

Members

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



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, March 16, 2017
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St NE
Salem, OR 97301

MEETING AGENDA

1. **Action Item:** Approval of minutes - PDSC meeting held on January 26, 2017 (*Attachment 1*) Chair Ramfjord
2. **Action Item:** Commission approval of Personnel Rules (*Attachment 2*) Paul Levy
3. **Action Item:** Payment Policies and Procedures; Certified Interpreter Hourly Rates (*Attachment 3*) Stephanie Petersen
4. Considerations for the PDSC as it begins the 2017 RFP and contracting process (*Attachment 4*) Caroline Meyer
Contract Providers
5. **Action Item:** Commission approval of Request for proposals – contract services (*Attachments 5a, b, c, d, e, and f*) Caroline Meyer
Paul Levy
6. Delinquency Update: waiver of counsel (*Attachments 6a & b*) Amy Miller
7. Budget & Legislative Update Nancy Cozine
Amy Miller
Eric Deitrick
8. OPDS Monthly Report OPDS Staff
9. Executive Session* - Executive Director Performance Evaluation Commission members

***Executive Session:** *The Public Defense Services Commission will meet in executive session at approximately 1:30 p.m. The executive session is being held pursuant to ORS 192.660(2)(i).*

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

Next meeting: May 18, 2017, 10 a.m. – 2 p.m., Providence Willamette Falls Community Center, 519 15th Street, Oregon City, Oregon, 97045. Meeting dates, times, and locations are subject to change; future meeting dates are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, January 26, 2017
10:00 a.m. – 2:00 p.m.
Main Conference Room
1175 Court St NE
Salem, OR 97301

MEMBERS PRESENT: Per Ramfjord (Chair)
John Potter (Vice Chair)
Thomas Christ
Michael De Muniz
Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Morgen Daniels
Eric Deitrick
Amy Jackson
Ernie Lannet
Paul Levy
Caroline Meyer
Amy Miller
Kali Montague
Stephanie Petersen
Rachel Woods
Billy Strehlow

The meeting was called to order at 10:04 am.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on December 15, 2016

Commission members unanimously approved minutes for December 15, 2016, PDSC meeting, noting one correction to the number of PDSC members present at the start of the meeting.

Agenda Item No. 2 2017 Legislative Session

Gail Meyer, legislative representative for the Oregon Criminal Defense Lawyers Association, along with OPDS Deputies General Counsel Amy Miller and Eric Deitrick, provided a 2017 Legislative Session update. Ms. Meyer noted that 1,500 bills were dropped in pre-session filing, and that OCDLA is tracking 300 of those now, with more to come when session starts. She provided Commission members with an overview of bills that OCDLA considers priority bills, including SB 496, which requires the recordation of grand jury proceedings. She also talked about HB 2616, which prohibits waiver of counsel in juvenile delinquency cases. She noted that in 2015, data suggests that there were about 100 cases scattered throughout the state where juveniles were resolving delinquency proceedings without counsel. Other bills mentioned included HB 2615 (amending theft statutes to prevent charging incidental shoplifting as C-felonies when stolen items are brought to the return counter), SB 521 (rationalizing fees for the cost of copying discovery), SB 497 (“clean-up” to expunction statute), and HB 2640 (prevents extended custody of material witnesses).

Mr. Deitrick explained that he is tracking criminal law legislation, particularly those bills with a potential fiscal impact to the PDSC. He discussed HB 2238, from the Governor’s office, and HB 2355, which originated with the Attorney General’s racial profiling task force, both of which reduce simple drug possession from a felony to a misdemeanor. He noted that the Criminal Justice Commission’s review of PCS convictions statewide showed racial disparity in PCS convictions, and that about 2,000 new felons are created each year, with 6,000-7,000 convictions statewide. He also noted that the Governor’s bill re-establishes the task force on public safety which will terminate at the end of this biennium unless continued by statute, and that the Attorney General’s bill requires law enforcement agencies around the state to gather and track both pedestrian and traffic stop data for race and other criteria to get a better sense of those who come into contact with law enforcement so that the Criminal Justice Commission can review the data and make reports to the legislature and other public safety agencies in 2020. Mr. Deitrick said that this session will also include several bills related to human trafficking – specifically SB 249 and SB 250. He noted that there is also a set of bills addressing the intersection of mental health and criminal courts in aid and assist determinations: HB 2306 allows the sharing of information between the hospital and the various agencies; HB 2309 authorizes rule making authority to streamline the sharing of progress reports between the hospital and the courts; HB 2631 is an attempt to again get people out of jail and into treatment more quickly; and SB 132, from the Attorney General, which contains various concepts relating to mental health - a due process right to have competency determination whether you are facing a criminal charge or a probation violation (the current statute doesn’t address probation violations), and a prohibition on commitment to the state hospital for restorative services unless the charge is an A misdemeanor or more serious charge, and codification of rules around involuntary medication. He indicated that there would also be bills focused on sex offense cases. Specifically, HB 2021, from Senator Courtney and Representative Barker, would create a new life sentence with the possibility of parole after 20 years for certain sexual offenses; and HB 2602 clarifies vagueness problems in the sex abuse statute. He mentioned several other bills related to sending OYA youth to DOC after the age of 25, second look hearings, and distracted driving. He noted HB 2561, from Representative Williamson, which would amend ORS Chapter 151 to require this Commission to pay rates on par with the local DDA, and prohibit the executive director of OPDS from entering into contracts that do not provide pay parity for attorneys and their staff.

Amy Miller provided a review of proposed legislation related to juvenile law. HB 2345, from the Governor's Task Force on Dependency Representation, requires the PDSC to develop and maintain a PCRCP model with caseload limits, access to social services professionals and program managers, and directs DOJ to provide a block-grant model of representation for DHS as a way to contain costs. The bill also contains a quality assurance component that would be housed at the Oregon Judicial Department. Ms. Miller touched again on HB 2616, the waiver bill, and Senate bill 501, similar to a bill introduced in 2015, requiring PDSC to ensure representation for people in protective proceedings. She also described a bill that prohibits the shackling of children, sponsored by Senator Gelser. Ms. Meyer added that there is a series of bills this session that protect the rights of children, including several introduced by Representative Gorsek – one that prohibits youth from waiving *Miranda* rights until they consult with counsel, another that requires recording of any interviews of youth in custody, and another that prohibits the use of trickery, artifice, or deceit when interviewing a youth and clarified that the interviewer cannot make an expressed or implied promise of leniency in exchange for giving an incriminating statement.

Commission members expressed interest in the topics and thanked the presenters.

Agenda Item No. 3 PDSC Annual Report

Nancy Cozine provided an overview of the annual report and invited comments, edits, suggestions. Commission members praised the report.

Agenda Item No. 4 Parent Child Representation Program: Annual Report

Amy Miller acknowledged the work of Cecily Warren and Rachel Woods in helping her create the PCRCP Annual Report. She reminded Commission members that the ABA Center on Children and the Law published indicators of success for parent representation programs, which provided a guide on what should be measured to ensure effective representation. She summarized four noteworthy observations. First, the lawyers in these cases regularly use investigators and experts, which is indicative of the preparation done to develop a theory of a case. Second, 95% of the clients that were surveyed reported being satisfied or very satisfied with their representation, and lawyers spend an average of 27% of their time with clients. Third, PCRCP counties have expedited permanency and increased reunification. Finally, these counties have reduced their use of foster care beds - in the PCRCP counties, the foster care population has gone down by over 15% three years in a row, while the statewide average dropped down a little in 2014, was almost flat in 2015 and crept up a bit in 2016. Ms. Miller concluded by noting that Columbia County wasn't included because there is only six months of data available, but that even there initial indicators show some incremental improvement.

Commissioner Welch asked whether children in the program are being adopted by care takers – foster parents or family members - noting that one problem in the system is current caretakers being disqualified as an adoptive resource. Ms. Miller said the information was not publicly available, but that she would continue to seek that level of detail.

Agenda Item No. 5 Ranking of Policy Option Packages

Nancy Cozine provided an overview of the state budget environment, which includes a \$1.8 billion budget deficit. She explained that the Governor's budget cut all Judicial Branch agencies by 4%, and that the Co-Chairs budget framework cut Judicial Branch agencies by about 3.5%. She noted that either of those cuts create challenges, and explained the need to revise the PDSC policy option package requests to better fit within the current budget environment. She then reviewed each package, recommending that POPs 100 and 101 be reduced to 1/3 of their original amounts, that 102 and 103 be withdrawn completely, that 104 be reduced to \$426,000, leaving package 105 as drafted. She explained the reasoning behind these reductions, answered Commission questions about the strategy, risks, and benefits, and asked the Commission to get input from providers and staff.

The Commission discussed benefits of the PCR program, which includes the concept of return on investment, and expressed some concern about tying a funding request to the expectation for monetary savings when the constitutional and statutory directive would imply that funding should be provided because it is right thing to do in terms of providing representation to families. Commission members also talked about whether a reduction of the package was appropriate given the fact that it has some potential for creating future savings, and asked about the savings realized in other states. Ms. Miller explained that other states had scientifically validated studies that documented savings attributable to their programs, and noted that OPDS would like to secure such a study for Oregon once there is enough data and a willing study entity. The Commission asked about support from other stakeholders. Ms. Cozine noted that the Governor's Task Force, which included stakeholders at the highest levels, endorsed a statewide expansion. Commissioner Welch expressed support for a staged implementation in order to give time for the culture changes needed at the local level as part of the implementation process.

The Commission heard testimony from Mark McKechnie, Executive Director at Youth Rights & Justice, regarding POP 100. He encouraged the Commission to reduce it, but to only one half the original request rather than one third, to ensure that more than one large county could be funded as part of the expansion.

Several administrators provided support for POP 101, noting its importance for purposes of recruitment and retention. Dan Bouck, Executive Director at Umpqua Valley Public Defender, explained that newer attorneys need to be able to see that there is a future in public defense. Jessica Kampfe, Director of the Public Defender of Marion County, spoke of the retention challenges at her office. She said that in 2016, four out of their ten lawyers - 40% of her attorney staff - resigned because they were taking higher paid positions in other offices. She encouraged the Commission to keep POP 100 at its original amount. Jon Weiner, Director of MCAD, the criminal consortium provider in Marion County, explained the economics of surviving on contract rates while also maintaining a reasonable caseload size, noting the critical link between the pay parity and quality of representation.

Commission members engaged in a lengthy discussion about the pros, cons, risks, and benefits of different approaches, and the realities of the current budget environment. A motion was made to approve the reductions as proposed. Following further discussion, and significant concern expressed about reducing the pay parity package at a time when contract providers have significant challenges,

an amended motion was made to reduce POP 100 to 1/3 of the original amount, continue with POP 101 as originally drafted, withdraw POPs 102 and 103, reduce POP 104 to \$426,000, and leave package 105 as drafted.

MOTION: Commissioner Ramfjord moved to approve the amended motion; Commissioner Christ seconded the motion; Commissioner Welch objected: **VOTE: 4-1**

Agenda Item No. 6 Certified Interpreter Hourly Rates

Nancy Cozine provided an overview of a letter from certified interpreters, which requested a change to the mileage requirements, telephone interpreting payment policy, and hourly rate. Ms. Cozine explained that a change in hourly rate, to the requested \$43.50, would have a budget impact of \$75-\$80,000 per biennium. She explained that recommending approval of the request was difficult given the current budget shortfall, but noted that if the Commission would like to take action, the item will be added to the March agenda. After a discussion of the need for interpreters and the critical service they provide, often in small increments of time, Commission members concluded that the hourly rate should be increased to match what is being paid by the Oregon Judicial Department. The Chair asked that the matter be added to the March agenda.

Agenda Item No. 7 Overview of the Appellate Process

Ernest Lannet, Chief Defender for the Criminal Appellate Section, provided an overview of the OPDS Appellate Division, which handles about 40% of the caseload at the Court of Appeals. Commissioner Christ asked why there are many fewer briefs than notices of appeal, and Mr. Lannet explained that between issues that moot out, consolidation of cases, lack of meritorious issues, matters that can be corrected by the trial court, and joint motions for remand, the number of briefs filed is much lower than the number of notices filed. Mr. Lannet went on to describe the management structure and editing process, and provided a high-level summary of the work done by the Appellate Division. Mr. Lannet concluded with a discussion of the Oregon Law Commission's Work Group revision of ORS Chapter 138, which governs appeals. He noted that the work group product, if adopted, would offer a much cleaner statutory scheme for appellate practitioners.

Agenda Item No. 8 Update on public meetings law litigation in *Handy v. Lane County*

Paul Levy provided an overview of the recently *Handy vs. Lane County* case, explaining that the case is instructive on the topic of public meetings laws. He noted the two main components of the public meetings laws. First, a directive that when a public body convenes - when a quorum gathers to decide or deliberate towards a decision - it must be open to the public. Second, that a governing body such as the PDSC cannot meet in private unless authorized to do so by the executive session laws. Mr. Levy explained that the case discusses whether serial individual meetings of public body members, or email exchanges between individual members of a commission or board can constitute a public meeting, and that though the matter wasn't entirely resolved in this case, there is another case pending that might offer additional guidance in the future.

Mr. Levy concluded by assuring Commission members that they would not be invited to inadvertently violate the public meetings law by engaging in discussion through email, or a series of

meetings that are not open to the public, when considering a matter that will ultimately come before the Commission for a decision.

Agenda Item No. 9 Executive Session – PDSC Contracting

Chair Ramfjord made the following announcement: The Public Defense Services Commission will now meet in executive session for the purpose of considering information or records that are exempt by law from public disclosure or inspection under ORS 192.502(9)(a) and ORS 40.225. This executive session is being held pursuant to ORS 192.660(2)(f) which permits the Commission to meet in executive session for the purposes just stated. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session except to state the general subject of this session as previously announced. No decision may be made in executive session. At the end of executive session we will return to open session and welcome the audience back into the room.

Following the announcement, the Commission discussed matters related to records that are exempt by law from public inspection. Following the discussion, the executive session was then ended, and the regular meeting resumed.

Agenda Item No. 10 OPDS Monthly Report

Nancy Cozine announced a few staffing changes at OPDS, as well as an upcoming reconfiguration of the Public Defense Advisory Group. Commission members discussed upcoming meeting dates and topics, concluding that the Clackamas County Service Delivery Review should be moved to May rather than March. Mr. Lannet announced that an excellent appellate lawyer, who had been with the office for five years, resigned to join a Portland law firm.

