



Oregon

Office of Public Defense Services

1175 Court Street NE
Salem, Oregon 97301-4030
Telephone (503) 378-3349
Fax (503) 378-4462
www.oregon.gov/opds

Public Defense Services Commission

Washington County Service Delivery Review

Final Report

December 2015

(Approved December 10, 2015)

I. INTRODUCTION

Background. The Public Defense Services Commission (PDSC) regularly holds public meetings in counties throughout the state as part of its effort to evaluate the effectiveness and efficiency of public defense services. The reports from these evaluations, called Service Delivery Reviews, are based upon interviews and public testimony from dozens of local justice system stakeholders, and focus on the structure of public defense services. The goal has been to ensure that the best type and number of public defense organizations are serving each county.

Parallel with the Commission's Service Delivery Review process, the Office of Public Defense Services (OPDS) has facilitated nearly 50 peer reviews of individual public defense providers since 2004. For each peer review, teams of public defense leaders from around the state spend several days in a county conducting interviews with justice system stakeholders in the course of examining the quality of representation provided by the entity under review. Among the primary aims of these reviews are identifying successful local policies and procedures that might be recommended to other public defense providers, and making recommendations for improvement where needed. The overarching purpose of each review is to assist public defense providers in pursuing excellence. Until recently, peer review teams produced confidential reports provided only to contract administrators and managers at OPDS.

In 2013, OPDS merged the two review processes while preserving the core purposes of each review. With the revised process, peer review teams examine providers in a county much as it would in the past, except interviewees are no longer promised confidentiality and providers and other system stakeholders are informed that the Commission will visit the county approximately one year after the peer review report issues in an effort to follow-up on the findings and recommendations of the peer review team. Prior to the Commission's public meeting in the county under review, at which it receives testimony from stakeholders, OPDS staff issue a new report based on interviews with public defense providers and county officials. After the Commission's hearing, a draft final report is prepared for Commission deliberation and approval.

Washington County Peer Review. The Washington County peer review team looked at the six public defense contractors providing representation in adult criminal and juvenile court cases. Those contractors included the following: Brindle McCaslin & Lee, PC (Juvenile); Hillsboro Law Group, PC (Criminal, Juvenile); Karpstein & Verhulst, PC (Criminal, Juvenile); Metropolitan Public Defender, Inc. (Criminal, Juvenile, Civil Commitment, specialty courts); Oregon Defense Attorney Consortium (Criminal, specialty courts); and, Ridehalgh & Associates, LLC (Criminal, Juvenile, specialty courts).

The OPDS Executive Director asked James Arneson to chair the evaluation team, and asked attorneys Karen Stenard, Tom Crabtree, Sarah Peterson, the Honorable Robert Selander, and Amy Miller to serve as team members. Paul Levy served as staff for the team.¹ The team's site visit was conducted in June, 2014, and contractors received final reports in November 2014.

Prior to the site visit, the administrator for each contractor completed a questionnaire about the operation of their entity. In addition, attorneys working with the Oregon Defense Attorney Consortium, and the attorneys and staff employed by each of the other contractors received a survey asking about their experiences working with the contractor.

Historically, peer reviews have also employed an online survey of justice system stakeholders who are familiar with the work of a contractor. However, OPDS had asked all Washington County judges, the District Attorney, and others, for comments about the contractors as part of its annual statewide public defense performance review conducted earlier in 2014. The peer review team reviewed results of that survey prior to the site visit.

The peer review team received extraordinary assistance from the Washington County courts, in particular, then Presiding Judge Kirsten Thompson, and Trial Court Administrator, Richard Moellmer, and his staff. Dee Ann Meharry, the docketing specialist with MPD, also provided invaluable assistance in scheduling interviews for the site visit.

¹ James Arneson is the head of a law firm in Roseburg that contracts with PDSC to provide representation in criminal and juvenile cases. He is a past-President of the Oregon Criminal Defense Lawyers Association (OCDLA), and also served as a lobbyist for that organization. He was the first chair of the Quality Assurance Task Force, which helped develop the protocols for peer reviews, and has served on other peer review teams. Karen Stenard is the administrator of the consortium that contracts to provide representation in juvenile cases in Lane County. She has served on past peer reviews. The Honorable Robert Selander is a senior judge who previously served as Presiding Judge in Clackamas County. He is the administrator of the consortium in Yamhill County that contracts to provide representation in criminal and juvenile cases. Tom Crabtree is the administrator of Crabtree and Rahmsdorff, a public defender office providing representation in criminal and juvenile cases in Deschutes and Crook counties. Sarah Peterson is an attorney in the Juvenile Appellate Section of the Office of Public Defense Services. Prior to working at OPDS, she was in private practice in Eugene handling appeals in domestic relations, juvenile dependency and criminal cases. Amy Miller is Deputy General Counsel at OPDS, and focuses on matters concerning juvenile dependency and delinquency representation. Previously, she was a staff attorney handling juvenile cases with Youth, Rights & Justice, and with Multnomah Defenders, Inc. Paul Levy is General Counsel at OPDS in Salem.

The Washington County peer review site visit took place on June 11, 12 and 13, 2014. Over the course of those three days, team members interviewed nearly 50 people including judges, court staff, prosecutors, Sheriff's staff, provider administrators, attorneys and staff, Juvenile Department personnel, representatives of the Probation and Parole Division, case workers with the Department of Human Services, a Court-Appointed Special Advocate (CASA) supervisor and others. Other telephone interviews were conducted after the visit.

At the conclusion of interviews, the team met to discuss preliminary findings and conclusions, and then met separately with the administrator of each contractor to provide initial feedback on the information it had received and some of the recommendations it was considering. A draft report was provided to each administrator, and after receiving comments and corrections, the team approved final reports.

Service Delivery Review Procedure. Over the course of three days - July 20, 21 and 22, 2015, OPDS Executive Director Nancy Cozine, PDSC member John Potter, and OPDS Contracts Manager Caroline Meyer, conducted follow-up interviews with Washington County justice system stakeholders and contractors to determine what developments had occurred in the county since the peer review. Nancy Cozine and Caroline Meyer held additional interviews, both by telephone and in person, on July 31, August 13, and August 14, 2015. All contract providers were interviewed, as well as Presiding Judge Bailey, former Presiding Judge Thompson, Chief Criminal Judge Knapp, Judge Menchaca, Trial Court Administrator Moellmer, court verification staff, District Attorney Hermann and his deputies, Sheriff Garrett and his jail commander, Juvenile Department Senior Juvenile Counselor Penny Belt and Drug Court Counselor Racheal Holley, Community Corrections Director Steve Berger and senior staff, CASA Director Lynn Travis and CASA supervisors, AAG Marcia Lance-Bump, DHS Program Managers Tom Vlahos and Shirley Vollmuller and Supervisor Katy Payne, and CRB Coordinator Sandy Berger.

The key findings and recommendations of the peer review reports, and the information gained from the follow-up interviews and meetings are related in the balance of this report. This report will be amended further following the PDSC meeting in Washington County on September 17, 2015. The report will be finalized following a subsequent PDSC meeting after deliberations on any specific findings and recommendations arising from the July meeting.

II. WASHINGTON COUNTY

Demographics. Washington County has a population of about 554,996, making it the second most populous Oregon county after Multnomah (766,135). The total estimated population for Oregon in 2013 was 3,930,065.² The population of Washington County has increased about 19% between 2000 and 2010.³ The county includes 15 incorporated cities, including Beaverton, Hillsboro, Sherwood, Tigard, Tualatin, Wilsonville, and a portion of Portland.

² U.S. Census Bureau, State & County QuickFacts, 2013 Estimates.

<http://quickfacts.census.gov/qfd/states/41/41067.html>

³ Portland State University, College of Urban & Public Affairs: Population Research Center, <http://www.pdx.edu/prc/census-data-for-oregon>.

According to U.S. Census data, the county is somewhat more diverse than the entire state population, with 68.9% identifying as white persons not of Hispanic or Latino origin (78.1% statewide); 2.1% identifying as black persons (2.0% statewide); 1.2% identifying as American Indian or Alaska Native (1.8% statewide); 9.3% identifying as Asian persons (4.0% statewide); and 16.0% identifying as persons of Hispanic or Latino origin (12.0% statewide). Census data also show the county has a slightly higher than statewide percent per capita of high school graduates (90.7%; 89.2% statewide), and a somewhat higher percent of college graduates (39.5%; 29.2% statewide). Nearly a quarter of persons over the age of five in the county speak a language other than English at home (14.7% statewide).⁴

Geographically, Washington County includes vast tracks of fertile farmland, where agriculture remains a major component of the county's economy. Elsewhere, the high-tech electronics industry is another major part of the county's economy, including the Intel Corporation, which is the largest for-profit employer in the county. Nike, Inc. is also headquartered in Washington County.

Oregon State Police profiles of index crimes for Washington County show a fairly consistent number of reported crimes over the five year period ending in 2012, with a high of 12,835 in 2008 and a low of 10,936 in 2011. Total reported crime for the county has also remained fairly constant over the same period.⁵

Justice System. With the exception of the Hillsboro and Beaverton branch offices of the Department of Human Services, and the juvenile detention facility in Portland where the county places youth in delinquency cases, the main places of business for the Washington County justice system are located close together in downtown Hillsboro. For the most part, lawyers are also within the downtown core. The Washington County Circuit Court includes 15 judges and one Juvenile Court Pro Tem Judge. Though there is a need for additional judges, space constraints in the courthouse resulted in a request for only one new judgeship, which was not funded in the 2015 legislative session.

Due to the significant demands on its limited judicial resources, the court sought and received grant funding from the State Justice Institute to engage the National Center for State Courts (NCSC)⁶ in a "reengineering" effort. Following a 2013 site visit and report from NCSC, the Washington County Circuit Court adopted a set of guiding principles and a governance plan that set out the structure of an Executive Committee to provide input and advice to the Presiding Judge. The Executive Committee consists of the

⁴ U.S. Census Bureau, *supra*.

⁵ Oregon State Police, 2010 Annual Uniform Crime Report, http://www.oregon.gov/osp/CJIS/Pages/annual_reports.aspx. The "Crime Index" was developed to measure crime on a national scale by choosing eight offenses that are generally defined the same by each state, which are: Willful Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny (Theft), Motor Vehicle Theft, and Arson. Total reported crime was 40,942 in 2006 and 33,270 in 2010, the last year for which data are available and a low for the five-year period.

⁶ The State Justice Institute was created by Congress in 1984 to award grants for state court improvement projects. www.sji.gov. The National Center for State Courts provides court improvement services. www.ncsc.org.

