

**Members**

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



**Ex-Officio Member**

Chief Justice Paul J. De Muniz

**Executive Director**

Ingrid Swenson

**PUBLIC DEFENSE SERVICES COMMISSION**

**MEETING**

Thursday, August 9, 2007  
9 a.m. to 1 p.m.

Myrtlewood Room  
Coos Bay Public Library  
525 Anderson Ave.  
Coos Bay, Oregon

**AGENDA**

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|---------------------------------------------------------------------------------------------------------|-------------------------------------|
| 1. <b>Action Item:</b> Approval of the Minutes of PDSC's June 14, 2007 Meeting<br><i>(Attachment 1)</i> | Barnes Ellis                        |
| 2. Presentations on Public Defense Delivery in Coos and Curry Counties<br><i>(Attachment 2)</i>         | Invited guests and audience members |
| 3. Final Budget Report<br><i>(Attachment 3)</i>                                                         | Ingrid Swenson<br>Kathryn Aylward   |
| 4. <b>Action Item:</b> Approval of increase in Attorney Hourly Rate<br><i>(Attachment 4)</i>            | Kathryn Aylward                     |
| 5. <b>Action Item:</b> Approval of OPDS Compensation Plan<br><i>(Attachment 5)</i>                      | Kathryn Aylward                     |
| 6. OPDS's Monthly Report                                                                                | OPDS's Management Team              |

***Please note: The Commission will convene for lunch immediately after the commission meeting at the Salmon Room West in the Mill Hotel. After lunch the commission will remain in the Salmon Room West for the opening session of the annual retreat.***

***Next meeting: The next meeting of the commission is scheduled for September 13<sup>th</sup> from 9am to 1 pm at a location to be announced in Salem.***

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, June 14, 2007 Meeting  
9 a.m. to 1 p.m.

Mt. Jefferson Room  
Inn of the Seventh Mountain  
Bend, Oregon

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
Mike Greenfield  
John Potter  
Janet Stevens

STAFF PRESENT: Ingrid Swenson  
Kathryn Aylward

Rebecca Duncan  
Lorrie Railey

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**TAPE 1, SIDE A**

**Agenda Item No. 1**

**Approval of the Minutes of PDSC's March 8, 2007 and May 10, 2007 Meetings**

001 - 027

**MOTION:** Shaun McCrea moved to approve the minutes of the March 8, 2007 meeting; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE: 5-0.**

**MOTION:** John Potter moved to approve the minutes of the May 10, 2007 meeting; Mike Greenfield seconded the motion; hearing no objection, the motion carried. **VOTE: 5-0.**

**Agenda Item No. 2**

**Budget Report**

016 - 110

Ingrid Swenson and Kathryn Aylward described the legislative history of the public defense budget bill, SB 5535, and the increases approved to date for a mandated contractor compensation adjustment and an appellate mandated caseload adjustment, an increase in the hourly rate for attorneys, and eight new attorney positions in the Legal Services Division. Kathryn Aylward noted that the legislature had instructed PDSC to review its existing performance measures and to add two new measures – a customer service measure and a best practices measure for the commission.

- 112 – 132 Ingrid Swenson said that PDSC was still seeking additional funds in this legislative session.
- 132 – 177 Chair Ellis reported that he had attended the budget hearings and believed that legislators were more receptive to the needs of public defense than in previous sessions, both in terms of the role of defense in the public safety system and to the fundamental fairness argument. He thought they responded positively to the business management approach and appeared to have confidence in the commission and its staff.
- 217 – 223 Kathryn Aylward said that the additional LSD positions were the result of a recognition that the workload of LSD is directly related to the workloads of the Judicial Department and the Department of Justice.
- Agenda Item No. 3 Approval of contract**
- 228 – 278 The commission approved a contract with attorney Andy Simrin to handle death penalty post conviction relief cases.
- MOTION:** Mike Greenfield moved to approve the contract; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**
- Agenda Item No. 4 Proposed Changes to Payment Policy**
- 282 - 361 Lorrie Railey explained proposed amendments to the PDSC Payment Policies and Procedures, including an increase, effective July 1, in the mileage rate.
- MOTION:** Shaun McCrea moved to approve the amendments to the payment policy; Mike Greenfield seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**
- Agenda Item No. 5 Review and Possible Approval of Death Penalty Representation Plan**
- 362 – 404 Ingrid Swenson summarized the draft report on the delivery of services in death penalty cases and proposed representation plan. She noted that a consistent theme in the testimony received by the commission was that cases should be handled properly from the beginning with adequate resources being made available to defense teams. Under the plan, OPDS is the designated “responsible agency” for assigning counsel in individual cases and overseeing the quality of representation. OPDS will survey judges and others about the performance of death penalty lawyers and will seek to increase the number of qualified mitigators available to work on these cases.
- 404 – 478 Chair Ellis proposed two amendments to the report to clarify that (a) one of the criteria OPDs should apply in making attorney assignments is the level of qualification of the attorney, and (b) to accelerate the proposed effective date of the assumption of the assignment function from January of 2008 to July of 2007.
- 500 - 517 Steve Gorham noted that MCAD’s contract does not expire until December 31, 2007 and under its terms MCAD assigns counsel in Marion County death penalty cases.
- 623 – 733 Chair Ellis inquired about appropriate steps to increase the number of available mitigators. Ingrid Swenson reported that OPDS would be offering contracts to some mitigators, that it would be exploring training options for mitigators and that the commission at its August retreat would be considering compensation

rates for investigators and mitigators. Lorrie Railey described other efforts OPDS had made to increase the number of available mitigators.

- 733 –  
**TAPE 1, SIDE B**
- Chair Ellis discussed the importance of creating an opportunity for judges handling death penalty cases to express in confidence their concerns about the quality of representation provide by defense counsel, and the need to explore methods of creating and preserving records in death penalty cases. He also noted the importance of communication between appellate counsel and trial counsel and the need for appellate counsel to work closely with PCR counsel.
- 264 - 270
- MOTION:** Mike Greenfield moved to adopt the report as amended; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**
- Agenda Item No. 6**      **Review of Proposed Service Delivery Plan for Washington County**
- 287 - 443
- Ingrid Swenson summarized the draft Washington County report
- 443 – 655
- Chair Ellis observed that it appears that Metropolitan Public Defender’s two-office system is not a detriment to the performance of the Washington County office and that there are a large number of providers in Washington County who are criminal law specialists but who handle both retained and appointed cases. He identified the principal issues in Washington County as training, rate disparity and the role of the private bar.
- 657 – 704
- Jim Hennings said that an additional issue is what appears to be a declining caseload in Multnomah and Washington Counties and the difficulty that presents for training new attorneys.
- 704 – 728
- Chair Ellis, Commissioner Potter and OPDS staff discussed the role of private bar attorneys in Washington County, particularly in juvenile cases and whether cases should continue to be made available to them. Commissioner Potter said that Washington County providers seem to prefer to remain independent of each other and are exploring the creation of another consortium only because they believe that the commission would prefer a consortium. Chair Ellis suggested that contractors discuss appropriate structural models at the meeting that was suggested for discussion of training options.

**TAPE 2; SIDE A**

- 029 – 106
- The commission and OPDS staff then discussed the issue of the disparity between rates paid to Washington County contractors and those paid to contractors in other areas of the state, the influence of competition on past rates, the effort to raise rates in the 2005-2007 biennium, and the possible impacts of declining caseloads and increasing population in Washington County. Further consideration of the Washington County report was postponed until a future meeting.

**Agenda Item No. 7**      **OPDS Monthly Report**

- 108 – 444
- OPDS staff presented its month report. Paul Levy provided an update on recent site visits; Peter Gartlan and Rebecca Duncan reported that LSD had received legislative approval of its three substantive bill proposals, was briefing a record number of Supreme Court cases, and was making progress on eliminating its backlog. Rebecca Duncan also discussed changes in the staffing of death

penalty cases and improving outreach to the trial bar. She described additional training options for death penalty lawyers. Peter Gartlan discussed the plans for filling the new positions approved by the legislature. Kathryn Aylward reported on the acquisition of additional office space to accommodate the new positions. Ingrid Swenson and Kathryn Aylward said that the Public Defender of Marion County office would begin taking cases in July.

444

**MOTION:** Shaun McCrea moved to adjourn the meeting; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE: 5-0.**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, June 14, 2007 Meeting  
9 a.m. to 1 p.m.

Mt. Jefferson Room  
Inn of the Seventh Mountain  
Bend, Oregon

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
Mike Greenfield  
John Potter  
Janet Stevens

STAFF PRESENT: Ingrid Swenson  
Kathryn Aylward  
Paul Levy  
Peter Gartlan  
Rebecca Duncan  
Lorrie Railey

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**TAPE 1, SIDE A**

[The meeting was called to order]

**Agenda Item No. 1 Approval of the Minutes of PDSC's March 8, 2007 and May 10, 2007 Meetings**

001 Chair Ellis The first item is approval of the minutes of both March 8 and May 10, Attachments 1 and 2. We'll take March 8 first. Are there any additions or corrections to either the summary or the transcript? If not, I would entertain a motion to approve the minutes of March 8.

**MOTION:** Shaun McCrea moved to approve the minutes; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE: 5-0.**

The minutes of May 10, both the summary and the transcript, any additions or corrections? I had a few nits, but they are not worth worrying about. I would entertain a motion from Mr. Potter.

**MOTION:** John Potter moved to approve the minutes; Mike Greenfield seconded the motion; hearing no objection, the motion carried. **VOTE: 5-0.**

The minutes of March 8, 2007 and May 10, 2007 are approved as submitted. Ingrid and Kathryn do you want to present the budget report.

**Agenda Item No. 2 Budget Report**

016 I. Swenson Thank you Mr. Chair. Good morning. I did want to pass on that the Chief Justice regrets that he cannot join us. He had planned on being here but his budget was up yesterday afternoon

and he thought there might be a need to remain in Salem and see what was happening with that. Our budget bill, which is Senate Bill 5535, has passed both houses at this point. There were nine no votes in the Senate and six in the House. None of them had anything to do with the merits of the bill. They had to do with some discussions going on between the two parties about how the budgets, in general, should be handled, so I was not concerned about that. It goes to the Governor for signature now and that is expected to happen. I will ask Kathryn to talk about the details of where we are with the numbers.

- 026 K. Aylward In your materials there is a memo that Robin La Monte prepared.
- 028 Chair Ellis The May 1?
- 028 K. Aylward Yes, that is correct. I apologize; the pages are a bit mixed up. Basically what happened was our agency request budget was submitted; the Governor's budget was prepared and the Co-Chair's budget was the same dollar figure. The bottom line is the Governor's budget. The Co-Chair's budget also made some adjustments to what is known as the essential budget, so when the Co-Chair's budget made those adjustments, the remainder over and above the essential budget level was \$1.8 million. As an example, to show the subcommittee what \$1.8 million could do if the Commission decided to apply all of that unspecified \$1.8 million to the hourly rate, it would only be enough to bring the hourly rate up from \$40 to \$43.25 on regular cases and from \$55 to \$60 on death penalty cases. Then I prepared some options for the subcommittee to look at to see the cost of increasing the hourly rate to something that might actually have an impact. The subcommittee then added \$856,000 to the Co-Chair's budget. Where we are now is we have ended up with a total of \$212,954,000 in general funds. We added eight positions to the Legal Services Division. For future budgeting, you see the table at the bottom of the first page has several adjustments. The fourth line down, mandated contractor compensation adjustment, is a change in how adjustments are calculated. As we have discussed before, we are not buying services and supplies and a small percentage increase doesn't cover the cost if you are buying professional services.
- 051 Chair Ellis Do we expect that to be kind of baked in in future budgets?
- 052 K. Aylward I don't see why it wouldn't be.
- 053 Chair Ellis I don't either, so we do expect that?
- 054 K. Aylward Yes. I think the rationale and the necessity for including it in essential budget level has been established and accepted, so that is very good news. The next one down is the appellate mandated caseload. In the past the budget for public defense had a mandated caseload for trial level coverage and we just never put anything in for the appellate division, so as the number of appeals grew we created a backlog and people were overworked and there needed to be a mechanism in our budget to say that even if nothing changes, we still have to do the same cases we are doing. There are going to be this many more cases, therefore we need more people and more dollars. That is also something that would continue to be a component of the essential budget.
- 062 Chair Ellis Between them that is \$9 million dollars which you are indicating we can expect that, or some adjustment of that, to be ....
- 064 K. Aylward If caseload rose, yes, and likewise if caseload is dropping off then I suppose our mandated caseload adjustment would be a negative number, so it is just a reflection. That is a total of \$2.7 million that is left over and it began as unspecified. It wasn't targeted at a particular policy package, and we ended up with LFO's recommendation that the policy packages for – it is No. 2 under LFO's recommendations that I was talking about - the juvenile dependency representation to add four appellate attorneys. The recommendation was that that package not be funded. Package 101, which was to increase the Legal Services Division attorney salaries

up to the same salaries as the AG's office, that package was not funded. Number four, the post conviction relief attorneys were not funded either. The remainder, the \$2.7 million, is aimed at provider compensation and I believe that the legislature assumed and intended that it would go entirely toward increasing the hourly rate. Yes, well 1/6 of the way to closing the gap between public defender salary and DA salary is part of the mandated caseload adjustment. So in other words, when we looked at adding \$7 million to increase contractor compensation, that is all the contractors, not the hourly paid ones, but all of the non-hourly paid ones. Some component of that money goes toward public defender offices which is the amount that enables the gap to be closed by 1/6. It is not in the \$2.7 million. The subcommittee also instructed us to add two new performances measures, the page with the black bars on it. We have our original performance measures and then No. 8 is the customer service measure, which all state agencies have ....

095 Chair Ellis

Who do we identify as customers?

096 K. Aylward

For the Legal Services Division, the customers are the clients and for Contract and Business Services, the customers are the providers. That was LFO's recommendation. That was my first question - who the customers are. Number nine is best practices for the Commission. This is one that all Boards and Commissions have. We will talk about that at the retreat. It is just standard practice and the best practices are ones we have always done for this Commission anyway. The subcommittee also recommended that we review our performance measures. Part of the problem with one of our performance measures is that in a closed system if you do better work with existing people who work harder and faster and more efficiently, you would reduce your backlog, but now that we have eight additional positions to address the backlog it ceases to become a valid performance measure. We will have to look at all of our performance measures.

109 Chair Ellis

You and Pete have assured us that that is going to go away soon anyway.

110 K. Aylward

We are hopeful.

112 I. Swenson

Mr. Chair, let me just add that the session isn't over and the legislators, and particularly the Ways and Means folks, are well aware that we are seeking additional funding, and at the conclusion of the subcommittee hearings as you and Commissioner Potter are already aware, almost all of the members of that subcommittee expressed their dissatisfaction with the level of funding that the Co-Chairs were authorizing and believed that more was needed and indicated their support for finding that if possible. We are looking for it. OCDLA has been actively engaged in the process of assisting in that effort and so has the bar and a number of legislators. Representative Shields, who is the Chair of the Public Safety Subcommittee and who carried our bill on the House floor, indicated that there was at least another million that would come to us from the subcommittee. The subcommittee had some discretionary funds and he has indicated that at least a million of that will come our way. That means we are still looking for approximately four million beyond that. In addition, this juvenile appellate section idea is very much supported by Senator Kate Brown and by some other legislators and certainly by the Chief Judge of the Court of Appeals, Judge Brewer, so we also remain hopeful that that may be part of the final budget.

132 Chair Ellis

First of all, in just raw dollars, there is a significant increase. It is about \$29 million on the numbers that we have, including the one million you mentioned, which I think is really encouraging. Secondly, what I noticed is that we are no longer having half our budget escrowed with the E-Board, which has been the pattern the last two sessions. I think that is also a good sign. I will repeat here, because not everybody was at the Washington County meeting, I really thought our group's presentation, that is not just your own presentation Ingrid and Kathryn and Peter, all of which were excellent, but all of the people you brought in to carry the message including two district attorneys, both the Washington County and the Multnomah County DA, I thought the whole tone of the Ways & Means Subcommittee was

very receptive, far more than I have ever seen before. And I think that really reflects very well on work that a lot of people in this room did. It is not just the OPDS staff, but a lot of people worked hard to get that message across and have interaction with the legislators. They seemed to me almost pre-persuaded, and the issue for them was where do we find the money, not who are these people and why are we supporting people that represent criminals. They did understand the broader message, both the message that we are part of a public safety system and you need to fund this part to have the whole system work fairly. I also thought they were more receptive to fundamental fairness arguments. They seemed to understand that what happens in a criminal justice system has a huge impact on the people that are being put through that, and fundamental fairness calls for good representation. I thought they particularly responded to sort of the business presentation. This was you Kathryn. I thought you did a terrific job of speaking to them in a language that for several of them really resonated that from a business management point-of-view, this is what needs to be done. And the final thing that struck me about the whole process was I think they have confidence that the Commission they created six years ago is working, that the staff is effective and competent and able, and that the money they are entrusting to us is being spent in a competent way. That is a precious franchise and I hope we are able to keep that momentum going. I felt there are many, many positive things about that session so far. I congratulate both of you and really everybody in the room. It was very, very well done. John, you were at all of those sessions, is there anything you want to add?

- 177 J. Potter No. I echo everything you have said Barnes. Ingrid and I had an opportunity to speak with Senator Brown a few days ago, and I asked her the question “We presented early on in the subcommittee process and since we didn’t see all of the rest of the subcommittee presentations did you hear from other legislators the same thing that you heard during our presentation, that is, people being concerned that there wasn’t enough money for public defense? Did you hear that with other groups that went through?” And she said “No.” The legislators were quite concerned about our level of funding, and they were certainly, I’m sure, concerned about other people’s level of funding, but they didn’t get the kind of response which I think I said was historic. I had never seen anything like it in which at the end of a presentation, after three days of presentations, all the legislators said “We are going to pass this budget out but it is clearly not enough” and they wanted to try and find more money.
- 192 Chair Ellis Mike, anything you want to add?
- 192 M. Greenfield No. It is add back time. Certainly the Co-Chairs have set aside money for adding back in, and the closer we get to the end of the session the more we need to hound them.
- 196 K. Aylward One more comment. The account itself, leaving aside our operating divisions, the account increase is \$27 million. Ten million of that will be needed just for caseload growth, so if we don’t increase anybody’s rates, \$10 million of that is gone. That is about 10 percent that is left. I think the system is significantly more under funded than 10 percent, so although it is a relief and it is good to not have this be as bad as previous sessions, it is only 10 percent more. That doesn’t fix anything. I agree we still have to keep pushing and get more because this is a relief but not a cure.
- 206 I. Swenson In our presentation to the legislature basically we said this is a six-year effort. We know we can’t get to where we need to go in one session. We would like to get as far as we can now and look to future sessions to address the compensation issue and the caseload issue.
- 211 Chair Ellis So is there any precedent for an agency like ours not asking for but getting eight FTE positions? Has that ever happened?
- 214 K. Aylward I think it is unusual.
- 215 Chair Ellis What was your magic? How did you do it?