Meeting Adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, January 26, 2017
10:00 a.m. – 2:00 p.m.
Main Conference Room
1175 Court St NE
Salem, OR 97301

MEMBERS PRESENT: Per Ramfjord (Chair)
John Potter (Vice Chair)
Thomas Christ
Michael De Muniz
Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Morgen Daniels
Eric Deitrick
Amy Jackson
Ernie Lannet
Paul Levy
Caroline Meyer
Amy Miller
Kali Montague
Stephanie Petersen
Rachel Woods
Billy Strehlow

The meeting was called to order at 10:04 am.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on December 15, 2016

0:06 Chair Ramfjord: Welcome everybody to the Public Defense Services Commission meeting for January 26, 2017. I am glad you are all here and able to make it. First item we have on the agenda is approval of the minutes from October 21, 2016 [note that minutes approved were the December 15, 2016] meeting. Do I have a motion?

0:25 J. Potter I have a potential correction. I believe agenda item number one where it says the vote was seven to nothing and agenda item number three where the vote was seven to nothing should be five to nothing because Commissioner Lazenby and myself were not there for the first five minutes of the meeting. Those were voted on early and we came in after.

0:53 T. Christ So maybe the minutes should indicate tardiness.

1:01 Chair Ramfjord Assuming that correction is made, any other corrections? Do we have a motion? **MOTION:** Commissioner Christ moved to approve the minutes as corrected; hearing no objection the motion carried: **VOTE: 5-0**

Agenda Item No. 2 2017 Legislative Session

1:19 Chair Ramfjord Gail Meyer, 2017 Legislative Session update.

1:25 G. Meyer Thank you mister Chair. Do I understand that there are three of us up here right now, or did you want to hear from me first?

1:33 Chair Ramfjord You were the first up but Eric and Amy can go ahead and come on up.

1:39 G. Meyer Let's have Eric and Amy up here. Then, by way of just understanding a little bit of time reference here, I was asking for some guidance from Nancy. She thought maybe the three of us can give our comments within 30 minutes, that would be good. Does that sound right?

1:54 N. Cozine If I could jump in just ever so quickly, you may recall at our last meeting we were talking about taking on another deputy general counsel to help with legislative session and Eric was present by phone at that meeting but he was not present in person and in the role of deputy general counsel at OPDS. I just wanted to quickly introduce Eric.

2:13 Chair Ramfjord Thank you and welcome Eric.

2:15 E. Deitrick Thank you very much, hello.

2:16 J. Potter Good to see you.

2:17 E. Deitrick Thank you John.

2:20 G. Meyer So I actually cued up on my phone here so we have 30 minutes, start and go. Hello members of the Commission, I am Gail Meyer. I am the legislative representative for the Criminal Defense Lawyers Association. I am very happy to be here. I think the Commission might not know that I have given notice that this will be my last session and so the board of OCDLA has arranged to have my hopeful successor be at the session with me and her name

is Mary Sell. It is a great portfolio background that she brings to the table. She has been a practitioner in Roseburg, Douglas County for about four years. She did juvenile dependency and delinquency there, a range of criminal. She went to Hillsboro, she was there for a bit and then she was at Metropolitan Public Defenders. She is co-lobbying with me. We have been pal-ing around this whole month. We agreed she should stay home today and get her to-do list done. In any event, it is going to be a good session because I will have a colleague with me and presumably we will have twice as much engine power. Just by way of a big overview, people ask me all the time what does the national election portend for the dynamics for the capital building here in Salem? I have been turning around and asking people that very same question. We all end up with the same answer; nobody really knows but probably not much. Oregon is still Oregon and the dynamics still look and feel the same. It was a game changer to have the secretary of state flip over to a republican. That is the first statewide elected republican for a while, but that doesn't really affect the public safety wheelhouse. In terms of leadership in the building, the leadership is still the same. The caucuses re-voted their same old leaders. The only vote count that switched was on the senate. The democrats lost one member and it flipped over to republican but we have met with that member, that republican member, and actually he is very sympathetic person. He had a long time trusted employee get caught up on a Measure 11, got indicted by the grand jury only to have the DA turn around later and dismiss the charges because they didn't have all the evidence. He actually isn't going to be that bad for us. To some extent this feels like de-ja-vu all over again. The only big switch may be, and it's not that big, the co-chairs of Ways and Means instead of having Peter Buckley, we now have Nancy Nathanson, but Richard Devlin is back as co-chair on the senate side. The configurations of the committees, the House Judiciary Committee and the Senate Judiciary Committee, those have changed. Those have new members. House Judiciary Committee has gone from nine members to eleven and the reason is a lot of people asked for the committee. So, a lot of new incoming blood there on both sides, that and the senate side. My sense of it so far is that pretty much everything will feel the same when everything starts to settle out. The senate will be more favorable to us, the house is going to be a harder gauntlet to run up. There are a lot of law enforcement voices on there but it doesn't mean that we are not ultimately going to be able to succeed and have some good success.

What I would like to share with you are the priorities for OCDLA for the session. OCDLA does have a legislative committee. I just want to praise them every chance I can. They are some of the hardest working people I know. We had a day-long meeting in Salem on Tuesday. 1,500 bills have dropped in pre-session filing. We are tracking 300 of those. Mary and I had to go through those 300 and triage which ones we felt were most viable and urgent for the committee to address. That was our day-long meeting. The committee gives me my instructions on what bills I am supposed to introduce, lobby and see what gets passed. That is what is on this green sheet of paper. You will see up

there the grand jury recording bill. It's going to again come in on the senate side. I predict easily it is going to be de-ja-vu all over again. It's going to get out of committee, it's going to go down to ways and means and it is going to sit and that is where the politics happen from there. The fight is over whether or not Oregon should convert to a hearsay state. The DA's are saying that if you record the grand jury verbatim and you give a record to the defense lawyer then what we have to do in Oregon is convert to a hearsay state and allow for an indictment to be issued solely on hearsay similar to the federal system. California is a hearsay state. Luckily for us our neighbors are not so we are trying to replicate procedures from Idaho, Alaska and other neighboring states where they get their fact witnesses in there, they are under oath in the grand jury, the defense lawyer presumptively gets a copy of the record and that is just part of discovery. We are trying to get there but it is going to be a big fight. It is going to be hearsay, it is going to be fiscal and that is probably the big push.

The other thing we are doing thanks to your Honor Betsy Welch putting this on our focus a long time ago, we do have this bill now that flat out prohibits a juvenile from waiving counsel in a juvenile delinquency proceeding. So, in order to shave down costs, what the bill says is that any delinquency proceeding in open court, so this would be misdemeanors, felonies, probation violations, the youth cannot waive counsel. Period. Then, on the formal accountability side of things, about 98% of those are without counsel, so that would've been a huge fiscal were we to mandate appointment of counsel for formal accountability agreements. Instead the bill reads, 'they may waive counsel but only after being advised to the right to counsel in writing and they have signed a waiver.' On the proceeding side, thanks to Amy Miller, she did a lot of background along with others at OPDS to figure out that data. In 2015 it looks like there were about 100 cases scattered throughout the state where juveniles were resolving delinquency proceedings upon waiver. That will not have that big of a fiscal by the time this bill gets down to ways and means and so, gee what do you know, maybe that will be one that will get through. This is the 50th anniversary of In re Gault, so it is timely that this bill be heard, considered and passed. I am going to gloss over the next one, 2615, it can get a little technical, it is a hard bill to lobby. Let me just say this, we are correcting something in the theft statutes so that the DA's are no longer capable of charging little incidental shoplifting charges as C-felonies. It is a complicated story but the bottom line is some enterprising DDA realized 'shoot, I can charge this instore return of merchandise as a c-felony even though the dollar value of the item is less than \$50.' So, we would go in and foreclose that and cut that one out. Senate bill 521, fees for copies of cost of discovery, I know you have had these conversations with Nancy before. There is no provision in our laws relating to if the DA's can charge for cost of discovery and if they can by what amount and by what unit of charge, is this per page, per CD? All 36 electeds do it differently. The bill right now says you flat out can't charge a fee period which of course has the DA's catatonic

because they are considering that an unfunded mandate to which I say we have had an unfunded mandate because we have to redact discovery and nobody has ever reimbursed providers for that. Bottom line, I have been told that this will probably detour off the rails into a work group to be considered during the interim session. There is just so much that is variance from county practice to county practice. We probably won't be able to figure that out during session but it is a good one to put on the radar and that is what that bill does.

Senate bill 497 is just a little teeny technical fix. The bottom line is our expungement statutes relate to records of an arrest or of a conviction. If you are sighted to appear in the field, by law that is not an arrest. So, that person with a citation comes to court, there is no charge, they have dismissed it so there is no case. So, there is a record of this citation that shows up on their criminal history but you can't get it expunged because it is not an arrest, so we just go in and tighten that up. 2640, the material witness one, this is one we filed last minute, it is a long history and I am not going to get into it because I have got to turn this over to my colleagues here. Bottom line is this, we have had some horrific examples of the abuse of the material witness warrant in Washington County of late. If you recall four years ago, they detained a material witness on a murder case for over 900 days on an aggravated murder. He happened to be the father of one of the defendants. More recently, they detained the crime victim of a custodial rape. She had been an inmate at Coffee Creek, had gotten into a relationship sexually with a corrections officer. By law that is a rape, by law she can't consent. By the time she got out and they prosecuted him, he was out on bail and they detained her. So the rape victim was in jail as a material witness and the defendant was out. This bill, the material witness warrant bill, adopts what other states do, they have a time limit on how long you can detain a material witness. If that material witness cooperates with a perpetuation deposition they get out and there are usually temporal time limits on that. They can't be held more than ten days, thirty days, whatever it might look like. We don't have a temporal limitation. It imposes one and says if they cooperate with a perpetuation deposition they can get out. Then, we decided to throw this out there to have the conversation, you can't detain a crime victim as a material witness. Boom. I think I am done.

12:51 E. Deitrick

Chair Ramfjord, members of the Commission, in this new job I am tasked with tracking legislation as it may affect our agency and our fiscal impact. So, we have been doing that and I just wanted to, as a part of this meeting, get you up to speed on some of the bills that will be part of the conversation this session in some way in the building because the conversations that happen around these are going to affect the way that everything is viewed. The bills that Gail has summarized, I won't go into those. I want to talk about some of the big picture bills that are coming up this session. House bill 2238 comes from the Governor's office and this would reduce simple drug possession

statewide to a misdemeanor rather than a felony. This kind of arises from the Criminal Justice Commission's review of PCS convictions statewide that show that there is a racial disparity in PCS convictions. About 2,000 new felons are created each year for simple drug possession cases, 6-7,000 convictions statewide. So that is a part of the governor's bill. It also re-establishes a task force on public safety which was sun-setting. They were tasked with overseeing justice reinvestment. This would reauthorize the task force and also, aside from reviewing and tracking justice reinvestment, have them study pretrial incarceration and the effects of fines and fees on those in the criminal justice system. House bill 2355 comes from the Attorney General's office and again it is kind of a bigger broad bill trailing on behalf of the profiling bill that happened in the legislature in 2015. It picks up where that bill left off. The Attorney General's task force that met to study profiling statewide had some recommendations that this bill would authorize going forward. It requires law enforcement agencies around the state to gather and track both pedestrian and traffic data for the race and other criteria of those who come into contact with law enforcement. It requires those agencies to turn that over to the Criminal Justice Commission and it tasks the Criminal Justice Commission with reviewing that data and making reports to the legislature and other public safety agencies in 2020. It gives them a few years to get up to speed on it. That bill would also reduce simple drug possessions statewide to a misdemeanor rather than a class C or class B felony. Those are kind of the big picture bills arising from racial disparity.

Another conversation I expect to happen this session will be around human trafficking. There are at least six or seven bills dealing with human trafficking and I included a couple in my bill list that I submitted. Two that stood out that I wanted to highlight for you all are senate bill 249 and senate bill 250. It is kind of this recognition that one party in the prostitution contract may be less culpable than the other and so senate bill 249 allows certain people to file a motion after the fact to vacate their convictions for prostitution if they can establish that they were a victim of human sex trafficking around the time when the event occurred and that would allow them to attack past convictions. Presently, senate bill 250 would create an affirmative defense in cases of prostitution where the person if they could establish they were a victim of human sex trafficking would be not guilty under the statute. Another area, and Gail and I were just doing a meeting on this the other day, is the intersection of mental health and criminal courts in aid and assist competency determinations and this arises because the state hospital, I think the number was about 40% of the people in the state hospital are there not for civil commitments and not for GEI but for their lack of capacity to participate in their defense in their criminal case. This has been a growing problem over the last six to seven years. There have been previous work groups that I have worked on addressing this issue. There is going to be another host of bills around how do we get people out of jails with mental health issues and get them through this process quicker and more effectively and how we

streamline that process. House bill 2306 kind of allows for sharing of information between the hospital and the various agencies. House bill 2309 authorizes rule making authority to streamline the progress reports that are shared between the hospital and the courts. House bill 2631 is an attempt to again get people out of jail and into treatment more quickly. So there is a tight two week time window between when the court orders a fitness to proceed evaluation that that get done in within two weeks and the finding by the court about whether they are fit or unfit occur within two weeks and they actually have to get that defendant either to the hospital for treatment or out on conditional release within seven days thereafter.

Senate bill 132 comes from the attorney general's office and this is a shoe horning of various concepts relating to mental health. There is a due process right to have competency whether you are facing a criminal charge or a probation violation, our statute doesn't address the issue of whether you have to have competency for a probation violation. This bill would clarify that and say, 'yes, on a probation violation or a contempt allegation the fitness to proceed procedures would apply.' It would also preclude you from going to the state hospital for restorative services to be made fit to proceed unless it was an A-misdemeanor. The thought here is again, some of these lower level misdemeanor offenses B and C misdemeanors, when people are going to the state hospital for treatment to get them able to face a prosecution for a B or C misdemeanor may not be the best use of resources. Another thing the bill does is it codifies the involuntary medication concept that currently is the Sell test, it puts that into statute and defines when a person can be involuntarily medicated. Another area of offenses and just in general issues that I think we are going to see conversations about, we saw it last session with the statute of limitations bill with sex offenses in general. I know that house bill 2021 comes from Senator Courtney and Representative Barker and it would create a new life sentence with the possibility of parole after 20 years for certain sexual offenses; rape I, sodomy I, unlawful sexual penetration I. There would be basically a sentencing hearing after the trial where the government, if they provide proper notice, if they prove that the person had psychopathic features, that there is a substantial probability that they would reoffend and that they should receive a life sentence for that. That is one bill I expect to be talked about. Another one is house bill 2602 which I know Gail worked on and this was sort of cleaning up the sex abuse statute for certain vagueness concepts that existed within it. I know she has done a good job educating legislators over the last couple of years that there is a vagueness problem to what sexual contact could mean and this picks out specific locations that where touching would occur and makes it clear what those apply to. There is going to be a conversation about youth in OYA who committed offenses when they were juveniles and whether they should go into DOC custody after the age of 25. Representative Greenlick has a bill that would authorize a second look hearing when the person turns 24 if they file a notice that they want such a hearing. There would be a procedure in place for the youth or that person at that time

who was a youth when they offended to establish by clear and convincing evidence that they are rehabilitated and should not go into DOC custody, but should be conditionally released. There is going to be a discussion about distracted driving this session and that is largely a result of the work of this office that won an appellate case. A DUI conviction was overturned because the traffic stop initiated with someone holding a cellphone in their hand and a light emitting from it. The current mobile communication device statute requires that there be evidence that you are using the phone. The Court of Appeals said that holding the phone with the light on wasn't sufficient probable cause that the person was using the phone. There is, I think, an acknowledgement that with distracted driving in general the health and danger associated with it, they are going to fix the statute. The question is what the penalty should be. House bill 2597 establishes fines for that behavior and authorizes certain distracted driving courses to avoid the fines. Senator Courtney's bill treats distracted driving as a DUI and it creates mandatory jail sentences and mandatory fines and a felony for the third offense in ten years if you commit distracted driving. So, some conversation is going to occur about what the appropriate penalty should be for that. House bill 2561 directly affects this Commission and our office which is from Representative Williamson and that bill would amend chapter 151 and require this Commission to establish policies and plans for compensating counsel fairly and at a rate on par with the local DDA in that county and it requires the executive director of OPDS to enter into contracts to compensate attorneys and their staff on par with the local DDA in that county. That is all I had. There is one bill and I don't have the number but it would prohibit driving a car with a dog in your lap which was my favorite that I wanted informed about. Thank you.