Presiding Judge, the Immediate Past Presiding Judge, the three Chief Judges of the Criminal, Civil and Family Law teams, and a new position of Assistant Presiding Judge.

On June 12, 2014, during the site visit for the peer review, the Washington County Circuit Court released the results of a major NCSC review of court docket management which included numerous findings and recommendations. Among other things, the report noted that the court “falls short of the state’s ambitious felony and misdemeanor case processing time standards,” although the report observed that most Oregon courts fall short and that the court generally met the NCSC’s own case time standards. More significantly, the report noted that jury trial rates for both felony and misdemeanor cases were dramatically higher than nationally and elsewhere in Oregon. The report suggested a combination of factors contributed to the high rate, including ineffective pretrial conferences where deputy district attorneys lacked authority to engage in meaningful negotiations and defense attorneys were not sufficiently prepared; lack of meaningful judicial involvement in pretrial settlement discussions; the siphoning of easily resolved cases onto an Early Case Resolution docket; and prosecutorial overcharging. The report also noted that a significant number of cases that resolve short of trial do so only on the day of trial.

The NCSC report included a number of recommendations aimed largely at promoting timely case dispositions. These included, generally, an effort to reduce unnecessary delay by creating the expectation that case events—most importantly trials—will proceed as scheduled. Specifically, the report recommended the creation of a criminal caseflow management plan with the expectation this would ensure that scheduled events occur in a predictable fashion and that those events are meaningful. The report also recommended that system stakeholders study further how to make pretrial conferences more meaningful and increase the success of resolving cases prior to the day of trial. Overall, the report emphasized the need to include representative from stakeholder groups in discussions about improving court processes.

Criminal Cases. All criminal cases in Washington County Circuit Court begin with a first appearance at the Law Enforcement Center, commonly called “LEC” (pronounced like “lecture”) which is two blocks from the main Courthouse. The LEC opened in 1998 and includes the county jail and Sheriff’s offices, along with two courtrooms.

Arraignments take place each day at 8:30 am for out-of-custody cases, and 3:00 pm for in-custody. Metropolitan Public Defender (MPD) covers the arraignment docket for all providers, except for Early Case Resolution (ECR) matters, which are addressed further below. Prior to morning arraignments, MPD’s docketing specialist will have spoken with the court verifiers, who make tentative assignments of new cases to contractors based upon a rotation schedule established with OPDS. The MPD arraignment attorney and legal assistant arrive prior to out-of-custody arraignments and speak briefly with clients likely to be assigned to MPD. Obvious conflicts of interest are avoided in the pre-arraignment assignment process, but neither MPD nor the verifiers have detailed information about names of complainants and likely witnesses. When cases will not be assigned to MPD, the attorney acquires basic contact and case information but does not inquire into matters that might touch on confidential information. Working relationships among the MPD attorneys, the court, and Sheriff are described as positive, with regular communication, including both formal and informal.

For non-ECR cases, as would be expected in a high volume court, arraignments move along quickly after the persons cited to appear⁷ have all viewed a video explaining their rights. Defendants leave court with the next court date, the name of the appointed contract entity, and instructions to contact the provider.

Prior to the 3:00 pm in-custody arraignments, MPD tries to contact likely clients, though transport and holding processes make it difficult and infrequent. During arraignment, defendants are brought to an enclosed, windowed area where they may speak with the arraignment attorney, although the setting does not permit confidential conversations. The court will not entertain release motions at arraignment, allowing release only if recommended by the release officer. Though community corrections secured grand funding to hire a second release officer⁸, the hiring process has been very slow, and Washington County continues to function with only one release officer. Consequently, only a limited number of individuals are interviewed by the release officer prior to arraignment. The jail population is approximately 572, and while there used to be no forced releases, the county had already processed 200 forced releases by July 2015, primarily due to a larger than anticipated female population. Defendants typically receive a preliminary hearing date about five days after arraignment, and if the attorney wishes to request release for a client, a motion must be filed and a hearing scheduled.

In 2005, Washington County implemented an Early Case Resolution program as a way to alleviate significant jail overcrowding. The PDSC described it as a model early resolution program in its 2007 Washington County Service Delivery Review report.⁹ Approximately 33% of the county's criminal case filings are processed (although not necessarily resolved) through the ECR program.¹⁰ MPD and the Oregon Defense Attorney Consortium (ODAC) cover the ECR cases, and each entity has an attorney present for ECR dockets, which are called either before or after the regular morning and afternoon arraignment dockets. Defense attorneys review the available discovery prior to arraignments, and share this and a written plea offer with the defendant. For in-custody defendants, there are two secure rooms to conduct these conferences. Some negotiation is permitted, and attorneys can request additional time to investigate. Otherwise, the options for ECR cases are to proceed to plea and sentencing on the day of arraignment or to reject the ECR offer, which results in the case being set in the normal course for either misdemeanors or felonies. Some concern was expressed during interviews regarding the inclusion of prison-bound cases in the ECR program, but interviews suggest that these cases are resolved through ECR only when particular circumstances make it the best option (such as when a defendant has an existing prison

⁷ There are numerous law enforcement agencies for the various cities in Washington County, each of which will cite persons to appear for arraignment. There have been efforts to coordinate days on which particular agencies will cite persons to appear to avoid congestion on some days, but those efforts have not been especially successful.

⁸ Greg Scholl, director of the Washington County MPD office, chaired a stakeholder group to develop the new pretrial services office.

⁹ The Commission's report is available here:

<http://www.oregon.gov/OPDS/docs/Reports/washcoservdelplan.pdf>.

¹⁰ The DA's office controls who is given an ECR offer, which is based entirely upon the nature of the charge. The offer will take into account a defendant's record and may, in the case of felonies, call for a prison sentence.

sentence and wishes to have case resolved with an agreement for concurrent time without disruption of existing prison programming opportunities).

The court also recently added the Diversion Early Case Resolution (DECR, referred to by many as “decker”) program. Through this program, defendants can enter a plea and agree to completion of certain conditions, with disposition scheduled one year later. If the defendant has completed all conditions, the case is dismissed. The DECR program was established at the suggestion of an MPD attorney, and with the cooperation of the District Attorney’s office and Chief Criminal Court Judge Knapp. All appearances in these cases are heard by Judge Knapp. There is a 50% failure rate, but it is still seen as an effective way to resolve cases and achieve an appropriate outcome.

When they happen, preliminary hearings in felony cases, which are usually set at 11 am, 3 pm, or 4 pm, are hearings where the state calls witnesses, subject to cross examination, in order to establish probable cause. Occasionally, the state will present a plea offer in return for a waiver of the preliminary hearing. A defendant may accept the plea at the preliminary hearing or the state will leave the offer open for a time, in which case the matter proceeds to arraignment at LEC on the DA information. Discovery in felony cases is generally received prior to the preliminary hearing, though lawyers report that there is often significant delay in receiving video and other non-paper discovery. A limited number of more serious cases proceed by way of grand jury indictment.

As part of its reengineering effort, the court recently discontinued its use of pretrial conferences and now holds a Case Management Conference (CMC) three weeks after the case arraignment. CMCs are held throughout the week and are scheduled based upon each judge’s preferred times. This means that scheduled CMCs can conflict with attorneys’ other regularly scheduled court matters. If the case does not resolve at the CMC, it is assigned a trial date and a Final Resolution hearing, which takes place on Friday two weeks before the scheduled trial date. Cases can be resolved at the Final Resolution hearing. Felony cases also receive a Case Assignment Day on the Friday before the assigned trial date, at which time a trial judge is assigned.

The new CMC model is reported by most as an improvement over the old pretrial conference system, but it is somewhat dependent upon the judge’s willingness to actively participate and explore obstacles to settlement. When the court is willing to get involved in order to address issues of delayed discovery and to have realistic discussions about whether charges are likely to be proved at trial, more cases are resolved earlier. While it is still too early to determine whether the new system has decreased the number of cases proceeding to trial, interviewees did describe some improvement. The state’s trial win rate is still low relative to other jurisdictions - reportedly around 50% - suggesting that perhaps more cases could be dismissed or settled earlier in the process.

Cases that proceed to trial are assigned by the Presiding Judge on the Friday morning prior to the week in which the trial is scheduled. Trials take place each week day except Monday. Most pretrial motions are heard on the day of trial, although occasionally some are heard earlier in the process. Continuance motions are generally not entertained at case assignment and must be made earlier by written motion supported by an affidavit that includes the opposing party’s position and a waiver of the 60-day speedy trial right

for in-custody defendants. At case assignment, lawyers sign in on a docket indicating the expected length of trial, whether it will be jury or court, and whether there will be any motions for change of judge (“affidavits”), or whether the case will settle. The Presiding Judge will then make assignments, including “call backs” for cases on standby and resets when there are not enough judges available.

Probation Violations and Special Courts.

Most probation violation hearings are held at the LEC where one probation officer handles court duties. While some attorneys are reported to be more prepared than others, the court indicates that most public defense attorneys handling these cases appear to meet with clients before the day of court and have contacted the court prior to hearings, when necessary, to discuss proposed resolution of cases.

Washington County has a variety of special court dockets. In addition to the ECR docket described above, it has a long-standing drug court, a DV deferred sentencing program, a DUII diversion program, a Justice Reinvestment grant program (originally part of HB 3194) called the Integrated Reentry Intensive Services and Supervision, or IRISS, program, and a mental health court.

Drug Court involves a team including the probation and parole division, a treatment provider, a deputy district attorney and a defense attorney, who is normally Greg Scholl, with MPD. The team is described as working well together with a focus on healing the client. Mr. Scholl gets very high marks for his involvement in the program. The clientele are generally high risk offenders who might otherwise be sentenced to jail or prison time.

In both the domestic violence deferred sentencing program and the DUII diversion program, defendants who are identified as eligible by the DA’s office may enter a plea of guilty and agree to successfully complete a treatment program, after which charges will ordinarily be dismissed. Failure to successfully complete treatment will result in sentencing on the charges. For both the DV and DUII programs, PDSC contracts with the Ridehalgh firm to “staff” the programs. Typically, Mr. Ridehalgh, who ordinarily handles these duties, will advise eligible program participants in a group setting prior to court. Neither the court nor Mr. Ridehalgh consider him to “represent” any individual defendants. There remains some concern regarding the extent to which defendants have an opportunity for private, confidential case-specific consultations about the advantages or disadvantages of entry into one of these programs.