- 216 K. Aylward We needed them.
- 217 Chair Ellis And the way to get them is not ask for it, therefore you must need them.
- 217 K. Aylward No. There was a discussion about mandated caseloads in general both with the Judicial Department and the Attorney General's Office, and so the LFO analysts who had each of those different components got together and said "Well wait a minute, if the AG's office is saying they have to have eight attorneys because of their mandated appellate caseload, then doesn't PDSC also have to have to eight or some number of attorneys added for the mandated caseload" and I said "Yes."
- 224 I. Swenson Mr. Chair, that may well be a function of what people were just talking about which is a different view of our place in the public safety system.
- 227 Chair Ellis Again, congratulations but keep working.
- Agenda Item No. 3 Approval of contract**
- 228 Chair Ellis Item No. 3, the contract Attachment 4.
- 229 K. Aylward Right. It is behind the brown divider of your materials. As you know, it has been difficult for us to find attorneys to take death sentence post conviction relief cases. We have had several that have languished for months trying to find attorneys to do them. I did manage to convince an attorney. Under contract he was willing to take one of the cases that we couldn't find anyone for. It is Andy Simrin. He used to work at the Office of Public Defense Services. After he left the office, he became a member of the appellate panel taking capital cases. He is very experienced with post conviction relief, so I signed a preliminary agreement and I hope the Commission will approve entering into a contract with him.
- 243 Chair Ellis I don't know him but do you see this as moving toward PCR specialists under contract playing somewhat the role we had hoped would be played by, I think it was Item 4, that was not funded.
- 246 K. Aylward Yes. I think at this point that is our only alternative. In this particular case, Mr. Simrin had been, I won't say hounded, but had been asked numerous times to please take this case. You know, if we could provide an increase in the hourly rate would you take this case. It was only by having a contract that it was then attractive to someone because you get a regular monthly payment.
- 252 Chair Ellis I gather from what you said that in this situation you had a specific case in mind, but I assume if this model works we can expand on it?
- 254 K. Aylward Absolutely.
- 255 Chair Ellis Any questions about the proposed contract?
- 257 S. McCrea Is there any number of cases contemplated under this contract?
- 258 K. Aylward The contracts are based on hours and so to the extent that more or fewer cases are needed to meet the hourly quota, with post conviction relief cases they tend to take a long time and hours may vary. You might have one month where you don't put in a lot of hours and then it goes to trial and you have a lot of hours.
- 265 I. Swenson One comment if I could, Mr. Chair. We had asked the Commission earlier to allow us to enter into these contracts on a more routine basis than we have been doing in the past. The

Commission basically said no, that you need to use the RFP process when you can, but the Commission understood that there were extraordinary circumstances in the past in which we had proceeded to a contract in sort of a desperate situation. That's again what this was. This was not an effort to go around your determination that the RFP should be the preferred process.

272 Chair Ellis I understood this was part of the BFP process. Beg For ... Any other questions or comments?

276 M. Greenfield Are you looking for approval for a preliminary agreement or for a contract?

277 K. Aylward I have entered into a preliminary agreement pending approval of the contract.

278 M. Greenfield **MOTION:** I move that we approve the contract as discussed; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

**Agenda Item No. 4 Proposed Changes to Payment Policy**

282 Chair Ellis Lorrie Railey, do you want to explain the proposed changes to the payment policy. You have the full attention of everybody in the room.

285 L. Railey We haven't updated our payment policy for two years I think, so it was time to do a little housekeeping. A lot of these are just clearing up confusion. When people read these they interpret them sometimes a little differently than what we intended, so we have done things like done away with a separate sheet of paper with an explanation for why you don't have a receipt. There are some areas in which we have had significant trouble getting the message across. (1) Interpreter services. We have had some interpreters billing twice for the same period of time because of the way the policy was worded. They thought they could have a one-hour minimum at each appointment they went to and so they were billing from 10:00 to 10:20, because that was their appointment with a lawyer and a client, and then at 10:30 when client number two walked in they said that was their second appointment and they thought they got an hour for that. We were trying to clarify that and I think it is a little clearer. (2) Transcripts are another area where there has been some confusion about what an original is, what a copy is, and we have had a number of reporters bill twice for originals because they had submitted two to the Court of Appeals. We have cleaned that up a little bit. (3) Travel expenses. We had in the policy no restrictions on driving your personal vehicle for public defense business, mileage reimbursed, within the State of Oregon and that meant an expert in Portland could get in his car, charge us \$100 an hour and drive to Medford. What we want to do is encourage people to use air travel if that is cheaper for us. Oftentimes, under a state contract it is cheaper especially when you are paying someone a \$100 an hour to sit in a car. We have restricted mileage to the most economical mode of transportation. A few other little clean ups.

323 Chair Ellis Anything buried in here that would be a hot button.

325 K. Aylward A good hot button. Do you know which one I am talking about?

325 L. Railey No.

325 K. Aylward We are increasing the mileage reimbursement rate to 48.5 cents effective July 1 if you approve it.

327 L. Railey That is the rate that other State of Oregon agencies are using right now, which I think is also the federal rate. With the price of gas our providers have been subsidizing rather heavily and a lot of those people drive a lot. The investigators put a lot of mileage on their vehicles.

- 333 Chair Ellis In the eastern part of the state we know that is true.
- 333 J. Potter Mr. Chair, on the mileage rate it was just a year or two ago we raised it and now we are going to raise it to the 48.5. Rather than making these raises, does it make more sense to have a policy that we pay whatever the state rate is?
- 339 L. Railey Our policy actually has a schedule of guideline amounts in the back. We could put that in, certainly. In the wording of the policy it just says the guideline rate and we try to refrain from putting guideline amounts in here that might change.
- 346 K. Aylward We talked about this and I thought that we would prefer to have flexibility in case the timing – we don't always find out or know that the state has changed it. It is short notice and we have to get word out and we have to split all our bills between did you drive on June 30 or July 1, so although I agree with you and think we should and will do that, we just thought otherwise.
- 353 L. Railey It is what we would like to do. We would like to stay in step with the other state agencies, but it may be that we might be 30 days behind.
- 355 Chair Ellis It is not that hard to update it.
- 356 L. Railey It is not actually in the policy it is in the schedule, so we can just change the schedule.
- 358 Chair Ellis Any other questions or comments. Is there a motion to approve?

**MOTION:** Shaun McCrea moved to approve the payment policy; Mike Greenfield seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

**Agenda Item No. 5 Review and Possible Approval of Death Penalty Representation Plan**

- 362 Chair Ellis The next is the review of the death penalty representation plan. Ingrid, do you want to walk through the key points?
- 366 I. Swenson That is Attachment 6 behind the orange divider. The attachment you have sets forth a summary of the testimony that occurred at the February Commission meeting. One consistent theme of that testimony was that we need to see that death penalty cases are handled properly from the beginning. It doesn't make any sense not to do that. It is more expensive in the long run and it doesn't serve the ends of justice. Our representative for the state, Tim Sylwester, Senior Assistant Attorney General in this area said that pretty forcefully, that that is where our attention should be. At the March meeting the Commission reviewed the ABA guidelines which we had discussed previously, and decided that OPDS should be the responsible agency, which the guidelines refer to, for administering the public defense representation in those cases. The Commission decided that OPDS will be the agency that assigns counsel. The court before appointing counsel needs to confer with us to find the appropriate attorney. The Commission decided that OPDS needs to actively monitor the quality of representation being provided. The system we were using to obtain information was probably not adequate. We need to survey prosecutors and judges on a more routine basis so that we can be aware of the quality of representation being provided. The Commission also looked at the lack of a sufficient number of mitigators and determined that we need to find ways to increase the number. As far as the hourly rate for death penalty cases, that is something that the Commission needs to look at in August along with all of the other financial issues that will be before the Commission. And then it was determined that PDSC would work with Matt Rubenstein, our new death penalty resource attorney, to increase training options for death penalty lawyers and mitigators.
- 403 Chair Ellis Including the PCR lawyers?

- 404 I. Swenson Yes. They are very much a part of that community. As the responsible agency, OPDS has in place – well excuse me, we have included in this draft what the ABA guidelines set forth as the responsibilities of that agency, and also the responsibilities of attorneys who handle death penalty cases. Those are set forth in an exhibit to the draft. The only thing I would point out about the draft representation plan is that sometimes we use the word “shall” and sometimes we use the word “should” in terms of what the Commission’s obligations are. The distinction is based on the fact that the ABA guidelines consistently use the word “should” in recognition of the fact that you can’t necessarily accomplish all of these things completely, but I used “shall” where it seemed like a core function of the responsible agency. In other words, if you don’t do this then essentially you are not behaving as a responsible agency, such as preparing lists of attorneys who are eligible for appointment. That is fairly consistent throughout. I think there is one place, and this is in the plan, and it is Item No. 4 on page 22 of the proposed plan. In most places we have used “shall” here and then we qualify what the Commission shall do by saying “assuming funds are available.” The only exception is Item No. C. and it says “The Office of Public Defense Services shall ensure that the workload of attorneys representing defendants in death penalty cases is maintained at a level that enables counsel to provide each client with high quality legal representation.” That is one that could be “should” if that is more appropriate than “shall” because once again it depends to some extent on the resources available. We certainly don’t want people to be handling more cases than they can. Do they from time to time? I’m afraid that is probably true. Other than that, I think we have discussed most of the issues.
- 448 Chair Ellis Okay, if I could start with a few questions. On page two, Judge McShane makes this statement, “As for the defense bar, there are essentially two kinds of attorneys handling the cases – a dedicated group of “phenomenal” attorneys and a group who ought to retire.” Now that bothered me, a lot of us, because that did suggest that at least in his observation there had been some lawyers in these capital cases who really aren’t appropriate. So, bearing that in mind, I wanted to suggest one change in the text on page 13. This is at the sentence that carries over and it says “If the Commission approves the proposed PDSC Legal Representation Plan for Death Penalty Cases, OPDS will be assigning counsel in each case. This should resolve the problem of cases being assigned to attorneys who are significantly overburdened.” I would add, “Or lack appropriate qualifications or experience” because I think that is what we heard. My question to you is that I note in the proposal that OPDS will be directly responsible for appointment of counsel in capital cases. It is not to take effect until January 1, 2008. Why can’t we do that now? Why can’t we have the start date the adoption date of the plan?
- 478 I. Swenson I think we could. We are essentially there. The purpose of the delay was simply to allow us to communicate that more directly to the judges, especially since we are going to be surveying them on the quality of representation. It seemed like kind of a combined effort to identify the standards for them, tell them we will be doing the assignment, and ask for their input on the quality of lawyers who were providing the service. Kathryn, that is essentially what is happening now, is that correct? We are doing assignments except in rare cases and in those cases, we simply need to (inaudible).
- 491 K. Aylward That is correct. Our death penalty analyst now is Billy Strehlow and he has communicated with the court, not the judges, but the staff, which is really the intake point, that they need to call our office whenever they have an aggravated murder case. I think by and large, it does happen occasionally, a judge will say that they want so and so to do this but it doesn’t happen very often now. I would say we are pretty much suggesting the attorney.
- 500 S. Gorham Mr. Chair, if I could interject. You have some contract obligations with some contractors, for example MCAD, which has that responsibility and our contract, like all contracts, ends at the end of this year. We are the, I guess you would say, responsible agency for that, the aggravated murder. I don’t know if there are other contracts like that in the state.

- 507 K. Aylward There aren't any other contracts that include aggravated murder, other than the death penalty contracts themselves, and my suggestion and recommendation would be that that not be included in MCAD's contract in the future.
- 511 S. Gorham At least until January of 2008 it is included. Hopefully you are not concerned, at least in our direct trial experience I don't think there have been, not that I know of at least, any complaints about the quality of the people doing the death penalty work in the direct trial level.
- 518 Chair Ellis Let's address page 20 and see if we can agree on some language. Under Item No. 2, Selection of Lawyers for Specific Cases, we had this beginning January 1, 2008. In light of Steve's comment, maybe we could rehash that and say "beginning with the adoption of this plan, except where existing contracts provide otherwise, when the court determines." I just didn't like that six month delay. I just didn't see a good reason to have that. I have made two suggested language changes. Maybe we ought to see if the Commission is okay with those so far.
- 536 S. McCrea Could you read us the language on your first suggestion?
- 537 Chair Ellis The first one was at page 13, after the word "overburdened" on the top sentence add "or lack of appropriate qualifications or experience."
- 541 S. McCrea I am okay with that. My concern is it almost seems different than the next sentence which is the number of qualified attorneys remain a problem.
- 544 Chair Ellis No it is very consistent. We are saying we don't want cases handled ...
- 545 S. McCrea By somebody who is not qualified.
- 547 Chair Ellis Yeah and it is a challenge to find the ones who are and then the language I just did on page 20 "beginning with the adoption of this report, except for existing contracts requiring otherwise."
- 552 S. McCrea That seems fine.
- 553 Chair Ellis Okay. When we get to the final motion we will move to approve the report with amendments and suggestions. I didn't want to go too fast.
- 558 I. Swenson Mr. Chair, with respect to the change on page 13 I think that we can assume in 100 percent of the cases that no lawyer is being appointed who is not technically qualified under our qualification standards. Maybe we need to talk about relative quality here so that we are looking for the best quality lawyers available, not simply making sure that people are qualified. I think technically they are.
- 566 Chair Ellis What would you propose? Suitable instead of appropriate? I am okay with that. I just thought it was disingenuous not to pick up what Judge McShane said, because he was clearly getting at a quality issue.
- 575 G. Hazarabedian Mr. Chair, just to cement what Ingrid is saying, when the death penalty peer review panel is taking a look at the people who are doing these cases, some of the attorneys that were problematic for that group to accept doing these cases, were clearly qualified if you look at their qualifications and they were clearly experienced. They were simply not very good lawyers who did not do very good work.
- 582 Chair Ellis We are trying to capture that thought. The words may not be perfect, but the legislative history will be very clear. Joe?

585 J. Rieke In the final operation piece who ultimately is supposed to make that decision about who is qualified.

589 Chair Ellis Well, in this context it will be OPDS.

590 J. Rieke And who does that mean?

591 Chair Ellis That means Ingrid, *et al.* That is who that will mean and based in significant part on the Death Penalty Advisory Group.

595 J. Rieke Does the peer group actually look at a case in progress or people working on a case that aren't doing real well when a judge is concerned?

597 Chair Ellis I don't know that.

598 I. Swenson At this point, we have not used the panel for that purpose. There are many additional purposes it could serve beyond those it currently does, but it is our intention, based on the Commission's previous discussions, to be surveying on a regular basis. Once we do that, we want to present that information to our panel and ask them to recommend whether we should continue to use certain providers.

607 Chair Ellis Any other discussion?

607 J. Stevens If what we are getting at is we don't want less skilled lawyers doing this, why don't we say that?

610 Chair Ellis I am fine with that. So lack suitable skills?

612 J. Stevens Or less skilled than their peers. Whatever.

614 Chair Ellis You're the wordsmith.

616 J. Stevens But I'm also not a lawyer and you guys are real sensitive. Newspapers are not.

619 S. Gorham Why don't you just add for lack of appropriate qualification or skills.

623 Chair Ellis The second area, I know we are addressing it, but I kind of want to talk through if we are doing as much as we should. We did hear a lot of testimony that there is a shortage of mitigators. There is a shortage of qualified people and we don't, as far as I am aware, currently have a system of contracting with mitigators the way with do with investigators for example. Help me out. What are we proposing to do to increase the availability of qualified mitigators in these cases?

637 I. Swenson Actually, I think there are three things that we have considered so far. One is to use contracts and Kathryn has already indicated her intention to do that - to look to contract with current mitigators and invite other people to consider a contract. We do need to provide more training and I have not yet met with Chip Lazenby, but that is clearly something that he is interested in. The Death Penalty Peer Panel is also ....

646 Chair Ellis Something PSU would get into.

647 I. Swenson Potentially, or some other educational institution in the area. It seems like a logical development and peer panel members have mentioned that in the past. That is something that needs to be explored and I have not yet done that. Then in terms of distribution of appropriated funds for the next biennium, I think the Commission needs to decide what to do

about compensation for investigators. It will be part of our discussion in August. That is just one piece of it.

- 657 Chair Ellis I think from the testimony we heard that struck me as a soft area in the present system and I am trying to move us from just good intentions to trying to make an impact. Do you think we are doing all we can?
- 663 I. Swenson Not yet, but I think those three things are the obvious ones. There may be others.
- 666 Chair Ellis At the present time, you have a defense team on a capital case. Are the mitigation services they get subcontracted to them? They go out and find someone or how is that handled?
- 670 I. Swenson Lorrie Railey is the person to talk to about that, but for the most part I think each team identifies a mitigator who is available. That is the difficulty. Sometimes ....
- 676 Chair Ellis Is it treated as an extraordinary expense?
- 677 L. Railey Yes. We have two death penalty contracts that include a mitigator. One three quarters-time and one full-time. Everyone else is hourly and overworked. We are bringing people from out-of-state to Oregon. People who used to live in Oregon and moved away are now coming back and working for us, fortunately. It is not always who is available but who is the right person for the mix and for the client.
- 688 S. Gorham I think there are a couple of things. One is the mix on the team and usually that is the attorneys who are handling the case and whoever the other investigators are. Also the mix of the client like Lorrie said. I think primarily, except for the two contracts that Lorrie mentioned, it is a team, the attorneys, who pick the mitigators and then do it under the extraordinary expense clause.
- 697 Chair Ellis It sounds to me like the problem is availability of qualified mitigators?
- 700 I. Swenson We can't compete with other states and the federal system.
- 702 S. Gorham If I can add one more thing. I think teams that have had problems finding mitigators are training their own mitigators. If you have an investigator who is willing to become a mitigator, the team itself helps train that mitigator.
- 709 L. Railey We have done that too. We have brought in fairly newly licensed investigators and teamed them up with an experienced mitigator, paid them a lesser rate, and had them take on a lot of the mundane responsibilities while learning the more complicated parts of mitigation.
- 715 G. Hazarabedian The mitigators in Oregon can go work on Idaho cases or go work on federal cases and get twice as much money as the [\$34] they get here. The Idaho system and the federal system pay a lot more than we do.
- 722 Chair Ellis Which takes us back to this concept of a contract at rates that hopefully are better.
- 726 I. Swenson Right, and as Kathryn has indicated there may be people who would like to have a contract and the assurance that they will have a certain number hours or work, an income, and that may be sufficient motivation without significantly increasing compensation, but we will have to see about that.
- 733 Chair Ellis Any other thoughts that anyone has on that? The third thing that me struck me in the testimony that we heard, and this is probably not limited to capital cases, but everything is more sensitive when you talk about capital, that the judges that had concerns about quality didn't really have a place to go. They didn't know what to do. Do you think our taking direct

responsibility for appointment in these cases, and that will obviously get communicated, will resolve that issue?