24:02 Chair Ramfjord Just curious on the likelihood of success of some of these or what your prospects are with the likelihood of success of some of these bills. Obviously 2561 would be wonderful but I don't know what kind of level of support, that is the bill on payment. I am also just curious about the first two broad, what do you see as the likelihood of success there?

24:23 E. Deitrick In terms of the first two broad packages, and I will have Gail chime in if she wants, I do expect that the relating to clause in both of those bills allows certain concepts in each to work with the other. I do think that there is going to be a conversation about drug policy and how we treat that. Where that settles I don't think is determined yet but I do think there are concerted efforts by a lot of people in public safety, chiefs of police, the sheriffs have all come out saying they want to change the approach to how we prosecute drug offenses in Oregon and that was a pretty unique position to take. So, given that they have taken that position and the attorney general has taken that position I know that that conversation will happen.

25:06 G. Meyer Although, the DA's oppose it and they are opposing it with fervor.

25:18 E. Deitrick The profiling piece I think is very important to the speaker and I am fairly confident that is going to get done. In terms of 2561 I think, it's interesting. I worked in the legislature in 2015 and you sense the building is kind of guided by a vibe and I feel like the vibe that session was Fergusson and I feel like all the public safety bills that came through were viewed through that lens of transparency and police accountability. I do think the big vibe this session is going to be the budget. It is going to be a different dynamic. All of these public safety bills are going to be looked at different than they were in 2015. I hope that answers your question.

26:15 A. Miller Chair Ramfjord, Vice Chair Potter, Amy Miller. I just have a couple of bills to talk about too. House bill 2345, which is the bill that came from the Governor's Task Force on Dependency Representation, I detailed a little more about it but regarding PDSC it requires PDSC to develop and maintain a PCRCP like model with workload models, caseload limits, access to social services professionals and program managers and sets out implementation for that. It does have a quality assurance component that would be housed over at OJD. A big piece of this that I didn't talk about too much in here is the attorney general representation of DHS. That piece is fragmented. In some counties the district attorney is present with a case worker. In some counties the AG represents DHS. It is a bit inconsistent across the state. One of the main roles of the task force was to come up with a recommendation on how to handle that. What the Department of Justice has agreed to is to provide sort of soup to nuts representation of the agency for a flat fee under sort of a block grant type model. Currently they bill at a \$175 an hour and that puts DHS in this position of having to decide sometimes what is most important in a case. It is very challenging for them with legal representation costs. That is a piece of this too. That piece is a priority POP for DHS and it is included in the governor's budget. I met with the governor's policy advisor this week. She is very supportive of this bill and this concept and hopeful that it will continue. Certainly, the work of the task force was excellent and unparalleled and really resulted in a compromise that people have been searching for, for probably decades. Gail talked already about 2616, the waiver bill. I thought it was so interesting; we have finally gotten access to eCourt data. So, Rachel and I were finally able to pull down delinquency cases over the past year and we looked up every single case where a lawyer wasn't appointed to see whether or not the youth waived or what happened. I can say with some confidence that the waiver rate in felony cases is one percent, on misdemeanor cases it is four percent. PV's are the big question. I think it is much higher on those and it is not easily tracked in the eCourt system. I think it is nice to know where we are and I can present more information county by county at a later date if you are interested in where this is occurring. But, I thought that was interesting.

- 28:53 G. Meyer It seems to be a practice, Judge, that has waned. It is not as prevalent it seems as it used to be.
- 28:57 J. Welch I am wondering how much the big counties store the data.
- 29:02 A. Miller I can present it county by county and also felony versus misdemeanor. We have all sorts of sliced and diced snapshots. Senate bill 501, a very similar bill, was introduced in 2015 about appointment of counsel for people in protective proceedings, both the protected person and the respondent in those cases. That also comes out of years of task forces. That bill is back this year and it would require payment by PDSC, create this right to court appointed counsel and require payment by PDSC. It is much different that the rest of the work that we do. It is civil cases, it is a different procedure all the way around. I did a lot of research on it the last time around, but we are tracking that obviously. Then, I wanted to call out senate bill yet LC3129. You have heard me talk about shackling for quite some time and it is something that Judge Welch has worked on as well. We had a hearing on that issue back in May. It was a pretty convincing hearing. Judge Welch was present. Mark McKechnie testified as well but we had no bill vehicle. We presented all of this information to the legislature and then left it there. In the meantime Senator Gelser had been down watching court in Albany and talked to a reporter and she was quoted in the paper about watching a youth being shackled and that was this summer. So, I reached out to her and said, 'hey, do you remember that hearing? What are you thinking about here?' So, she is putting forth a bill that is related to shackling. It basically codifies the Millican decision and prohibits shackling unless there is an immediate and serious risk and it requires an individualized determination in court. Interestingly, the other thing it does is it prohibits shackling of youth by the Department of Human Services. She talked about a particular story where there was a developmentally delayed youth in Deschutes County that needed to be transported over the mountains to the farm home down by Corvallis and how really early in the morning without telling this person and without feeding them breakfast or given a chance to shower, they were picked up from their foster home, shackled, and driven over the mountains. This was not a delinquent youth. This was a victim of abuse and neglect. So, she wanted to prohibit that behavior. So, that is also within that bill. We met with her, Mark, Gail and Mary and I and the juvenile department met with her yesterday and so she has got a little bit more wordsmithing to do on the bill but will be filing it soon. That is all I have.
- 31:30 Chair Ramfjord Thank you.
- 31:32 J. Potter I have a quick question for Eric. On house bill 2021, that defines sexually violent offenders, is this going to mirror a death penalty case now?
- 31:41 E. Deitrick It is very similar in concept.

31:43 J. Potter So, it is going to make these cases a bit more complicated from the defense perspective.

31:46 E. Deitrick It is a lot more expensive, a lot more complicated and it also has a whole other jury trial component that would also codify another ten-two jury decision.

32:02 Chair Ramfjord Are the economic consequences of that in this budget cycle something that you think will have a negative effect on the likelihood of passage?

32:15 G. Meyer Chair Ramfjord, I am not even sure it is going to get out of committee. We are working with Jeff Ellis on the future dangerousness issue because what it's doing is it is importing future dangerousness from the capital murder side, which is subject to huge criticism, and so we are getting the forensic experts lined up and other advocacy associations like the Psychologists Associations on board. Nobody really quite frankly knows the problem that needs to be fixed. This would apply to first time convictions, so these are not repeat offenders. This would be something the DA could file an enhancement on...

32:54 Chair Ramfjord and get a conviction.

32:57 G. Meyer presumptively for life.

33:01 J. Potter It strikes me that there is even a tinge of that in the bill you just talked about from Gelsner where you've got a serious risk of dangerous or disruptive behavior as a quasi-future dangerousness issue too and there is going to be a separate proceeding to determine that.

33:14 A. Miller There is, and that is the case law regarding that issue. But, yeah.

33:22 Chair Ramfjord Other questions?

33:23 G. Meyer Can I just say something? It's a good thing to talk about common themes. There are a few bills that are coming that really raise the common theme of youth are different from adults. They are not legally consensual beings. We don't let them sign contracts for a reason and they can't consent to sex and all that good stuff. There are a few bills that are going to come forth now that highlight that in the context of juvenile adjudications. So, there is our waiver bill but then behind that comes a suite of bills filed by Representative Chris Gorsek. He is on the house judiciary committee. One is going to be a Miranda waiver bill, youth cannot waive Miranda until they consult with counsel. If that doesn't survive, which you can imagine in a committee with law enforcement it may not, there are the two that come in right behind it. If you are interrogating a youth in custody you have to record. So, our recording mandate now applies to adults on Measure 11 cases. This would be youth charged with person crimes, you have to record. Then, the third bill is the one

that is attracting a lot of interest from national advocacy folks; when you interrogate youth you may not use trickery, artifice, or deceit; you cannot make an express or implied promise of leniency or about their benefit in exchange for giving an incriminating statement. We are talking to the folks that are representing Brendan Dassey and Making of a Murderer and all that, they love this bill. They say if you get it right it could actually start making an impact nationally. Those will be coming but it is all part of this theme that we really can't treat kids the same way as we do adults, and you can't subject them to the third degree.

35:08 J. Welch It is hard to keep my mouth shut. The whole last point, which is exciting, most significant, it is one thing to confess to the police if you have a lawyer afterwards presumably the lawyer can at least attempt to deal with that. But, so much of what goes on in the juvenile system is probation officers, for lack of a better term, convincing kids that it is in their interest not to fiddle around with all this legal stuff and just go home now and so forth. I just wish it were a little broader in its approach but that is much more complicated to address.

35:57 G. Meyer I think I need to schedule some time with you to preview all these bills with you. Basically, what it says then when the police are interviewing a youth you ask questions and you get answers but you are not drilling down for the purpose of getting a confession. So it calls into question the whole Reid technique of interrogation. Many countries, Canada and the UK, they think interrogation violates human right. You can ask them a question and their answer is an answer but you're not using trickery and you are not belittling the consequences of the severity of the conduct or anything like that. You are not trying to trick them into making statements and confessions. That will be an interesting conversation. It might take more than one session. The good news about Gorsek's bills is there is no fiscal. There is a fiscal on the Miranda bill but there wouldn't be a fiscal on these interrogation bills, it is just procedure. Those are the ones that might be able to move forward really in this climate.

37:11 Chair Ramfjord Thank you, very much.

Agenda Item No. 3 PDSC Annual Report

37:20 Chair Ramfjord Nancy, next item up, the annual report.

37:25 N. Cozine Thank you Chair Ramfjord, members of the Commission, I did also want to quickly mention on the legislative side that of course our agency will not only be tracking the substantive bills related to criminal and juvenile law but also sort of the agency government bills. Paul is helping a lot with that and Cynthia Gregory is also looking at the HR related bills. There is really quite a bit to track during these legislative sessions and certainly the budget climate will dictate much of what happens and doesn't happen. Turning then, to the PDSC Annual Report which is attachment three, hopefully you have read it. You will

see that we made an effort this time to step away from our traditional approach of just words to highlight some of the volume of the work that we do and put it in context with the staffing that we have. I won't go through each page of the report. I welcome any suggested edits. It really is still in draft form. We haven't published it to our website yet but really, I think, as we were putting this together what struck me was that we are an awfully busy office. No matter what section of this office you look at, the leaders in those areas are working with their team and creating a lot of really good outcomes on the whole. At times, I think we struggle because the volume is so significant and the consequences of not doing good work are also significant. But, the work gets done. It gets done well. You can see on the appellate side there are a really high number of cases going to the Court of Appeals and to the Supreme Court. We are getting very good opinions. You will hear more from Ernie a little bit later. And, of course, contract and financial services addressed an incredible number of billings and NRE requests every year and our contract analysts are managing well over a hundred contracts. I welcome any questions that you have. I hope that this gave you a good perspective on what our annual workload is. I also wanted to mention our Community Contributions page because it highlights four things that this office does every year, actually the green team is a new one, but where we also try to give back to the community as members of a state agency. Those are always galvanizing and satisfying. The food drive is coming up again. We will be doing that in February and looking forward to it. On the back of that page is the Looking Forward, Challenges for 2017 and the conclusion and as we have hinted at all day and will continue to do so, the major challenge will be budget. I welcome questions and feedback, edits.

- 40:45 J. Potter With your green team you say 'with any luck and a little more work, OPDS will be certified as a green law firm.'
- 40:51 N. Cozine Yes, it's true.
- 40:53 J. Potter What do you have to do to get there?
- 40:56 N. Cozine Where is our green team leader when you need her? I want to say it's the Oregon State Bar that published the criteria that allows you to be established as a green law office and there are specific criteria. So, we have been meeting and actually working through that to make sure that we are hitting the mark. We are not quite there yet, but very close.
- 41:22 J. Potter I like the layout myself, just for readability it is much better than in the past.
- 41:28 Chair Ramfjord I agree with that too and I think that some of the statistics that you have are really impressive and they just jump right off the page and are very effective.
- 41:36 N. Cozine Thank you.

- 41:38 J. Welch Maybe I missed something, on page 12, the diversity discussion, I decided to look at that and I can't tell which line is which. It doesn't seem to say anywhere which the light gray and which the dark gray is.
- 41:55 J. Potter At the very bottom.
- 41:56 N. Cozine OPDS Demographics.
- 41:58 J. Welch There it is, it's the old eyes. Sorry.
- 42:02 N. Cozine So, we have some work to do. The interesting thing is if you look at law it is pretty bad in Oregon. I think there is work we can do including, in my own view, inspiring our young students, our high school students in our own schools to stay here in Oregon and to join the practice of law. I will be visiting Jefferson High School later this month with that message.
- 42:48 Chair Ramfjord Alright, thank you very much.