The county’s IRISS program is aimed at diverting offenders from likely prison sentences into intensive probation supervision, where resources are available to assist with housing, employment, treatment and other rehabilitation services. The program is described as dependent upon good working relationships among the court, prosecutors, defense attorneys, the probation and parole division and treatment providers. A screening evaluation and comprehensive, evidence-based case plan are prerequisites for participation in the program. Defendants in pending new cases may be referred for IRISS consideration either by agreement of the defense and prosecution. Probation officers can also make referrals for current probationers who face the possibility of a prison sentence in revocation proceedings.

The county has a robust mental health court managed by Judge James Fun and a team that includes a prosecutor, a defense attorney, a probation officer with mental health training, and representatives from the jail, the Sheriff's office, and social service providers. Jennifer Harrington, an attorney with MPD who is also a Qualified Mental Health Professional, is the defense attorney for the program. Ms. Harrington consistently receives very high marks for her contribution to the program. Persons are referred to the court after having been placed on probation following conviction, or as a result of a negotiated agreement between the state and defense following "prescreening" for the program, or by agreement to divert the case. The program seeks to coordinate and facilitate the provision of a variety of services to participants who also meet frequently with the probation officer assigned to the program and with the court. A person generally must have a diagnosed mental illness to participate. Other than treatment obligations, conditions of probation are kept to a minimum with fines and fees usually converted to community services, although any restitution obligations will continue to be enforced. Although the program is structured to last one year, some participants remain in it much longer if they have difficulty stabilizing and meeting the minimum program obligations. With successful completion, probation is terminated or, for those who entered the court on diverted offenses, the charges are dismissed.

Juvenile Cases. All juvenile delinquency and dependency cases in Washington County Circuit Court are handled by the juvenile court. The juvenile court is located in the Juvenile Services Building, across the street from the main courthouse, and has two judges, Judge Ricardo J. Menchaca and Judge Pro Tem Michele C. Rini. Limited space at the juvenile court makes confidential attorney-client conversations, which are often necessary in a court setting, virtually impossible.

Delinquency. Washington County does not have a detention facility. Instead, the county contracts with Multnomah County for 14 beds in the Donald E. Long Detention Facility (DEL) on the east side of Portland.¹¹ Youth are transported from DEL to Washington County for court appearances and are placed in a holding area behind one of the courtrooms. In-custody court appearances occur every day at 1:00 p.m., immediately followed by the 1:15 p.m. "cite-in" docket, which includes out-of-custody preliminary hearings on new charges, as well as probation violations and violations of conditions of release. Other types of out-of-custody cases are then heard throughout the afternoon.

New charges are initiated by petition. Probation violations (PVs) and violations of conditions of release are initiated by affidavits to show cause. Each youth is assigned a juvenile court counselor (JCC).¹² The Washington County District Attorney's Office has

¹¹ The beds are often filled mostly by youth prosecuted in adult court on Measure 11 offenses. The only other detention facility is the Harkins House (HH), which is a juvenile shelter program located three blocks from the courthouse. HH is for youth (boys and girls, maximum capacity 14, almost always full with a two-week waiting list) who would qualify to be detained under ORS 419C.145(1) but stay at HH to stabilize while the case is pending. It is designed to be a 45-60 day program; it is level based, with school and family components. The goal of the HH program is for the youth to return home at the end of the stay there.

¹² Typically, the JCC decides to handle a PV or violation of conditions of release out of custody. Those appearances ("cite ins") are also included on the 1:15 docket.

two assigned juvenile court deputy DAs, who may also have certified law students assisting them.¹³

Some cases are resolved either informally, where a youth will never see a courtroom, or through Formal Accountability Agreements (FAAs). The JCCs advise youth of their right to counsel in connection with FAAs, and some youth request a lawyer. If a youth expresses uncertainty about whether he or she should have a lawyer, the court typically appoints counsel.

Either Judge Rini or Judge Menchaca preside at initial appearances (“prelims”). Attorneys are appointed in all delinquency cases unless a youth appears with retained counsel. On the morning of the prelim, public defense providers receive an email referral requesting confirmation that they will accept appointment to new cases. The attorneys are then present for the prelim hearing. If the youth is in custody, topics at the prelim include release and setting dates for both the pretrial conference and trial (“CJ” for contested jurisdiction) to comply with the statutory 28-day deadline. If the youth is out of custody, the court sets only the pretrial conference at the prelim (usually within 30 days); a CJ will be set, often significantly later, only if the case does not settle at the pretrial conference.

The DDA makes a settlement offer at the pretrial conference. Discovery is fairly forthcoming, and the DDA usually provides complete discovery by the time of making the offer at the pretrial conference. Sometimes the police reports are the only discovery, and they are usually attached to the petition.

The court does allow and sometimes grants motions for alternative disposition (including conversion of the petition to a dependency petition), but the court will not allow conditional postponements. In comparison, Multnomah County continues to utilize conditional postponements. Significant concern was expressed regarding pretrial advocacy for youth, particularly those charged with sex offenses. Several people suggested that lawyers may not be filing motions for alternative disposition or motions to find the youth unable to aid and assist, even when such motions are entirely appropriate.

If a youth is adjudicated, either by an admission or after CJ, there are three possible dispositions: discharge (no consequence), probation (bench, which is rare, or supervised by a Juvenile Department JCC), or commitment to the Oregon Youth Authority (OYA). An OYA commitment is either correctional (incarceration at MacLaren, etc.) or noncorrectional (in the custody of a treatment facility). As the result of a recent change by the Juvenile Department, in most cases a youth’s pre-adjudication JCC becomes his or her post-adjudication probation officer.¹⁴

Youth appearing in court while in custody are generally shackled in the courtroom, including during the hearings on their cases. The shackles consist of both leg irons and handcuffs attached to belly chains. For a time, according to the peer review, a risk assessment was employed to limit shackling to only those instances warranting

¹³ The same two DDAs represent DHS in dependency matters through the jurisdictional stage.

¹⁴ “PO” is sometimes used, but “JCC” is more correct.

heightened security precautions. But attorneys have become complacent, failing to challenge routine shackling, and it has once again become ubiquitous.

Washington County has a juvenile drug court program called Keys to Success. Typically, the JCC identifies whether a case qualifies for drug court and does so early on. Judge Raines runs the program out of his courtroom in the main courthouse. The program is very structured; if a youth meets certain criteria and completes certain phases, his or her case is dismissed. The drug court program has existed in some form for more than 10 years, and the more structured program has existed for approximately three to four years.

Within the year prior to the peer review, the juvenile court created the PHASE Program for gang-involved youth. Judge Menchaca runs that docket on Tuesday afternoons. The program is two and a half years into development, and lawyers at the Karpstein and Verhulst firm indicate that improvements are still being made, including the recent introduction of weekly meetings with the PHASE team. The team is described as being very committed to the program, and there is a strong desire to build its number of successful graduations.

Overall, representation in juvenile court, in both delinquency and dependency cases, is said to be good. Still, attorneys should consider continuing to pursue conditional postponements, and administrators should ensure that lawyers are filing motions seeking alternative dispositions, inability to aid and assist, and unshackling. They should also be sure that attorneys are having sufficient contact with clients. At the time of the peer review, there was significant concern about the frequency of visits to detained youth. Interviewees suggest that there has been improvement, and the Juvenile Department indicates that youth are transitioned out of detention to electronic monitoring or to a placement in Washington County as quickly as possible, reducing the need for lawyers to visit the DEL facility.

Dependency and Termination of Parental Rights. In Washington County, when DHS files a dependency petition, it also seeks a shelter order. Shelter hearings occur every day, in the afternoon, and Judge Rini presides over most of them. The court notifies the attorneys to be appointed by approximately 11:00 a.m., and parents are told to arrive 30 minutes before the shelter hearing to meet their attorneys. By the time of the shelter hearing, parents have received a copy of the petition. During the hearing, DHS serves parents with a summons that includes dates for the status hearing (approximately 45 days later) and “CJ” (approximately 60 days later, to meet the statutory deadline¹⁵). Issues litigated or discussed at shelter hearings include return home, other placement, visitation, and continuing jurisdiction, though fully contested hearings on the latter are infrequent. The court dismisses very few petitions at shelter hearings.

¹⁵ 419B.305 requires, absent a good cause finding, that the court shall hold a hearing and enter a dispositional order on a petition within 60 days after the filing of the petition. In Washington County, for petitions filed between 10.1.12 and 9.30.13, 73% of petitions filed reach jurisdiction within 60 days or less of filing which is consistent with the state average of 73.18%. 17% of petitions filed do not reach jurisdiction until over 90 days which exceeds the state average of 14.94%.

According to peer review team interviews, the number of petitions filed has declined within the past year, largely because of Department of Human Services renewed emphases on their Oregon Safety Model which requires evidence of an immediate threat of harm to a child before DHS will file a petition. Even with the reduced filings, the county is very dependent upon use of a private bar list in order to provide representation for every party. Because all juvenile providers are firm providers, conflicts are common to the members of each firm. Court staff reportedly spends significant time calling lawyers on the private bar list before shelter hearings in order to find sufficient coverage. The use of private bar attorneys also makes it more challenging for system partners to distribute information to all lawyers providing court appointed representation in juvenile cases in the county, as it is an ever-changing mix of lawyers.

Admissions to allegations contained within dependency petitions most often occur at the status hearing, which occurs two weeks before the scheduled CJ.¹⁶ The department provides most discovery prior to the status hearing and is seeking to routinely provide discovery, via electronic transmission, within 10 days of it becoming available.¹⁷ A deputy DA represents DHS in the dependency proceeding through CJ.¹⁸ Most commonly, if the court asserts jurisdiction at CJ, the court will proceed immediately to disposition. At disposition, the court sets dates for the six-month review hearing¹⁹ and a later permanency hearing. At the time of the peer review, it was not uncommon for the court to enter a judgment asserting jurisdiction and ordering disposition as to one parent based on that parent's admissions, with the understanding that the judgment may have to be vacated if the other parent prevails at CJ. However, subsequent to the recent *W.A.C.* case,²⁰ this practice has all but ceased. The current procedure for handling cases in which one parent makes an admission and the other seeks CJ is slightly different depending on the judicial officer. However, both Judges advise the admitting parent that, until jurisdiction is established as to the other parent, services ordered by the court are voluntary but recommended.