- 746 I. Swenson I would hope it would help. I think it is a continuing sort of issue when we do the structural reviews or our site visits. People are happy we have come there to get their views, but that doesn't necessarily translate to communicating with us as often as they should. Kathryn and I are going to meet with the new judges on Monday. This is an annual event for new judges and that is certainly part of the presentation she has made in the past. And then as part of our survey about quality representation, we can reemphasize the importance of contacting us. Kathryn has her analysts for each region of the state and they often hear from trial court administrators and sometimes judges, so some of them certainly know about that avenue and we just need to be more active in informing them they can do that, we want them to do that, and we want to resolve the problems.
- 770 Chair Ellis A conundrum and maybe Paul Levy is going to have some thoughts here. How do we do an effective job there trying to monitor quality and not become ourselves witnesses in the PCR case and how do we get the judges willing to say something, because I know at least some of them are fearful, given the light that gets shone on competence of counsel in capital PCR cases, they are going to get brought in.
- 782 I. Swenson Paul can certainly comment as well. You know, I think judges for the most part, at least when I was monitoring those kinds of concerns, were reluctant to be identified as the source and sometimes that is okay. We don't need them to do that. The information is sufficient and we can generally verify it from other sources to help us take some kind of action.
- 794 Chair Ellis What is the privilege status, if any, of communications on this subject?
- 797 I. Swenson Our complaint policy basically says that you can submit a complaint confidentially. If you do that we will not disclose your name. The Public Records Act protects information that is clearly sensitive, that was obtained with an assurance of confidentiality and where there is a valid public policy reason for maintaining the confidence of that information. I think we are okay there, but I often tell people that we can't guarantee it but it is our intention to do everything we can to maintain confidentiality.
- 812 Chair Ellis I think where I come out is I am much more into the prophylactic side than the pathological side, and I would much rather err on the side of structuring a system that will encourage communication at a time when change can occur. I think to do that we have to maximum the protections to those who communicate that they are not going to end up in a witness chair because of that communication. I know this is not an easy topic, and it probably won't require a change in the report, but I would suggest that Paul, who is I think the right person to be doing this, take some time and work through what protections there are and if there is anything more that we could do to give protection so we do encourage those communications, I would certainly welcome that proposal.
- 836 I. Swenson As you may recall, last session we asked the legislature to protect the attorney/client privilege in those circumstances because it wasn't clear to us whether it would be lost. Sometimes the attorney who is alleged to have provided poor representation needs to discuss the details of a case with us. Our concern was that that might lead to a loss of the privilege, so the legislature specifically enacted a provision that stated it did not. As we look at this area, if we feel there is additional need for protection we can look at a specific exception to the Public Records Act, but I think it is there.
- 855 Chair Ellis If it is there, then it seems to me that we ought to have a little information campaign to get the judges aware that that protection is there so that the concerns we heard in the testimony [end of tape]

**TAPE 1; SIDE B**

- 058 M. Greenfield I will just add, in addition to those actions which make sense to me, the review process that the Commission is going through county by county is also a mechanism that allows us to have some indication as to how it is working and techniques for remediating. Of course it is after the fact, but it is another tool.
- 064 Chair Ellis Page 4, there is a passage there, this is Judge Barron testifying, he stated "It would be helpful if PDSC contracts required defense counsel in these cases to keep certain records and notes and make sure their investigators do the same." And what he was getting at is that inevitably the PCR process is going to involve a review of the quality of representation. I think all the lawyers in this field who are at the initial trial stage know that. One of the very best things they can do is to keep a really good paper trail of the things that they did. These cases tend to be five, seven, eight year later. Have you given any thought to picking up on his idea? Somehow building into the death penalty contract a requirement that detailed records be maintained?
- 078 I. Swenson Mr. Chair, this is one of the things on the list of items that I want to discuss with Kathryn and I think it is a little more complex than that. To some extent, it has to do with the technology used to generate the original records, discovery and so forth. We would like to see a consistent format so that information could be transferred from law enforcement to the attorney and then to whomever else is going to be reviewing that case, in a way that is efficient and effective so that that is part of it, and then we could look at including those requirements in the contracts. I know Kathryn has worked with some of our attorneys in terms of record preparation and retention and the use of new technologies to do that. Kathryn, anything that you want to add?
- 091 K. Aylward Well, the contracts do require record keeping and record retention, and in a lot of situations we had death penalty contractors contact us and say "Do you realize that I have an entire warehouse full of boxes that I have to keep 20 years or forever" and we have provided additional funding under certain circumstances where their storage needs are huge. I agree it is nice to move on to electronic file storage, but I think with older cases if you don't know that is where you are headed at the beginning, the files take so many man hours to get them ready to be scanned. I think it is something to do looking forward when you are preparing a file to make sure that you are not double-sided and stapling and with sticky notes on it.
- 102 Chair Ellis The quality of the PCR process has to be improved if the records at the trial stage are good. The expense that we probably incur, in the PCR process where the records at the trial stage are not well kept, is an avoidable expense, and I'm not trying to side one way or the other on how these cases go, but it does seem to me it is almost inevitable that you litigate in a goldfish bowl in these cases. It is almost inevitable that there is going to be a review of the competence of the representation, and I would think the lawyers at the trial stage would actually help themselves a lot by keeping those records so that eight years later, when they are challenged, they can reconstruct what they did. I don't know if it requires a change in the plan, but it did seem to me a valid point that Judge Barron had and one that, to the extent that we had the ability to follow up on it, I think we should. Any other comments on that? Page 6 of the report, this is Becky Duncan's presentation, and there are kind of two intersections that I am interested in here. One is the intersection between our appellate lawyers and the trial lawyers, and the sentence in the, I guess it is the fourth paragraph, Ms. Duncan said that there is no system in place to make sure that the trial lawyers are informed of all of the errors identified on appeal. I think this is more of an educational issue than a case management issue, but I would really like to see a systematic interface between the trial lawyers, and we'll start with capital cases, because I don't see that this doesn't have impact in other areas, but a systematic interface between the trial lawyer and the appellate lawyers from the point of view that the next time around the trial lawyer.... These are subtle issues. I am certain if I were to attempt to do a capital case I would miss 90 percent of them even trying really hard,

because they are subtle. Again, it probably doesn't require a change in the report, but I really would like LSD to kind of build in a communication structure there once the appellate lawyer is into it enough to know what errors are going to be identified. Then obviously if those include errors that weren't raised, that adds to the difficulty of the appeal. It adds to the potential of the PCR. We want to minimize that in every way that we can. Any thought how we can do better there?

- 145 I. Swenson Well, we'll let Pete come up too, but our management team did have a one-day retreat, I think it was last week, to start looking ahead to where we need to focus our energies. For our Legal Services Division, as you are well aware, they have simply not had the resources to do some of the things that they know they need to do and want to do in terms of working with the trial bar, the post conviction bar and others, to provide that kind of information through websites and in person and so forth, and it is certainly on the list of things they intend to address.
- 153 Chair Ellis With all of those FTEs he is going to be able to do that.
- 153 I. Swenson That is exactly right, so that is the need for this current plan. We may have the capacity to start doing those things. Pete, anything you want to add?
- 154 P. Gartlan Becky is correct. It is done on an ad hoc basis. For instance, we send an e-copy of all our briefs to trial attorneys, so the trial attorney receives a copy of our brief and can read it. With respect to highlighting or notifying trial counsel about what could have been raised but wasn't, that tends to be on an ad hoc basis. A lot of that depends on whether or not the appellate attorney is confident enough to engage in a discussion, because some of it is questioning the trial attorney, why didn't you do this and why didn't you do that, and it can easily be understood as criticism. I think there is a confidence factor that is necessary for appellate counsel even to engage in a conversation like that, but I agree there should be something system wide in place.
- 167 Chair Ellis My guess is even though some conversation might be a little painful, the trial side of this will welcome it.
- 169 G. Mallon Barnes, what we have done, quite a way in the past when they had more time and more resources, we worked with an appellate lawyer prior to the appellate case. We still do that but now we use private appellate attorneys, but rather than waiting until it is done and asking what we did wrong, we try to work with them ahead of time, prophylactically, to try and do it right from the start. We usually have a federal person and a state person. I don't think everybody does that but that is how teams I have worked on have done it.
- 177 Chair Ellis Is one of the problems that the trial contract ends with the final judgment so the trial lawyer feels orphaned?
- 180 I. Swenson Part of the contract requires that they facilitate the next phase of the case in some fashion. It doesn't spell that out but it is certainly expected that the case will get successfully transitioned to the next step.
- 183 Chair Ellis All I am suggesting is if there is an issue that it isn't happening because the trial lawyer doesn't feel they are being compensated, I really want ....
- 186 I. Swenson No.
- 187 Chair Ellis Then related is the other transition, the post-appeal to PCR transition. In the following Becky says "Ms Duncan stated that it would helpful for the appellate attorney to have a face-to face meeting with the PCR attorney when the case is transferred." Again, I don't think it requires a change in plan, but I really would hope to see that institutionalized within LSD and with this

emerging specialty group, by contract, of PCR attorneys that we have talked about earlier. Any other comments that people have?

- 198 S. McCrea Looking at footnote 4 on page 8 with the comments that Tim Sylwester made concerning PCR that we are going to need to figure out some way to adequately fund the post conviction petitioner's work and get these cases moving along. It seems very appropriate that we approved Andy Simrin's contract today.
- 201 Chair Ellis I agree and there is a lot in the testimony we heard that suggests you have a peristalsis problem, that there is this cluster of cases that are going to hit the PCR system in a significant way. I think Bill Long was very clear about that. This one contract is a good start to try and address that and not just have it happen to us. Any other comments? I really did think it was an excellent report and I appreciate getting us to focus on this topic. It is one that we all know is out there, but it is not one that, until this year, the Commission ever really looked at.
- 215 I. Swenson Mr. Chair, I notice on page 7 that I referred to an exhibit that you don't have and that relates to the cost of representation in aggravated murder cases. Kathryn had prepared that at the request of the legislature and also in response to the Commission's inquiry in this area. I didn't bring those documents, but my recollection is it is something like sixteen percent of the public defense budget. Is that about right?
- 222 K. Aylward Sounds good.
- 223 Chair Ellis Did you have a number in mind?
- 223 K. Aylward I might have it somewhere on paper, but don't wait for me.
- 223 Chair Ellis I made a comment at one of those hearings that I would repeat here, I don't think it is for this Commission to weigh in on whether the death penalty is a good idea or a bad idea, but I do think it is appropriate for this Commission to make sure that the public and the legislature know the costs associated with that policy judgment. To the extent we can increase the accuracy and the public awareness on that subject, I think that is appropriate.
- 233 S. McCrea And you are in a quote on page 7, last paragraph, saying just that.
- 235 G. Mallon On page 23, paragraph d, dealing with compensation of attorneys, there is a U.S. Supreme Court case called *Rompilla v. Beard* which was a death penalty review case. The interesting part of that case for these purposes is that they held the ABA guidelines to be per se reasonable, and overturned Mr. Rompilla's case because the attorney didn't follow the ABA guidelines. As far as compensation is concerned, what the guidelines say, and I am not reading from it, but it is very much like "shall be compensated at a level commensurate with civil attorneys handling equivalent complex cases." Now the day may be coming when the Commission is going to have to say "We are going to have to compensate attorneys to the level that is legally required by the U.S. Supreme Court." Now the Rompilla case wasn't a compensation case, it had to do with mitigation standards in the ABA guidelines, but the day may come when the Commission may have to say "We are going to compensate as is legally required and let the legislature find the money, or stop doing it." That is my comment. The language that is here is very different from the ABA guidelines in this case.
- 256 I. Swenson Mr. Chair, the ABA guidelines language is set forth on page 15 at the top and we tried to follow that essentially.
- 259 G. Mallon It doesn't say "to the extent that funds are available."
- 260 I. Swenson That is right. As I indicated we had to qualify some of the guidelines for that reason.

262 G. Mallon It may be that the law will require that and then the legislature is going to have to figure out what to do with it.

264 Chair Ellis Any other comments or questions by Commission members? If not, I would entertain a motion to adopt the report as amended in today's session.

**MOTION:** Mike Greenfield moved to adopt the report; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

270 Chair Ellis Thanks. That was a good project. I thought it was very productive. I just got a kick in my shin from the Vice Chair. Why don't we take a 15 minute recess.

**Agenda Item No. 6 Review of Proposed Service Delivery Plan for Washington County**

276 Chair Ellis The next item on the agenda is the Review of the Proposed Service Delivery Plan for Washington County which is Attachment 7. Ingrid, do you want to summarize that?

279 I. Swenson I would be happy to Mr. Chair. Let me make one correction. In my earlier statement about the cost of representation in aggravated murder cases, I said it was 16 percent. It is \$16 million dollars, or nine percent.

283 Chair Ellis Do I detect an element of diplomacy by Kathryn who didn't want to correct you publicly?

285 I. Swenson I suspect so.

286 Chair Ellis Some people are really, really tactful.

287 K. Aylward That is what I am known for.

287 I. Swenson The Washington County draft report appears as Attachment 7 behind the yellow divider. The initial report, as you will recall, included findings from the investigation which John Potter, Caroline Meyer and I did. We identified some system issues, all of which appear to be things that could be addressed by stakeholders in the county, so I don't think we need to do anything further with respect to those issues. We learned about the new ECR, Early Case Resolution Court there, the Drug Court and Mental Health Court. There may be some compensation issues for providers in those courts. It was clear that they had participated significantly in the formation and planning of the courts and that they need to get adequate compensation for their ongoing representation. As you recall, what we heard is that the ECR court in particular is affecting the entire system pretty dramatically there because of the volume of cases that are being routed there and successfully handled there in much shorter order than cases would be in the normal course. It is generally one appearance and people take care of their probation issues at the same. They are not retained in custody. The jail doesn't have to release these people early. There are lots of system benefits resulting from it. In the juvenile system, again, there were some system issues. There is just no physical space for some of the things that need to occur in juvenile court and there had been no forum for people to discuss that and other kinds of issues, but it looks like people in the county are going to be meeting regularly and addressing these kinds of issues. We also heard quality concerns about juvenile representation similar to what you have heard across the state and during your review of juvenile representation last year. These same kinds of concerns have arisen across the state - not seeing clients and confusion about the role of attorneys for children in dependency cases. In Washington County they now provide representation at initial hearings in dependency cases, which was a huge achievement. I'm sure it took a lot of planning by the providers to be able to make lawyers available for those hearings. We still need to do that with delinquency cases. There are not a lot of custody delinquency hearings, but there are some and we would like to see some progress there and the same in criminal cases. Currently, there is no representation for in-custody defendants at their initial hearings in criminal cases except for

those in the ECR program. You heard a little bit about each of the providers - the public defenders office (and we received excellent reports about the quality of service they are providing), the Harris Consortium, which is very new and which includes some very senior lawyers, allowing them to participate in the public defense system without dedicating full-time to it. There are the private law firms - the Garland Firm, which is Washington County Defenders; Karpstein & Verhulst; Brindle, McCaslin & Lee; and the Ridehalgh & Associates firm. And then we also heard from Susan Isaacs on the private bar people who feel like they provide a good service and we certainly heard from some of the system people that they rely on the private providers for special types of appointments, especially in the juvenile cases. In the draft report I prepared for today, I think the overall view would be that the system is working fairly effectively. Although there are a large number of providers, that seems to be the preference of the providers. Some of them are certainly willing to participate in a consortium if they were told that is what was expected. Our sense is they are satisfied with the current system and according to Kathryn and Caroline, it seems to be working effectively for us. As I mentioned in the draft report, I suppose one of the benefits is that if one of those providers ceases to do good work, we don't have to continue to contract with them. We have an adequate number of other providers that we could use. In terms of training for lawyers, judges and others pointed this out as a significant need across the board, except for the MPD lawyers who have the benefit of trial training skills they do routinely for their lawyers. That training doesn't appear to be available on an as needed basis for lawyers in the other firms, so something needs to happen. The report talked about either creating their own trial skills programs within the Washington County Bar, which is a very active association, or with OCDLA or others, or at least creating a mentoring program within their firms. It has got to be possible for the senior lawyers in those firms to spend more time with the new lawyers to make sure they are ready for court. The judges are reporting that they don't seem to understand what their job is when they get there in lots of cases. They are not ready to try the cases and some of the errors that are reported could seriously affect the rights of the client. In the juvenile area, I suppose much like the report that Peter Ozanne prepared on dependency cases, we look at additional training for juvenile lawyers as the key to improvement. The tools are there now. I think in the past there wasn't as much training available for juvenile lawyers as there is now. A number of regular seminars are available to lawyers that deal with the basics of representation and with complex cases, so that is available for them and there is plenty of guidance from the Rules of Professional Conduct, from the State Bar's Performance Standards, from our contracts and our qualification standards. It is all set out pretty clearly so you just kind of know what the next step should be. Some states are working with the National Association of Counsel for Children to certify juvenile lawyers. You have to have an active chapter of that organization in your state, and then you have to undergo significant process in order to be approved as a site for certification. We have never looked at that seriously before. The bar has never approved that approach previously in Oregon, but this might be something further to explore so that lawyers get a curriculum that they have to complete. They have to take an exam and pass it before they are certified. Not that they couldn't necessarily practice under supervision of some kind before they were certified. It might be something to look at. That is something I would like to explore further with the Juvenile Law Training Academy, this informal organization of folks that are interested in training juvenile lawyers. Then there is representation at initial hearings. And finally, firms need to continue to recruit bicultural people although I think some of the firms have already been very successful at hiring attorneys and support staff that are bilingual and bicultural. The only other recommendation was that PDSC might want to closely monitor this ECR program. It seems to be well set up, well designed, and meets the criteria of the Commission's standards.

423 Chair Ellis

My thought on that was that it was very interesting that MPD assigns some of its most experienced lawyers to the ECR program, not the other way around, which I thought was a good sign.

- 427 I. Swenson As does the District Attorney's Office. A twenty-year veteran, Tom Tintera, is the assigned DA. I think Bob Hermann would say that that is one of the reasons for the success of the program.
- 430 Chair Ellis One of the comments that was made about that goes to how we do our contracting. I certainly don't want to discourage contractors like MPD from using that ECR process. The worry is that they will say that that is the low hanging fruit, the easier cases. Those are the ones that we blend in to be able to handle the hard cases. I just think it is one of those things as we come to contract renewal time we need to be sure that we are handling in a way that is fair and doesn't discourage use of ECR, because from a system point-of-view that is a very promising development. Any other comments you wanted to make Ingrid?
- 442 I. Swenson No Mr. Chair.
- 443 Chair Ellis I thought there were a couple of things that struck me about Washington County. One is, I think this is the only place in the state that we have a contractor, in this case MPD, with two major offices. You have something a little like that out in the Hood River, Wasco area, but Washington County is somewhat unique and I was listening really hard both when Professor Mandiberg spoke but also when the judges spoke. It struck me that it is working remarkably well and I do want to commend MPD because I think they have done it in a way that gets the benefit of the economies of scale, without the detriment of having a big county like Washington County - it is the second or third largest in the state now - feel like they are just dealing with a satellite. They have empowered, and this I know goes back to the beginning of that office, they have empowered the director in many ways and Keith is doing a really first-class job, being the voice of the defense community, working system wide. So I took away from the testimony reaffirmation of what I thought when I went out there - that a large organization can effectively function in more than one jurisdiction and we should keep that in mind as we go forward in the planning process. The second thing that struck me is I could see there were more providers than in the typical model we have in several other large counties. But I got the impression, you tell me if I am wrong, in Washington County there are more providers who were criminal specialists but are able to divide fee paying clients and defense work than I believe is true elsewhere. Maybe I am just exaggerating data inappropriately, but I did sense that and if that is true I actually think that is a good thing. Then we have the benefits of specialists and the ability to expand and contract without the kind of huge impacts that 2003 caused. I had three topics I wanted to ask you about and a couple of suggested editorial changes we'll come to. I'll list all three of the topics and then let's just take them one at a time. One was training which you have already flagged as a significant issue in that county. Two is rate disparity because I know at least one judge and one provider for whom that was very much in their minds, and three relates to your footnote 7 on page 17. I want to understand more of what you are thinking on private bar issues. Those were the three topics. Why don't we start with training because that is probably one that is easier to address and it relates to rate disparity. It does seem to me that the testimony we heard was pretty clear that MPD is doing a very good job with its lawyers on the training piece. They have a skills course and the lawyers that are coming in there are getting a really good sense. We have talked about this before but one reason there are rate disparities is that some offices like MPD are providing a broader service than some of the consortia providers who simply practice but don't provide that training and mentoring function. The question in my mind is in that county can't we work it out so that MPD is the source of the training, even for non-MPD lawyers, and we build in whatever comp level we need to achieve that for MPD? But it seems to me kind of uneconomical to try and have separate pockets of that kind of training. We have a really good training provider and maybe some of this is happening already and Jim can tell us, but I thought that was the best way to try and address this issue. I thought it was significant that two judges raised it, including Judge Letourneau.
- 527 I. Swenson Mr. Chair, I recall Keith Rogers saying that despite the availability of that trial skills training program it was really by, I think he used the word "osmosis," that his lawyers received their

training. They learn on the job and from other lawyers around them in a culture that allows them to be mentored by the other attorneys. Maybe Keith could talk a little bit more about that.