Agenda Item No. 4 Parent Child Representation Program: Annual Report

- 42:57 Chair Ramfjord Amy, you want to go ahead and talk about the child representation report?
- 43:04 A. Miller Chair Ramfjord, Vice Chair Potter, Amy Miller. I am here to talk a little about the PCRCP report. I first want to acknowledge Cecily Warren and Rachel Woods in our office for their assistance in pulling this together. It is a big job to gather all of this data. Rachel's attention to detail is impeccable and she really helped me come through it. I think, in summary, this report is a strong endorsement of the PCRCP type model of legal representation. Before I go into notable observations I just want to give you a little background as to how this report came into being and how I intend to use it. When we received funding back in 2013 to improve the quality of representation in these cases we were instructed that we had to be able to demonstrate results. This thing continues and if anything it is louder now that it was even then. Over the past year I have spoken with many elected officials and stakeholders about this program and we receive, I think, overwhelming interest and support. But, with the comments they want to make sure we are doing a couple of things. One is measuring results and being able to track what we are doing and see if we are improving or not and the other piece of it is ensuring that attorneys are being monitored and held accountable for the quality of their work. We are not asking people to invest resources without showing some improved practice. I think that is why this model is appealing. This report, I talked about this a little last year because this is the second report, but this is just a reminder that the ABA Center on Children and the Law has published indicators of success for parent representation programs. So, they provided a guide, a road map on things you should be measuring to see if your parent representation program is

effective. Most of their measures are also in this report so I didn't make this up myself. They prioritize four measures which are contained in the report; caseloads, access to multidisciplinary staff, out of court representation which is time spent with clients, attending meetings and communication with other stakeholders, and then decreased time to safe permanency. Since the ABA issued their report, the University of Chicago's Chapin Hall issued something similar for the quality representation of children. So, I think it is interesting now that there is this movement not only around parent representation but also about improving the quality of child representation. The Chapin Hall evaluation uses many of the same indicators that are contained in this report. As you know, I am a lawyer and I may be an engineer but I am no statistician. So, I do need to let you know that this report is not in any way a causation based report. I am not alleging an association that is statistically significant. It is my observational data, but until we have a thorough evaluation that can sort of isolate out factors I can't say a whole lot more than that. In my sense, from pulling this report together, I think there are four noteworthy observations. The first is around the competency of legal representation you can see that the lawyers in these cases regularly use investigators and experts. I don't want to allege that the use of investigators and experts makes a lawyer competent or not but I think it is indicative of the preparation and the work that is done to develop a theory of a case and proceed. In this program the lawyers have access to case managers and social services professionals and that is a big piece. We do a client satisfaction survey and 95% of the clients that we have been able to contact report being satisfied or very satisfied. And, the lawyers themselves spend an average of 27% of their time with clients. They are investing time with their clients. In addition to competent legal representation you can also see that the report points to expedited permanency. One of the things that we are looking at is not only reunification – kids going home – but kids getting out of the system into some sort of permanent placement. So, the metric I use is permanency in 24 months and that is a DHS metric. Before the PCRCP, both Linn and Yamhill had rates of expedited permanency below the statewide average. Since the PCRCP and almost on a dime you can see that it starts to climb. Now, with the PCRCP, 72% of kids have achieved permanency in 24 months compared to statewide at about 64%. That is a positive. I also look a lot at reunification. You can see the percentage of children reunifying with family. For the two years prior to the PCRCP, children were reunifying with family in the PCRCP counties were going down. Kids were less frequently being reunified with family. Since the PCRCP, those numbers are trending up. Over the last year in the PCRCP counties the percentage of children leaving foster care for reunification increased by 12%, it is now at 68% overall. The statewide rate increased a tiny bit as well, it is now at 63% overall. Something I do want to point out, because I get asked by legislators is, kids are going home but are they staying home and is it safe? I measured that as well. In the PCRCP counties the rate of re-removal is lower there than it is across the state and I think that speaks probably to strength of representation of children in particular. Reduction in the use of foster care beds, you can see there is a little

chart right at the beginning. You can see this graph on page five. Here is the average in the PCRCP counties; the foster care population has gone down by over 15% three years in a row. The statewide average dropped down a little in 2014, it is almost flat in 2015 and it has crept up a little bit in 2016. That is all positive information.

You may notice, and I talk about it in here, that Columbia County isn't included because we only have 6 months of data on that county. But, even there, there are some incremental improvements that you can see and I am hopeful that they will be bigger next year. Their time to reunification has also decreased a little. Their rate of permanency within 24 months has increased. I plan to use this report to of course say thank you to these attorneys and stakeholders in those counties but also to look at opportunities for increased improvement going forward. So, there is work to do in Columbia County. I think another big question mark is months to achieve adoption. That takes a lot longer in these counties than the statewide average. If you break that out into the time to termination of parental rights and the time to achieve adoption post that, that time in the PCRCP counties is very short. I think that points to lawyers for children putting pressure on DHS. This first piece though, is very long. I am guessing that it also points to lawyers for children doing what they need to do at this critical stage. That is one of the things we will be looking into. I think, in summary, this report just like last year's report is a strong endorsement of moving forward with this model. I want to say I appreciate the support of you because when this first started I think we all wondered where this would go and I feel pretty satisfied that it is continuing to move in the right direction. It was, as you know, recommended for statewide implementation by the Governor's Task Force on Dependency Representation which was the who is who of people who do this work and they spent a year studying this. It really, because it was both cost effective and tied to positive outcomes, in summary I think it is really bright spot. I am sure you read a lot, as do I, about the challenges in the child welfare system and this is one of the ways where our lawyers can play a huge role in holding the agency accountable in increasing the efficiency and effectiveness of these cases and in the meantime having positive outcomes for their clients. Questions? Comments?

51:20 J. Potter

So, the cost effectiveness is a systemic cost effectiveness? Is that what the argument is? It is not necessarily the cost effectiveness for this agency because it may cost more for the lawyers in those cases and the experts and the investigators, but it is saving the system money?

51:37 A. Miller

I think there is that argument and then there is also when I mentioned it in terms of the governor's task force they looked at different models and what those models could deliver and the relative cost of those. This model could deliver fairly good promising results for a relative cost less than say an FTE model which is much more expensive. So, it was a balance.

52:00 J. Welch The chart on page five is all you need. It is wonderful. I have a kind of snarky little point that I am wondering about. Listening to all of this and having read this with great enthusiasm and interest, one of the main variables historically in regard to achieving permanency is whether the children that are adopted are adopted by their prior care takers – foster parents or family members. That isn't here and that is not a criticism but I am wondering if that isn't something to be looked at. The issue there, for those of you who are not initiated in this, is I will give you an example of a case I heard many years ago where the foster parents wanted to adopt kiddo and the agency said, 'no you can't, you were good enough to be foster parents but not good enough to adopt this kid who has lived with you for five years.' This is very troublesome. I am not saying it is black and white or an easy thing, but if they are not good enough to adopt the children that have become totally integrated into their family then they shouldn't be the foster parent in the first place. It is such a fundamental issue about understanding that this isn't about saving money, this is about saving people and the trauma of children going through repeated removal from people they are attached to even though they may not have very good taste in who they attach to.

53:49 A. Miller You are absolutely right. The DHS data, I can slice and dice it in some ways. I can look at age, I can look at gender, I can look at whether they are adopted into family homes. That is one of the things I am going to parse out and try and figure out these timelines. That is harder to pin down. Mark, did you have a comment?

54:10 M. McKechnie I have a comment that we made a statutory change in 2015 that addresses that exact issue. DHS had a rule that, starting in 2010, would require them to consider only relatives and that led to circumstances where they were looking at relatives who had never met the child over current care takers who had the child in their home for years and we put it in statute that DHS has to prioritize both of those groups over strangers.

54:41 A. Miller They are on equal footing.

54:42 M. McKechnie Basically, DHS now has to consider relatives and current care takers first before they look elsewhere. But, that just went into effect.

54:53 J. Welch That is a piece of it. The issue is how long it takes to get any of this done. Thank you. It's wonderful.

55:03 Chair Ramfjord Any questions or comments?

55:08 A. Miller Okay, I am happy to answer them later. Thank you.

Agenda Item No. 5 Ranking of Policy Option Packages

55:22 Chair Ramfjord Next up, policy option packages. In light of our current budget crisis, Nancy.

55:39 N. Cozine Thank you Chair Ramfjord, members of the Commission, you have in front of you the handout that is our snazzy one pager that we intend to use during the legislative session that we will need to amend if you follow the recommendations that I am going to give you. Of course, that is up to you and you will likely want to hear from providers as well. In your packet attachment five is a more detailed version of our policy option packages and this is the structure and format that you looked at when you initially approved them. You have heard already several times that our state budget environment is remarkably challenging. We are looking at a \$1.8 billion dollar budget deficit and the Governor's budget cut all judicial branch agencies by 4%. The co-chairs all-cuts framework budget cut public defense by about 3.5%, and if you apply either of those cuts to this agency in any quadrant it will create challenges for us. As you have heard over the years we are already funded at a level that is relatively low compared to other state agencies. With that background, I am very hopeful that we can maintain our current service level without a cut. I think even that is a stretch, or I understand that it is a stretch. With that in mind it becomes pretty imperative that we look again at our policy option packages. When these were adopted we were really told, 'put in what you need, we don't know what the budget is going to look like, be prepared for what the future holds.' Now that we know, each of our packages needs to be modified or potentially withdrawn. The highlighted portions in your packet are those pieces that in my estimation are essential and must remain. Policy option package 100 is expansion of the Parent Child Representation Program. My recommendation is that that package be reduced to approximately one third of what it was so that it has about a third of the caseload covered plus the staffing necessary to get that third done which would take, in the current draft you see there, three PCRCP attorney managers would be taken down to one attorney manager. It would clearly significantly reduce that request. On policy option package 101 I would recommend that we reduce that request also by one third. As you know, we still have contractors in this state who are making 50% of what prosecutors are making. It is important that we continue to talk about this and continue to try and make headway on pay parity for public defenders across the state and public defense providers. I think my using the term 'public defender' it may imply that it is just those who are in non-profit offices and this package is drafted that it would reach all of our contractors, both contract and hourly rate providers.

Moving down then, to package 102, you will see that it is not highlighted. That is the statewide case management system. My recommendation for right now is that we withdraw that package entirely. We are still in the configuration process of the case management system that will be used in the Parent Child Representation Program counties and we know from that process and from our own juvenile appellate section process that the configuration

stage is long. With the reduction in budget we think we ought to keep focused on configuration and delay this package, withdraw for this session. This package would cover the user licenses and that would be something that we can push off until next biennium as a package. My recommendation is that 102 is withdrawn entirely. Package number 105 is the Professional Services Account budget shortfall. That package reflects a recurring problem and I recommend that it remain as a package request. You may recall that pretty much every single biennium as we get to the end there is a budget shortfall. We go to the Emergency Board, we get supplemental funding to cover that shortfall. At the time that we have made that request, the request for the next biennium has already been developed. So, every single time that little piece that we get at the end is not built into the next session's budget. So, we have this repeating problem. This package is intended to close that gap and stop that recurring cycle. My view, it is important that we do that. If we don't do it, it is likely that we will have to go to the Emergency Board and ask for late funding which doesn't benefit anyone.

Moving down to package 103, this is the employee compensation here at OPDS. You will recall that you approved a package that brings our staff to within 10% of other state agencies. My recommendation at this point is that we withdraw that package entirely. I have had communications with the represented, the Union AFSCME, and they are in agreement with this recommendation at this time. Clearly, it is something that we want to keep on the radar. We want to keep it part of our discussions, but in terms of actually asking for funding, I think it is important at this time to withdraw that package. Then, you have package 104 which is the PCRCP Staffing and Quality Assurance. Our recommendation there is that we continue with the research analyst position which is both PCRCP and quality assurance research as well as the deputy general counsel position to help us continue to pursue our quality assurance efforts across the state, withdrawing only then the portion that is the juvenile delinquency appeals portion. We had really hoped to add a lawyer position here at OPDS to help with handling the volume of delinquency appeals. We are seeing an increase and it is hard to find panel attorneys. But, we have been doing some work and will continue to do some work and continue to diddle out that panel and we feel like we can make it through the next biennium using that strategy. That is the overview and I am very happy to answer questions on each of the packages individually and would like to note again, that there may be contractors who wish to comment.

1:03:00 J. Potter So, the total policy option package before was 78 million on 106. What is this current policy option package total?

1:03:10 N. Cozine When we reduce it to the requested amount you would think, Vice Chair Potter and members of the Commission, that I would have totaled that number for you in advance of today's meeting in anticipation of that question. I have not.

- 1:03:25 J. Potter If I add up the yellow on the sheet, is that where I am going to end up?
- 1:03:29 N. Cozine It is not quite where you will end up because there are a couple of things you are going to divide by. That would be the FTE dedicated to the PCRCP attorney managers, so that is divided by three. Then, there is a highlighted portion for contractor parity that gets divided by three.
- 1:03:49 Chair Ramfjord How is that going to be modified, how are you going to break that down?
- 1:03:59 N. Cozine I think that would have to be a Commission discussion if we received the funding. I think the policy question there is do you try and target it so that you are affecting those entities that are the furthest behind or are you trying to do an equal distribution? That is a very lengthy conversation I would guess and probably not one that we need to tackle today.
- 1:04:28 J. Potter I know you are already talking to Ways and Means legislators and I know you are telling them that you are not tone deaf to the budget process and to the budget situation. Do you think by going in and reducing these numbers it gives more credibility to your arguments when you are sitting down with them?
- 1:04:47 N. Cozine Vice Chair Potter, members of the Commission, I believe that it does. I have met with leadership. We met with LFO. Even with a package that approaches 30 million dollars, you are asking for a lot in this budget climate. It is not quite that high but it is still very high. But, it does show that we have the ability to identify our priorities and that we have the ability to structure our work and structure our goals in a responsible way.
- 1:05:22 T. Christ Doesn't it just become a new ceiling, they just take it for granted and we work down from there? Aren't there some proposals for increased revenue?
- 1:05:41 N. Cozine Commissioner Christ, and members of the Commission, that is a really good question. Candidly, yes, it creates a new ceiling. It does. I think we would be lucky to get that new ceiling. There are proposals; there may be proposals for new revenue. There is nothing concrete on the table yet. My impression is that if there are new revenue streams made available they would not be so significant that it would allow us to achieve our previous goals. Even with a new funding stream, that is probably the only thing that would allow us to get the modified packages.
- 1:06:36 J. Potter So, this is a strategic decision that we are discussing. I will be interested to hear what contractors have some ideas as well, maybe even our lobbyists in the building.