The court typically reviews cases every six months, with Citizens Review Board hearings held before the first six-month court review. According to interviews, some attorneys consistently attend CRB hearings while others rarely or never do so. Many times an attorney's legal assistant will attend a hearing but not participate in any

¹⁶ Around the time of the shelter hearing, the case is transitioned to a different DHS caseworker, the "permanency caseworker." The parties participate in a "child safety meeting" (CSM) within 30 days (that is, before the status hearing) to develop an ongoing safety plan. At the CSM, the parties are introduced to the permanency caseworker.

¹⁷ Unlike delinquency cases where all discovery comes from the DDA, discovery in dependency cases appears to be compiled and distributed primarily by the assigned caseworker, which results in some significant inconsistency across cases.

¹⁸ Even if the court rules to assert jurisdiction, the department is not represented by an attorney until an AAG is assigned to the case shortly before the permanency hearing.

¹⁹ The court will schedule more frequent review hearings in cases that require greater oversight and attention, including when the court has made a certain order and wants to ensure that the parties comply.

²⁰ In *Dept. of Human Services v W.A.C.*, 263 Or App 382 (2014), the Court held that jurisdiction over a child may not be based on the admissions of one parent when the other parent properly contests the allegations in the petition.

meaningful way. Several people interviewed cited recent and specific instances in which a parent needed advocacy during a CRB or other non-court setting, but was accompanied by a legal assistant who said nothing. DHS court reports are generally provided at least three days in advance of the review hearing, in compliance with the requirements of ORS 419B.881(2)(a)(B). Attorneys were described as being more effective at review hearings when they had personally met with clients in advance of the hearing. Several interviewees indicated that lawyers who have their staff visit with child clients prior to the court hearing often do not have the level of detail needed to effectively represent their clients. Several interviewees suggested that while a few attorneys are effective when representing a child or parent, others seem to confuse these roles, and would do better if they represented only children or only parents.

If the department intends to seek a change in the permanency plan at the permanency hearing, the assigned AAG provides such notice approximately 30 days before the scheduled hearing. This allows the other parties time to consult with their clients and, if needed, request time for a contested permanency hearing. Prior to the AAG getting involved, discovery is inconsistent and depends on the particular caseworker. If the department does not intend to seek a change in plan, the court generally does not change the plan and, instead, schedules the next permanency hearing in approximately 90 days. In some cases, the court will continue jurisdiction until a parent obtains a custody order in a domestic relations proceeding.

If the case proceeds toward termination of parental rights (TPR), DHS includes a first appearance date on the TPR petition. At the first appearance, the court appoints counsel, schedules dates for a pretrial conference, a best-interest settlement conference (“BI/SC”) (basically, a second status hearing), calendar call (the Friday before the trial date), and trial.²¹ If a parent fails to appear at the first appearance, the court schedules a termination-without-parent (“TWOP”) hearing about a month later, at which point, if the parent still does not appear, DHS can proceed with a “prima facie” termination case. Relinquishment of parental rights is not an option in most cases. In lieu of relinquishment, a parent stipulates to termination in a non-contested court proceeding. Stipulation to a termination of parental rights is considered by DHS to be “voluntary” and, as a result, parents are more likely to be offered mediation services with the selected adoptive resource.

About 25 to 30 percent of cases in Washington County involve a Court Appointed Special Advocate (CASA). The CASAs are regarded as well-trained, engaged in case planning and strong advocates for children. There were mixed reviews, however, regarding the effectiveness of lawyers appointed to represent children. While some attorneys are said to communicate appropriately and effectively with children, there is also a sentiment that more training is needed in how to talk to kids about legal issues in age appropriate terms. As noted above, there is also criticism of using legal assistants, rather than attorneys, for home visits with child clients, especially with teens or where a child’s capacity to make informed decisions is in question.

There is a concern, according to interviews, that attorneys in juvenile cases lack cultural competence, especially regarding Latinos. According to one person, attorneys need to

²¹ The court addresses any evidentiary issues on the morning of trial.

better understand acculturation and how it affects the lives of their clients. They also need to know that even though parents may speak some limited English, an interpreter may be necessary for effective communication. Attorneys would also benefit, according to information received by the peer review team, from a better understanding of the Mexican child welfare system. Concerns were expressed that there is reluctance to place children with relatives in Mexico, which can leave children in substitute care longer than necessary. This reluctance was attributed to a lack of understanding about resources in Mexico and how to access them.

III. PUBLIC DEFENSE CONTRACTORS

Detailed findings and recommendations specific to particular providers will be made in the sections pertaining to those providers. Overall, though, the peer review team found general satisfaction with the public defense providers in the county.²² Some attorneys, especially those practicing as part of ODAC, are highly regarded, with appreciation for their years of service to public defense, and for their skill and professionalism in criminal cases. MPD was commended for recent improvements in its training of new attorneys and overall professionalism, though one interviewee noted that their certified law students need additional oversight. ODAC and MPD handle the vast majority of criminal cases, with the other four contractors handling some misdemeanor and minor felony criminal cases and a substantial number of juvenile cases.

There were a number of concerns about defense providers heard consistently during the peer review interviews. There was an impression among many system stakeholders that high caseloads (one judge called them “obscenely high”) are interfering with adequate client contact and case preparation. There is also concern about the turnover of attorneys, which delays case resolution (even serious in-custody cases) as they are reassigned to new lawyers. It also means that there is a regular influx of new or less experienced defense attorneys who require intensive training and supervision to achieve proficiency in their work. Further, there were concerns that some new lawyers weren’t getting adequate training and supervision.

Public defense contractors have been active participants in local justice system workgroups that pertain to both ongoing planning and consultation efforts, such as regular bench-bar meetings, or project-based efforts, such as exploration of a new pretrial services office or the court’s current reengineering effort. Typically, these efforts involve participation by a representative from MPD and/or ODAC, although other providers are involved in other justice system workgroups. Some concern was expressed, though, that information provided or received by contractor attorneys at these meetings was not always widely shared with the rest of the public defense provider community. More generally, some people, especially those working on juvenile law cases where five of the six contractors handle cases, expressed a desire for a better mechanism to easily and reliably disseminate information to all attorneys providing public defense services in the county. Currently, defense providers gather

²² However, the Washington County results on the annual OPDS statewide public defense performance survey are less favorable than overall statewide results. On the question concerning rating of performance in criminal cases, for instance, 90% of respondents statewide said it was either excellent or good, whereas only 50% said so for Washington County. Most respondents for Washington County rated the performance good (37.5%) or fair (37.5%).

once a month at MPD to discuss issues of common concern, but the topics are generally focused on criminal cases.

IV. REVIEW FINDINGS

1. THE METROPOLITAN PUBLIC DEFENDER (MPD)

OVERVIEW: Founded in 1970, MPD is the oldest and largest of the not-for-profit public defender offices in Oregon. It began accepting cases in Multnomah County in 1971 and in Washington County in 1973. Although there is an office director, currently Greg Scholl, in the Washington County office, much of the MPD administrative staff, including the Executive Director, Human Resources Director, Director of Attorney Training, and IT support staff, are located in the Portland office. MPD is governed by a seven-member board of directors, four of whom are appointed by outside authorities, including the Washington County Board of Commissioners. The board meets approximately quarterly.

There are 21 attorneys in the Washington County office, supported by five investigators, 11 legal assistants, and several other clerical positions. The staff is divided among two groups of attorneys working in the criminal courts, one focused on felonies and the other on misdemeanors, a group of four lawyers working in the juvenile court, and a specialty court group that works in the ECR and arraignment courts, mental health court, LEC probation cases and a number of other matters. Each group is led by a Chief Attorney. The office director, in addition to administrative responsibilities, handles drug court and also serves as part of the MPD death penalty representation team.

Cases are assigned at MPD by their longtime docketing specialist who has information about current caseload numbers for each attorney, attorney leave schedules and major trial obligations when she distributes cases. She also works with the court to avoid appointment of cases to MPD where there will be a conflict and to quickly seek MPD withdrawal on appointed cases where conflicts become apparent during the case opening process. Once the case file reaches the assigned attorney, that person is responsible for further and ongoing analysis of possible conflicts, in consultation with his or her supervisor.

MPD frequently emphasizes its commitment to training. New lawyers participate in a multi-day in-house trial skills program. The firm provides financial support for attorneys to attend programs presented by the Oregon Criminal Defense Lawyers Association, the Oregon State Bar and other organizations. The firm employs a fulltime director of training, although this person's office is in Portland and generally visits Hillsboro only once a week for regular Tuesday one hour "brown bag" training meetings. The office also convenes an annual one-day diversity training for all staff. Most of the training that occurs, though, is "on the job" experience, with guidance and feedback from supervisors and other colleagues, and it is the quality of this mentoring that can be most critical to an attorney's development. The firm expects that supervisors will conduct annual formal evaluations of all employees, although it appears that this expectation is largely unfulfilled.

MPD attorneys and other staff have been represented by the American Federation of State, County and Municipal Employees (AFSCME) for many years. A central and controversial provision of the collective bargaining agreement between MPD and AFSCME has allowed attorneys to transfer from the Washington County office to the Portland office when openings become available only after 18 months of employment in Hillsboro. That provision had been dropped from the agreement, and lawyers began transferring to Portland even earlier. This contributed to an increase in turnover, and was noted by many as being a significant problem. Since the time of the peer review, the contract was renegotiated, and lawyers must now once again wait for at least 18 months before transferring out of Washington County. While there are still instances of turnover, it has diminished since the time of the peer review, and there is a sense of commitment to the Washington County office among many of the lawyers there.

MPD attorneys are involved in many Washington County justice system stakeholder meetings, including the Public Safety Coordinating Council, criminal and juvenile bench-bar committees, the Washington County Reentry Council, and the Drug Court Policy Committee. Firm attorneys have also participated on the OCDLA Board of Directors, the Oregon State Bar Criminal Law Section Executive Committee, and have served as faculty on numerous CLE programs pertaining to criminal and juvenile law.

FINDINGS. Overall, MPD and Greg Scholl, the director of MPD's Washington County office, received praise for recent improvements in professionalism and training, and for performance in some areas of representation, as well as for the abilities of specific attorneys. Of particular note, Jennifer Harrington in Mental Health Court, and Mary Bruington in juvenile court, were mentioned repeatedly as attorneys who provide valuable input in collaborative settings, zealous advocacy in the courtroom, and who demonstrate the highest level of professionalism. MPD's work in special courts, and especially in connection with drug court, mental health court and its handling of probation matters, was highly praised by judges, probation officers and others. The firm is said to work well in policy committees, in team staffings prior to court, and some commented on attorneys in the firm who are positive participants in efforts to fund raise for county programs that benefit their clients. With drug court and mental health court in particular, MPD is reported to embrace the mission and philosophy of the courts, work collaboratively with system partners, while maintaining a client-centered focus and advocacy.