- 536 Chair Ellis One thought I had, I know in Multnomah, I don't know the current status of it, but I know for a period of time there was this concept of borrowed lawyers. The larger firms had lawyers that were frustrated they weren't getting time in court, and you had both MPD and the DA able to use them under supervision. One model I was wondering if it would work out there is if you do have younger lawyers entering the system, but not regular MPD lawyers, is there some way to have them be borrowed MPD lawyers and get that experience of being second-chair in a case or directly supervised in a case. I am very uncomfortable with the way it was left which is you do have MPD seeming to do a good job, you do have consortia with experienced lawyers and they are already there, but nobody that we heard from really had much of a solution. What do you do with the non-MPD lawyers who want to get into criminal work who probably have all the mental and personal skills that you need but don't have the training?
- 559 I. Swenson Most firms probably can't spare the time of their senior lawyers, enough of their time, to do intensive training.
- 562 Chair Ellis The consortium model is different than the firm model. I think it is really hard to think that senior consortium lawyers are really going to do much about supervising younger consortium lawyers. I think that is unrealistic.
- 567 I. Swenson I do too.
- 567 Chair Ellis Keith, feel free to pipe in. You see the problem. You were there and you know what was being said.
- 569 K. Rogers Sure. I'll repeat what I said to some extent. I think some of what the judges were saying was that the newer attorneys in the other firms weren't getting the training they needed and there was so much turnover. There are so many of them, they don't have as much chance to develop. As I also said, we are perfectly willing to be the resource, the clearing house, the focal point of training for programs in Washington County, but as Ingrid mentioned a lot of it is what you learn from your colleagues, your supervisor and the day-to-day workings. That is something that is really hard to translate into the other smaller firms with only a few people. They are the attorneys who are representing clients in conflict cases, so we couldn't necessarily be a source for second-chair kind of training or borrowed lawyer training in those cases. I am not sure there is a great solution except that those firms should be held to a standard of training their people through some means, perhaps OCDLA. And our office could handle some more generic or general trainings in Washington County.
- 592 Chair Ellis The good news was there are young people entering the defense field who want to do defense work. I did take that as a good thing. I really am uncomfortable that we haven't really built in a way to bring them to the competence level that we want. Any other thoughts? It is easy to state the problem but a little bit harder to design the solution.
- 601 I. Swenson Maybe what we need to do is talk with these providers specifically about this at a meeting and get some ideas and make some plans and see if there is some assistance we can provide. John could participate on behalf of OCDLA and we could try to come up with some sort of a plan for each of them.
- 608 Chair Ellis One of the presenters talked about the fact that there is not even a practical skills workshop opportunity. I think among the sources that you just identified, we ought to be able to do a two or three day practical skills workshop. That is not quite as good as being second-chair in an actual case, but it would sure help.

- 617 I. Swenson It certainly would. Unfortunately, of course, they probably hire them one at time over a period of time, so it would have to be repeated relatively often.
- 620 S. McCrea Or if we could video it and have it available.
- 620 Chair Ellis Jim.
- 620 J. Hennings Video doesn't work very well. We have tried because we have video capabilities and it just doesn't take as well. We are trying to do some things. We are working with Paul Levy and OCDLA. We were approached by (inaudible) about NITA putting on a program sometime this year, which is a trial skills program with video-taping, a very intensive type of skill sets. That would include access to (inaudible) type material in the future for free as well as part of the program would train trainers in the NITA style so that we could do that within the state. If we can get that program up and running we could put that on, not just for Washington County, but for other areas as well. With appropriate compensation I think we could expand the trial skills program. We are presently doing them two, sometimes three times a year. We have made slots available throughout the state whenever we have had slots that we didn't need for our internal attorneys, so we would continue to do that and potentially we could add another trial skills program. The borrowed attorney plan would work only in a area where you have got large, private firms who come forward to delegate an associate for an extended period of time to a public defender's office. They get somebody who is trial experienced at that time. We require from a firm a six month commitment and 20 percent of an associate's time. That is what is donated to us and in that period of time someone will have enough trials that when they go back to the law firm they are actually one of the senior trial lawyers.
- 655 Chair Ellis I hadn't really thought of Keith's conflict point.
- 657 J. Hennings Those are all the issues, and the other issue that I am willing to talk about more at a later time is there seems to be a declining caseload. For some reason there was a substantial shortfall on assignments of cases to MPD in 2006 and that is continuing into 2007. Your numbers that were provided show at least a flat rate, but we were substantially double-digit below our quota in 2006 in all areas except for juvenile.
- 669 Chair Ellis In Washington County?
- 670 J. Hennings Yes and also to some degree in Multnomah County, but not double-digit.
- 670 Chair Ellis That is so counterintuitive because all the population growth data runs the other way.
- 673 J. Hennings In Multnomah County, for which I have the best numbers on felonies, we are running 14 percent behind where our appointments were. These are all felonies that are running 14 percent behind what we did in 2006 and 2006 was dead flat with 2005. This is now being recognized within Multnomah County and the real big question that is being asked at a policy level is where are all the cases going? C felonies are down in the first six months almost 20 percent from what they were for the first six months of last year - felony appointments in Multnomah County. To some degree there is an identical image in Washington County further aggravated by all the Early Disposition Court cases. There is a decrease in the number of cases and I think one of the issues that is going to have to be looked at is what do you do when there is a decrease in caseload.
- 695 Chair Ellis From a public policy sort of view this is all very positive.
- 698 J. Hennings This gets into training. There may not be space for training. If we have a decrease in caseload, you have to have misdemeanors that you can train new people on. Either the office

has to have misdemeanors or there need to be misdemeanors that other contractors are handling so that they can bring in new people.

- 704 Chair Ellis This is actually a good segue to note 17. It wasn't clear to me quite what your point was. Maybe you can spell that out. It appears on page 26.
- 711 I. Swenson As we look at contracts for the next biennium the Commission could consider contracting for fewer than all of the cases if you wanted to preserve a role for the private bar.
- 718 Chair Ellis When you say private bar, what do you mean?
- 720 I. Swenson I mean the hourly rate attorneys who have no contract. People like Susan Isaacs and the other folks who practice in juvenile court there. They have no contract. The problem becomes if the caseload shrinks we need to have our contractors fulfill their contracts. That means there are fewer cases for the private bar. Maybe they need to make a decision about that and consider whether they want a contract or want to become part of a consortium that allows them to participate on some basis. I don't know if Kathryn has had time to think about it. It was just a note for something to think about.
- 732 Chair Ellis Let me try to get a handle on it. Are you able to estimate what percent of cases are going that way now?
- 736 I. Swenson It is known, but I don't know what it is. We learned in the criminal area that it is basically one percent of the cases that are handled by private bar. I don't think I heard anything about the juvenile. Do you know Kathryn?
- 740 K. Aylward I don't know a percentage, but we are actively trying to keep as few cases going to private bar as possible now to assist contractors in reaching their quotas.
- 743 Chair Ellis To be honest, I wasn't overwhelmed with the process as it is structured. The private bar appointments, as I understood it, are essentially being done by the verifiers and I didn't hear anything that suggested anything other than a law license was required for qualification, and I didn't hear anything that gave me confidence that the private bar providers who did get appointed - that there was anything to assure us of a skill level and experience level.
- 757 I. Swenson That is certainly not clear from the information that was been provided to you, Mr. Chair. I don't know if John was part of these interviews or not, but there are three private bar providers who are very well thought of generally by the judges and the people in the juvenile system.
- 764 Chair Ellis Including Ms. Isaacs.
- 764 I. Swenson Yes. Judge Thompson spoke a little bit about that. She certainly mentioned it to us. She knows the lawyers well and knows what other skills they have besides the ability to represent clients in juvenile cases. She calls them for those special cases. They like to have lawyers available who can do probate or whatever it is in a particular case that is needed beyond an ordinary juvenile court lawyer.
- 776 Chair Ellis That doesn't sound like the same appointment system that we were told about. We were told this is done by the verifiers who are court staffers.
- 780 I. Swenson Certainly in the criminal area. I think in the juvenile area there has been, I don't want to make this representation without Kathryn correcting it if it is wrong, but ...
- 785 Chair Ellis She won't do that.

- 785 I. Swenson My sense is that these, at least these three attorneys are very much a part of the juvenile law community and the verifiers, the court, everybody has continued to include them. Caroline Meyer and I when we were there asked for the numbers in terms of who is getting appointed, and Caroline recognized that this can't continue because they are taking cases that would otherwise go to the contractors. At that point, after talking with Kathryn, she basically informed the verifiers not to do that. I think the practice had been to have a flexible appointment system which allowed the verifier, on behalf of the court, to select, to some extent, the attorneys. Certainly in conflict cases it may be appropriate to appoint someone outside the contract offices.
- 809 K. Aylward Could I make one comment in regard to Susan Isaacs specifically? Now that our office is trying to locate and assign appellate juvenile dependency attorneys, we have a hard time doing that. Susan Isaacs is very highly regarded for her appellate work, so if I call her up and say "Will you please take this appeal" and she says "I am too busy because I am taking trial level work" when I know the trial level work could go to a starving contractor, it just makes no sense to me. I want to cut her off the trial work and I can keep her fully occupied and well utilized doing appeals. That is true of a lot of the attorneys. The good attorneys there will always be work for. I don't see any problem with that kind of arrangement, assuming these people are equally willing to do appellate work. For them it is the same hourly rate.
- 829 Chair Ellis Your footnote suggests sort of a policy question for us, whether we should go out of our way to have some cases for private bar. I was reacting against that.
- 835 I. Swenson I understand, Mr. Chair. Nationally it is an issue of interest. In the literature regarding quality public defense, they often talk about making sure there is always a way for the private bar to participate in public defense. That is usually said ...
- 843 Chair Ellis Is that for the benefit of public defense or the private bar or the political base?
- 846 I. Swenson For the benefit of public defense, bringing in lawyers with special skills who may not be public defenders. Our system certainly allows for people who do lots of things other than public defense to participate. I know Ms. Isaacs would like you to think about that question.
- 854 J. Hennings I suggest you have another model that might solve all the problems here and that is the model in Eugene. They organized a panel that gives you the oversight in terms of who is accepting those cases. It allows new attorneys to come in who are either experienced, or potentially want to come in on an the individual basis.
- 867 Chair Ellis We raised that at the meeting. Eugene, or Lane County is significantly different. It is a much larger percentage of the cases that are going to this managed appointment group. You can afford the structure.
- 874 J. Hennings Especially in the juvenile area I think that could be done.
- 878 Chair Ellis Maybe I'm not getting it, but in the criminal side I am fighting this. On the juvenile side maybe there is quite a bit of room.
- 884 J. Hennings I think it would be worth exploring to push the consortia and the private attorneys and go to an individual system. The consortia, if they want to stay in, can stay in it but individually qualify them, but have a single organized system that handles your conflicts and it handles the special cases in Washington County, the three, it might be more than three, qualified people who are private attorneys whose skill level you want to hang onto.
- 897 J. Potter Mr. Chair, I was actually surprised when we were in Washington County that that wasn't raised as an option by the providers. Instead what I heard, and I think Ingrid heard it as well, is that some of the providers are almost second-guessing what they believed the Commission

wanted to have happen. They seemed to think the Commission wanted to have these consortia. I don't think it has ever been discussed seriously in Washington County to develop what Jim is talking. This also dovetails a bit into my impression of Washington County and how difficult it is with the training component to come up with a unified umbrella training for all the different kind of firms, the consortium and MPD. They all get along. They seem to appreciate each other, but there is clearly, at least I thought, an undertone of competitiveness. [end of tape]

## **TAPE 2; SIDE A**

- 003 J. Potter A large organization like OCDLA probably doesn't provide the day-to-day mentoring kind of training that needs to go on. I think we should pursue the notion of getting all the contractors together and I think there is a brand new consortium that was talked about that is being developed. I don't know where they are in the process, but they have talked about developing a new consortium in addition to what they already have. Maybe they should take a look at doing what we are suggesting, rather than a ....
- 010 Chair Ellis On the juvenile stuff?
- 010 J. Potter I believe it was for all cases.
- 011 I. Swenson Just juvenile.
- 011 J. Potter I'm sorry, just juvenile, but maybe a model for juvenile that is similar to the Lane County model.
- 013 Chair Ellis Does this make sense? I think we all feel that Washington County has a great history of being a county with a justice system that actually seeks different components. I think it is a county where they do as John said, they get along. I think there is a base of really good competence there, but they are kind of groping for a structural model that works. I guess I would like to hear more after a meeting with the providers to kind of talk through some of these reactions that we had listening. And I think many of them who came to the meeting -- that meeting itself was a starting point for them to talk it through. Related to this is the third topic that I had on my list which is their sensitivity, at least by some of them, on rate disparity. I did have two places that I did want to suggest some text correction or change. One was on page 20, down there at the bottom where it is talking about Mr. Harris, the last part of the paragraph, and it says "Mr. Harris is not satisfied with the rates the consortium is receiving under its current contract because they are lower than the rates received by providers in other areas of the state." I want to insert the word "some" before the word "providers" if that is acceptable. The same issue appears on page 28 where again you are summarizing compensation issues. It says "Rob Harris and witnesses at the May 10 meeting noted that MPD and" and I want to insert the word "some" before contractors "in other parts of the state receive higher rates of compensation than" and then I want to insert "some" before "Washington County contractors." That is just a cleanup thing. It wasn't the right thing to do at that meeting to get a whole lot of detail on this but maybe Kathryn can help. What are we talking about in terms of rate disparity there and where do you see it going from here?
- 046 K. Aylward Two years ago the Commission instructed me to try to bring the contracts with the lowest rates up and to put an emphasis on that. We did do that. The Washington County contractors got larger increases than anyone else in the state. We didn't have enough funding last biennium to bring them up as much as we would have liked to, but I think in this next biennium we will be able to finish adjusting Washington County rates. As I said in the past, and part of what John is noticing, is the competition there. Part of what you are seeing is they are jockeying for -- they are trying to figure out what we want because they are trying to survive. If the caseload is down and they already don't make very much money they are

thinking that I will still bid low so that I don't get kicked out. I think we have a whole lot going on there that is impacting a decision you would make about this sort of model, if depending on how much rates can go up they might choose a different model or approach if they had an assurance that nobody is getting dumped. If we are not going to throw out one contractor so that others can continue to be at the same level, then maybe they would have a different approach. I think this juvenile consortium thing - I think they are doing it to make sure that they grab a big piece of pie. We have heard that in the past when we sort of push people together to make them do things that they aren't doing on their own. In the long run it is not really good for the system. I think we have a lot to talk about and a lot of it starts with knowing what kinds of rate increases we will be able to provide.

- 067 Chair Ellis Any other comments? I know some of you weren't able to get to the meeting so you are hearing some of this for the first time. Any other thoughts or comments on Washington County?
- 070 J. Potter Just another observation, Mr. Chair. You mentioned earlier that Washington County is the second or third biggest county in Oregon now and that growth has taken place pretty quickly. What I also detect is that they have gone from a small county model of delivering services to what is now a very large county model. They have Hillsboro. Everything feels small about Washington County. It really does even though there has been lots of growth out there. It doesn't have a big city feel to it. I think there is still some struggle going on with the providers as to who they are and how to best provide these services.
- 078 I. Swenson By the way, Mr. Chair, I did check the trial rates. On felonies in Washington County they try, this is combined court and jury, they try ....
- 081 Chair Ellis They try a much higher percentage of cases than you would think.
- 082 I. Swenson They try 7.2 percent of their felonies and four percent of the misdemeanors. The statewide average is five percent of felonies and four percent of misdemeanors. They are right on target with misdemeanors but two percent above the state average on felonies.
- 086 Chair Ellis This is at the preliminary report stage and where I see it going is to try and have a gathering with the providers and talk through several of these issues, but especially the training and this issue of how do we handle what is now a private bar piece with a particular focus on juvenile. I thought the report was extremely helpful. I thought it was a good meeting. I thought the number of presenters who came was quite good. I was impressed that MPD had a board member as their presenter. I thought that was a symbolic statement among other things. It did not go unnoticed. I am again very impressed that the Washington County DA presented to us and came to the legislature on our behalf. There are some very positive things happening there.
- 100 J. Hennings Barnes, could I suggest that a point be added that the caseload needs to be looked at. I think that is a significant issue and I think the report is incomplete without some recognition that the caseload is at least flat. There is one place in the entire report and it is not even highlighted, but the caseload is at least flat and I think it is decreasing and that has to be addressed.
- 106 Chair Ellis I have no problem with that.
- Agenda Item No. 7 OPDS Monthly Report**
- 108 Chair Ellis The next item is the OPDS monthly report.
- 109 I. Swenson Paul, do you want to speak about the site visits?

- 110 P. Levy Quick report on the site visit process. The very last attachment is a running document that I updated and what you see is that we are doing about four major site visits a year and we are on schedule to do that again this year.
- 116 Chair Ellis You have Benton and Jefferson.
- 117 P. Levy We are in the process now of finalizing the MPD Multnomah County Adult Criminal site report. With that completed, we will have evaluated 55 percent of the trial level, non-death penalty caseload in the state. That accounts for a good chunk of them. Benton County is next month and planning for that is coming along very well. We have one more planned for this year and possibly a fifth in December if we can get that in. Aside from being basically on track with what we have been doing in the previous years in terms of number of site visits, I think it is also important to report that since the Commission meeting at the management conference in October, we have heard from five providers who have been the subject of site visits on changes, improvements, and adoption of best practices subsequent to those visits. We are continuing to get very good feedback.
- 135 Chair Ellis Are you continuing to get the level of interest from people who are on the site visit teams?
- 137 P. Levy In my short experience that is probably the most difficult part of the entire process is putting together a team. There is a lot of hard work, but people are responding and volunteering. The two teams now that I have staffed have had great experiences working as a team.
- 143 Chair Ellis I think it is one of the great things that is happening.
- 143 P. Levy You see in this report who the members were on the two teams we have had so far this year. Everybody made really outstanding contributions. Especially on the MPD evaluation we wanted a very experienced team so we had Burt Putney who has done this before. Tom Sermak was part of that and Gordon Mallon brought a great perspective. I think it is coming along well and it is still a very useful process.
- 155 Chair Ellis Good. Any questions for Paul on that? Ingrid, do you feel you have already done the legislative report.
- 156 I. Swenson There is some additional substantive legislation we would like to talk about. Actually, Kathryn, Pete and Becky are going to talk about that.
- 156 Chair Ellis Okay.
- 162 P. Gartlan I can discuss this relatively quickly. I gave you a brief rundown last time. In the year 2007 we added six attorneys who are helping eliminate the backlog. We are very pleased with their performance thus far. On top of that, starting in May through now, we are in the process of briefing 10 Supreme Court cases in the Oregon Supreme Court. In my experience we have never had that many open cases actively being briefed in the Oregon Supreme Court. Perhaps we have had three or four at one time, but this is at least double of what my experience has been.
- 171 Chair Ellis Is that because they are taking more?
- 173 P. Gartlan I have not checked those numbers. I do not know if they are taking more, but at a minimum they seem to be taking perhaps more criminal cases. They are definitely taking more criminal cases out of our office than they have in the past. Hopefully, I think that demonstrates some sort of confidence in the quality of the product that we are producing. Becky was going to give an update.