- 1:06:57 T. Christ Before you go, can you explain the PCRCP Expansion to me? How big was this expansion going to be? Was it to all counties or to some limited number of counties?
- 1:07:08 N. Cozine So, the total package amount of almost \$36 million would have expanded it statewide. Even as we were drafting the original request, we broke it into thirds in anticipation of the potential for some type of reduction being necessary down the road. What you are looking at phase one, phase two and phase three, it is about a third of the caseload, and it really depends on which counties you choose. So, it is difficult for me to say a third of the state because you pick a large county and that could eat up a significant portion. I don't know if Amy wants to comment on that but I think what we would do in the event that money were made available is we would work with the legislature to identify which counties they would want to fund. We have a very good idea of what each county would cost. We have a good idea of which counties are more ready than others and where we would have the biggest impact. We would probably pick some strategy that would target perhaps a large county, a medium county and a few small counties. It is to be determined, but if we got the ten million, somewhere in the range of a third of the caseload across the state.
- 1:08:32 Chair Ramfjord A couple of questions, it seems like you are at a high water mark in terms of legislative enthusiasm for the PCRCP program and it seems like one of the reasons it is sellable is that it actually has system wide cost savings associated with it. What are your thoughts on whether or not we may be giving something up if we don't take advantage of that high watermark enthusiasm and I am wondering whether you feel like the option of really selling it as really a system wide cost wide saving measure is nonetheless futile?
- 1:09:22 N. Cozine Commissioner Ramfjord, members of the Commission, Amy I don't know if you want to chime in. You are welcome. You've been having a lot of conversations, as have I. My sense, again, is that we would be very, very lucky to achieve a third at this point in time. I think even in a healthy budget climate, for public defense to get a \$36 million dollar package for a statewide roll out would be pretty unprecedented. There is a lot of enthusiasm. It is wonderful, but I don't, my sense is that legislators want to be supportive and they want to be able to fund it. I think they are going to have to work hard to find any funding. Ten million would be a tremendous success. Thirty million, I think, probably makes them feel like we aren't listening.
- 1:10:37 Chair Ramfjord Well, with the notion that we are trying to save money, I guess to me it underscores the notion if we do it in a phase in method like this that the better we are able to collect the data that actually reflects those cost savings and quantifies them in some way the easier it will be to sell the other parts of it.

Because, realistically, if it can be effectively sold as money you are spending here to save money there, it should be sellable now. I am sorry, Judge.

- 1:11:13 N. Cozine It's true. The rationale applies. You would think that you would want to spend money so that you could save more money down the line. I think legislators are really struggling to come up with any money right now, any money at all. But, again Amy I know you, and Judge Welch, I know you have a question.
- 1:11:36 A. Miller You are exactly right. It is much more sellable because there is this concept out there that you can save money. That is what the state of Washington has done and they pay for their program and yet have money left over. So, yeah, I mean that is what resonates really well and some legislators work super analytically with numbers and that is something that they can really get behind. So, certainly, I think there is support for that. But, Nancy's point, I don't want to concede that anything less than a full roll out would be something that we or that I would want but to Nancy's point, from the get-go we were asked to put this into buckets with the idea that this discussion was going to have to occur at a later date.
- 1:12:30 J. Welch Do we have a body of data at this point that shows that it saves money, here as distinct from just saying Washington did so...
- 1:12:40 N. Cozine Amy, you should come up because we are talking about your program. And, I want to make sure your comments are captured on the recorder too. So, what we have access to is DHS data. In other states, they have had independent bodies actually study the program to scientifically validate that the savings generated are really attributable to the program. With that, I will hand it over to Amy who can talk a little bit more about what the data shows, how relevant it is, and where we could head in terms of getting our own validated study.
- 1:13:18 A. Miller I have been asked that exact same question. In fact, I think people are demanding that question. I feel uncomfortable attributing this program alone solely to cost savings, because it needs to be done through a statistically valid study, usually through a pre and post type of model. That is what has been done in Washington State and that is what has been done in some other jurisdictions and until we have that, and I firmly believe that if we did that study that is what it would say, but until we have that I can't say it with certainty. What I have done, though, is I have given legislators, it costs nearly \$30,000 a year to keep a child in foster care and that is just the basics. That is not a child with excessive needs or a BRS placement. What I said to legislators is, 'okay, you can map out here is where the foster care beds are in our program. If you applied the state wide rates which have been sort of flat and now we are inching up, here is where they would be. There is a gap of over a hundred kids now.' You can apply the numbers. Whether it is directly attributable solely to legal representation, I can't say. As Judge Welch knows, there are well intentioned people from all over the place monkeying around

with different levers that they can pull in different silos to make this thing work. Until we can strip away those silos we can't say for certain. So, this is the best that I can provide.

1:14:49 Chair Ramfjord How much in these other states where they have done these studies, who has funded the studies; how much have they cost; and what is the potential viability of getting some kind of a study done here?

1:15:05 A. Miller That is a good question. In Washington State it was done through a public-private partnership and it was actually done without the knowledge of the program at all, it was completely separate. They had partnered with the University of Washington and they do all sorts of government evaluations of all different types of programs and it was done through that program and their research is just highly respected generally. So, they didn't pay for it, it was a gift to them. There have been other ones done where they have been paid for and I haven't asked about the specifics. I have been looking around and trying to see if we can utilize a college, even some students that have more technical expertise do something basic but yet that might be able to be sufficient to answer that question. As I say, I hedge because I don't feel comfortable. I am not going to make this claim without having the data to support it. I think that is less of a concern at the legislature, frankly, but that is something that I feel integrity is important.

1:16:19 T. Christ I am a little concerned in one respect about tying this to savings because it seems to me that as I understand this program, it is the right thing to do regardless of savings. The parent and child should be represented. They should have experts and caseworkers and all of the things that you are doing in the program for the right thing to do and the ideal. So, even if a study were undertaken that shows there is no cost savings I would still support the program anyway and I would not like to see it tied to savings so that would be grounds later for them to say we are going to scale back the program. For a lot of things we do it is people deserve representation. They are entitled to it. They should have it. It shouldn't always be looked at in terms of the cost savings. On top of that, I don't consider myself an astute student of government but there is one thing that I have noticed in observing the legislature is that they do not spend a lot of time spending money now to save it down the road. We do not invest in infrastructure now, repairs that will save money down the road. Money for schooling that will add revenue down the road, it seems to me like it is not a really good argument. They are all looking at current events.

1:17:48 A. Miller Current crisis. I think I have spoken to this Commission about this exact point. You are absolutely right. Public defense needs to be competent and effective. The lawyers who do this work need to be paid a living wage. Our clients deserve that. Access to social services professionals, having this multidisciplinary team has been shown to be more effective in a variety of

different settings. You are right; it is the right thing to do. It makes sense for both trial lawyers and the clients separate from that. I can speak though too to the political environment that we are in that resonates with some people but it doesn't resonate with everybody. Some people want more than that. So, I think this program probably offers the opportunity to balance both.

- 1:18:30 N. Cozine I would say that it is interesting too just to note that, I think, clearly as a philosophical matter our preference would be that the program would be funded for the reasons that you state, because it is the right thing to. In this budget climate, it won't get funded because the legislature isn't necessarily able to move on things that ought to be funded when they are working from a deficit position. They are going to have to, if they want to invest in this program, find it somewhere. I think there is a shot at doing that this session. It will be a lot of hard work, but when you look at the counties, even the pilot counties, even though we really cannot claim that all the foster care bed reductions are attributable to this program what you can say is that in our pilot counties things are changing. They are changing for the better. If you look at the dynamics in those counties pre and post, something has taken root. More children are going home, they are going home faster, and...
- 1:19:54 A. Miller ...They are finding permanency more quickly.
- 1:19:56 N. Cozine There was one other thing, we are using fewer foster care beds. I think there is a risk and approaching with a cost saving analysis in the long run because that is not the standard you want to set for why you should fund public defense. At the same time, the data is there if they want to make that leap.
- 1:20:24 T. Christ Will other stakeholders, and I am not even sure who they are, but other people besides us go to the legislature and say this is working, things are improved in these counties?
- 1:20:38 A. Miller Let's see, stakeholders have their own positions and their own pieces. If you talk to the court I think what the judges will say is that they have seen improved efficiency, they have seen things resolve more smoothly. Judge Collins in Yamhill County talks about not having TPR petitions anymore and that is true. They have almost dropped off and that is because cases are resolving in ways that make more sense. They will be able to articulate those things and they do. When you talk to the Governor's office they very much appreciate this data driven model where there is this quality assurance piece of it. Different stakeholders certainly have their perspectives. I haven't heard a stakeholder or anybody question whether or not it is effective.
- 1:21:25 N. Cozine Clearly, when you look at the Governor's Task Force on Dependency Representation, there was an endorsement of this program from everyone sitting at the table which included all the key stakeholders at the highest levels. I think that says a lot, the fact that we had the head of DHS, Justice

Brewer who has been involved in this conversation for decades, DA's, DOJ, everyone sitting at the table saying that this is the form of representation we want in Oregon because it is the right thing to do which says that there is an endorsement. Whether in this budget climate everybody wants to come in to testify at our budget hearings to cheer for it independent of the governor's task force is a different question probably. I think every single stakeholder would come in in the context of the task force bill and say that they support this program.

- 12:22:23 Chair Ramfjord It does seem like there is a PhD thesis in the making for doing a study on this though and maybe some contacts with people at universities might lead to some hope on that.
- 1:22:39 N. Cozine That is our intention. All other programs have waited until the five to seven year mark. We want to make sure that we have had a chance to get these programs up and running and functioning well before we launch into that study but it is a discussion we are very actively having.
- 1:22:58 A. Miller I think it is critical, absolutely. It gives the stamp of legitimacy that we are otherwise missing.
- 1:23:08 T. Christ One last question, can you give me an idea of how many lawyers and clients we are talking about?
- 1:23:18 A. Miller In this program? Twenty five or twenty six lawyers...
- 1:23:24 T. Christ In the two counties now?
- 1:23:25 A. Miller Three.
- 1:23:32 N. Cozine Not all of them are full time.
- 1:23:33 A. Miller Right, not all of them are full time.
- 1:23:34 N. Cozine Full time dedicated to the PCRCP.
- 1:23:38 A. Miller All of them I think work full time as attorneys. Clients, I don't know that number off the top of my head. I can tell you the case managers alone have worked with a little over about 460 people to date and they handle just a small slice. So, I can't tell you the number. I can probably track that down but I don't know it off the top of my head.
- 1:24:03 J. Welch For whatever it is worth, I think it is a way better idea that it not all come in one fell swoop. The culture changes that are involved in doing this program are not insignificant. The amount of work that the people here have had to do

to bring around everybody in the system, I think the slower way has got lots of virtues to it without regard to the finances, for whatever it is worth.

1:24:45 N. Cozine Amy has done a lot of work on culture change. The truth is to expand we would still need to bring in another attorney manager and that person has to be trained and if we are not going to get more than one, then our capacity is limited. There may be virtues. It is hard to envision it not going statewide very quickly but there could be upsides.

1:25:12 Chair Ramfjord Thank you. Are there other people that would like to talk about the policy option packages, especially the one affecting contractors?

1:25:44 M. McKechnie Good morning, I am the executive director of Youth Rights and Justice in Multnomah County. Obviously, both the first two POPs effect contractors, the first one effects juvenile contractors directly and the second one effects all contractors. I think that for many of the reasons you have already articulated this morning that there is the most political interest and will and momentum for the juvenile POP. I think Commissioner Christ you made the point that I was planning to make which is once the bar is set, the legislature is not going to allocate more money than what is requested. So, if the request is \$10 million for the PCRCP versus \$36 million, then that is the most we can possibly expect and it will probably be less. I guess my wish and my recommendation would be to set the bar a little higher in hopes that we maybe even get the third that we are talking about. But, to give the legislature that option should they find the money, should revenue become available, should other things change that I think we don't know at this time. There are a lot of things that are going to happen during this session and they are unpredictable and wild and wooly and things like this will be decided at the very end in the waning hours of the session. Seeing a number places that target and nothing is going to above that target, above the ask. That is one of the few things I think we know very clearly. It would be most unprecedented for the legislature to say, 'well you only asked for ten but we happened to have another ten so we are just going to give it to you because we know you really need it.' It just doesn't happen in the legislature world because there are other needs as well. I also wanted to reiterate that I think part of the reason why there is so much political will behind this is because this is an initiative that is focused on the needs of our clients and improving outcomes for them and it is very clear that that is the goal and would be the result. I agree that the cost savings is not the most important thing. It happens to be a side benefit so we are certainly going to talk about the fact that there are fewer children in foster care that will save the state some money in paying for foster care, but it is not the primary purpose in my view of the PCRCP which is to improve outcomes. We are at a point in time where I think it is incredibly frustrating to me to be in a position where we think we can get this done because there was a task force of very distinguished and expert people who all came to an agreement. That alone is a huge feat. Within months of the bill that created the task force passing the

huge mess that our foster care system is was uncovered in several stories in the media that continue where DHS placed children in programs that they knew to be substandard sometimes for years. That caused a great outcry and a lot of attention and people trying to do things to fix it legislatively and otherwise that frankly are not going to be enough to fix the problem. One of the things that we can accomplish through legal advocacy is finding ways to keep children out of foster care or to get them out of foster care. I think that will look differently in different counties so I think we also want to make sure we are measuring outcomes in different ways. I would say that in Multnomah County we don't see as many children per capita coming into foster care. Our filing rates are not as high as some other counties. But, what we do see is an incredible overrepresentation of children of color and a very large percentage of children who have been in foster care for a long time. More than a third of the children in Multnomah County in foster care have been there three years or longer. Those are the children who are going to have the worst outcomes and when we talk about cost and cost avoidance, the longer children stay in foster care the worse their outcomes are going to be and the higher the cost for the public is going to be in the future because we are not just talking about the expense of keeping them in foster care for three or five or ten years, we are talking about the likelihood that they won't graduate from high school, that they will end up in prison, they will end up homeless, they will end up in poverty, their own children will end up in the foster care system and the next generation. There are huge consequences at stake resulting from this program. I guess one other sort of political thing that I wanted to mention, since it hasn't been mentioned yet, is the co-chairs of the public safety subcommittee. One of the co-chairs oddly I think too many people's surprise in a democratically controlled legislature, both co-chairs are republicans. One of them is Senate co-chair Jackie Winters from this area who has a very long standing history of interest in child welfare, human services and the foster care system. The other co-chair is Duane Stark. While he is only in his second term now as a legislator, he was a member of the task force and he is a foster parent and he has worked with DHS for many years. We have two co-chairs of the public safety committee which is often very focused on criminal issues and the larger court system who are both intensely interested in foster care and the child welfare system. And, who better than most other legislators in the building will get the connection between what happens in the legal process and the outcomes for child welfare and human services and will care about both the outcomes and the cost savings as well? I would, bottom line, strongly encourage you not to reduce the amount requested so dramatically. Given all of this interest I frankly don't think that legislators would look askance at a higher request if it were \$15 million or \$17 million if you meet them literally halfway I think that shows them an understanding of the budget situation but it also conveys the very urgent need that this tries to address. Thank you.