The previously high rate of attorney turnover at MPD, mentioned above, was cited by many people as a factor that seriously affected the overall quality of the firm's representation. The regular departure of experienced attorneys and arrival of those with little or no experience is an obvious concern, as is the wholesale transfer of entire caseloads to new attorneys, which can cause significant delay in case resolution. While MPD has improved in this area during the last year, it is still a concern that should be consistently monitored and managed.

The MPD director seems to have responded well to the peer review team recommendation for better supervision of new lawyers. Several people interviewed noted the increased training provided to, and improved professionalism demonstrated by, MPD's newer lawyers. While there were very specific concerns about interactions between MPD lawyers and the bench at the time of the peer review, but those

interviewed were consistent in their praise for MPD's current attorney group and management team during the last year since the peer review.

2. OREGON DEFENSE ATTORNEY CONSORTIUM (ODAC)

OVERVIEW. ODAC was formed in 2006 by Robert Harris, who heads the Harris Law Firm. The consortium consists of ten members who maintain their own private practices and the Harris Law Firm (this firm was an individual contract provider prior to 2006), from which four associates handle consortium cases. Mr. Harris administers the consortium but does not handle consortium cases. An office assistant in the Harris Law Firm performs some ODAC administrative work under the contract. ODAC is organized as a Sec. 501(c)(3) non-profit corporation and is governed by a five-person board of directors, which at the time of the peer review consisted of Mr. Harris, two consortium member attorneys, one non-member attorney and another vacant non-member position.

ODAC handles only criminal cases, including the largest share of adult Measure 11 cases in the county (for 2014, ODAC is contracted to handle 120 adult Measure 11 cases; MPD is the only other contractor handling Measure 11 cases, contracting for 108 cases, including juvenile Measure 11 cases; ODAC, however, does not contract for any murder cases, whereas MPD is contracted for 8 in 2014). By contract, ODAC shares responsibility to cover the ECR court with MPD. The consortium receives appointments to cases each morning. After staff does a preliminary conflict check and determines if a client is being or has been represented by a consortium member, Mr. Harris and his staff make case assignments to consortium members. In the process, they review member totals for previous number and type of cases assigned, and the court and vacation schedules for members, seeking to make assignments that work best for member schedules and workload.

ODAC does not have any formalized processes for attorney training, oversight, evaluation or discipline. Instead, the group relies upon its selection of excellent, experienced criminal defense attorneys. Some of the Harris Law Firm attorneys handling ODAC cases have been newer and less experienced, but they do receive training and supervision through the law firm. The model ODAC member agreement also provides for the termination of membership, which would be by action of its board, if the member "is deemed to have failed in providing services according to the requirements" of the agreement, which incorporates by reference the ODAC contract with PDSC and its performance expectations. ODAC does not sponsor its own CLE programs, but was involved in the creation of the noontime training meetings held every other month at the MPD, and remains involved in the planning and coordination of those meetings. ODAC also has its own email list for announcements and other communications among its members, and Mr. Harris initiated a similar list for all criminal defense attorneys in Washington County.

ODAC attorneys are involved in a number of Washington County justice system stakeholder meetings, including the Public Safety Coordinating Council and the Washington County Bar Association. Firm attorneys have also participated on the OCDLA Board of Directors and have served as faculty on CLE programs pertaining to criminal law. Mr. Harris worked with the Presiding Judge to restart a bench-bar

committee, drafting the group's by-laws and eventually serving as its presiding officer. It now meets quarterly and includes the Presiding Judge, the Chief Judge of the Civil, Criminal and Family Courts, and representatives from the civil and criminal bar.

FINDINGS. ODAC consortium members are clearly viewed as premier public defense providers in Washington County, and they were praised for their experience and skill in both settling cases and in trial practice in both criminal and juvenile cases, which some members handle on a non-contract hourly basis. Mr. Harris was also praised for his effective administration of the consortium and for his involvement in justice system management issues. Interview comments also commended Mr. Harris and members of ODAC for their commitment to the community in Washington County, as evidenced by involvement in non-legal community affairs and through their long-term relationship with the legal community there. Finally, Mr. Harris and ODAC members receive praise for their involvement in court operation workgroups and committees. Their participation is clearly valued by system stakeholders and fulfills a best practice for Oregon public defense providers. This participation can benefit all public defense providers, their clients and the justice system generally as court policies and procedures evolve with the information and expertise of respected public defense leaders.

3. RIDEHALGH & ASSOCIATES, LLC (R&A)

OVERVIEW. The Ridehalgh law firm has contracted to provide public defense services since 2000. The firm is a limited liability company and does not have a board of directors. Ronald Ridehalgh manages the firm, which consists of himself, four other attorneys and three support staff. The firm contracts with PDSC to handle a caseload of dependency, misdemeanor, probation violation, and contempt cases, in addition to providing coverage for the DUUI diversion program and the domestic violence deferred sentencing program. The firm does not handle juvenile delinquency cases.

As the "advice attorney" for both the DUUI diversion and domestic violence deferred sentencing program, Ron Ridehalgh meets with persons determined by the DA's office to be eligible for participation, and provides both general information about the advantages and disadvantages of the programs and case-specific guidance about whether participation is advisable or not. In juvenile dependency cases, R&A attorneys are present in court for the initial court appearance of a new client and are appointed at that time. In criminal cases, where the initial arraignment is covered by MPD attorneys, a firm paralegal picks up notices of new appointments at least once each day at the LEC and then usually also visits those new clients who are in custody. Case assignments to firm attorneys are made according to a detailed flow chart that seeks, among other things, to make efficient use of attorney time by assigning particular court dockets (what the firm calls "zones") to specific attorneys, and then assigning other cases according to attorney workload and availability. Workload and case distribution information for each firm member is available in a database which is monitored by Mr. Ridehalgh but also accessible to all firm members.

Much of the firm's work processes, such as the flow chart for case assignment, are set out in a detailed employee manual. R&A relies upon the manual and mentoring by its more experienced attorneys for new attorney training, along with firm-paid attendance at outside CLE programs. There is also a weekly attorney meeting where cases are

discussed. The firm has both an intranet and a separate networked database where practice forms, manuals and other aids are available. The firm does not have a formal evaluation process. Mr. Ridehalgh is the direct supervisor of each attorney, and part of the firm's file closing protocol calls for him to personally review each file. The firm has a complaint procedure that involves a form to receive input about an attorney's performance and investigation by Mr. Ridehalgh.

R&A attorneys are involved in a number of Washington County justice system stakeholder committees, including an advisory group for the domestic violence deferred sentencing program, the local Domestic Violence Intervention Council, and the Juvenile Court Improvement Project. Mr. Ridehalgh is also a member of the county's Supplemental Local Rules committee.

FINDINGS. Attorneys with the Ridehalgh firm are said to be knowledgeable, prepared and committed to doing good work. Mr. Ridehalgh was specifically praised for his work with both the domestic violence deferred sentencing docket and the DUII diversion docket, and for his management of the firm. The firm's work in juvenile dependency cases was described overall as very good, and the firm was noted as one that provides excellent training and oversight. As with many of the contractor firms in Washington County, there was mention about what seemed to be high attorney turnover at the firm. This firm manages to mitigate some of the potential harm of turnover, largely because Mr. Ridehalgh is clearly committed to public defense work and has invested significant time and energy to create office systems that provide structure, training, and oversight to newer lawyers.

4. KARPSTEIN & VERHULST, PC (K&V)

OVERVIEW. The Karpstein & Verhulst law firm has contracted to provide public defense services since 1994. The firm does not have a board of directors. Greg Karpstein manages the firm, which consists of himself and four other attorneys and three support staff. In addition, the firm has two part-time positions called "home visitors," who maintain in-person contact with dependency clients on behalf of the assigned attorney. Mr. Karpstein has expressed his intent to transition firm leadership over the next five to seven years to two of his firm's attorneys, Nathan Law and Jacob Griffith, who joined the firm in 2012,.

The firm contracts with PDSC to handle a caseload of largely juvenile delinquency and dependency cases, in which it represents mostly children. In addition, it contracts to handle some criminal Class C felony, misdemeanor and probation violation cases. In addition to its public defense work, the firm handles a variety of privately retained cases, advertising services in business and incorporation matters, domestic relations, estate planning, real estate, and landlord/tenant cases.

In juvenile delinquency and dependency cases, K&V attorneys are present in court for the initial court appearance of a new client and are appointed at that time. In criminal cases, where the initial arraignment is covered by MPD attorneys, a firm secretary picks up notice of new appointments each day at the LEC. Case assignments to firm attorneys are made on the basis of availability, case type and level of attorney qualification, and the workload of attorneys. The firm is able to avoid some conflicts of

interest by reviewing delinquency and dependency dockets prior to the initial hearings. Otherwise, a conflict check is conducted during the file opening process.

K&V does not have any formal processes for attorney training, oversight or discipline. Instead, the firm relies upon outside CLE seminars and mentoring by senior firm attorneys to train new attorneys, in addition to the weekly staff meetings, other special firm gatherings and an open-door policy that is in place for all firm attorneys and staff. There is a general orientation for new attorneys that involve introductions to key places and players in the criminal and juvenile justice system, as well as a period of shadowing more experienced attorneys. The firm has an employee handbook that includes an evaluation form, although it is unclear if it conducts regular evaluations. Regarding attorney oversight, the firm says, in responses to the questionnaire submitted in conjunction with the peer review, that there is no formal process to gather input on attorney performance but because it is a small entity “the supervising attorney knows immediately from either judges or court staff if there is a problem.” As related below, however, this may not be a sufficient approach to quality assurance.

K&V attorneys are involved in a number of Washington County justice system stakeholder committees, in addition to participation in the Washington County Bar Association. Nate Law is the current private bar representative for the Washington County model court team, which involves regular monthly meetings, as well as attending the statewide JCIP conference. Mr. Karpstein has received professionalism awards from the Juvenile Law Section of the Oregon State Bar in 2010 and from the Washington County Bar Association in 2013.

