and improve staff efficiency.
Status:

2014 Target	Data				
	2001	2002	2003	2004	2005
0	184	179	155	114	N/A

Snap Shot: June 30th of each year
Data Source: LSD Appellate Intake Database
Definition/Explanation: Backlog cases are defined as cases that have been pending for more than 210 days awaiting briefing. Attorney productivity is diminished with a large pending caseload.

Strategy 6: Expand OPDS’s capacity to support PDSC’s contractors and the state’s public defense system.

- A. OPDS will upgrade, expand and manage its website, using the legal expertise and research capacity of LSD’s appellate lawyers.
- C. By December 2005, LSD will assume full responsibility for advising contractors on the legal merits and strategies of potential mandamus and habeas corpus actions and for managing the library of legal authorities and resources currently managed under contract with OCDLA.

Strategy 7: LSD will continue to refine and manage and consider expanding panels of appellate attorneys to handle appeals that cannot be handled by LSD.

- A. LSD has developed panels of appellate attorneys to handle felony, misdemeanor and capital cases, which include processes to determine

the professional qualifications of applicants for panel participation, to weight cases based on their complexity and compensate qualified panel attorneys accordingly.

- B. LSD will develop a proposal for a panel of appellate attorneys to handle appeals in juvenile cases for consideration by PDSC no later than September 2005.

Strategy 8: Implement a new system to handle Post-Conviction Relief cases.

- A. OPDS has conferred with its Contractors' Advisory Group and public defense attorneys, prosecutors and judges throughout the state regarding the most effective ways to deliver quality public defense services in PCR cases. A clear consensus favors the establishment of a state office as a separate division of OPDS.
- B. Accordingly, OPDS has developed a separate Policy Package in PDSC's proposed budget for 2005-07 for a four-lawyer division of OPDS that specializes in PCR cases at the trial and appellate level.
- C. Because judges and prosecutors have been vocal proponents of the right to counsel in PCR cases, OPDS will seek their support and advocacy for this PCR Policy Package.

Goal III: Strengthen the PDSC's Contracting Process.

Strategy 1: Revise PDSC's standard form contract.

- A. CBS considers changes and improvements in PDSC's form contract on an ongoing basis and will continue to propose revisions when the need arises.
- B. OPDS's Contractors' Advisory Group has formed a Model Contract Subcommittee to recommend to OPDS revisions and improvements in PDSC's standard form contract.

Strategy 2: Consider the development of a consistent contract rate structure that compensates contractors for actual work performed and establishes rational bases for any differences in rates.

- A. OPDS has requested relevant recommendations from the Model Contract Subcommittee and awaits its response.
- B. The Commission's Service Delivery Plan for Multnomah County will begin to address this issue.

Strategy 3: Develop a systematic process to evaluate the legal competency and ability of public defense contract attorneys prior to the time that PDSC's contracts are negotiated or renewed.

- A. OPDS should develop a formal and systematic process to ensure that professional judgments are made with regard to the legal competency and abilities of candidates for PDSC's contracts before those contracts are negotiated or renewed.
- B. PDSC will need to identify alternative legal counsel in the event that it determines available attorneys in a county or region are incapable of delivering legal services at a level of quality and cost-efficiency acceptable to the Commission.

Strategy 4: Continue to improve the effectiveness and cost-efficiency of OPDS's administration of the contracting system.

- A. OPDS will measure its progress in improving the administration of the contracting system through application of the following Performance Measures:

Performance Measure #2: Percentage of fee statements reduced due to incorrect billing.
Related Goal: Ensure cost-effective service delivery.
Objective: To pay the correct amount for appropriate costs.
Status:

2014 Target	Data				
	2001	2002	2003	2004	2005
3%	N/A	N/A	N/A	N/A	N/A

Snap Shot: 12-month period preceding June 30th of each year
Data Source: Accounts Payable Vouchers Database
Definition/Explanation: The database was not originally designed to include an incorrect amount billed; the database has now been modified. In the absence of a baseline, the PDSC has estimated that 3% would be the sustained error rate and that the PDSC should be able to maintain that level.