I want to bring you up to date on two different things. One is the death penalty representation in our office and two is an update on some of the legislative things that we have been involved in. First, on the death penalty, when we appeared before you in March we talked about how we were staffing these cases. Since March I wanted to let you know that we have gathered a team of five volunteer attorneys from our office that are going to take on death penalty cases. We are really pleased with the people who stepped forward to take on these cases. They are strong attorneys. They range, in terms of experience, from a senior attorney in our office to one of our Deputy I attorneys. We are pleased with the range of experience. Of the five attorneys, four have already litigated Supreme Court cases. One hasn't, but we are pleased with the range of senior to Deputy I because the youngest and least experienced attorneys will be part of our death penalty team for several cases before that youngest attorney takes on a death penalty case. With five attorneys on the death penalty team right now, we will be able to staff several death penalty cases with these folks, and by staff them I mean we had talked to and will have a lead attorney for every death penalty with a backup attorney supporting the lead attorney in the case. That is our plan going forward for cases that we are handling at the direct appeal level. All of the attorneys are very supportive of the goal of improving outreach to the trial bar and making good connections with the attorneys who represented the defendant at trial and then handing the case off to the attorney who will represent defendant at post conviction. Our five attorneys are making connections with the Federal Public Defender's Office and Matt Rubenstein who is in charge of the Capitol Resource Project. They went out to lunch with him recently. Also, these attorneys are undertaking training. They went to a full day death penalty training at the Federal Public Defender's Office and we also brought in the Federal Public Defender's Office to do a death penalty training for our attorneys, not just the five, but for anyone who was interested in attending. So we do expect that these five are willing to take on cases right now, but we expect to add more people to this group so that we are constantly able to develop attorneys and then have good experienced attorneys ready to take on cases when they come into our office. The attorneys will also be attending the OCDLA death penalty training in the fall. We are prioritizing the training of these death penalty folks. As far as what we have right now, we are expecting to be assigned one death penalty case probably next week. We have the attorney team already picked out for this. The attorney who is going to be the lead attorney has already made contact with the trial attorney for that defendant. We are emphasizing the transitions as the cases come in. That is what we are doing with the death penalty. As far as legislative work, the session is winding down for us. We had three bills that Legal Services was involved with. We requested two housekeeping bills. One was to just make it clear that if a defendant had already been approved for court-appointed representation there didn't need to be a separate approval for preparation of the transcript. We wanted to eliminate that inefficiency. That bill went through as a housekeeping measure with no problem and it has been signed by the Governor. We had another bill where we wanted to make it clear that when a case is done in Oregon but has gone on to the federal courts through a petition for cert and possibly that cert has been allowed, that the time for filing a post conviction relief petition doesn't start to run until we are done in the federal courts. The law wasn't entirely clear. We didn't want people to be confused about when we need to file the state PCR action. We certainly didn't want to start that when there was still a chance in the federal court, so that was another housekeeping bill that we requested and that has gone through. The third bill we had was a parole bill. Our office represents people in judicial reviews of parole cases and right now the process involves filing a motion for leave to proceed. We had to request and receive permission to file the brief in these cases. That meant we had to file a motion, the AG had to respond, the court had to rule on the motion and then we would get to file our brief. While this was intended to be a helpful screening process when this requirement was implemented in 2001, it actually just resulted in a lot of delay, on average four months for these motions to be granted. The majority of the motions were granted so we went to the legislature and asked for elimination of that process so that parole appeals can be treated just like regular direct appeals and we can go straight to briefing. On that bill we worked with the Court of Appeals. They came out and supported us on the bill and that bill has passed out of both houses and been signed by the president in the Senate so we are just waiting for a signature from the House

and that should go through. All of the bills that we requested look like they will be signed by the Governor and enacted.

- 253 Chair Ellis You have become the big hiring center. You are the employer with open jobs.
- 255 P. Gartlan That is right Mr. Chair so if ever you need a job.
- 256 Chair Ellis This probably came as a little bit of a shock to you that all those new positions are there?
- 257 P. Gartlan Yes it did come as a shock. I think the legislature viewed it as a fairness issue. The Attorney General had asked for more attorneys to address the cases that our office was filing in other appeals and the legislature believed that it was only fair to give us some sort of comparable number of positions.
- 262 Chair Ellis What do you see as the process you are going to follow to fill those. Do you see any issues?
- 264 P. Gartlan I think first of all Ingrid has already scheduled a series of management meetings where we will come together and discuss how those positions will be used and the best way to utilize them for OPDS. I am pleased, thanks to Kathryn and that the Commission approved, that we hired some attorneys....
- 272 Chair Ellis The four temps.
- 273 P. Gartlan So far those people are working out. They are competent at addressing issues and so there should be a nice transition assuming that we select them for a permanent position. There should be a nice transition because they are fully acclimated to our office.
- 276 Chair Ellis The other four?
- 277 P. Gartlan We are hoping to recruit after the July bar. That is when a lot of people are coming out of law school and have passed the bar and are in the market. We think that will be a prime time for recruiting top notch people to work with our office.
- 282 Chair Ellis Are we getting the word out?
- 283 B. Duncan In February, Ingrid and I went to the Public Interest Law Job Fair and we interviewed a half dozen folks who would be graduating this May and taking the July bar. There were some very strong candidates there. The word is also getting out through a lot of our employees that the office may be growing.
- 289 Chair Ellis At a minimum, I would be sure to let the right people at the three in-state law schools know. I do think this is a great opportunity both for us and for some graduates.
- 294 P. Gartlan I agree, Mr. Chair.
- 294 Chair Ellis You have already anticipated space needs?
- 295 K. Aylward I have negotiated many contracts. I have never had more difficult negotiations than I have had with the landlord over getting additional space in his vacant building. As Pete was saying in October when we made the decision to double-fill some positions with limited duration attorneys, the gamble was that if we didn't get positions next biennium we would still find enough money to continue to pay those people for that year of promised employment. Now that we have the positions, whether those particular individuals become permanent employees or not they slip immediately into those positions, so it is as if the positions are filled as of July 1. That is good in the long run because then we don't have vacancy savings next

biennium because it does take awhile to gear up. I had to get additional space for the double-filling attorneys. It took me five months to reach agreement and the ink was barely dry and I called him and said "Look, can we start talking about more space because now I really think we are going to get even more positions." They are currently renovating the space and converting it into offices. There had been some partition walls that we wanted enclosed. We have also sort of knocked space out between the separate suites so that we could have more of a flow through of the office. We are starting to look at actually arranging our office differently now that we are big. We talked a little bit last October about CBS trying to take over some of the administrative functions to help with the backlog, but suddenly those administrative functions have become much more time consuming, or will with this increase of employees. We are looking at ways that we can really reorganize internally, sufficiently, so that we can be a large, efficient law firm.

- 324 Chair Ellis Aren't we glad we got under one roof before all this happened?
- 326 K. Aylward Yes.
- 327 Chair Ellis I'm glad to hear that this is moving right along. Any other comments on either the monthly report or the legislative report? Sounds good. Ingrid, do you want to talk a little bit about the August meeting and the retreat?
- 330 I. Swenson Just a little bit if I could.
- 331 Chair Ellis By the way my October conflict seems to be resolving so we don't need to address that.
- 333 I. Swenson So we are all scheduled for the October retreat ...
- 335 Chair Ellis August retreat.
- 335 I. Swenson Excuse me the August retreat. The dates are the 9th in the morning, 9:00 to 1:00, and then the balance of the 9th and the 10th would be the retreat. We will be looking at the delivery of public defense services in Coos and Curry Counties and as you know they are experiencing some significant financial difficulties, so that will be part of the picture that we will be hearing about. We will invite all those folks to present to the Commission. The main work of the Commission at the retreat is going to be to make some decisions about the allocation of funds in the next biennium.
- 344 Chair Ellis I thought it was really creative to have the meeting on allocation of funds at the most remote location we could find.
- 347 I. Swenson It is unfortunate that all of our providers won't be able to join us there. John has been down there a number of times meeting with contractors and legislators and others and we will be staying at the casino. I hope the repairs -- they have been working on the casino part but the hotel is separate, at least it was when I visited there last summer.
- 353 Chair Ellis Picture some cartoon in your organization's monthly newsletter and the Commission allocating money in a casino.
- 358 I. Swenson We are hoping that people will come down the day before so that they can be rested for these meetings. If I could, Mr. Chair, one of the things I would like the Commission to hear a little bit about today is Marion County. Tom Sermak is here and maybe he could give you a quick update.
- 365 Chair Ellis On Marion County, I would be very interested.

- 374 I. Swenson Tom is not out there. Just very briefly, I think beginning July 1 he has office space in the Oregon building on the 4<sup>th</sup> floor. He is recruiting actively for lawyers and expects to start operations on July 1. What is the contract situation? We are not quite there yet?
- 380 K. Aylward We are not there yet, but I think by June 30 he is required to submit a budget of how many cases, which types, how much money do I need to run my office, and at that point we will be able to figure out case rates and numbers of cases. We are not at that point yet. He has already obtained quotes for things like telephone systems and computers and furniture. He is moving ahead but you sort of have to know what it is going to cost before you know how many cases you can handle.
- 389 I. Swenson John Hemann is the chair of the Board of Directors and he and other board members have worked pretty closely with Tom. They had a meeting with all the judges and I think Tom has met with MCAD at least once, maybe more than that, so I think things are moving along.
- 394 K. Aylward But I think it is unlikely that they will start taking cases July 1. I just don't see how that is possible. We know how long it takes to order and install furniture, but I would have expected it to not start July 1.
- 398 S. Gorham I can tell you Tom respectfully disagrees with that. He thinks it is ready, maybe not totally ready. We have worked with Tom in regard to how we will allocate cases. I guess that is maybe the best way to say it. So far, we have a real cooperative meeting of the minds on doing everything.
- 404 Chair Ellis Steve, I do want to say we appreciate how you are relating to that.
- 405 S. Gorham Olcott Thompson, our chair, and I have meet with Tom numerous times and will continue to meet to smooth out the process. I think the most important part of it is knowing what the mix of cases that Tom will actually be getting so that we can adjust for that. The sooner the better on that would be great. I think if Tom were here he would say that he is ready to go. We are prepared to take any cases he can't take.
- 417 Chair Ellis A lot of people have given a lot of help to get this process working and I really do appreciate how things are going.
- 420 J. Potter Mr. Chair, we talked about this, I think it was in Klamath Falls maybe, and before that certainly, developing a new Public Defender's Office in Marion County. I had at least said it would be wonderful to start a new office and have it on par with the prosecution's office so that it would be a model that we would use to try and get all public defender offices at that level. I understand that the negotiations are going on and that we have costs that will be very similar to what the rest of the contractors have, so we are not going to even get close to being at the same level with the prosecutors. I am not sure that we can do anything about that, but I am disappointed.
- 433 Chair Ellis Anything else?
- 434 I. Swenson One other thing and that is our strategic plan will expire as of July 1. Our management folks had a meeting with Geoff Gilfoy about a week ago and looked at how to update that. Most of it can remain pretty much the same. Our mission and goals ....
- 440 Chair Ellis Can you use another word instead of "expires?" Our strategic plan will come to completion.
- 443 I. Swenson It won't expire at all as a matter of fact. It will be revised and updated for the next biennium.
- 444 Chair Ellis If there is no other business, I would entertain a motion to adjourn.

**MOTION:** Shaun McCrea moved to adjourn the meeting; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE: 5-0.**

# Attachment 2

**OPDS's Initial Draft Report to the Public Defense Services  
Commission on Service Delivery in Judicial District No. 15  
(August 3, 2007 draft)**

**Introduction**

Since developing its first Strategic Plan in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission to deliver quality, cost-efficient public defense services in Oregon. Recognizing that increasing the quality of legal services also increases their cost-efficiency by reducing risks of error and the delay and expense associated with remedying errors, the Commission has developed strategies designed to improve the quality of public defense services and the systems across the state for delivering those services.

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004, 2005 and 2006, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Wasco, Wheeler, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of the public defense systems in Coos and Curry Counties. The final version of this report will include PDSC's service delivery plan for these counties.

**PDSC's Service Delivery Planning Process**

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

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more 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 preliminary draft report and public comments during the Commission's meetings in a county or region, PDSC develops a

“service delivery plan,” which is set forth in the final version of OPDS’s report. 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 (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, contractors subject to the Commission’s service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission’s plans and in establishing other best practices in public defense management.

Any service delivery plan that PDSC develops will not be the last word on a local service delivery system, or on the quality and cost-efficiency of the county’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 service delivery 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 counties in the state on an expedited basis in order to address pressing problems in those counties.

### 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 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.

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 Contractor 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 process 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 site teams visited contractors in Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams visited all of the juvenile contractors in Multnomah and Lane Counties and criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole juvenile and criminal provider in Benton County.

In accordance with its Strategic Plan, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC undertook 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 2006, the Commission devoted two of its meetings to investigating the condition of juvenile law practice across the state and to develop a statewide Service Delivery Plan for juvenile law representation.

In 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in those cases was approved by the Commission in June of 2007.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the 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. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. 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.<sup>1</sup> A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and 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 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 Contractor 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

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<sup>1</sup> 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).

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 quality 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:

1. 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.<sup>2</sup> 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 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

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<sup>2</sup> Spangenberg and Beeman, *supra* note 2, at 36.

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.<sup>3</sup> 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.

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

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<sup>3</sup> Id.

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 receive court appointments.

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender 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, on 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.

4. 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.

5. 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 Preliminary Investigation in Judicial District 15**

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 those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense system begins with a review of an OPDS report like this.

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve two other important functions. First, they provide useful information to public officials and other stakeholders in a local justice system about the condition and effectiveness of that system. The Commission has discovered that "holding a mirror up" to local justice systems for all the community to see can, without any further action by the Commission, create momentum for local reassessments and improvements. Second, the history, past practices and rumors in local justice systems can distort perceptions of current realities. PDSC's investigations of public defense delivery systems can correct some of these local misperceptions.

On July 18 – 20 Commissioner John Potter, OPDS public defense analyst Billy Strehlow and Executive Director Ingrid Swenson visited with stakeholders in both Coos and Curry Counties. In addition to talking to PDSC's contractors in the district, they also met with the judges, the trial court administrator, district attorneys, juvenile department directors, the DHS Child Welfare Program Manager and members of her staff and representatives of the Sheriff's Office in both counties. Written responses to questionnaires were also received from the three contractors in the district. Copies of these responses are attached as Exhibits A, B and C.

At its meeting in Coos Bay on August 9<sup>th</sup>, PDSC will hear directly from invited guests and others about the delivery of public defense services in the district and some of the challenges facing the public safety systems in Coos and Curry Counties.

This preliminary draft report is intended to provide a framework to guide the Commission's discussions about the condition of Coos and Curry Counties' public defense systems and services, and the range of policy options available to the Commission – from concluding that no changes are needed in these counties to significantly restructuring their delivery systems.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Judicial District 15's justice systems could turn out to be the single most important factor contributing to the quality of the final version of

OPDS's report to the Commission and its Service Delivery Plan for Coos and Curry Counties.

## **OPDS's Preliminary Findings in Judicial District 15**

### **A. Overview of Funding Crisis in Coos and Curry Counties**

While the funding crisis in Oregon's "timber counties" has been well documented, the extent of the impact on county services in Coos and Curry Counties can hardly be overstated. OPDS staff was advised that 68% of the general fund in Curry County and 50% in Coos County had come from the federal government. When the Congress eventually approved a one- year extension of funding under the Secure Rural Schools and Community Self Determination Act, both counties had already made decisions to make significant cuts in public safety spending. When funding for the additional year was ultimately provided, the counties took different approaches to use of the funds. Curry County rehired some of its public safety personnel. The Coos County Commission decided against restoring positions, however. Among the impacts in Coos County that were described to OPDS staff were the laying off of 85 county employees, the closing of nearly half of the jail beds, and the loss of half of the Sheriff's patrol deputies. Cuts in these and other county programs are discussed below in connection with particular agencies and functions.

### **B. The Court**

There are six judges in Judicial District 15 who preside over proceedings in three separate court facilities – the Coos County Courthouse in Coquille, the Coos County Courthouse annex in North Bend and the Curry County Courthouse in Gold Beach. Judge Richard Barron is the presiding judge and Ed Jones is the Trial Court Administrator. The two newest circuit court judges - Jesse Margolis and Cynthia Beaman - have been assigned to the Curry County Courthouse. Judges Barron, Michael Gillespie and Martin Stone are located in Coquille and Judge Paula Bechtold is assigned to the North Bend Annex. The courts in both counties are working toward using the same model for processing cases. Some hearings have different names in the two counties and some court related functions are performed by different agencies in each county.

### **C. Coos County**

#### **(a) Judicial Assignments**

Presiding Judge Barron handles juvenile cases, domestic relations cases that include children, and criminal cases that are tied to the family court process. Judge Bechtold handles non-jury cases, violations, small claims matters, FEDs, probate, domestic relations cases not involving children, mental health court and

civil commitment hearings. Judges Stone and Gillespie are the principle trial judges for civil and criminal cases.

(b) Special Courts

Drug Court - Coos County initiated its drug court program in February of 2005. It has processed approximately 300 Possession of Controlled Substance cases to date. The court meets once a month. Challenges to the ultimate success of the court include the lack of adequate funding for community corrections and the lack of a sufficient number of qualified treatment providers at low or no cost to participants.

Mental Health Court – This court was initiated a year ago. It is a post plea program that currently has six to eight persons enrolled. It meets once a month.

Family Court - The county is in the process of creating a court for families with 0-3 year olds who are in protective custody. Mental health, drug and alcohol, and parenting services will be included. The court will start with five families. On August 24, 2007 there will be a meeting with the attorneys to discuss the potential benefits of the program to their clients. One of the goals of the court is to limit the number of times children in care are moved. Each agency is contributing staff time – mental health, DHS, the trial court administrator and probation officers as needed, including juvenile officers. The attorneys will also participate in the course of their representation of public defense clients.

There is also a deferred sentencing program for domestic violence cases.

(c) The District Attorney

Paul Burgett is the Coos County District Attorney. He will retire in December of 2007. His chief deputy, Paul Frazier, is expected to be appointed to fill the vacancy. The office recently lost one deputy district attorney position and will not fill the vacancy created by Mr. Burgett's retirement. After his retirement there will be one district attorney and five deputies. This loss of personnel will affect the volume and seriousness level of cases filed in the county. Mr. Frazier believes that each deputy can handle an annual caseload of 725 cases including all of the cases reviewed and not filed. This means that some categories of cases will have to be treated as violations. At this point the plan is to treat as violations all Class B misdemeanors and below, all non-person A misdemeanors and some Assault 4s if there is no injury. DUIs, Reckless Driving cases, and Driving While Suspended felony cases will be treated as crimes. One deputy DA is assigned to juvenile court but this deputy is currently out on family leave. The office currently handles juvenile dependency cases only through disposition. In the past they were able to appear at post-dispositional review hearings.

#### (d) Public Safety Agencies

Prior to the budget cuts the sheriff's office initiated approximately half of the criminal cases in the county according to the district attorney. Now there are very few cases initiated by the six deputies assigned to patrol duty. There are five small police departments in the county – North Bend, Coquille, Myrtle Point, Coos Bay and Bandon. These departments are reportedly in good financial condition.

#### (e) Criminal Case Processing

Initially, all criminal cases are docketed centrally. Once set for trial, however, they remain on the assigned judge's docket. Up to six trials may be set for trial on a single day.

The docket moves quickly in Coos County. It is described as a county-wide "rocket docket." Once a plea offer is declined and the case is set for trial, the defendant must plead to all counts, the case must be dismissed or it must proceed to trial. There are no judicial settlement conferences in Coos County. Trial rates, particularly jury trial rates, are significantly higher for felony cases in Coos County than for cases in rest of the state<sup>4</sup>. After the trial date is set continuances are rarely allowed for either side. The system works well in the opinion of the Chief Deputy District Attorney. His office has been able to provide deputies to try the cases. Occasionally there are not enough judges or courtrooms for the number of trials set, however. Others in the system find the court not very understanding of the parties' struggle to keep up. There is a sense that the interests of the litigants are disregarded and this reportedly gives rise to a less than cordial relationship among the members of the local legal community.

Despite the loss of public safety personnel, the criminal caseload in Coos County showed an increase in the first six months of 2007. In January through June of 2006 there were 375 felonies and 536 misdemeanors filed. In January through June of 2007 there were 394 felonies and 800 misdemeanors. It is expected that a significant decline in cases will occur in the second half of 2007. OPDS would describe the caseload as essentially flat.