FINDINGS. Overall, interviewees said that firm attorneys were generally prepared and provide good representation in public defense cases, and Mr. Karpstein has clearly earned the respect of system stakeholders. There is concern regarding the transition of the firm. Other attorneys in the firm are described as being very capable, but still in need of training in some areas, particularly around representation in juvenile delinquency cases, and especially serious case types. The firm has improved its client contact in both juvenile dependency and delinquency cases, but they can still improve in this area. Prior to the peer review team’s site visit, the team reviewed a lengthy letter from the Executive Director and the Program Director of the CASA program for Multnomah and Washington counties that detailed numerous specific concerns about the performance of K&V attorneys, in addition to a concern about insufficient contact with child clients. The firm is reported to have responded appropriately, terminating one attorney who was not providing quality representation, hiring capable attorneys, and making some improvement regarding the frequency of visits to clients. This remains an area where the firm should continue to make improvements. Reports indicate that the firm’s reliance on staff contact with clients make the lawyers less effective during court hearings, and there is very little advocacy on clients’ behalf outside of court hearings. There was also concern about lawyers having staff attend CRB reviews because the staff who attend don’t speak on the client’s behalf (several people suggested that the staff appear to be there to take notes), even when the client is clearly in need of advocacy. Finally, while firm lawyers are visiting with in-custody delinquency clients more frequently, and always prior to the first preliminary hearing, the firm continue monitor and improve upon the frequency of visits to clients who remain housed at the DEL facility. With the transition of the firm’s management responsibilities to the newer

management team, extra caution will have to be taken to ensure that attorneys receive necessary training and oversight, and that the firm's recent steps to improve representation are not lost in the transition process, but rather continually enhanced and monitored. Because the lawyers at the firm are said to be very capable and professional in their relationships with stakeholders in the county, as well as with their clients, they are in a good position to build upon their successes during the period of transition.

5. HILLSBORO LAW GROUP, PC (HLG)

OVERVIEW. The HLG is the current iteration of a law firm that has contracted to provide public defense services in Washington County since 1994. HLG is the assumed business name of Burton McCaffery Oregon Lawyers PC, an S Corporation with three shareholders who constitute the directors of the firm. Grant Burton is the firm's managing attorney and administrator of its public defense contract. In addition to himself and the two other shareholders, the firm employs two senior associate attorneys, one who leads a criminal team and the other the juvenile team, and three associate attorneys who work in part on one of those two teams. There are five support staff employees.

The firm contracts with PDSC to handle a caseload of juvenile dependency and delinquency, Class C felony and misdemeanor, probation violation, and contempt cases. The public defense contract, however, accounts for less than half of the annual revenue of the firm, which advertises services in bankruptcy, corporate, family law, immigration, personal injury, real estate, social security and estate planning matters. Some firm members do very little or no public defense representation. At the time of the peer review, Mr. Burton was administering the firm's public defense work, and though he was providing coverage for other attorneys in his firm and had handled court-appointed work in the past, he was not handling any public defense cases. Mr. Burton explained that the firm began expanding its retained work in 2006 in order to meet overhead expenses and accelerated that expansion in 2008 when its share of public defense work was significantly reduced.

HLG attorneys are present in court for the initial court appearance of a new client in juvenile dependency and delinquency cases. In criminal cases, where the initial arraignment is covered by MPD attorneys, a firm legal assistant receives notices of new appointments and then emails the assigned attorney about in-custody clients. Case assignments are rotated among firm attorneys according to the percentage of FTE they devote to the public defense contract and the particular team, juvenile or criminal, to which the attorneys are assigned. The intent is to achieve a fair distribution of the public defense work, whether the assigned cases are above or below the expected quota.

As with other firms, HLG relies largely upon mentoring and outside CLEs for training new attorneys. In addition, there are monthly attorney and support staff lunches with the supervising shareholders. The firm uses group emails to update its teams with announcements and other messages relevant to their practice. Mr. Burton conducts formal attorney performance reviews twice a year that consist of a meeting with him and a written evaluation. He obtains input for the review from senior firm employees, clients and judges.

Much of the firm's workflow is managed through a highly customized implementation of the Time Matters software, which manages and tracks work performed on cases, the associated documents, and case outcomes. The firm also uses Time Matters to organize various documents and resources concerning office procedures and practice forms and aids. Time Matters also automates the creations of basic letters and other case related documents. In conjunction with Time Matters, the firm had been a user of Demandforce, a service that automatically sends clients email and/or text message reminders about court and office appointments, and sends them a satisfaction survey at the conclusion of the case. Mr. Burton reported that this did reduce the number of failures to appear for his firm's clients. Unfortunately, the firm's ability to use Demandforce was lost due to an incompatibility issue created during a recent Time Matters upgrade. Mr. Burton is interested in finding a solution, and has agreed to speak at the 2015 OCDLA Management Conference regarding the benefit of automated client communications.

HLG attorneys are not active participants in Washington County justice system policy and planning efforts, but they are members of the Washington County Bar Association and attend a juvenile bench bar meeting and the monthly criminal defense bar meetings held at MPD.

FINDINGS. The firm was reported as providing somewhat inconsistent representation at the time of the peer review, with some very good attorneys and others in need of improvement. Additionally, the firm was asked to evaluate the extent to which it was committed to providing quality public defense services. The firm has taken steps to improve its services since that time. One particularly problematic attorney was let go, and the vacancy was filled with an experienced attorney from out-of-state. Mr. Burton reports that the firm now provides Oregon and Washington County-specific training to new attorneys. Additionally, Mr. Burton started personally representing public defense clients, primarily in a small number of Measure 11, felony PV, and juvenile delinquency cases, and he reports that the firm is winning more than 50 percent of the cases it takes to trial. Mr. Burton has asked senior attorney Peter Tovey to be co-administrator of their public defense contract going forward, as Mr. Tovey does a higher percentage of public defense work. Mr. Burton is also making good use of technology to measure results and keep clients engaged. The firm should continue its efforts to ensure quality representation provided to public defense clients.

6. BRINDLE MCCASLIN & LEE, PC (BML)

OVERVIEW. The Brindle McCaslin & Lee law firm has contracted to provide public defense services in Washington County since 1995. The firm does not have a board of directors. Louise Palmer is the contract administrator for the firm. In addition to its public defense work, the firm maintains a privately retained practice for which it advertises services in a broad range of civil and criminal matters including immigration, insurance, land use, personal injury, estate planning and real estate. Of the ten attorneys at the firm, three shareholders and three associates devote some portion of their practice to public defense cases.

The firm had contracted to provide representation in Washington County in some criminal Class C felony, misdemeanor and probation violation cases, in addition to a larger caseload of juvenile dependency and delinquency cases, but shortly before the peer review's site visit the firm agreed with OPDS that it would no longer take any criminal cases. This change was a result of serious concerns on the part of the court and others about the quality of the firm's representation in criminal cases.

Attorneys from BML are present at first appearances in juvenile dependency and delinquency cases when it is expected that they will receive an appointment by the court. According to the firm, cases are assigned to attorneys with the goal of matching both attorney interest and level of proficiency with case complexity and to achieve caseload balance among the attorneys. Since the firm's associates have relatively little experience with juvenile law, a more experienced attorney is reported to be available to assist with more complex cases.

The BML firm does not have a formal training program for new attorneys or sponsor its own CLE events. Its supervision appears to be largely an "open-door" policy where attorneys can seek guidance from other firm attorneys. The firm does have a bi-annual review for each attorney that includes completion of a self-evaluation and a "feedback session" with a firm partner.

FINDINGS. Interviewees consistently commented on the very high rate of turnover in this firm, the complete absence of training and supervision for new lawyers, and the continued practice of giving these new attorneys very high caseloads. Specific comments regarding the firm's representation in Washington County were uniformly negative. Even when the firm is able to recruit competent lawyers, those lawyers are overloaded with cases, receive no training, and leave in relatively short order. While Mr. McCaslin is described as being a capable lawyer, he handles public defense cases only when needed to provide coverage when attorneys leave the firm and everyone seems to be aware that he would prefer not to handle juvenile public defense cases. Louise Palmer, the contract administrator, spends her time on remaining Multnomah County cases. The firm did not provide any response to the peer review team recommendations and does not seem to have an awareness of what would be required to improve the situation.

V. SERVICE DELIVERY REVIEW—RECOMMENDED AREAS OF INQUIRY

Quality of Representation.

- **Contact with Juvenile Clients in Detention.** Public defense providers should ensure that they are visiting with their in-custody clients in delinquency cases within the requirements of the contract with PDSC (within 24 hours of appointment to the client) and as needed to fulfill their obligations under the Oregon State Bar *Standards of Representation for Criminal and Juvenile Delinquency Cases*, Standard 2.2, and Oregon Rule of Professional Conduct 1.4.
- **Professionalism.** ODAC was identified in the peer review and again in the service delivery review as being a provider who consistently demonstrates the highest level of professionalism. Almost all other providers, most notably MPD, made significant gains in this area between the time of the peer review and the service delivery review. All providers should be encouraged to document and

adhere to the highest standards of professionalism, and the Commission may wish to inquire about each provider's commitment to this important element of representation.

- **Client-Centered Advocacy.** ODAC and MPD were consistently identified as firms that provide zealous, client-centered advocacy. As mentioned throughout this report and in the system issues section below, other firms could benefit from increased information-sharing to ensure that all entities have an opportunity to learn about recent system developments that impact clients, and to share ideas with each other about how to provide client-centered advocacy in light of those developments.
- **Advocacy for Juvenile Delinquency Clients.** Firms should ensure that their attorneys are filing motions for alternative disposition and motions to find unable to aid and assist, and exploring ways to challenge the denial of conditional postponements. Additionally, because this is an area of rapid development, attorneys handling juvenile delinquency cases should be seeking particularized training from organizations such as the National Juvenile Defense Center.

System Issues.

There are a number of other issues that are either common to all or most public defense providers in Washington County or pertain to them. Those issues are as follows:

- **Advocacy at Arraignment, specifically pretrial release.** The court's prohibition on attorneys advocating for release at the time of arraignment remains a significant concern in this county. The Commission may wish to discuss with providers whether they have considered any kind of group effort to address this issue. Clearly, it has a disproportionate impact on public defense clients (note that privately retained clients have more attorney contact prior to arraignment giving the attorney a better opportunity to work with the pretrial release officer). Studies consistently demonstrate that pretrial advocacy and the

opportunity to gain release at the first court appearance is critical to achieving procedural justice.²³

- **Specialty dockets: ECR (ODAC & MPD), DUI and DV Diversion (Ridehalgh).** The Commission may wish to inquire further to determine whether clients in these programs are receiving thorough advice regarding options and collateral consequences prior to entering a plea, and whether the structure of these programs is consistent with the PDSC's *Guidelines For Participation of Public Defense Attorneys in Early Disposition Programs*.²⁴
- **Information Sharing.** As the two largest public defense providers in Washington County, it is appropriate that MPD and ODAC be represented on major justice system workgroups pertaining to system wide policy and procedure. At the time of the peer review, there were complaints that MPD did not sufficiently share information about the proceedings of these workgroups with other public defense providers. The Commission may wish to inquire about the extent to which information is being shared with other providers.