Performance Measure #3: Percentage of fee statements processed within 10 business days.
Related Goal: Ensure cost-effective service delivery.
Objective: To ensure prompt payment to providers
Status:

2014 Target	Data				
	2001	2002	2003	2004	2005
95%	N/A	N/A	N/A	N/A	N/A

Snap Shot: 12-month period preceding June 30th of each year

Data Source: Accounts Payable Vouchers Database

Definition/Explanation: The PDSC's guideline rates are well below the rates many service providers normally charge. By assuring prompt and reliable payment, providers are more willing to work at the reduced rates. This Performance Measure also sets an appropriate standard for employee performance.

Performance Measure #4: Percentage of non-routine expense requests reviewed within 5 business days.

Related Goal: Ensure cost-effective service delivery. Improve the quality of representation.

Objective: To provide either approvals or denials to attorneys as quickly as possible.

Status:

2014 Target	Data				
	2001	2002	2003	2004	2005
90%	N/A	N/A	N/A	N/A	N/A

Snap Shot: 12-month period preceding June 30th of each year

Data Source: Non-Routine Expenses Database

Definition/Explanation: A major portion of non-routine expense requests are for investigation. In many instances, investigation is more productive when begun as soon as possible after the alleged incident.

Performance Measure #5: Percentage of complaints regarding payment of expenses determined to be founded.

Related Goal: Ensure cost-effective service delivery.

Objective: To reduce the percentage of founded complaints by paying only reasonable and necessary expenses. To address complaints in a timely manner.

Status:

2014 Target	Data				
	2001	2002	2003	2004	2005
<10%	N/A	N/A	N/A	N/A	N/A

Snap Shot: 12-month period preceding June 30th of each year

Data Source: Complaint Database

Definition/Explanation: Complaints determined to be founded will result in recovery of inappropriate expenditures and/or modification of approval procedures and guidelines. In addition, PDSC will record data to monitor the length of time to resolve complaints and the outcome and action taken on founded complaints.

Goal IV: Strengthen Working Relationships with Public Defense Contractors.

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

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

Strategy 3: Administer CBS's "customer satisfaction" survey of contractors at the end of 2005 and 2006 to obtain feedback on how PDSC's contracting processes and services are being administered.

Goal V: Continue to Strengthen the Management of OPDS.

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

Strategy 2: Refine agency performance measures for direct and contract legal services. (See Goal #1, Strategy #3, above)

Strategy 3: Implement a pilot project to centralize transcription services for transcripts on appeal.

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

Goal VI: Respond to the requests and directives of the Oregon Legislature in a timely and effective manner.

Strategy 1: Present performance measures for "direct and contract public defense services" to the Joint Legislative Audit Committee which gain the Committee's support and approval.

- A. In May 2005, OPDS presented PDSC's first draft of its Performance Measures to the Joint Legislative Audit Committee (JLAC). JLAC directed OPDS to confer with the Joint Interim Committee on Judiciary regarding those Performance Measures and to return to JLAC with revisions in December 2004.
- B. In December 2004, JLAC approved PDSC's Performance Measures and commended OPDS's efforts to improve the quality and cost-efficiency of the state's public defense system. OPDS assured the Committee that it will continue to refine those Performance Measures and explore the possibility of additional measures by consulting with other states, national legal organizations and research agencies.

Strategy 2: Submit the biennial report of OPDS's Executive Director to the Legislature in January 2005.

Strategy 3: Determine the need to convene a “Jury Pool Workgroup” and, if necessary, convene the workgroup and present recommendations to the House Judiciary Committee to ensure that jury pools are representative of the general population.

- A. OPDS has determined that the legal and policy issues underlying the House Judiciary Committee’s proposal for a Jury Pool Workgroup have been or soon will be resolved by case law and changes in relevant litigation strategies.
- B. No later than March 2005, OPDS will submit a letter to the House Judiciary Committee explaining why a Workgroup and recommendations for further legislative action are no longer necessary.

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

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

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

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