1:32:48 Chair Ramfjord Thank you.

- 1:32:54 J. Potter Before you leave, I got a little confused at the very end. I thought you were starting to suggest that we keep the number the way it is as \$30 million, but then you made mention if we said 15 or 17 it would show that we are trying to meet legislators half way. Clarify what your position is.
- 1:33:08 M. McKechnie Sure, I would be glad to. Thank you. I don't want that to be unclear. I think bottom line is we appreciated the position originally of the Commission to ask for the entire amount and for the office to put that in the request and to suggest that and for you to approve it. But, we also knew even before we knew that measure 97 wasn't going to pass and other things weren't going to happen that would be favorable to that happening. Even then, because of the challenges as Judge Welch mentioned, that trying to unfurl this program statewide all at once would be a challenge. So that, combined with the fact that we would be shocked even in a better environment to see a \$36 million increase in one biennium I think many of us who have been involved in this knew all along that the real amount would be something less than that full amount. But, I think asking for half rather than merely a third sets the bar a little higher, makes it more likely that maybe we would land at least a third than less than a third. I think if we land at less than a third that really narrows the options in terms of taking the next step in the pilot and having much choice at all about which counties can be implemented in the next biennium and that further delays the progress towards implementation statewide. I know that when money was first appropriated for the original pilot I believe it was \$3 million. The choices that the office had to use that money knowing that they needed with this approach to implement entire counties at the same time left them with few choices. I think it is having choices to target both need and readiness where you can see success in implementing this model and also address need. Those are sort of two sides of the same coin that you want to direct the money where the contractors are ready to implement this model effectively but you also have to look at where you can have the opportunity to move the needle and see change happen in a two or four year time span.
- 1:35:47 J. Potter So, you strip some of this away and if it were just \$10 million and Multnomah County was the only county that got the money, isn't it part of your argument basically saying that Multnomah County would suck up most of that \$10 million and there would be very little dollars left over to implement it in other counties?
- 1:36:07 M. McKechnie I believe you are correct. I think the highest cost for a single county is six million dollars and that is not Multnomah County. But, basically if you end up with \$10 million you can't fund more than one large county in the first phase and then relatively few additional counties. If you do choose one large county that limits the number of additional counties as well.
- 1:36:31 J. Potter I didn't disagree with anything you said in your presentation. I didn't. What I am sort of grappling with is how, if I am a legislator and I am looking at the

cost but as we have heard we may not be looking at the cost savings because they are future cost savings and they are generic over multiple agencies, it's an argument. What I am looking for as a legislator is something I can take back to my constituents and say, 'here is what I did and what I can do with this program potentially, because the data shows that we helped a whole bunch of families, we helped the system and we helped kids,' and I can go back and talk to my constituents about that. But, now I am in the last days of ways and means, as you mentioned where this will all take place, and it is the final hours. We now have the revenue forecast for May. We know where we really stand and we have got this list of priorities. I am going through the list and I see these big numbers all the way down. I see thirty-something million dollars versus ten million. As a legislator do you think that you might look at numbers like ten million, there is something I can potentially achieve, 30 million I am just drawing a line through because it is just too much to begin with and I don't have time to listen to all the arguments again. For me, at least, I am just trying to put myself in the place of a legislator at the very end making a decision and both psychologically and practically what is the best way to go. What I am hearing you say is the best way to go is to up the number from ten million and go to 15 or 17, but don't put in thirty-something.

1:38:18 M. McKechnie If I understand the question in there. One, I think part of our challenge is that 10 million or 35 million sound like very big numbers. When you talk to people who deal with the state budget as a whole or much larger agencies than OPDS, it is not necessarily such a big number to them. When you are looking at the K-12 budget when they talk in decimal points, those decimal points are \$100,000,000 increments. If DHS only had to make \$30 million in adjustments to their entire budget they could do it in an afternoon. There are orders of magnitude that the legislature is dealing with that would make them not necessarily that 10 million or 35 million are not big numbers. So, I don't know that seeing 10 million versus 15 million would cause them to skip over that as a priority. I think the other aspect is that they never feel constrained by providing less money than what the request is and they will never hesitate to do that as we learned. All of the POPs that have been allocated in the last several sessions have been less than what the request was. I think that was your question.

1:39:45 A. Miller To your question about thinking something bad when our legislators are seeing their county are having some accountability. In thinking about how I would frame this to them I think I would identify the big pricey counties; Lane, Multnomah and Jackson County. Those are the three big ones that will cost the most. Lane and Multnomah both have high caseloads but Jackson and Lane have lawyers with very high caseloads. So, this program is partially a parity focused payment but it is partially flipping a switch on these caseloads. That is where the cost comes in for those two counties. I would like to give them a list, these are the most expensive places, here are the middle of the range, here are the ones that are a million or less. I would like to provide them

with that guidance. I certainly have my own opinions and some rooted in anecdotal evidence and some rooted in data about where the right places would be and why. I can share those at a later date. I think that I would like to give them the opportunity to weigh in and to take something back if they choose to do that. Regardless of the number I think I would like to give them some options in that way.

- 1:40:58 Chair Ramfjord The only thing I might add to that is in talking about impact, like the counties where the program is likely to have the most impact, that is also an important consideration. If it is true that it is in Jackson County that maybe has the highest impact then emphasizing that is important.
- 1:41:19 N. Cozine Chair Ramfjord, members of the Commission, I wanted to loop back to the earlier question of what is the total cost if the packages are modified as I recommended. The total cost is just over \$26.3 million and I would simply say that I would be very uncomfortable having a package request over \$30 million. I hear loud and clear what Mark McKechnie's concerns are and I think they are very valid. You are potentially going to get less than whatever it is you ask for, but the prospects of bumping a package over \$30 million and allowing us to have the credibility that we need with the legislature I think there is a risk there. So, I would suggest that the Commission, if inclined to recommend something more along the lines of half the PCRCP that you would then want to look at reducing something else like pay parity to keep the package request still somewhat under \$30 million because I think that makes it more sellable in the long run. That said, I am comfortable with either approach in terms of communication with the legislature.
- 1:42:49 Chair Ramfjord I was just wondering if there are other people that wanted to talk about POP 101 on parity.
- 1:43:03 D. Bouck Good morning, I am Dan Bouck. I am the Director of the Public Defender in Douglas County. I would encourage that we need to proceed with as much money as possible for at least 102. My firm does both dependency and criminal work so I would like both but we know we are underpaid. The attorneys know they get less...
- 1:43:26 J. Potter Do you mean 101?
- 1:43:28 D. Bouck Excuse me, 101, it is very important. They know realistically they are not going to see much of an increase in the coming legislature but there is, I am trying to recruit and retain attorneys and it really makes a big morale difference when they see the Commission or OPDS not even asking for the parity. Knowing they may not get it will make a big brow bruise. It will make my job a little bit easier at least to say, 'hey, I know Nancy went in and did her best to get us the money and Salem refused it.' Where if we don't even ask it's like, 'gosh, if they are not going to support us for money how can I

look into that as a career? Maybe I should be looking to go private.' It just makes it a bit more challenging for us. I would just say that I am glad we are dropping for this time 102, the program. I can say for meetings with the other directors of the public defenders in the state, although they like the idea of a uniform program, the program where it was at at this point they considered dead in the water. They weren't going to support that program. It is something that I wouldn't say needs to be done over, but a lot more work needs to be done on that before it is presented to the legislature as what would work.

1:44:57 T. Christ This is less a question than a comment, but when we talk about the PCRCP we often talk about how spending more money on this program will have these beneficial effects on the clients. The parents will be reunited with children, the children will stay out of foster care. When it comes to contractor parity I think we should keep the same concept in mind. There is a benefit to the clients of spending more money for the contractors that innocent people will not be convicted and sent to jail. If they are wrongfully convicted they will be exonerated on appeal. There is a benefit to clients there too but we tend to look at the contractor parity only as this is going to benefit the lawyers, they are going to get paid more. But, we should focus also on the benefit to the clients there as well just like we do in the PCRCP program. I am concerned about reducing the number from 34. These are ridiculously low rates for lawyers to be paid for doing such good work and I am very concerned about the suggestion that we add more money to the PCRCP and then take it away from the parity. I would, at the risk of going over \$30 million, I would like to keep the number here for parity that we already have.

1:46:35 Chair Ramfjord Other comments?

1:46:37 J. Kampfe May I make a comments?

1:46:38 Chair Ramfjord Sure.

1:46:47 J. Kampfe My name is Jessica Kampfe, I am the Director of the Public Defender's office here in Salem, Oregon and I just want to speak with regard to the pay parity bill. A couple of things, first we know that we are going into a difficult legislative session with regard to budget shortfalls but we also know that is not going to get better any time soon. We are going to be having this conversation into 2025. So, if the time to act is not now it is not going to be for a really long time. I think that it is important that this is a message that we bring at this time and that we don't delay it. I feel pay parity is in a crisis situation in the public defense community right now. I can speak from my own office experience and that is our office employs about 10 lawyers. In 2016 I had four out of ten lawyers resign because they were taking higher paid positions in other offices. In losing four out of ten, 40% of my lawyers, I lost a great deal of experience. One of those lawyers was Ballot Measure 11 qualified, two were on the verge of being Ballot Measure 11 qualified. When

that talent leaves my office to higher paying positions it does impact the quality of services that I can provide to the clients that we serve. It has a very direct relationship to the quality of representation and the product that we are able to put out there and I think that that message needs to be brought to the legislature. I would be very against this Commission reducing the request for pay parity from the request outlined in Nancy's current budget. I would like to see it higher. I am already frustrated that it has been reduced to a third of the original request. I think it needs to be significantly higher than that. Thank you.

1:48:47 Chair Ramfjord Thank you.

1:48:48 J. Potter Can I ask a question about the four people that left? Did they go to higher paying jobs with other contractors or higher paying jobs outside of the defense system?

1:48:58 J. Kampfe Both. Two left to another contractor and with regard to the quality piece I would note that that contractor doesn't maintain the same caseload standards that our office does so that contractor is able to pay higher because his lawyers have significantly more cases than our lawyers have. One left to a public defender's office in Arizona, so another state that pays public defense parity with the district attorney's office. And, one left to the legislature where she is now getting PERS.

1:49:37 N. Cozine One last quick reminder which is that funding the PCRCP package does impact the pay parity numbers because any attorney that is getting...the pay parity is one package that looked at what would happen if we didn't get PCRCP and only pay parity. So, there is some overlap between those two and I just wanted to remind you. It is on the handout, but just a reminder that there is some linkage there when PCRCP attorneys we have gotten them largely to parity so it reduces that parity number.

1:50:16 Chair Ramfjord One other question Nancy. How would you feel if we went to one-third on PCRCP instead of reducing 101 parity by two-thirds, if we reduce it by %50 you would still be under \$30 million, but it might leave a little more room? Or is that something that you would think even that would be going a little too far? I don't think, for those concerned, that we are going to lose the sense from the legislature that we are pushing for parity. We push for parity every year. We will continue to push for parity in the future. But, I am sensitive to the notion of not putting up enough of a fight for parity even when things are as grim as they are right now. I am just wondering if it would be feasible to increase the amount for parity a little bit so we stay under 30 but giving us as much as we can while maintaining our credibility. The reason, I think, of going with PCRCP to one third is that we had already divided the program one-third, one-third, one-third. It is a rollout. It sort of makes sense. But I don't think there is any logic, it is not obvious to me that there is logic

behind reducing parity by one-third just because we are reducing PCRCP by the same.

1:52:00 N. Cozine Right, there isn't the same rationale other than if we are going to make strides in a three biennia strategy this would be following that methodology. I tend to agree, we have had pay parity as a package I think since before this agency was actually created but certainly since the inception of this agency and have had only very very slow incremental progress. I certainly agree that it needs to continue to be a conversation and I hope that perhaps we have interested individuals testifying at our budget hearings to talk about that link between compensation and the quality of services offered to clients. It is essential that we continue to try to preserve our recruitment and retention or improve our recruitment and retention across the state.

1:53:07 Chair Ramfjord Other people's comments?

1:53:10 J. Welch Somebody in the back.

1:53:15 J. Weiner Yes, very briefly. Jon Weiner, I am the director of MCAD which is the primary private provider in Marion County. Just really briefly, this is the first contract period I think where we have exerted real effort to come closer to the case caps of 400 misdemeanors, 150 felonies. If I keep our members within 20% of that, so let's say I let them take 480 misdemeanors, or similarly with the felonies if I try to keep within 20% of that the gross that those people will make is right around 120 when you take the administrative costs off for MCAD and the OPDS expects us rightfully so to have a training and things like that, mentorship. So, we have to have some administrative costs but we really do run the organization on a shoestring. So, I have got people that have been doing criminal law for 20-25 years and saying that is your gross. You have got to pay your PLF, you have to pay your light bill, you have to do all of these things. So, to the extent that the OPDS tries to conform its contractors to the case caps but doesn't provide funding for it, there won't be anybody to take the cases. If I really kept everybody at 400 misdemeanors and didn't even allow a 20% variance, you can't do it. You can't keep in business. It is not possible. Also, those case caps take into consideration or they assume proper administrative support. So you have got 120 grand, pay the rent, do the lights, pay somebody, you don't call them an independent contractor call them an employee because that is what they are. What you can make, \$60-\$70 thousand, which is what a brand new DA makes. We can't improve the quality of representation by changing the crushing caseloads without funding that goes at the same goal. We can't do it. You are going to have people still doing 140%, 150% of the caseloads because that is what they need to do to eek out a minimal living with bare bones, maybe 20 hours a week help. There is absolutely a critical link between the pay parity and quality of representation. We are not talking about people getting rich, we are just saying people taking reasonable caseloads that you can't do it unless we continue to

pound and get some more money. We won't be able to make the progress that the OPDS is hoping and I am actually contractually obligated to impose, strictly speaking it is impossible for me to comply with my contract. I cannot keep people strictly at the caseloads without more money. Thanks.

1:56:40 Chair Ramfjord Anybody else? Alright, discussion.

1:56:48 J. Welch Mr. Chair, I would like to move that we accept the executive director's recommendations to us about how to do this, cutting the PCRCP to approximately phase one as set forth and that together with the things in 104 that she submit a series of POPs that are \$30 million or less. So, these wonderful well-presented arguments regarding quality representation of criminal defendants be acknowledged by the Commission.

1:57:44 Chair Ramfjord If you went with the recommendation on item 100, if we cut 101 in half as opposed to two-thirds and we went with the other recommendations, we would be at \$29,515,000. With POP 104 funded as specified, POP 105 funded as specified, POP 101 funded on a 50% basis, and the POP 100 funded with the one-third basis, that is where that would end up if you wanted to know where that would fit. If we go down to funding POP 101 by one-third as opposed to one-half we are down at the \$26 million range. That is the difference, roughly, as I calculate it.