A different but related concern is that stakeholders in the juvenile justice system, such as Juvenile Court Counsellors, CASAs, CRB, and DHS caseworkers, do not have a convenient mechanism to share information or developments concerning their agencies with the public defense community. Likewise, there appears to be some uncertainty in these agencies about whom to contact with specific concerns about the representation provided by public defense attorneys. The Commission may wish to inquire about steps providers have taken to communicate with juvenile court stakeholders and with other public defense providers to ensure there is a way for information to be easily shared when necessary, and whether stakeholders feel they have a way to provide feedback to each provider about the quality of representation in juvenile court. The Commission may also wish to consider whether the creation of a juvenile consortium, rather than the current consistent use of private bar lawyers for conflict cases, would provide a more efficient mechanism for distribution of information to juvenile providers.

- **Shackles in Juvenile Court.** Public defense providers handling juvenile delinquency cases should ensure that in-custody youth are transported to court and appear in court in shackles only when this extreme measure is required by a combination of heightened security concerns and no less onerous alternative. In light of evidence demonstrating the psychological harm that shackling can cause to youth, a growing number of jurisdictions, including in Oregon, have prohibited the indiscriminate use of shackles in juvenile court. Lawyers should contact Youth, Rights & Justice or OPDS for briefing and court orders from litigation in other counties if needed to challenge the practice in Washington County.

²³ See the latest report by the Constitution Project at: http://www.constitutionproject.org/wp-content/uploads/2015/03/RTC-DINAL_3.18.15.pdf

²⁴ The guidelines are available on the OPDS website here: <http://www.oregon.gov/OPDS/pages/pdscreports.aspx>.

Administrative Oversight.

- **Documentation & Efficiency.** Some contractors have well-documented systems to ensure adequate attorney training and oversight and sufficient client contact. The Commission may wish to speak with providers about any efforts underway to create, or for some providers preserve and enhance, existing practices.
- **Performance Reviews.** Some providers are reportedly very consistent in providing attorneys with performance reviews, and in checking with the court and other system stakeholders to ensure that public defense clients are receiving quality representation. The Commission may wish to ask stakeholders about contractor efforts to get feedback regarding lawyer performance.

VI. TESTIMONY AT THE SEPTEMBER 17, 2015 PDSC MEETING

Chair Ellis introduced the Commission's hearing on the Service Delivery Review by explaining that the Commission's primary interest is to learn whether it is contracting with the right number and type of public defense providers in the county and whether those providers are performing well.

District Attorney Robert Hermann was invited to speak first. He expressed appreciation for the opportunity to have shared his observations of how things were working in the county with PDSC staff prior to preparation of the draft report. He said that his office and the public defense community work together very well in a number of areas, including the administrative efforts needed to simply make the system work efficiently, the county's drug court, and the Early Case Resolution (ECR) program. He estimated that 20% to 30% of all criminal cases filed in the county are resolved in the ECR program. He emphasized that it is not a "rocket docket," and that attorneys can postpone resolution if additional time is required to investigate the case and consult with a client about the benefits of resolving a case through ECR. He had particular praise for the work of MPD, and its director, Gregg Scholl, in the drug court, which focuses on high risk offenders who may face substantial prison sentences.

Mr. Hermann said the public defense community was also working well with a new protocol for pre-trial conferences. The new protocol seeks to make the conferences more meaningful events where cases can be resolved in advance of the scheduled trial date and without resorting to trial. He expressed one concern about MPD withdrawing in murder cases when nearing trial because new witnesses, mainly other defendants awaiting trial in jail with whom MPD's clients have talked about their cases, were identified by the state. Because these new witnesses were former clients of MPD, the firm has needed to withdraw from representation, causing delay in resolving the murder cases. Mr. Hermann also noted a previously high rate of turnover at MPD, resulting in reshuffling of caseloads at the firm, which caused significant delay in resolving cases. He noted however, that this dynamic has improved dramatically in the last year.

Asked about the concern with the shackling of juveniles for transport to and from, and during, court hearings, Mr. Hermann said he had not thought too much about the issue until reading a draft of the service delivery report, but he had to agree it's a

concerning practice. He promised to raise the concern with others in his office and with the Sheriff.

Mr. Hermann said that he sees the need for more attention, planning, and resources in the area of mental health as key to diverting people from the criminal justice system or avoiding their contact with it entirely. He hopes that the defense community will be able to devote attention and resources to this area.

Commissioner Lazenby noted that Washington County is said to be the most diverse county in the State of Oregon, and he said the conversation ongoing now about over-representation of minorities in the juvenile justice system will soon take place in the context of the entire justice system. He asked whether the DA's office itself reflected the diversity of the community it serves. Mr. Hermann didn't have data available to answer the question, but identified a number of attorneys and staff who were from minority communities. He also estimated that about 40% of the attorneys were women.

Penny Belt, with the Washington County Juvenile Department, told the Commission that both referrals to the department and delinquency petition filings had decreased in recent years. In 2012, she said, there were almost 3,200 referrals, whereas in 2014 there were fewer than 2,500 referrals. Of those referrals in 2014, which she said were the result of about 1,500 youth, only 212 of them were actually adjudicated, with the remainder handled through diversions or formal accountability agreements or in some other non-court manner. She said the average length of stay in detention is about seven days, but that number also reflects the inclusion of Measure 11 youth, who are now detained in the juvenile detention facility rather than the county jail and have much longer lengths of stay in detention.

Ms. Belt said that under a previous presiding juvenile court judge, her department developed specific criteria for when youth may be shackled. She also clarified that her department, not the Sheriff, is primarily responsible for the transportation of youth to and from court. She said in recent years her department has not been following those criteria, but until one defense attorney spoke to her about it the defense bar had not been raising any objections to the practice.

Ms. Belt concluded by saying that she wished that both defense attorneys and deputy district attorneys would do a better job of keeping the juvenile department "in the loop" on cases, and indicated that defense attorneys could also do a better job of communicating with the families of their clients, she said.

In response to questions from Commissioner Lazenby, Ms. Belt said it is very clear that there is minority over-representation in the county's juvenile justice system. She said that in addition to the Latino and African American populations, her department is having more frequent contact with the Somali community and, to some extent, with Russian families.

Karen James spoke to the Commission about her group, founded by parents of adults in the criminal justice system with mental illnesses, which seeks to improve conditions and services for persons in the criminal justice system with mental illness. They have focused their efforts on the Department of Corrections but have also meet with the Washington County Sheriff's Office to talk about concerns. More recently, the group

has sent a letter to Presiding Judge Charles Bailey. Locally, the group is concerned that persons in jail with mental illness are not receiving appropriate attention and resources, and that insufficient planning is occurring to transition them back into the community. Ms. James is especially concerned that some public defense attorneys are neglecting their clients with mental illness. She thinks better training and awareness of how to represent clients with mental illness will lead to better advocacy and outcomes.

Judge Charles Bailey, Presiding Judge in Washington County since January 2015, presented his views to the Commission. He said a number of things have changed significantly, and for the better, since the 2014 OPDS Washington County Peer Review report. He specifically commended the defense bar for the reduction in affidavits for change of judge, which were a major cause of tension and difficulty. He also praised the reduced turnover at MPD, which was a source of delay and difficulty in case management. Finally, he noted that the re-engineering process facilitated by the National Center on State Courts resulted in judges becoming more engaged in managing pre-trial conferences and helped reduce Washington County's unusually high trial rate.

He said that overall he is very pleased with the public defense providers in the county, and with how PDSC has addressed concerns when they arise. He expressed concern, though, about compensation for the non-public defender contractors, which he said should be on an equal par with the public defender offices. The Chair clarified that this is being addressed thanks to a legislative funding package specifically for that purpose. Judge Bailey also communicated a concern from Judge Raines that the Commission continue to assure the presence of a viable non-contract private bar in juvenile cases, where they are needed for conflict cases. [A letter from Judge Raines is appended to the end of this report.] He also said that he shared the concern of Ms. James, that better attention and resources are needed to appropriately handle persons with mental health issues who come into contact with the criminal justice system.

Judge Bailey also expressed satisfaction with the courtroom work at the Law Enforcement Center, where MPD handles most of the arraignments in criminal cases and also handles, along with the consortium, the ECR program. He also expressed appreciation that he can call PDSC staff when necessary to address concerns that might arise with public defense providers in the county.

Judge Richardo Menchaca is the presiding juvenile court judge, who works in the small juvenile services building along with Referee Michele Rini. He said that he is trying to take inspiration from Judge Bailey and do a better job of managing the juvenile docket, which is very busy and needs to be run efficiently. He appreciates the great job of all of the juvenile defense providers, and echoed other comments about the need for a non-contract private bar presence within juvenile court. He also appreciates being able to contact PDSC staff when needed.

Regarding shackles, Judge Menchaca said he did not realize it was an issue until reading a draft of the service delivery report. He believes that shackles are used when appropriate security concerns have been identified and trusts the juvenile court staff to make decisions about when they are necessary. He said the juvenile court is a small, crowded building where it's necessary to keep a close watch on security

issues.

Chair Ellis pointed out that his assumptions about the appropriate use of shackles may be unwarranted if they are being used indiscriminately. Commissioner Welch, who was the presiding juvenile court judge in Multnomah County, shared her philosophy about shackles in the courtroom, which is that they will not be used unless she approves it based upon appropriate concerns. Judge Menchaca said that during his entire tenure on the bench he has yet to have a defense attorney or deputy district attorney express concerns about shackles. He reiterated that security is a paramount concern, especially since a number of juvenile court cases concern gang-involved youth.

Asked about over-representation of minorities in juvenile court, Judge Menchaca said that as an Hispanic judge, who experienced racial bias growing up, he will not allow racial intolerance in his courtroom. But he acknowledged that over-representation occurs in both the criminal and juvenile justice systems. He expressed pride in the juvenile “gang court,” which seeks to avoid commitment of high-risk youth to the Oregon Youth Authority’s correctional facilities. Commissioner Lazenby said that the issue of over-representation is likely to demand increased attention of every justice system partner and will require a concerted effort in order to see improvement.