#### (f) Juvenile Dependency System

Initial juvenile court appearances occur every morning from 8:30 to 9:00. Juvenile matters are scheduled for hearings at 3:00 p.m. on Monday afternoons. The trial court administrator said that in the past attorneys had been present for shelter hearings in juvenile dependency cases but that it is simply not feasible for them to appear on such short notice when all of the paperwork may not be

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<sup>4</sup> The average trial rate for felonies in Oregon in calendar year 2006 was 5% with approximately 8 court trials for every 10 jury trials. In Coos County 7.8 percent of felony cases went to trial and there were roughly six times as many jury trials as court trials.

available. The court appoints counsel at the initial hearing and a second appearance with counsel then occurs within 24 hours.

The DA participates in dependency cases only until the initial disposition hearing. The Attorney General's office represents DHS in termination cases and usually gets involved as soon as the agency has decided to seek termination.

DHS has a staff of 50 in the county and as of mid-July there were 170 children in foster care. Half of these children are under the age of five. According to DHS, in the 2001-03 biennium Coos County had the highest child abuse rate in the state. It is now 14<sup>th</sup>.

Judge Barron has been the juvenile court judge for many years. He is described as the driving force in juvenile matters in the county. In addition to hearing the juvenile court docket, he is also the trial judge in most dependency and termination cases.<sup>5</sup> DHS staff say he is knowledgeable, concerned and caring. He has initiated a number of innovative programs and approaches to handling cases. He organized the family support team which accelerates access to services for parents and he initiated the Ford Family Foundation 0-3 court team which will start in September. Because so many of the children in care are under the age of five he has generally preferred to appoint CASAs for these children, rather than attorneys. About half of the children in care have court-appointed CASA's. A CASA volunteer said that CASAs are never appointed until after jurisdiction, however, so that children have no one, other than the other parties to the case, to advocate for their interests prior to jurisdiction. Recently the court has reportedly been appointing attorneys for children more frequently, however, especially for older children.

The Citizen Review Board in Coos County is very active in the review of dependency cases, convening hearings every six months. Attorneys generally attend these hearings as well as family decision meetings, youth decision meetings and the like.

Dependency cases, like criminal cases in Coos County, move fairly quickly with jurisdiction often being established within 45 days.

DHS anticipates that there will be fewer dependency cases in the County as long as the Sheriff's Office is operating at its current level. The Sheriff's Office had previously been involved in approximately 60% of the dependency referrals.

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<sup>5</sup> It is unusual for the judge who monitors the progress of the dependency case to also hear the termination of parental rights case. Many counties routinely assign a judge other than the principal juvenile court judge to hear terminations. Attorneys who object to the termination case being heard by the judge who has, in most cases, already approved the change of plan from return to parent to adoption, move for a change of judge. This practice appears to be rare in Coos County.

### (g) The Juvenile Delinquency System

The Coos County Juvenile Department lost one third of its staff in the recent budget cuts. Rather than leaving the decision about which positions to cut to the Juvenile Department, the County Commission made the decision. The fewest cuts were made to detention center staff. The facility holds twelve youth and includes a treatment center. Two beds are rented to Curry County. Most of the cuts were made to the probation staff, which decreased from six to two and three/fifths FTEs. The Juvenile Department Director reported that youth are now exhausting local options sooner and more youth are being committed to the training school. The county routinely exceeds its cap at the training school and consequently pushes for adjudication on Class A felonies<sup>6</sup> since commitments on these offenses do not count against its cap. Although youth may initially receive probation on Class A felony offenses, with few community resources available they are less likely to succeed and more likely to be committed on probation violations.

The juvenile department director would like to see fewer cases reduced from felonies to misdemeanors because she believes many of the youth who need felony level services are not receiving them.

She said that alternative treatment in juvenile sex offense cases is not available in the county.<sup>7</sup>

### (h) Coos County Public Defense Providers

There are two contract providers in Coos County, Southwestern Oregon Public Defender Services, Inc. and the Coos Indigent Defense Consortium. The consortium handles only conflict cases<sup>8</sup>.

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<sup>6</sup> Youth committed on these offenses occupy Public Safety Reserve beds that do not count against the county's cap.

<sup>7</sup> Alternative treatment in sex offense cases generally involves an amendment or postponement of proceedings on the delinquency petition to allow a youth to engage in treatment services. If such services are successful the petition may be dismissed or treated as a dependency petition preventing the youth from having a non-expungible record or having to register as a sex offender. There is a significant disparity between counties as to whether juvenile departments, prosecutors and judges are willing to consider supporting such treatment. Attorneys for youth have been successful in a number of counties in persuading the court, sometimes over the objection of the juvenile department and the district attorney's office, to grant alternative treatment.

<sup>8</sup> A spreadsheet setting forth the caseloads of both Coos County providers and the Curry County consortium is attached as Exhibit D.

## **Southwestern Oregon Public Defender Services, Inc.**

This non-profit public defender office currently provides services only in Coos County although it previously served both Coos and Curry Counties<sup>9</sup>. The firm has a Board of Directors comprised of three outside members, one selected by the president of the county bar association, one appointed by the presiding judge and one selected by the other two members.

There are currently six full time attorneys at SWOPDS. There had been seven until one attorney resigned in February of 2007. Carole Hamilton, the administrator of the office, believes that the appropriate caseload for each full time attorney is approximately 25 to 27 new cases per month. To maintain that ratio the office will probably need one more attorney but Ms. Hamilton has decided not to fill the vacancy until she has more information about caseload trends in the county. Recruiting and retaining attorneys is difficult. New attorneys in the DA's office receive \$3400 per month. Starting pay at SWOPDS is \$3100. Ms. Hamilton would like to increase the compensation paid to attorneys in her office.

SWOPDS has a written personnel policy manual and performs written evaluations of its employees. New attorneys are provided with experienced mentors. The administrator meets regularly with the judges in the county to inquire about attorney performance and sometimes listens to audio tapes of their trials. Financial support is provided for attendance at CLE sessions but additional funding would be needed to allow attorneys to take advantage of national training seminars which Ms. Hamilton believes her attorneys should attend.

## **Coos County Indigent Defense Consortium**

This consortium is comprised of five attorneys who devote varying percentages of their professional time to public defense representation. Sharon Mitchell is the administrator of the consortium. Each member of the consortium receives an equal share of contract funds (except that the administrator receives an additional amount for performing her administrative duties.)

The consortium does not have a board and does not include any quality assurance processes.

As noted above, the consortium is appointed only to those cases in which the public defender's office has a conflict preventing representation. The court assigns cases to individual consortium attorneys on a random basis. Separate appointment lists for Measure 11 and termination of parental rights cases prevent individual attorneys from receiving disproportional numbers of these cases.

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<sup>9</sup> The office ceased providing services in Curry County in 2001.

## Hourly rate providers

There are several attorneys from the Eugene and Roseburg area who appear regularly in Coos County cases. OPDS records indicate that there are only 1.2 cases per month that go to the private bar.

### (i) Comments regarding the quality of representation

## SWOPDS

The following comments were provided regarding the quality of representation provided by SWOPDS attorneys.

Complaints about public defenders not seeing their in-custody clients are “rare.” Attorneys seem to have a lot of clients but appear to be prepared. One SWOPDS attorney in particular is seen by the sheriff’s office as going the extra mile for his clients and really caring about inmates.

Most attorneys work cooperatively with the DHS in dependency cases. Some parents complain that the attorneys who represent them in dependency cases see them only outside the courtroom for five minutes to court hearings<sup>10</sup>. One CASA volunteer said that some attorneys don’t read the file until they get to court and don’t seem to know where their clients are. Some attorneys do excellent work. All of them seem overworked. Two public defenders were identified as being particularly good at getting things done for their dependency clients between hearings.

With respect to delinquency cases it was reported that Coos County defense attorneys are doing good work. They are looking for the best outcome for kids<sup>11</sup>. They see their juvenile delinquency custody clients regularly. Two attorneys in particular spend a lot of time with their in-custody clients. Over time representation in juvenile delinquency cases has improved in Coos County. There used to be an attorney who just didn’t care but the new lawyers are doing very good work.

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<sup>10</sup> DHS staff and others noted that clients can be hard to reach and the lack of an adequate public transportation system is a major problem in the county.

<sup>11</sup> Of course attorneys for youth in delinquency cases are required to advocate for the client’s expressed wishes, not for what the attorney may believe to be in the client’s best interest. Nevertheless, in support of the client’s expressed wishes it is important for the attorney to help identify outcomes and services that will serve their clients well.

The chief deputy district attorney and others indicated that if they observed a problem with the conduct of an attorney with the public defender's office they would bring it to the attention of Ms. Hamilton who would deal with it.

Another deputy district attorney indicated that there is an institutional rivalry between the DA's office and the public defender's office. Attorneys there sometimes decline reasonable offers. Some of the motions they file are not well founded.

Ms. Hamilton is described by opposing counsel as always willing to "work outside the box" when it comes to creating specialty courts and other non-routine approaches to handling cases. She is also felt to be a good spokesperson for the defense.

Ms. Hamilton has served on several OPDS site teams. During site visits she not only provided valuable advice to the contractors being evaluated but also used the opportunity to identify best practices that she could use in her own office. Ms. Hamilton is a member of the Local Public Safety Coordinating Council. Two attorneys in her office are also actively engaged in community organizations supporting young people.

### **Coos County Indigent Defense Consortium**

Comments about the quality of representation provided by the consortium included the following.

One prosecutor indicated that if a relative of the prosecutor were charged with a crime the prosecutor would recommend that the relative seek representation by a consortium attorney.

When the sheriff was able to retain more defendants in custody there were complaints about consortium attorneys not seeing their clients regularly.

Most attorneys work cooperatively with the DHS in dependency cases<sup>12</sup>. Some parents complain that the attorneys who represent them in dependency cases see them only outside the courtroom for five minutes prior to court hearings. A CASA volunteer said that some attorneys don't read the file until they get to court and don't seem to know where their clients are. Some attorneys do excellent work. All of them seem overworked. Consortium attorneys sometimes fail to request discovery in dependency cases as required by a standing local court order. If they do not request it, it is not provided and attorneys have to appear in court without having reviewed the case developments. Three consortium attorneys were identified as being particularly good at getting things done for their clients between hearings.

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<sup>12</sup> Some of the comments made with respect to consortium attorneys were also made regarding attorneys with the public defender's office and therefore appear twice in this report.

With respect to delinquency cases it was reported that Coos County defense attorneys are doing good work. They are looking for the best outcome for kids. They see their custody clients regularly. Over time, representation in juvenile delinquency cases has improved in Coos County. Most of the consortium attorneys are good. Some are temperamental.

Consortium attorneys are always ready to work outside the box.

### **Hourly attorneys**

These attorneys were generally described as providing good representation. Some concern was voiced about the cost to public defense of having attorneys come from outside the county.

#### (k) Issues for Consideration

Among the issues that the commission may wish to consider as it reviews service delivery in Coos County are the following needs articulated by members of the criminal and juvenile justice systems in the county:

- (1) A number of those interviewed indicated that there is a need for at least one additional attorney to handle the public defense caseload in the county. DHS believes that more attorneys would help to reduce caseloads and this would allow attorneys to spend more time with their clients and do more preparation for hearings. They could also have more direct contact with service providers<sup>13</sup>
- (2) The Trial Court Administrator noted that one obstacle to recruiting attorneys to Coos and Curry Counties is that spouses and partners of attorneys have difficulty finding employment in the area. Mr. Jones thought that a loan forgiveness program might be a very positive incentive for attorneys to relocate.
- (3) Since the volume of some case types is relatively small, attorneys may not develop expertise in all areas of practice. Attorneys with expertise in specific areas of practice could be made available as “resource attorneys” on complex sentencing guidelines issues and Indian Child Welfare Act cases, for example.
- (4) Recruitment and retention: One of the judges recommended that public defenders, who seem to have heavier caseloads and receive less

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<sup>13</sup> Public defender offices and some consortia, such as Klamath Defender Services use paralegals to assist their attorneys in performing some of the functions of juvenilt that can be performed by non-attorneys, such as visiting with child clients and contacting service providers.

compensation than consortium attorneys, be paid the same amount as the DAs.

- (5) One judge recommended that all of the attorneys obtain additional training on the rules of evidence.

#### D. Curry County

##### (a) Judicial Assignments

Jesse Margolis, a former attorney with the SWOPDS office and Cynthia Beaman a former member of the Curry County Consortium, are the two Circuit Court Judges assigned to Curry County Courthouse in Gold Beach. Judge Beaman had only recently been appointed to the bench at the time of the OPDS visit to the county and Judge Margolis had only been there for a few months.

##### (b) The District Attorney

Everett Dial is the District Attorney for Curry County. When initial budget cuts were made he lost both of his deputies. One deputy was added back after funds were restored. As a result of losing one of his deputies Mr. Dial decided that the office could no longer prosecute support enforcement cases and has not been able to be as involved in juvenile cases as it was in the past.

##### (c) The Sheriff's Office

In addition to the financial crisis faced by the Sheriff's Office, the former Sheriff was recalled from office on June 13, 2007 after being indicted for sexual harassment and other misdemeanor charges. He has since been convicted of all the charges. Allen Boice was named the new sheriff.

##### (d) Criminal Caseload

Although the proportion of cases charged as felonies in Curry County decreased in the first six months of 2007 as compared with the first six months of 2006, the total number of criminal cases filed in Curry County has actually exceeded the number of cases filed in the first six months of 2006<sup>14</sup>.

Some of the position cuts did not take effect until July 1 of 2007 so the full impact will not be known for at least several months.

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<sup>14</sup> According to the Trial Court Administrator in the first six months of 2006 there were 108 felonies, 282 misdemeanors and 1636 violations filed. In the first six months of 2007 there were 98 felonies, 326 misdemeanors and 1833 violations filed. OPDS would describe this caseload, as well as the caseload in Coos County, as flat.

#### (e) Juvenile Dependency System

There are 8 DHS staff persons in Curry County and forty children in foster care. All services within the county are located in Gold Beach which means that parties from other parts of the county must find transportation to the county seat for all required services<sup>15</sup> or travel to Coos Bay or Crescent City, California for services. District Attorneys appear only for contested hearings in dependency cases so DHS must prepare its own petitions and represent itself at all other hearings. The Attorney General's office has counsel present for permanency hearings, however. The Citizen Review Board conducts reviews every six months and attorneys are reported to be present for these hearings most of the time. Attorneys are rarely appointed for children in dependency cases and currently, due to an upheaval in the Curry County CASA program, there are only three available CASAs. New CASA volunteers have been recruited, however, and should be available soon.

#### (f) Juvenile Delinquency System

There are currently 74 youth on probation in Curry County, 26 of whom are on formal probation.

The Curry County Juvenile Department has laid off 9 staff members since February of 2007. Consequently, minor cases are not filed and are closed with a warning or a letter to a parent.

#### (g) Defense Providers

### **Curry County Consortium**

This small consortium has undergone a number of recent changes. John Spicer remains the contract administrator but the other two members of the consortium have left – one to fill a vacancy on the circuit court bench. Two new attorneys have recently been added - Jim Gardner, who has been practicing criminal and juvenile defense in Coos County for a number of years and Rick Inokuchi who is also a member of the Coos County Indigent Defense Consortium. Both Mr. Spicer and Mr. Gardner are considering adding associates to their firms but need a third consortium member to handle conflicts.

The consortium does not have a board of directors and operates under the terms of a written Operating Agreement among consortium members. There are no evaluations of consortium members but input is sought from the judiciary and the consortium is one of the few contractors in the state that provides clients with the opportunity to evaluate the representation they receive.

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<sup>15</sup> There is a "bus loop" on Mondays, Wednesdays and Fridays.

## Hourly Rate Attorneys

Two Coos County attorneys are often appointed in public defense cases in Curry County. These appointments have generally been on an hourly basis although it appears that Mr. Inokuchi is currently receiving cases directly from the consortium. OPDS records indicate that only .7 cases per month are assigned to the private bar.

### (h) Quality of Representation

OPDS staff received the following comments regarding the quality of representation provide by the Coos County Consortium.

The Sheriff's Office noted that there aren't as many complaints from inmates as there used to be. John Spicer must be overwhelmed with the number of clients he has but he does a good job. He seems to assess cases well, files motions and goes to trial.

Mr. Spicer handles most of the delinquency cases. He is described as being very good with kids. He sees them often. He is reasonable and doesn't ask for "outlandish" things. Jim Gardner is said to definitely be an advocate for his kids. Both attorneys file motions on behalf of their clients and try a lot of the delinquency cases.

In dependency cases it was reported that attorneys are only sometimes prepared for hearings and they must sometimes be called and reminded to come to court. There have been no termination of parent rights trials in a number of years. Attorneys do appear for CRB hearings and attend family meetings. The attorneys here don't handle a high volume of juvenile dependency cases so they lack experience. In juvenile cases there are areas of practice in which attorneys do not seem well versed.

### (i) Issues for Consideration

Among the issues that the commission may wish to consider as it reviews service delivery in Curry County are the following needs articulated by members of the criminal and juvenile justice systems in the county:

- (1) Both Curry County judges, the trial court administrator and a representative of DHS indicated that there is a need for more attorneys in the county, although OPDS records indicate that only .7 cases per month are being assigned to the private bar. Although Mr. Inokuchi is apparently a third attorney handling cases assigned to the consortium It is not clear that he is able to handle a sufficient number of cases because his office is located in Coos County and he has a large caseload there.) In addition,

both of the principle attorneys in the consortium are approaching retirement age and need to have succession plans in place.

- (2) Judge Margolis indicated that he believes that a public defender office would be the preferred model for service delivery in the county but understands that the conflict problem may not make that feasible<sup>16</sup>.
- (3) Although the caseload may decline due to shrinking public safety resources, consortium attorneys will need to be compensated sufficiently to make their practice in the county viable. Current rates for appointed counsel are simply not adequate to attract participation by private attorneys in the county. The billing rates for these attorneys is in the \$200-250/hour range. The district attorney's higher salary range has also been insufficient to retain experienced lawyers.
- (4) The Trial Court Administrator noted that one obstacle to recruiting attorneys to the county is that spouses and partners of attorneys have difficulty finding employment in the area. Mr. Jones thought that a loan forgiveness program might be a very positive incentive for attorneys to relocate.
- (5) Since the volume of some case types is relatively small, attorneys may not develop expertise in all areas of practice. Attorneys with expertise in specific areas of practice could be made available as "resource attorneys" on complex sentencing guidelines issues and Indian Child Welfare Act cases, for example.

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<sup>16</sup> As noted above, SWOPDS previously had an office in the county but ceased providing services there in 2001.

# Exhibit A

Please respond as completely as possible to the following questions. Questions in some categories may overlap with questions in other categories. Please feel free to refer to previous answers when appropriate. Please provide any written materials that are responsive to the questions set forth below. If the requested information is contained in a document being provided with the responses, no additional response is necessary. If your response to any particular question or questions would be unduly burdensome, please note that fact and suggest other ways in which PDSC could obtain the requested information. (For your information a list of best practices developed by our Quality Assurance Task Force is attached.)

### **Board of Directors**

1. Do you have a board of directors or other body overseeing the firm's public defense work?

Yes.

2. Who serves on your board of directors?

Jacques DePlois, Jerry Lesan, and Nick Nylander.

3. How are board members selected and how long do they serve?

According to our Articles of Incorporation, trustees are selected as follows: one trustee shall be appointed by the president of Coos/Curry Bar Association; one trustee shall be appointed by the presiding judge of the 15<sup>th</sup> Judicial District; and one trustee shall be appointed by the other two trustees thus appointed.

Vacancies shall be filled by the majority of the remaining trustees then in office.

The term of office of the two appointed trustees shall be 2 years and shall commence immediately after the annual meeting in the year of their appointment. The term of office of the one trustee to be elected by other two trustees shall be one year and shall commence immediately after his/her election which shall take place each year at the first of the board of trustees.

In reality, the trustees serve until they decide to resign.

4. How often does the board meet?

We try to meet 1/month; however, because all four of us have busy schedules, we often don't meet that often.

5. What are the functions of the board?

The board oversees general procedures and policies; financial decisions; advise and supervise director.