1:58:47 T. Christ If my math holds up and we leave it at the full parity, that would add 17 to it and take it to 46.

1:58:56 Chair Ramfjord Yes. Commissioner Welch, my understanding of your recommendation is I understood you to say up to 30 with her having discretion?

1:59:12 J. Welch No, I meant to do phase one and in affect to do it half. The spirit behind what I am saying is not that I think Nancy should tell us always what to do and that we should mind her, its that there is a bunch of judgements involved here and I feel that given her experience in doing this now for what is it, the third or fourth session, that she is in the best position to make those judgements. We all have different opinions about those things but she is the one that is going to have to do it.

1:59:57 T. Christ Okay, so it is your view strategically that we are not going to get 30 even if we ask for it, but we should ask for 30 as opposed to 46? 46 being the full.

2:00:14 N. Cozine The budget deficit that the legislature is facing is so substantial that there is an almost an eerie feeling in the building. It is almost unprecedented to have what is largely regarded as a robust economy with this really incredible budget deficit. Going in and requesting \$47 million, even though many people would go in and describe that number as budget dust, somehow it just doesn't

resonate. It is not received well. You say \$47 million and people just stop listening when it is for a relatively small program. Relative to other state agencies we are small. I feel like I have had a pretty clear message from the legislature and from leaders that we will be very lucky if we get out of this session without a cut. With that as the starting point, with the first hurdle just being to current service level and not getting a cut, I mean that is hurdle number one and that is a fairly substantial hurdle. Then, when you look at, okay if the legislature is charged with trying to find money for other priorities it is coming out of some other state budget most likely. The bigger our number is the less motivated they might be to try and find that funding.

2:01:48 T. Christ I am assuming we are not going to get the money. I am just wondering what the consequence is on surrendering on a principle that seems to me as important as parity, that if they hear you say when money is tight we give up on that. Will that come back to haunt us down the road?

2:02:09 N. Cozine We have reduced our request in the past. We have tried a three biennia approach in the past and we have gotten a little bit. It is a little frustrating when you lower the ceiling and then you get a third of what your new ceiling is. I think that is certainly a risk. And, I understand the concern about the messaging. If we back away from a full request when the consequences of not taking action really are significant for the people that are served. So I suppose the tension is between trying to make something small enough that it is palatable and might have a chance versus sending a message. I think, at this point, my recommendation is make it small enough that it is potentially palatable to the legislature even though we are backing off of a really important request and a really important number. This is my third full session. I still wouldn't consider myself an expert. This is tricky business and it is very political, as you know. But, my sense at this point is that moving forward with one-third of each package would still be a big request but the best strategy at this point in time. I am going to point to Vice Chair Potter here because he has been through many sessions both in his position on the Commission and also as former Executive Director of OCDLA. I don't know if you have a sense, you have a bigger history of sitting in the budget room with PDSC's budget in the last 16 years.

2:04:00 J. Potter Well, you have touched on it, I believe, when you came back up here and started your remarks in essence saying this is a moot argument with a potentially high likelihood that we will be in a deficit situation and we will be talking about how we are going to cut off the system. When are we going to stop taking cases? Are we going to do a BRAC? Are we going to take it to the cliff and let it fall off? I think we are going to be spending more time discussing that in reality than talking about the extra money that we now have that we need to spread around these various POPs. I guess with that in mind I am coming down to a position that we also have a political reality that we have to deal with and we have a constituent base that we have to deal with, the

providers. I think I am shading to the constituent base to say that we are going to ask the legislature for incremental funding on programs that we are trying to get off the ground and we are going to keep the amount of money that we had in our request for the POP for the lawyer increases to get to parity which have already been reduced from what is really needed to get there and we are going to end up with a number that is \$46-\$48 million. I am not sure that that is going to be any different than asking for \$26 million to ask for \$46 million in front of the legislature right now. I don't think so. But I think it does make a difference for providers to hear that we are not backing off this core principle that ever since and before has been mentioned we have fought for and in varying degrees have not succeeded. I would want to amend the motion that has been made to suggest that we keep the full funding request on 101.

2:16:15 Chair Ramfjord A pproval of the amended motion. **MOTION:** Commissioner Ramfjord moved to approve the amended motion; Commissioner Christ seconded the motion; Commissioner Welch objected: **VOTE: 4-1**

2:06:32 Chair Ramfjord I recognize that that is not what you wanted but I tend to agree on principle here it is really important to speak with a strong voice on that and continue to speak with a strong voice on it recognizing that we are not likely to get it, but I still feel like it is important for the constituency as well and I think it is a principle that is exceedingly important for the citizens of this state that if we are going to deliver constitutionally adequate and appropriate justice in this state we cannot do it at funding levels that are far below what they should be. It is just not something that I think is amenable to compromise, unfortunately.

2:07:26 N. Cozine There you have it. Thank you.

2:07:33 Chair Ramfjord Shall we take a break? This has gone on longer than we normally do.

Agenda Item No. 6 Certified Interpreter Hourly Rates

2:08:03 N. Cozine This is Nancy Cozine stepping in for Angelique Bowers on the certified interpreter hourly rates. You will see in your packet as attachment six a letter that we received from interpreters expressing some frustration with the recently adopted payment policy. That payment policy made a few changes in terms of mileage and one hour minimum for telephone interpreting and it retained our rate of \$40 per hour for certified interpreters. What we did not know was that the court was adopting an increase to \$43.50. We became aware of that when we received the letter. So, they are asking that we consider changing the rate. As you know the guideline hourly rate for lawyers is \$46, so it is bumping up awfully close. We have looked at the cost and we expect that if we made that switch from \$40 an hour to \$43.50 it would cost the agency \$75-\$80,000 per biennium. It is not on your agenda as an action item. We wanted to discuss it with you first. If you would like us to we can post it

as an action item and make the amendment. I think that our recommendation is that given what the current lawyer hourly rates are we need to stick with the \$40 per hour for certified interpreters for now, but that we would include this with our budget presentation to the legislature with an explanation and certainly an invitation to the certified interpreters and they can come and testify to the legislature about what this means to them. Clearly, in their letter it does cause some concern that they will choose other work over public defense work and we acknowledge that that is a serious potential consequence and not one that should be taken lightly. But, the budget implications when we are already at a deficit, we are still looking at ending this biennium with a \$9 million budget gap. It is really hard to recommend an increase in the hourly rate. We have since learned that OJD intends to continue increasing that rate on a regular interval. Once we know what that is then maybe we have a better shot at, at least knowing in advance so that you're not discussing it after the fact. But, if we were going to make any change the modification we would like to potentially see is an adjustment to the mileage amount and probably what we could do is there are some providers in eastern counties that are hitting that 60 mile mark pretty quickly and so we could internally adopt an exception for those eastern county providers. Our recommended approach would be to let us handle that exception internally and to stick with the current rate and the current payment policy. But, if you do want this on the agenda in March as an action item, we can do that.

- 2:11:28 T. Christ Help me understand how this works. Do providers retain the interpreters and then the interpreters bill us?
- 2:11:33 N. Cozine Correct.
- 2:11:35 T. Christ So, if they all quit is that a burden on the providers?
- 2:11:41 N. Cozine It is a burden on the entire system.
- 2:11:42 T. Christ Well, I get that.
- 2:11:45 N. Cozine Yes, it is a burden on the providers.
- 2:11:49 T. Christ So, turning them down will make the providers all the more unhappy although giving them a pay increase that is almost on parity with them...
- 2:12:05 N. Cozine I think historically our providers have felt that it is incredibly important to have a team that serves them to provide them the representation that needs to be provided. I am not sure that they would be entirely offended by the rate increase. But, I think given all of the factors, at least holding off until we know what our budget is going to look like is a reasonable approach. It would give us some time too to see what the consequence is, whether or not people are truly declining the work or continuing.

- 2:12:38 J. Welch Do you happen to know off the top of your head what percentage of adult criminal defendants require the use of interpreters? What percentage of cases use interpreters?
- 2:12:53 N. Cozine Wow, I think we could create that clarity in a really rough sense by looking at the number of interpreters requested per case compared to the total caseload but I don't know off the top of my head.
- 2:13:19 J. Welch My reaction to this is much more sympathetic to the interpreters. When a lawyer has a case, even if they are getting paid a horrible \$45, they have a case. They have hours and days that they will spend on that case. Interpreters function as very finite resource, usually very time limited. There is a lot of travel involved and having seen and dealt with on a first hand basis the trials and tribulations of getting interpreters, which obviously all practitioners here experience as well, that when they are saying I want to get X an hour they are not going to get it for 8 hours in a day. Obviously people are different and communities are different circumstances.
- 2:14:03 N. Cozine I think that is very fair.
- 2:14:05 T. Christ So, they can't pick it up in volume the way providers can?
- 2:14:11 N. Cozine Sometimes they do appear on multiple cases at one time, but it is not the same. We have always increased when OJD increased, historically. This one, we sent out the draft payment policy in advance and we gave people an opportunity to comment. No comments were received. This came in after it was already approved. The budget is very tight. There are many factors that lead to the recommendation to hold off for now. But, I understand that if the Commission feels that this is a priority and there isn't that much left of this biennium but it would have a cost.
- 2:14:57 A. Miller I answer questions for attorneys, especially on the juvenile side and provide technical assistance when I can and I get questions more and more frequently looking for interpreters who can interpret in languages that are – there aren't very many interpreters speaking certain languages in this city and it is very challenging. When you talk about the work that it takes to find an interpreter, I am aware of a couple of situations where an interpreter who spoke one of those very hard to find languages just won't do work for our office anymore without authorizing an exception and we have done that because of the exceedingly rare circumstance there. That is becoming a challenge and it puts a burden on the lawyers and they reach out to me and ask me for help in locating these people that will work for our rates.

- 2:15:45 J. Potter When you talk to contractors and lawyers, they contract with you and they make an independent decision on whether or not they are going to take the rate that you are offering. So far we have not had a mass rejection of that.
- 2:16:02 N. Cozine We are coming pretty close, but yes.
- 2:16:04 J. Potter And we may get there. In this case you have got a situation where the OJD has raised their rates. We, as a state agency could easily follow that because they were doing but in this case I think you would have at least stated on paper that some of these interpreters won't work for us at these rates. I agree with Commissioner Welch, we should be paying what we need to pay to keep them. It's \$3.50 and I understand it has an impact and it will roll over to the next year but I don't want to defer this cost of doing business. It is real. It is documented and we shouldn't ignore it.
- 2:17:02 N. Cozine Right, and we have general counsel in the room. I think we could, even though it is not posted as an action item, I believe if the Commission directed us to issue an amended payment policy we could do that.
- 2:17:22 P. Levy I think so, because it is on here and it is noticed as an item that concerns rates.
- 2:17:30 N. Cozine Right, and we can put it on the March agenda for the official action with a retroactive date if that is what the Commission wishes.
- 2:17:39 J. Potter I, for one, would like to see it on the March agenda when we could vote on it properly.
- 2:17:46 N. Cozine The OJD's change took affect I believe January 1, so it would be helpful for me to know if the Commission would like us to adopt something, if that is the direction you are leaning in, just an effective date so that we can draft it accordingly.
- 2:18:04 J. Potter I would have no problem adopting it on the date that we adopt it in the March meeting.
- 2:18:10 N. Cozine Okay. We will have it on the March meeting agenda.
- 2:18:17 Chair Ramfjord That said, I think it is a worthwhile parachuting point with the legislature to point out that getting pressure from our translators who are being paid at a level that is \$2.50 less than our contractors or by OJD is unfortunate.
- 2:18:39 N. Cozine Alright, thank you. We have an update for you on our appellate process. So, if you don't mind I will dim the lights so that you can better see the presentation.

Agenda Item No. 7 Overview of the Appellate Process

2:18:55 E. Lannet Chair Ramfjord, members of the Commission, Ernie Lannet Chief Defender for the Criminal Appellate Section. I think it was early, early last year or late the year before we talked about doing a reintroduction of what we do. Then, in preparing and looking at the agenda today I felt sorry for you because it is another presentation and then I thought about it some more and I felt sorry for me. Nonetheless, I think we can get through this and if there are any problems with this as I am already having we might have to rely on...there we go. Excellent. Just to remind you, the appellate division is composed of two sections, one of which being the criminal section. We have 38 attorneys and 11 support staff as in our annual report. We handled approximately 1600 case referrals every year, file about 1,100 notices of appeal and end up filing about 645 and that number varies between 750 and the low 600's per year just based on the kinds of issues going through the courts. Sometimes there are batches of cases that come through that raise the same type of issue, an error that is coming through and that will bring up the number of merit briefs just because it is an error that is going through the system. Judging by the Oregon Judicial Department's numbers we are about 40% of the caseload looking at the criminal cases understanding that we handle the majority of the direct appeals and almost all of the parole appeals.

2:20:56 T. Christ Why are there so many fewer briefs than notices of appeal? Do you file a notice and then conclude there is nothing worthy of arguing?

2:21:06 E. Lannet Yes, there are a number of scenarios. One of them is that the only issue that the case presents, say sentencing, moots out because the case won't be in front of the appellate courts before the condition no longer applies or the jail sentence is no longer being served. There are instances where the client after getting advice from the attorney here about what types of issues we can raise on appeal will say they no longer wish to pursue an appeal and we will file a motion to dismiss on their behalf. There are quite a few cases that are referred and we count our case referrals by case number. So each case has only one client but we often get referrals for one client with multiple cases. If those are consolidated for trial then we will consolidate them for appeal. Then, there are the instances where we can't identify a meritorious issue to raise on appeal and it will go through a balfour proces, so a supreme court case on it. In that case many clients will choose to dismiss rather than go through with a Section A that just goes through a procedural background of the case but not actually raising issues because there are no issues to raise in the attorney's opinion. I am trying to think if there is any...I guess two other instances are when we spot an error that looks pretty obvious and we can get the trial court by filing a motion in the trial court. There is a procedure asking them to correct erroneous terms. Sometimes that obviates the need to an appeal. There are some instances where before we file a brief we approach the attorney general's office and we ask if they are amenable to a joint motion to remand and that is kind of an expedited fashion when the parties both agree that there was some kind of error, maybe not an erroneous term that can be corrected an

OA3 motion. So, it might be something that requires a hearing or resentencing or something like that. That is another way that cases get resolved.