Sandy Berger, the field manager for the Citizens Review Board in Washington County, told the Commission that she sees a real benefit in those cases where attorneys are present at CRB reviews. She has the benefit of having previously worked as the CRB field manager in Klamath County, where the public defense providers employ case managers to work closely with parents and children, and those case managers appeared for the attorneys at CRB hearings and were able to provide valuable information. She thought that system worked very well. But in Washington County, when attorneys cannot appear at CRB hearings they send legal assistants, who mainly take notes and only occasionally relay information from attorneys about their clients. She thinks outcomes would improve if attorneys were consistently present at the hearings, especially since parents may be under significant stress and not able to express themselves well on their own.

Lynn Travis is the program director and program attorney for the CASA program in Washington County, which advocates for the best interests of children in juvenile dependency cases. She told the Commission that there is a need to shift the locus of advocacy with the advent of managed health care. Under the Oregon Health Plan, all Coordinated Care Organizations (CCOs) are now required to provide wraparound services for most children in foster care. Whereas in the past, she said, most advocacy focused on services provided by the Department of Human Services, now critical decisions will be made at CCO staffings. Thus, advocacy concerning visitations, transitions home, and transitions out of more restrictive levels of care will need to occur at these CCO staffings in order to achieve better outcomes for children.

Gregg Scholl, the director of MPD’s Washington County office, told the Commission that the county is a very good place to be a criminal defense attorney in part because it can also be a difficult place to practice criminal defense. He said that the high rate of turnover that his office had experienced has improved significantly, in part because of a new policy negotiated with the union representing MPD employees concerning when transfers can occur between MPD’s Hillsboro and Portland offices. But he also

said that he thinks the Hillsboro office is seen now as a very good place to work, in part because of a new training regimen for new lawyers. The office has also developed a strong commitment to zealous advocacy, which fulfills the classic public defender ethic of challenging authority. But he insists that this be done professionally and with purpose. Mr. Borg also addressed the turnover issue and the attendant reshuffling of caseloads that District Attorney Hermann said had been a problem but was much improved. He said that the problem wasn't primarily that lawyers were moving from Hillsboro to Portland, and simply abandoning their Hillsboro clients. He said that there had been a great many new hires into the Hillsboro office and that some of those attorneys simply didn't perform well and left the firm entirely.

Mr. Scholl emphasized that he has an excellent working relationship with District Attorney Hermann, and that the office has good relationships with the Sheriff, with the jail command staff, with community corrections, and even with the county's administrator. In addition, the office has a seat on the local Public Safety Coordinating Council, on the OCDLA Board of Directors, on the Supplemental Local Rules Committee, and the Oregon State Bar's Criminal Law Executive Committee. He also expressed appreciation for OPDS's trust in the office to undertake representation in cases in other counties, in addition to the work they do around the state in aggravated murder cases.

Mr. Scholl also praised the county's drug court. He said that graduates of the program have paid around \$120,000 in restitution, and the 90% of them are now employed, many full-time. He also praised the attorneys in the juvenile section of his office, calling one of them the person most knowledgeable about the juvenile code in the state, and saying another is considered a model juvenile court defense attorney.

He also addressed the concerns about affidavits, saying that his office has never had a policy that lawyers should file them when assigned to certain judges. He emphasized the fact that lawyers are trained to determine for themselves whether a judge can be fair, even ones that have been historically difficult in criminal defense cases. He said this training has contributed to the decrease in the use of affidavits, but that judges' individual efforts lawyers are also making lawyers more comfortable having their clients appear before them. Lane Borg, the executive director of MPD, also addressed the affidavit issue, and said he thinks the controversy died down in part because, after a judge filed a bar complaint against an MPD attorney concerning the practice, the Oregon State Bar wrote a comprehensive opinion finding no misconduct on the part of the MPD attorney.

Both Mr. Borg and Mr. Scholl addressed a question from Chair Ellis about how MPD operates now with two offices. They both expressed satisfaction with having most administrative functions located in Portland, especially since key administrators, including Mr. Borg, the training director, and others, are usually present in the Hillsboro office at least once a week. Lane Borg also noted that the size of the Hillsboro office has grown steadily and dramatically, so that it is foreseeable that each office will eventually have about the same number of employees.

Mr. Borg also addressed Mr. Hermann's complaint that MPD has needed to withdraw from a number of murder and aggravated murder cases because of conflicts of interest. He said that it was his belief that these conflicts were created by the DA's office through intentionally targeting current or former MPD clients to become

informants, thereby requiring that MPD withdraw from the cases. In one instance, MPD insisted that the state had no real intention of calling the informant as a witness, which the state denied. Yet when the case did come to trial, with different attorneys, in fact the state did not call the witness. He said that MPD is now more vigilant when it appears that the state might be creating a conflict simply to have the firm removed from a case. Mr. Borg also made clear that he was not accusing Mr. Hermann of misconduct, saying that he is an honorable and good man. But Mr. Borg said the same cannot be said for some of the deputy district attorneys in Washington County.

In response to a question from Commissioner Lazenby about the diversity of the attorneys in the Washington County office, Gregg Scholl said that three or four of the 20 attorneys employed by the firm are minorities. He said there is more diversity among the support staff. Ellen Johnson, who is appointed by the Washington County Commissioners to the MPD Board of Directors and serves as the chair of the board, said that overall five percent of the entire firm's attorneys are African American and about one to two percent are Hispanic, which she said mirrors the population of the Oregon State Bar. She said that the MPD board is in the process of examining both the firm and the broader justice system through an equity lens.

Rob Harris, the executive director of the Oregon Defense Attorney Consortium (ODAC), began his appearance before the Commission with praise for the work of Gregg Scholl and MPD for leadership in the county's criminal justice system. In response to a question from Chair Ellis, he described a number of ODAC members who formerly were MPD attorneys. He said he looks for good experienced attorneys to bring into ODAC, who need to also be good at managing their own businesses and workloads, especially since ODAC is appointed to some of the most serious cases, other than murder, that can be brought. He said that ODAC is losing two very experienced attorneys, one to retirement and to other to focus more on federal appointed work. But he has recruited some good attorneys in recent years, whom he described to the Commission. He also manages his own 11-attorney law firm, which is a part of ODAC. New lawyers in that firm do some public defense representation, with the opportunity to also work in other areas of the law involving litigation.

The chair asked how the consortium handles concerns about attorney performance. Mr. Harris described one recent instance where he was able to find a more appropriate caseload for one attorney, and said that the membership of another attorney was terminated. Most of Mr. Harris's time, in connection with consortium matters, is devoted to administration and providing some limited coverage, although he expects in the next year to handle a number of major felony cases in order to remain fully acquainted with the issues facing other ODAC members in their criminal defense representation.

In response to a question from Commissioner Potter, Mr. Harris said that he does not have any immediate plans for retirement, but he is preparing for long-range transitions both by bringing younger attorneys into ODAC who may have an interest in taking over his administrative responsibilities, and by bringing a minority shareholder into his firm who can eventually become its managing owner.

Ron Ridehalgh, who heads a one of the law firms that contracts with PDSC, appeared briefly. The chair noted that the draft service delivery had good comments about the work of his firm. Mr. Ridehalgh said he appreciated those comments.

Grant Burton, managing attorney at the Hillsboro Law Group, complimented MPD as the “vanguard” of public defense in the county, but he said that his firm also provides a place for talented attorneys who may wish to practice both criminal defense and work in other practice areas. He explained that because his firm has a broad multi-area practice, it is not dependent upon public defense to remain viable, which provides flexibility in contracting with PDSC. He said that the firm will continue to contract for public defense work only if the terms are fair and work for the firm. He cited, as an example, that the firm needs to be paid enough to afford to adequately pay a felony-qualified attorney. Mr. Burton also noted, following up on earlier comments, that he believes race to be a clear factor in criminal justice outcomes in the county, and suggested that more data is needed in order to determine causation.

Nate Law appeared before the Commission for the Karpstein and Verhulst firm, which contracts to handle, along with MPD, the bulk of juvenile dependency cases, along with some lesser criminal cases. He said that Greg Karpstein is transitioning management of the firm to himself and Jake Griffith, another younger attorney, and said they both are excited about providing new leadership for the firm. He also addressed the shackling issue, saying he was alarmed to hear Judge Menchaca say that defense attorneys were not raising concerns with him, and noted that though he has been worked behind the scenes with the juvenile department on this issue, he sees now that much more work remains.

The chair then noted that though **Louise Palmer**, with the Brindle, McCaslin and Lee firm, had been invited to speak to the Commission, she did not attend the meeting.

VII. A SERVICE DELIVERY PLAN FOR WASHINGTON COUNTY

At its October 23, 2015, meeting, the Commission reviewed a draft of this report, including the testimony from its September 17, 2015, meeting. The Commission determined that the current service delivery plan should be continued, except that contracts for public defense services in the county for 2016-2017 will no longer include the Brindle, McCaslin and Lee firm. A substantial portion of the cases that firm would have received will be handled by juvenile law practitioners in the Oregon Defense Attorney Consortium.

The Commission observed that relationships among public defense providers in the county are good, and that the overall climate for public defense in the county has improved recently. It also noted that the Washington County office of the Metropolitan Public Defender appears to receive appropriate administrative support and attention from the firm's top managers, although the Commission directed OPDS to continue to monitor how the firm performs with offices in two counties.

The Commission also directed OPDS to follow up with contractors to ensure that they are addressing the concerns expressed at the September meeting regarding the representation of persons with mental illness. Specifically, OPDS should determine that contractors are advocating for programs and services that divert mentally ill persons from the criminal justice system where appropriate, and that appropriate attention and resources are devoted to mentally ill clients who remain in the criminal justice system, including planning for transition back into the community. OPDS should also ensure that attorneys are receiving training on issues specific to representation of mentally ill

clients.

The Commission further determined that OPDS should continue to monitor the performance of all public defense providers in Washington County in connection with the issues identified above as “areas of inquiry” for Commission consideration in the county. The Commission specifically directs OPDS staff to continue its efforts to address the unwarranted use of shackling in juvenile court proceedings. In this regard, following the Commission’s meeting in Washington County in September 2015, OPDS Deputy General Counsel Amy Miller provided Judge Menchaca, the presiding juvenile court judge, with additional information about shackling, including a statement from the National Council of Juvenile and Family Court Judges urging a presumptive rule or policy against shackling children except when individual circumstances warrant the practice.¹ Ms. Miller also followed up on the issue with the county’s Juvenile Department and with the public defense providers in the county.

¹ http://www.ncjfcj.org/sites/default/files/ShacklingOfChildrenInJuvenileCt_Resolution_July2015.pdf.