6. Does the board have written policies and procedures?

They have a copy of our bylaws which set forth their duties. In addition, they have a copy of SWOPDS policy manual.

### Personnel

1. Do you have written policies and procedures for handling personnel matters? If not, do you have a system you use? Please describe.

Yes, we have a policy manual.

2. Do you have written job descriptions? If not, please outline the functions of each category of employee involved in public defense work.

Yes.

3. Do you have written policies regarding supervision of your staff? If not, describe your system of supervision.

Yes, we rely upon the policy manual. The secretaries report to the officer manager; the investigator reports to the Chief Investigator; and the attorneys, office manager and chief investigator report to me.

4. What is your staff evaluation process?

Written evaluations.

5. How do you address issues of underperformance?

First, the supervisor informally discuss the problem with the employee. If that does not resolve the issue, the supervisor and director will discuss with the employee; if that still does not solve the problem, then there is a written reprimand from the director. If that does not solve the problem, the next step would be termination of employment. However, steps may be bypassed if there is a serious breach of employment responsibilities.

6. How do you acknowledge and reward excellence?

Verbal acknowledgement of good work; I buy lunch for attorneys who win jury trials.

7. Do your salary scales compare to other local attorney offices?

Our salaries are somewhat comparable to other PD offices. We may be a little low, but not substantially.

As with most public defender offices, our salaries are below those of the assistant district attorneys.

8. Do you have a plan in place to permit new attorneys to join your office?

Yes.

9. How do you monitor the general quality of the working environment at your firm? Are there regular staff meetings? Is there a process for obtaining feed-back from staff regarding the working environment?

Chief investigator meets with the investigator on a regular basis (usually 1/week) to discuss issues/cases. The office manager meets with the secretaries (goal is 1/month) to discuss their issues/concerns. I meet with the attorneys for an attorney meeting 2/month and for an attorney lunch 2/month. The office manager, chief investigator and I meet as needed. The entire office meets as needed. Also, there is a board meeting where the entire staff is invited twice a year.

Employees feel comfortable about approaching any of the supervisors to voice concerns.

### Competence

1. What standards do you use for the hiring, monitoring, and management of the professional competence of staff involved in public defense cases?

Obtain feedback from other employees in office, other attorneys, judges, court staff. Watch attorneys in court. Listen to tapes of trials.

2. How do you review the casework of your staff? How is that review shared with the staff?

I try to give verbal feedback immediately. This would involve both positive and negative feedback. I try to periodically talk with each attorney about their performance – not just during performance review.

3. Do you have a complaint process for use by staff, clients, others? How is it used?

Nothing other than encouraging people to voice any concerns they have.

4. Do you have a procedure in place to obtain regular feed-back from public defense clients regarding the representation they received from your office? Please describe.

No.

5. Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?

No.

6. Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or the former Disciplinary Rules? What were the circumstances?

No.

### **Cultural Competence**

What steps have you taken to provide culturally competent representation to clients of diverse backgrounds?

Have documents translated to various languages, mainly Spanish. Use interpreters. Call Mexican Consulate or Catholic Charities Immigration Services.

Not a lot of cultural diversity in this area of the state.

### **Training**

1. How do you orient new staff to your office?

Introduce to office and the courthouse and personally introduce to people they will be meeting in their job. Chief investigator has an orientation meeting with new attorneys as well as an open door policy. The office manager has an open door policy. I have an open door policy as well.

New attorneys are trained via cocounseling with an experienced attorney. The mentor will walk through the steps necessary in different kinds of cases; will attend client interviews with the new attorney; and will appear in court with the new attorney. Everyone in this office is willing to help the new attorneys learn the ropes.

Once they have done two misdemeanor trials, the next step in training is having become minor felony and, similar to when they are new, they cocounsel with senior attorneys to learn about felonies.

If I develop a concern about an attorney, I will co-counsel some additional cases with that attorney.

2. How do you insure that attorneys are familiar with and abide by the Oregon Rules of Professional Conduct?

By mentoring and followup. I ask the various judges for feedback every 3-6 months. I listen to audios of trials. Talk with clients if there is a concern voiced.

3. What ongoing professional development training is offered to staff by your office?

Purchase CLEs on tape for the office to listen. Have had speakers come in to give presentations. Try to encourage staff to attend meetings sponsored by other agencies (if topic is relevant to our work) in order to develop and maintain good working relationships. One example is an all day seminar on Commission on Children and Families.

4. What assistance or support do you provide to staff in order to encourage participation in professional development training outside the office?

CLEs and other conferences. We encourage all employees to attend training, not just the attorneys. We do have a financial cap on what the office will pay for, but will pay for the registration fee, hotel, food, and mileage.

### **Case Management**

1. What is your case file protocol for public defense cases?

Distribution of cases is equal among the attorneys. There is a rotation for in-custody and M11 cases to try to ensure the same number of

cases. Out-of-custody cases are assigned on availability. Our case manager reviews the numbers to ensure fairness.

2. What is your case assignment process in public defense cases?

We have one employee who acts as case manager; she assigns all cases on the basis described in No. 1 above.

3. How do you determine whether cases are being distributed fairly among attorneys?

Case manager runs periodic reports showing case assignments and I review if there is a problem/complaint.

4. What policy or procedure do you have for case relief when needed?

If someone is overworked, will reduce number of cases assigned to him/her temporarily.

5. What is your procedure for identifying and handling conflicts?

We do conflict checks for all cases. As soon as a conflict is identified, I review all potential conflicts and, if necessary, we withdraw.

### **Availability**

1. Under what circumstances are attorneys in your office made available to indigent members of the public seeking information about criminal and juvenile matters?

We only give legal advice in cases where we have been appointed by the court. For calls from the public, the staff will refer callers to legal aid.

2. When is an attorney with your firm first available to an indigent person suspected of a law violation?

For in-custody clients, there is an attorney at arraignment. In addition, an attorney is appointed to their case that same day and I expect the attorneys to see in-custody clients within 24 hours.

For out-of-custody clients, clients usually call in within 2 days of arraignment. We send out appointment letters within a week for an appointment within 2 weeks of arraignment.

3. Is an attorney present for the initial court appearance in criminal and juvenile public defense cases? If not, why not?

For in-custodies and for first appearances on dependency cases, we have an attorney staff the appearance.

For out of custodies, we do not have an attorney appear at arraignment. We used to do this, but it was very time consuming and the only information we gathered from them was their address/phone.

Do you have a policy requiring contact with in-custody and out-of-custody public defense clients within a specified period of time? What is the policy? Do you monitor compliance with this policy? How? Is the policy generally followed?

The attorneys are expected to see in-custody clients within 24 hours. I believe this is usually followed. When someone is new, I review their files and would ascertain that the attorney is doing this. Once I no longer review files, I just expect the attorneys to follow through on this. One time, I had complaints from in-custody clients that an attorney was not meeting with them, I checked that attorney's file, and met with the attorney to reiterate that this needed to be done. Another way I monitor is just by being aware. Most of the attorneys visit in-custodies immediately after court and, since we are a small office, I am aware of the number of times per week an attorney is over at the jail.

For out-of-custody clients, judges ask the clients to call our office and most do call within 2 days of arraignment. In addition, we send out letters within a week of arraignment, scheduling an appointment (we try to set the appointment for within 2 weeks of arraignment).

### **Appeal:**

How and when are public defense clients advised of their appellate rights in criminal and juvenile cases?

We advise our clients of their right to appeal when reviewing a Petition to Enter a Guilty Plea with them; the judge reviews it again at the time of conviction; and after the case is done, we write a closing letter which includes the right to appeal.

### **Community Education**

1. How is your office involved with the local community (local government, local criminal and juvenile justice systems, and local legal community)?

I belong to the Local Public Safety Coordinating Council.

2. Does your office provide trainers to the local community? If so how and on what topics?

No.

3. If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?

### **Zeal**

What steps have you taken to inspire and support your staff in providing zealous representation to public defense clients?

We work toward keeping morale high. We celebrate each other's birthdays, have holiday parties, and get together periodically. The office manager, chief investigator and I all try to ensure that the employees know that they are appreciated. In response to this, the employees work very hard for SWOPDS and, I believe, do a good job.

### **Conclusions:**

1. In what areas do you believe your firm excels?

I think that we offer excellent representation in a timely and efficient manner to our clients.

Our employees are dedicated and loyal. Many have been employed here for years and have established excellent contacts within the community. I do believe that there is a team oriented atmosphere here.

2. Are there any areas in which improvement is needed? What are they? How do you intend to address them?

More intensive training for new attorney through national training seminars. I would like to see scholarships that would pay for attorneys to attend these.

# Exhibit B

## Questionnaire for Administrator of Consortium

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide.

**No, there has never been any written agreement or by-laws in our consortium. We have made decisions based on consensus when we could, but with a majority rule.**

2. Does the consortium have a board of directors? If so describe the role that your board plays. Who are the members? How often does it meet? What kinds of issues are directed to the board? Are there limits on how long a board member can serve or how long one member can chair the board? Are there seats designated for "lay" or "community" board members?

**No, we do not have a board of directors.**

3. How is the administrator of your consortium selected? Compensated? Evaluated? Are there formal qualifications to be the administrator? Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next?

**The administrator position has been a volunteer from one of our attorneys, approved by majority of the members, with compensation of an extra \$500.00 per month. There are no formal qualifications, evaluation or plan for succession.**

4. What percentage of the administrator's overall workload is related to consortium matters? Is there a formal limit to the percentage?

**Since the administrator does not assign cases (our court assigns based upon a simple rotation), the position is primarily responsible for record keeping and contract negotiation, which is a small percentage of the overall workload.**

5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? Is there a formal or informal back-up administrator?

**We have found no need for a back-up administrator, although a second attorney is a signator on the consortium bank account.**

6. What are the requirements for membership in the consortium?

**We do not have formal requirements. We prefer that the attorney be Measure 11 and TPR qualified, but have accepted an attorney and assisted him in attaining those qualifications. We discuss potential members with the presiding judge, and will not accept an attorney that he indicates is not qualified.**

7. What is the process for applying for membership?

**The process has been informal, in that attorneys who are interested have let us know that when an opening occurs, they would like to be considered for the position. We have asked local attorneys whether they were interested, and we have considered asking out of town attorneys. We have never had a formal application process.**

8. How long has each of the attorneys been a part of the consortium?

**Jesse Coggins since 1996, Sharon Mitchell since 2000, Rick Inokuchi since 2001, Megan Jacquot since 2005, Matt Muenchrath since 2006 (and also 2001-2004).**

9. To what extent do consortium attorneys specialize in criminal and juvenile defense, representation of the allegedly mentally ill? In public defense? Is there a limit on the percentage of an attorney's practice that can be consortium related?

**Three of the attorneys do criminal, delinquency and dependency cases almost exclusively (both contract and non-contract), and the other two about half of their caseload. We rarely represent the allegedly mentally ill, although four of the five have experience in the area from working at the public defenders or prosecutors offices. We do not have limits on what percentage can be consortium related.**

10. How do you insure that new attorneys can become part of the consortium?

**We prefer attorneys who are already qualified to handle serious cases.**

11. What materials and orientation are provided to new consortium members?

**If the attorney has already been practicing in Coos County, we don't provide any particular orientation. To an attorney new to our county, we would provide an informal orientation as to the local practices, as well as any other needed assistance.**

12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? Do you have a formal mentoring system? Please describe your system.

**We have an informal relationship in which any of us can, and do, ask any of the others for assistance and input.**

13. How are cases distributed among attorneys? Do you have a process for assigning cases based on the seriousness and complexity of the case? If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

**The court staff assigns dependency and criminal cases based upon a rotation. The exception is for Measure 11 and Termination of Parental Rights, in which**

**there is a separate list, and limit to how many each attorney is required to handle at any one time.**

14. How soon are attorneys notified of appointment to a case? Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC?

**Attorneys are notified by the court staff on the day of appointment or the following morning. Our attorneys routinely contact clients within the contract timeframe.**

15. Does your system provide continuity of representation when possible? If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney?

**This does frequently occur in the dependency cases, since it minimizes the possibility for conflicts, but criminal cases are a strict rotation, with the public defender getting the appointment, then the next consortium attorney if there is a conflict. If an attorney is currently representing the client on a criminal or dependency matter, the court will usually appoint the same attorney if it is aware of the representation.**

16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? When are conflict checks conducted? How soon is a case reassigned after a conflict is identified?

**Each attorney or their staff performs their own conflict check. If there is a conflict known at the time the attorney is notified of the appointment, the court staff may just move on to the next attorney on the list, but usually we have to file a motion to withdraw and the court appoints the next attorney. There can sometimes be a significant delay between the motion to withdraw (by the consortium or by the public defender) and notice of appointment of a new attorney.**

17. Do consortium members meet regularly as a group? If so, how frequently?

**No. We are all friends, and are frequently all in court together, so we meet informally often. But we only have a formal meeting if there is an issue that requires a decision.**

18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing?

**There are only five attorneys in our group. Three of us are in one building. We communicate regularly in person, on the phone, at court, or through email (only some members are available through email). When I have an official notice to send out, such as the schedule for appearing at the monthly conditional discharge arraignments, I fax or mail the notice to those not in the building.**

19. Is there a mechanism for sharing research or forms?

**We share informally.**

20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? How do you insure that attorneys are not handling too many cases?

**As administrator, I keep statistics on the value of appointments each attorney has each month, and provide that to the members. The allocation of cases is an issue that arises periodically in the group, and each time, we have decided that although there can be a random period when one attorney gets a higher or lower caseload than average, we are willing to accept that. We have not had a situation with any attorney handling too many cases in many years, and even then the issue was that it was interfering with the ability to take non-contract cases.**

21. How do you insure that attorneys are providing quality representation? Are there regular evaluations of attorneys? If so, how and by whom are they performed? Are there other mechanisms in place to insure that consortium attorneys are providing quality representation.

**We have no procedure for addressing quality of performance by the attorneys, other than relying on the court to inform us if someone is not qualified to do appointed cases.**

22. How do you address problems of underperformance by attorneys?

**See above.**

23. Do you provide training or access to training for consortium lawyers? Please describe. Do you require a minimum number of criminal, juvenile or civil commitment law or trial practice-related CLE credits per year?

**We do not have any requirements in addition to those of the OSB.**

24. Are attorneys required to report disciplinary action by the bar? How many consortium attorneys have been disciplined by the bar? What were the circumstances?

**We have no formal requirement. None of the consortium attorneys have been disciplined by the bar.**

25. What is the consortium's process for handling complaints from judges? Clients? Others? Is there a designated contact person for complaints? Is that person's identity generally known in the criminal and juvenile justice community?

**If there is a complaint from the judges, the administrator handles those issues. Complaints about attorneys are made to the court, and addressed by the court.**

26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences?

**Each attorney has been responsible for maintaining their own competence on these issues.**

27. Do you have a system in place that allows clients to evaluate the quality of services received from consortium attorneys?

**No. As stated above, if a client has a complaint, that is made to the court, and addressed by the court, usually by the presiding judge.**

28. Are consortium attorneys and the administrator active participants in policy-making bodies of your criminal and juvenile justice systems?

**Yes, several of us have participated in such policy making bodies, such as in the development of the mental health court.**

29. What are some of the things your consortium does especially well? Please describe.

**We are very good at helping one another, with legal issues, covering court appearances, etc.**

30. Are there any areas in which you think improvement is needed? Please describe.

**We have no monitoring of the quality of representation the attorneys provide, nor any mechanism for addressing any failure in that representation.**

# Exhibit C

## Questionnaire for Administrator of Consortium

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide.

*We have an operating agreement (see attached).*

2. Does the consortium have a board of directors? If so describe the role that your board plays. Who are the members? How often does it meet? What kinds of issues are directed to the board? Are there limits on how long a board member can serve or how long one member can chair the board? Are there seats designated for "lay" or "community" board members?

*No, the consortium does not have a board of directors.*

3. How is the administrator of your consortium selected? Compensated? Evaluated?

Are there formal qualifications to be the administrator? Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next?

*In the past the administrator has been selected by agreement. Compensation is minimal, basically covering expenses only. There is no formal "plan for succession" at this time.*

4. What percentage of the administrator's overall workload is related to consortium matters? Is there a formal limit to the percentage?

*Prior to July 16, 2007, the assignments were handled by an independent contractor. Currently, they are being handled by John Spicer's office. The exact amount of time required to handle administration has not been determined.*

5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? Is there a formal or informal back-up administrator?

*The administrator's staff deals with problems and demands as much as possible when the administrator is unavailable. There is no formal or informal back-up administrator though the other attorneys in the consortium are available should an emergency arise needing immediate attention.*

6. What are the requirements for membership in the consortium?

*Must meet qualifications set forth with PDSC.*

7. What is the process for applying for membership?

*Members are asked to become part of consortium. As the bar is small, qualified attorneys are limited. Meeting with administrator and then filling out application and other documents required by PDSC.*

8. How long has each of the attorneys been a part of the consortium?

*M. John Spicer has been member of current consortium since its inception in 2002 and was public defense attorney with another consortium prior to that time. He has been involved with public defense work off and on since 1974. James Gardner just became a member of current consortium but has been involved with public defense work off and on since 1974. Rick Inokuchi has also only recently started working for the current consortium in Curry County but is a member of the Coos County Consortium.*

9. To what extent do consortium attorneys specialize in criminal and juvenile defense, representation of the allegedly mentally ill? In public defense? Is there a limit on the percentage of an attorney's practice that can be consortium related?

*None of the attorneys specialize in a specific field. All the attorneys have to be qualified to practice in all fields. There is no limit on the percentage of an attorney's practice that can be consortium related.*

10. How do you insure that new attorneys can become part of the consortium?

*They must meet qualifications and standards set forth by PDSC.*

11. What materials and orientation are provided to new consortium members?

*They are given a copy of the PDSC contract which was entered into between consortium and PDSC, a copy of the fee schedule and rate value for case charges and a copy of the consortium's operating agreement.*

12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? Do you have a formal mentoring system? Please describe your system.

*John Spicer and James Gardner are actively seeking to hire new attorneys in their respective office to be trained to do public defense work.*

13. How are cases distributed among attorneys? Do you have a process for assigning cases based on the seriousness and complexity of the case? If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

*All three attorneys (John Spicer, James Gardner and Rick Inokuchi) are fully qualified to handle all cases regardless of complexity and seriousness.*

14. How soon are attorneys notified of appointment to a case? Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC?

*Attorneys are notified of appointments the day the consortium is notified of appointments. The court emails the court appointments to the administrator after court, the administrator then assigns the cases to each specific attorney and notifies that attorney either by email or fax of the appointment later that same day. Each attorney is encouraged to meet with clients in custody within 24 hours of being appointed. Clients who are not in custody are given a notice from the court encouraging them to contact the consortium administrator within one business day to obtain the name and phone number of the attorney to whom they've been assigned.*

15. Does your system provide continuity of representation when possible? If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney?

*Yes, if an attorney has represented a client in the past, that client is assigned to that attorney in future cases unless there is a conflict.*

16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? When are conflict checks conducted? How soon is a case reassigned after a conflict is identified?

*It is the responsibility of the attorney to check for conflicts. If the charging documents have names of victims or co-defendants listed, the attorney is provided with those names so as to conduct a conflict check at the time of appointment. However, if there are no names provided at the time of appointment, the attorney is responsible for doing a conflict check as soon as names are provided through police reports, etc. The case is reassigned within 24 hours of the administrator being notified that there is a conflict if at all possible.*

17. Do consortium members meet regularly as a group? If so, how frequently?

*There are no regular formal meetings among the three attorneys but the three attorneys see each other most every day and consult each other regularly regarding cases, case loads, etc.*

18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing?

*At this time, e-mail is the preferred communication tool; however, fax is also used almost as often.*

19. Is there a mechanism for sharing research or forms?

*No formal mechanism. If an attorney has a question or need, he asks one of the other attorneys for whatever is needed. Forms are shared freely.*

20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? How do you insure that attorneys are not handling too many cases?

*Microsoft Access is the database used by the administrator to assign cases. Reports are run at least once a month to determine volume of cases being handled by each attorney. Adjustments can be made at that time. If an attorney asks for a report at a different time, the report can be generated then and adjustments made if necessary.*

21. How do you insure that attorneys are providing quality representation? Are there regular evaluations of attorneys? If so, how and by whom are they performed? Are there other mechanisms in place to insure that consortium attorneys are providing quality representation?

*No evaluations are performed by anyone in the consortium. The consortium asks for comments from the judiciary and makes note of comments/complaints from clients. The clients are provided evaluation sheets. The attorneys use check lists and record conferences with the clients.*

22. How do you address problems of under-performance by attorneys?

*Meet with them and discuss ways to improve performance.*

23. Do you provide training or access to training for consortium lawyers? Please describe. Do you require a minimum number of criminal, juvenile or civil commitment law or trial practice-related CLE credits per year?

*In that all three attorneys currently doing public defense work in Curry County are experienced attorneys, no training is done. However, each attorney is encouraged to participate in CLE seminars particularly geared toward public defense issues.*

24. Are attorneys required to report disciplinary action by the bar? How many consortium attorneys have been disciplined by the bar? What were the circumstances?

*Not necessarily. None. n/a*

25. What is the consortium's process for handling complaints from judges? Clients? Others? Is there a designated contact person for complaints? Is that person's identity generally known in the criminal and juvenile justice community?

*All complaints and comments from judges, courts and clients are noted and discussed among the three attorneys handling public defense cases. There is no designated contact person; however, John Spicer is generally the one contacted.*

26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences?

*There is currently only one interpreter used by the court. Arrangements are in place for an AT&T operator to be used if that interpreter is unavailable.*

27. Do you have a system in place that allows clients to evaluate the quality of services received from consortium attorneys?

*There is a form provided to the client when the case closes which the clients are asked to fill out.*

28. Are consortium attorneys and the administrator active participants in policy-making bodies of your criminal and juvenile justice systems?

*No; however, we hope to be more involved in the future.*

29. What are some of the things your consortium does especially well? Please describe.

*Our attorneys are all very experienced attorneys, each having practiced many years, putting those years of experience to good use in representing our clients.*

30. Are there any areas in which you think improvement is needed? Please describe.

*We need more feedback from clients and other people involved in the court system. A more reliable system of communicating among the attorneys' staff is being worked on. Different work schedules, distance (Rick Inokuchi's office is in Coos Bay) and other factors hinder quick communication among the three offices but improvements have been made and are continuing to be made.*

# Exhibit D

<b>Adult and Juvenile Felonies</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
SWOPD	589	595	597	595	647
CCIDC	319	241	235	200	163
Contract and Private Bar	923	845	845	803	817

<b>Adult and Juvenile Misdemeanors</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
SWOPD	810	714	832	787	646
CCIDC	153	136	156	124	94
Contract and Private Bar	964	850	990	911	741

<b>Adult and Juvenile Probation Violations</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
SWOPD	642	417	497	411	506
CCIDC	62	45	56	35	36
Contract and Private Bar	704	463	553	446	542

<b>Juvenile Dependencies</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
SWOPD	243	192	231	288	312
CCIDC	413	293	338	424	628
Contract and Private Bar	656	485	572	716	945

<b>Curry County</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Adult and Juvenile Felonies	332	208	291	212	254
Adult and Juvenile Misdemeanors	381	250	347	297	312
Adult and Juvenile Probation Violations	168	151	187	160	214
Juvenile Dependencies	39	27	53	125	131

# Attachment 3

## Public Defense Services Commission 2007-09 Appropriations

### GENERAL FUND

Name	SB5535			SB5549			Total from both bills		
	Persnl Svcs	S&S	Total	Persnl Svcs	S&S	Total	Persnl Svcs	S&S	Total
Legal Services Division	\$7,566,562	\$1,137,091	\$8,703,653	\$806,536	\$137,928	\$944,464	\$8,373,098	\$1,275,019	\$9,648,117
Public Defense Services Account		\$201,185,762	\$201,185,762	\$0	\$991,074	\$991,074	\$0	\$202,176,836	\$202,176,836
Contract & Business Services	\$2,556,174	\$508,928	\$3,065,102	-\$4,746	\$0	-\$4,746	\$2,551,428	\$508,928	\$3,060,356
			\$212,954,517			\$1,930,792			\$214,885,309

### OTHER FUND

Name	SB5535			SB5549			Total from both bills		
	Persnl Svcs	S&S	Total	Persnl Svcs	S&S	Total	Persnl Svcs	S&S	Total
Legal Services Division			\$0	\$0	\$0	\$0	\$0	\$0	\$0
Public Defense Services Account			\$0	\$0	\$0	\$0	\$0	\$0	\$0
Contract & Business Services	\$605,708	\$0	\$605,708	-\$1,089	\$0	-\$1,089	\$604,619	\$0	\$604,619
			\$605,708			-\$1,089			\$604,619

### TOTAL FUNDS

Name	SB5535			SB5549			Total from both bills		
	Persnl Svcs	S&S	Total	Persnl Svcs	S&S	Total	Persnl Svcs	S&S	Total
Legal Services Division	\$7,566,562	\$1,137,091	\$8,703,653	\$806,536	\$137,928	\$944,464	\$8,373,098	\$1,275,019	\$9,648,117
Public Defense Services Account	\$0	\$201,185,762	\$201,185,762	\$0	\$991,074	\$991,074	\$0	\$202,176,836	\$202,176,836
Contract & Business Services	\$3,161,882	\$508,928	\$3,670,810	-\$5,835	\$0	-\$5,835	\$3,156,047	\$508,928	\$3,664,975
			\$213,560,225			\$1,929,703			\$215,489,928

74<sup>th</sup> OREGON LEGISLATIVE ASSEMBLY – 2007 Regular Session  
BUDGET REPORT AND MEASURE SUMMARY

MEASURE: SB 5535-A

JOINT COMMITTEE ON WAYS AND MEANS

Carrier – House: Rep. Shields  
Carrier – Senate: Sen. Winters

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**Action:** Do Pass as Amended and Be Printed A-Engrossed

**Vote:** 17 – 3 – 1

House – Yeas: D. Edwards, Galizio, Jenson, Nathanson, Nolan, Shields  
– Nays: Garrard, Hanna  
– Exc: Morgan

Senate – Yeas: Bates, Carter, Devlin, Gordly, Johnson, Morse, Nelson, Schrader, Verger, Westlund, Winters  
– Nays: Whitsett  
– Exc:

**Prepared By:** Erica Kleiner, Department of Administrative Services

**Reviewed By:** Robin LaMonte, Legislative Fiscal Office

**Meeting Date:** 5/18/07

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**Agency**

Public Defense Services Commission

**Budget Page**

K-7

**LFO Analysis Page**

499

**Biennium**

2007-09

**Senators:** Bates, Carter, Devlin, Gordly, Johnson, Morse, Nelson,  
Schrader, Verger, Westlund, Whitsett, Winters

  
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Senator Kurt Schrader, Co-Chair

**Representatives:** D. Edwards, Galizio, Garrard, Hanna, Jenson,  
Morgan, Nathanson, Nolan, Shields

  
\_\_\_\_\_  
Representative Mary Nolan, Co-Chair

  
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Representative Chip Shields, Public Safety Subcommittee Chair

**Budget Summary\***

	2005-07		2007-09		Percentage Committee Change from Governor's Budget
	Legislatively Approved Budget (1)	Governor's Budget	Committee Recommendation	Difference from Governor's Budget	
General Fund	\$ 182,477,879	\$ 212,098,215	\$ 212,954,517	\$ +856,302	+0.4%
Other Funds	991,474	605,708	605,708	0	0.0%
Total	\$ 183,469,353	\$ 212,703,923	\$ 213,560,225	\$ +856,302	+0.4%

**Position Summary**

Authorized Positions	57	64	64	0
Full-time Equivalent (FTE) Positions	55.45	63.25	63.25	0.00

(1) Includes adjustments through the December 2006 meeting of the Emergency Board

\* Excludes Capital Construction expenditures

**Summary of Revenue Changes**

The agency is funded mostly with General Fund. The Public Defense Services Commission's (PDSC) Legal Services Division and Public Defense Services are supported by General Fund. The Contract and Business Services Division of the PDSC is supported by General Fund and anticipates approximately \$688,870 in net Other Funds in the 2007-09 biennium from an application fee (\$20) and a contribution amount that is paid by persons seeking representation at state expense. The total anticipated fees of \$3.3 million Other Funds are used to offset the General Fund cost of public defense eligibility verification staff in the Judicial Department (\$2.6 million Other Funds) and for operating expenses for public defense administration.

**Summary of Subcommittee Action**

The Subcommittee approved a budget of \$212,945,517 General Fund, \$605,708 Other Funds, and sixty-four positions (63.35 full-time equivalent positions). This is a 5.8 percent total funds increase from the agency's essential budget level. The Subcommittee approved a budget for the PDSC that deletes most of the funding for policy packages (as is highlighted in detail below), but adds a mandated caseload adjustment in the essential budget level (EBL).

Package 090/LFO Package 807 – Analyst Adjustment/Amend Governor's Adjustment: The Subcommittee adjusted the package by eliminating the unspecified reduction of \$19,722,401 and adding back the total General Fund amount of \$19,722,401.

Package 100 – Juvenile Dependency Representation: The Subcommittee eliminated the entire package of \$526,546 General Fund and four positions (4.00 FTE) to improve the quality of representation and timeliness of juvenile dependency appeals.

Package 101 – Employee Commensurate Compensation: The Subcommittee eliminated the entire package of \$350,659 General Fund to adjust appellate attorney compensation to provide parity with Department of Justice appellate attorneys.

Package 102 – Post Conviction Relief: The Subcommittee eliminated the entire package of \$303,453 General Fund and four positions (4.00 FTE) to provide for the establishment of a post-conviction relief unit.

Package 103 – Public Defense Provider Compensation: The Subcommittee eliminated the entire package of \$29,358,320 General Fund to increase the hourly rate to \$95 per hour for death penalty attorneys and \$70 per hour for all other case types, increased investigator hourly rates, and to reduce the disparity between the prosecutors and public defense contractors. Note: The adjustment in the essential budget level, plus the recommended funding level of \$2,690,933 in policy package 808, will enable the agency to increase the hourly rate to \$60 and \$45 and close the prosecutor/contractor salary gap by approximately one-sixth.

Package 806 – EBL Package 040 Mandated Caseload Adjustment: The Subcommittee approved \$8,981,946 General Fund and specified approval of two components:

- Add an appellate mandated caseload adjustment that adds \$1,917,852 General Fund and eight positions (8.00 FTE). The Department of Justice has an essential budget level adjustment for appellate caseload growth. This adjustment aligns PDSC with its counterparts in the Department of Justice for its caseload growth projections.
- Add a personal services adjustment that adds \$7,064,094 General Fund to the mandated caseload adjustment in the Public Defense Services Account. The mandated caseload is calculated using the caseload increase plus the standard 3.1% adjustment for services and supplies inflation, and an increase of 9.08 percent to the personal services portion of expenditures that reflects the average statewide adjustment for personal services.

The Subcommittee noted that, with the addition of the mandated caseload adjustments for appellate services, it will be important to have data which is readily comparable to the data compiled by other agencies regarding mandated caseload. Therefore, the Subcommittee recommended that the Public Services Commission include in future budget requests a clear delineation between expenses for trial-level representation and expenses for appellate-level representation. The Subcommittee also recommended that the PDSC adopt a name for its Legal Services Division that reflects the services provided by the division.

Package 808 – Co-Chair Provider Compensation Adjustment: The Subcommittee approves \$2,690,933 General Fund which will partly enable the PDSC to increase the hourly rate to \$60 and \$45 and reduce the prosecutor/contractor salary gap by one-sixth as is mentioned above. The Subcommittee discussed the testimony from providers on the effect of the current compensation rates on public defender retention and hiring rates, the difficulty in finding qualified attorneys in some parts of the state, and the need for adequate funding. The Subcommittee also discussed the need for qualified attorney representation on juvenile appellate matters, which would have been funded in Policy Package 100.

### **Summary of Performance Measure Action**

The Subcommittee approved the key performance measures, as detailed on the attached Legislatively Adopted 2007-09 Key Performance Measures form, with a recommendation that PDSC review its measures during the interim, and add realistic but aggressive targets. The Subcommittee recommended that the review focus on identifying areas where outcomes can be identified and tracked, as several of the measures relate to process rather than outcomes. This should include measures that track the effect of best practices on the cost of providing services. The Subcommittee also recommended that the PDSC add a customer service measure, which is a standard requirement for all agencies, including Judicial Branch agencies.

**DETAIL OF JOINT COMMITTEE ON WAYS AND MEANS ACTION**

**SB 5535-A**

Public Defense Services Commission  
Erica Kleiner (503) 378-3456

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
2007-09 GOVERNOR'S BUDGET *	\$212,098,215	\$0	\$605,708	\$0	\$0	\$0	\$212,703,923	64	63.25
<b>SUBCOMMITTEE ADJUSTMENTS</b>									
Policy Package 090: Analyst Adjustment									
Professional Services	0	0	0	0	0	0	0	0	0.00
Policy Package 100: Juvenile Dependency									
Personal Services	(820,998)						(820,998)	(4)	(4.00)
Services and Supplies	(137,928)						(137,928)	0	0.00
Professional Services	432,380						432,380	0	0.00
Policy Package 101: Employee Commensurate Compensation									
Personal Services	(350,659)	0	0	0	0	0	(350,659)	0	0.00
Policy Package 102: Post conviction Relief									
Personal Services	(715,148)	0	0	0	0	0	(715,148)	(4)	(4.00)
Services and Supplies	(120,145)						(120,145)	0	0.00
Professional Services	531,840						531,840	0	0.00
Policy Package 103: Public Defense Provider Compensation									
Professional Services	(29,358,320)	0	0	0	0	0	(29,358,320)	0	0.00
Policy Package 806: First Mandated Caseload Adjustment									
Personal Services	1,641,996	0	0	0	0	0	1,641,996	8	8.00
Services and Supplies	275,856	0	0	0	0	0	275,856	0	0.00
Policy Package 806: Second Mandated Caseload Adjustment									
Caseload Adjustment	7,064,094	0	0	0	0	0	7,064,094	0	0.00
Policy Package 807: Amend Governor's Adjustment									
Professional Services	19,722,401	0	0	0	0	0	19,722,401	0	0.00
Policy Package 808: Co Chair Provider Compensation Adjustment									
Professional Services	2,690,933	0	0	0	0	0	2,690,933	0	0.00
<b>TOTAL ADJUSTMENTS</b>	<b>\$856,302</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$856,302</b>	<b>0</b>	<b>0</b>
<b>SUBCOMMITTEE RECOMMENDATION *</b>	<b>\$212,954,517</b>	<b>\$0</b>	<b>\$605,708</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$213,560,225</b>	<b>64</b>	<b>63.25</b>
% Change from Governor's Budget	0.40%	0.00%	0.00%	0.00%	0.00%	0.00%	0.40%	0.00%	0.00%

\* Excludes Capital Construction expenditures

# LEGISLATIVELY ADOPTED 2007-09 KEY PERFORMANCE MEASURES

**NAME OF AGENCY: PUBLIC DEFENSE SERVICES COMMISSION**

Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

2007-09 KPM#	Legislatively Adopted KPMs for 2007-09	Changes to 2005-07	Target 2008	Target 2009
1	APPELLATE CASE BACKLOG - Number of cases in the Legal Services Division backlog	No change	68	57
2	FEE STATEMENTS REDUCED - Percentage of fee statements reduced due to incorrect billing	No change	3%	3%
3	PROCESSING FEE STATEMENTS - Percentage of fee statements processed within 10 business days	No change	88%	89%
4	REVIEWING EXPENSE REQUESTS - Percentage of non-routine expense requests reviewed within 5 business days	No change	87%	88%
5	EXPENSE COMPLAINTS – Percentage of complaints regarding payment of expenses determined to be founded	No change	<10%	<10%
6	BEST PRACTICES - 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 PDSC's site visit process and the process's "360 degree" evaluations	No change	40%	50%
7	ATTORNEY PERFORMANCE COMPLAINTS - Percentage of complaints regarding attorney performance determined to be founded	No change	<10%	<10%
8	CUSTOMER SERVICE – Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	New Measure		
9	BEST PRACTICES FOR BOARDS AND COMMISSIONS – Percentage of total best practices met by Commission	New Measure	100%	100%

2005-07 KPM#	<i>PROPOSED DELETIONS of 2005-07 Key Performance Measures (KPMs)</i>	Target 2008	Target 2009
	<i>No proposed deletions</i>		

For links to high-level outcomes and Oregon Benchmarks reference the agency's Budget Form 107BF04a.

# **LEGISLATIVELY ADOPTED 2007-09 KEY PERFORMANCE MEASURES**

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**NAME OF AGENCY: PUBLIC DEFENSE SERVICES COMMISSION**

Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

**LEGISLATIVE FISCAL OFFICE RECOMMENDATION:** Approve the key performance measures with a recommendation that PDSC review its measures during the interim, and add realistic but aggressive targets. The review should focus on identifying areas where outcomes can be identified and tracked, as several of the measures relate to process rather than outcomes. This should include measures that track the effect of best practices on the cost of providing services. PDSC should also add a customer service measure, which is a standard requirement for all agencies, including Judicial Branch agencies.

**SUB-COMMITTEE ACTION:** The Subcommittee adopted the Legislative Fiscal Office recommendation.

# Attachment 4

**Presenter:** Kathryn Aylward

**Public Defense Services Commission**  
**Meeting Action Item**  
August 9, 2007

**Issue**

PDSC approval of an increase in the guideline rates for hourly paid attorneys.

**Discussion**

The 2007 Legislature appropriated sufficient funding in PDSC's 2007-09 budget to provide an increase in the guideline rates for hourly paid attorneys from \$40 per hour to \$45 per hour for non-capital cases and from \$55 per hour to \$60 per hour in capital cases.

**Recommendation**

Approve the increase for appointments on or after August 9, 2007.

**Required Commission Action**

Vote to approve the increase in the guideline rates as discussed above.

# Attachment 5

**Presenter:** Kathryn Aylward

**Public Defense Services Commission**  
**Meeting Action Item**  
August 9, 2007

**Issue**

PDSC approval of 2007-09 OPDS employee compensation.

**Discussion**

Executive Branch agencies (principally through union negotiations) will be providing employees the following adjustments to compensation:

1. A 3.0% COLA effective 7/1/07 (awarded 10/1/07) with a minimum increase of \$80.
2. A 3.2% COLA effective 11/1/08 with a minimum increase of \$85.

The Judicial Department will be providing employees the following adjustments to compensation:

1. A 3.1% COLA effective 9/1/07 (no minimum).
2. A 3.1% COLA effective 9/1/08 (no minimum).
3. An additional top step will be added to each classification on 1/1/08.

PDSC is required to establish a compensation plan that is commensurate with other state agencies.

The Budget and Management Division of the Department of Administrative Services will be seeking additional funding from the 2008 Legislature for all state agencies to cover the cost of COLAs. The same calculation will be applied to determine the additional funding for all agencies regardless of minor differences there may be between the branches (and the "formula" for that calculation will likely be based on the Executive Branch adjustments). If the additional amount funded is less than the amount required, agencies will need to fund the difference out of existing operating funds.

**Recommendation**

Staff recommends the following adjustments for OPDS employees:

1. A 3.1% COLA effective 9/1/07 with a minimum increase of \$80.
2. A 3.1% COLA effective 9/1/08 with a minimum increase of \$80.
3. An additional top step will be added to each classification on 3/1/08.

**Required Commission Action**

Vote to approve the increase in the guideline rates as discussed above.