We employ a team structure. I think this is unlike our counterparts across the street. We have eight senior deputy attorneys. Six of those are team leaders and we actually have employed a rotating basis now which actually allows team leaders to withdraw from a team for a year and work on their cases because it is a completely different position than a deputy one or deputy two in a sense that there is a lot of mentoring, a lot of editing, and leading case discussions. We meet weekly. Everyone is on a team. Managing attorneys are one or two teams but they don't lead the team meetings. They are sitting there as part of the team and a representative to the extent that questions come up that management might be able to address. But, it is really the senior deputy defenders that are taking that position. There are 26 deputy one and deputy two defenders. Deputy ones, I think you may know, handle generally misdemeanor cases and routine felony cases. Deputy twos will handle anything. They are in a position to handle pretty much any case that comes into the office. So there are instances where we have had deputy two attorneys working on capital cases, but they don't have the extra responsibilities of leading a team. The management structure is chief defender, then three chief deputy defenders. We roughly divide duties of office development, operations and outreach. We each have reduced caseloads. My caseload is mostly just working on the Oregon Supreme Court cases either as editor, I do Court of Appeals cases but not as many as I would like. The division of responsibilities is really to have a point person for staff or attorneys to go to when questions come up or for the types of issues that recur like when we get a letter from the Client Assistance Office asking us to respond to a compliant that a client or someone else has lodged with regard to a case or when the attorney generals are asking for a response on a post-conviction claim. We like to have a managing attorney there that can be of aid to them. Office development, right now Ingrid MacFarlane, she works with the support staff and is on their team and helps with a lot of the routine motion practice and forms that we use. The other section of the appellate division is the Juvenile Appellate Section. Shannon is not here but Shannon Storey is the Chief Defender of that. As you can see it is a smaller unit working on different cases. They have employed similar structures and processes to handle their cases but they do differ in various ways. I know she would be happy to come back and tell you about those.

I am trying to figure out how to quickly describe what we do. One of the things is the kind of cases we work on. About half of our cases are judgements of conviction and sentence that arise from a bench trial or a jury trial. About 20% of our cases are guilty or no-contest pleas and a small percentage of that is resentencing cases. Then, there is a category of cases that have not been through a full trial but are resolved with a conditional plea or stipulated facts. Usually, there is a dispositive issue that was litigated and so it was set up for

the appeal. Everyone understands that this is a dispositive motion and the defendant wants to be able to challenge that ruling on appeal but does not see the benefit in going through a full trial. 14% of our cases are probation violation or revocation orders. These are really somewhat like mini trials. Different rules applied but it is often dealing with evidentiary rules that come up, finding out whether there is a violation and then reviewing the sentence if there are new conditions or revocation of probation. Here we get a little more to the esoteric parts of the cases that we work on. We do judicial review from final orders from the Board of Parole and Post-Prison Supervision. These are civil appeals, but the legislature asked us to handle them and we do. Then, there is a very small percentage of our cases that fall under these esoteric contempt actions, state appeals, DNA testing, and very occasionally we have had victim rights and interlocutory appeals being pressed that we step in to defend. As you can see if you look at just the purple and the blue is pretty much most of what we do. Most of what I will be talking about from here on out is directed at that. I would be remiss not to note that we have the Oregon Supreme Court practice. It is a court of discretionary review, for the most part. In the last few years they have taken approximately 20 cases. These are huge resource requirements because we put a team on each case. There is someone that is litigating a case, briefing the case, arguing the case. I am usually the lead editor working with that attorney. But, we get the team together in a pre-briefing stage to discuss how the issue should be approached and then also have meetings closer to the oral argument to prepare and work through anticipating questions the court might have or dealing with arguments that the state is bringing. Frankly, we dedicate all those resources to those cases because they only hear about 40 or 60 cases a year and they are the court of last resort. There is the potential in any one of those cases to have some very reaching impacts on the practice throughout the state, even more so than the Court of Appeals cases. Death penalty or capital cases, we generally only try to have one or two cases open in the office. They are usually very different parts of the life of a capital appeal which takes three to four years to go through the direct appeal. I would say, generally, one of our attorneys is basically dedicated working on a death penalty case at any point in time, on average. There is actually a second chair, but like I said there are periods of time where even though they are assigned a capital case they can work on other work. But, for the most part once the transcript is on those cases and sometimes even before it really does take all their effort to handle that case. They are just a completely different beast.

2:31:11 J. Potter

Do you rotate that person?

2:31:13 E. Lannet

We have a capital team. We like teams here. That is on a volunteer basis for people that are interested in joining it. We have kind of embraced the model over the last six or eight years where someone who is maybe ready to take their first capital appeal will take it and then someone who is interested in doing so in the future at some point will second chair it. Often times it works

out where the person who second chaired it is then called upon to do the next case. In the last ten or twelve years I don't think we have had one who has done two capital appeals. I think they have all gone to different attorneys. That is a different model than we had 15 years ago where we had single attorneys doing capital work and it was grueling and frankly a little cruel and unusual. This is actually done a lot better and develops the expertise so we have a broader base to draw upon on those cases. Criminal appeals 101, sorry if anything is a little too remedial at this point but I thought I would break it down to what our attorneys are doing. We are looking for legal error committed by the trial court. We are not disturbing facts when they are supported by any evidence of a record. Under the Oregon Constitution health courts will not disturb any facts; they are binding, if there is constitutionally sufficient evidence to support them. Although we often hear, 'but they lied,' from our clients. We can't do much about that. We also don't do adequacy of counsel claims or generally we don't get into any claims of prosecutorial misconduct. Again, that is relegated to post-conviction. So, we are really focused on rulings that the trial court was asked to make. It is a closed record. We often do not have discovery at trial for the litigant's benefits there. We are only looking at what was filed in the trial court as far as filings, motions, testimony, evidence, exhibits. We don't do any additional investigation. Sometimes frustratingly so we can't reach off the record rulings from the trial court in case parties get into chambers and resolve some issues that maybe could've presented appellate issues. Often times, unless we can get those on the record somehow, they are just not within the scope of the appeal. In that way, sometimes, new information from trial court, from attorneys, from the clients are of limited benefit. They may be beneficial in knowing what the attorney's assessments of the issues are, benefit from knowing what the client is interested in in getting out of his appeal, but we can't refer to anything that is not in the record so it is of limited utility as far as doing the legal work. The deck is stacked brief if you are an appellant in a criminal case. Preservation and prejudice are common to all appeals, but here the things that we are constantly battling are did the appellant bring the error to the attention of the trial court in a manner that allowed the opposing party to respond and the trial court to avoid the error? This is just a basic principle that has a very strong presence in Oregon law that if you didn't ask the trial court to make a ruling and didn't present it with the arguments that it shouldn't make that ruling and sometimes if the other party didn't have a chance to respond you are out of luck absent of – you have a plain error doctrine which is kind of a safeguard for errors that are obvious on the record that are beyond dispute and don't require resolving any dispute in the case that can't be decided on the record. They are only supposed to use it with utmost caution. The Appellate Courts in Oregon also have a constitutional mandate to affirm if it finds that any error is harmless. If it can say after recognizing that an error occurred, so a legal ruling was an error, under the constitution they have to affirm if they can affirmatively say it had little likelihood affecting the outcome or the verdict. These are considerations we always have to look at. They might not be a

reason we don't raise an issue but it certainly is a reason why our clients might not get relief on an issue. The standard of review in direct appeals is for errors of law. But, often times there are factual records that have to be established on which the trial court rules. What is important here that I am pointing out is that the Appellate Courts will give deference to any explicit or even implicit resolution of disputed facts and if the findings are not made explicitly on the record they will come up with reasonable inferences that support the trial court's opinion and they will defer to any credibility determinations that the finder of fact must have made. In my phone calls with clients, numerous times I have said that I understand that they think that it just didn't happen the way the trial worked out but making the point that if you had six nuns see an accident and they went into court and all testified that the light was green but the town drunk was on the corner with one eye and bad vision in the other eye and came in and testified it was red then it is red if that is the way it works out. We don't get to argue about facts; we just get to look at the legal rulings. Often, those legal rulings allow for multiple choices. That is generally referred to as an exercise of discretion. At that point, if we are in that type of issue where the court had several options to choose from, we have to show that it chose from an option that was completely out of the range. Those are just some of the built in restrictions on appellate relief that we have to wrestle with and we are always trying to deal with or get around in a legitimate way.

Here is my 'Winning an appeal in four easy steps' and again, this is just talking about what attorneys do and they review the transcript and trial court file. That is their universe in any particular case. So, they are pouring over the transcript and pouring over the trial court filings and looking for any significant adverse rulings, the arguments that were made when the trial court came up with that ruling, and they are also reviewing for plain error. Like, in any case an appellate attorney sitting down would look at a sentence in a criminal case and make sure that was within legal bounds. So, some things are kind of obvious even if they weren't brought to the attention of the trial court, often can be raised on appeal. But, it certainly is a very limited subset of the types of issues that can be raised. Then, we live in our little caves and do a lot of research looking at the case law, the court rules, the statutes, any kind of pertinent legislative history, treatises, we get to go on field trips to archives sometimes which I recommend to everyone if they haven't done that. But, it can be a very solitary existence. It is trying to map out where the case law sits and how your new case with its own particular factual circumstances play into those cases and what kind of arguments you can build to get some relief for your client. I would say on the research part that is also why we have the team structure. It can be so isolating that we found that making people talk to each other and fostering an environment where you go down the hall saves tremendous amounts of efforts on cases because we do have this institutional history and knowledge that we can draw upon. So, rather than have everyone reinvent the wheel for every case they have we do employ ways to get around

that by consulting with colleagues, bringing things up in team and looking at our brief bank. The real work that we do is we write, research, revise, edit, research, revise, edit. It can go on and on. It is very technical writing. Brief writing, if you have had the pleasure of reading any of Bryan Garner's works on writing or those that he did with Scalia, they are quite illuminating that this type of persuasive writing can be very different than what you see in the trial courts, maybe with the exception of written motions to suppress and some of the other motions. It is very law based, analytically based. It takes a long time to develop. Then, you get your fifteen minutes to answer the judges questions after they have read all the briefs. That is my 'Winning an appeal in four easy steps.' That fifteen minutes is an oral argument that each side gets fifteen minutes but that doesn't happen in every case. That in Oregon, we actually enjoy that it is on the attorney's desire to have an oral argument then they will have an oral argument. That is the complete opposite in most jurisdictions and most frameworks. In most frameworks you get called in for argument and otherwise they don't want to see you. Here, I think largely because we haven't abused the process and we go in when we know that there are questions that deserve addressing and we think the judges will have questions that that is useful time but it is not useful in every case where the briefs lay out everything as they are and there frankly doesn't need to be additional discussion on it. That is my very rapid run through of what our attorneys do. I wish I could do more of this stuff as I am going through it. I would be happy to answer any questions. The last time I spoke to the Commission about our group I kind of went through our backlog, our median filing dates and I would be happy to come back at some future point and give you an update on that but I was just trying to reacquaint the Commission with what these excellent attorneys here are spending all their time doing.

2:43:06 Chair Ramfjord Do you all do any post-conviction or is that all done by contractors?

2:43:10 E. Lannet It is all done by contractors. As I understand it almost all of them go to one contractor right now, O'Connor Weber. Ryan O'Connor was in the office for a number of years, I think eight before he left. He was trained here and he brought that expertise there. There was a period of time, I think it was in 2003, when the budget was just about at its worst for us that we did take on some post-conviction appeals. But, that was kind of an extraordinary thing and always contemplated as temporary and the reason for that is just as we are looking at what happened at the trial court and we are looking at what the trial attorney did and the arguments it made we might flag things for an issue that could've arisen or try our best to argue as preserved but maybe it is not preserved. So, we are auditing the system and part of that is looking at what trial counsel did. So, we don't bring post-conviction claims but we often give a kind of assessment to the client like, 'here are some things I noticed and here is why I can't raise them on appeal, here are the next processes that you can go to,' assuming that the appellate courts affirm on appeal. Just as post-conviction counsel will look at a trial attorney's performance, they look at

appellate attorney performance. So, we can't be in a position to be wearing both of those hats. I would be happy to answer any additional questions.

2:44:59 N. Cozine If there aren't questions on the process could I impose it upon you to tell just a little about the Chapter 138 reform?

2:45:07 E. Lannet I think we met like 14 times. Judge Bushong, who is a member of the Oregon Law Commission, is chairing a work group on direct appeals. Most of the statutes dealing with direct appeals are in Chapter 138 of the Oregon Revised Statutes. Some of those statutes go back to the DD code, so basically back to the 1850's. There have been significant changes in sentencing and appeals and the scope of review. There has not been a revision of those statutes I don't think ever, as far as complete re-write and even what we are undertaking is not a complete re-write. It has been addressing things as they come up or as the legislature makes certain points. That has left the statutes in a rather confusing state when it comes to what kind of things are appealable from the state, what can they appeal before a judgement is entered so an interlocutory appeal, post-judgement, what kind of arguments can be raised? What can they seek review of as in sentencing errors on the state's case. That translates over to defendants too where there are times where the case becomes about can we argue about what we think went wrong and it can take a tremendous amount of resources. So, it is quite wonderful that we are trying to make that clear and so those kinds of issues can come off the table and then we can spend our time litigating about the merits and about the errors that we are saying happened rather than fighting with the state about whether the court can get to those errors. That is the benefit that we will receive there assuming that the Oregon Law Commission's work group efforts bear fruit.

2:47:12 N. Cozine There has been a lot of praise of both the Department of Justice and OPDS's involvement through Ernie and Marc Brown in terms of being incredibly skilled practitioners who are available to help shape the proposed changes. It has been really nice.

2:47:30 E. Lannet I guess it is like being a plumber and then having to refer to whatever kind of CCR job where it is what we have worked with every day. It is amazing over the course of 14 years in dealing with your own cases and your colleagues' cases just how many snafus can arise. Untangling some of that has been interesting.

2:47:56 Chair Ramfjord Questions? Thank you.

2:47:59 E. Lannet Thank you.

Agenda Item No. 8 Update on public meetings law litigation in *Handy v. Lane County*

2:48:18 P. Levy

I sat here because I think I am next on the agenda. I am sure everybody read the *Handy vs. Lane County*. It is a classic punt. We have been following this case and certainly sensitive to the issues for many years and what we have always done and will continue to do is to not invite the Commission to inadvertently violate the public meetings law by engaging in discussion through email of a matter that will be the subject of a decision that the Commission will be asked to make. The case, I don't want to spend a lot of time on this, but the brief procedural history you don't get it all in the opinion from the Supreme Court. But, we started talking to the Commission about this in 2013 when a trial court judge decided the original *Dundee vs. Handy* which arose out of a scheme of three Lane County Commissioners to have the commission approve funding for each of the commissioners to have part time assistants. They wanted to accomplish that and hardwire it before it became an item on the actual commission agenda. They were cautioned against doing that. They had these serial meetings and this Dundee person and maybe our Commissioner from Lane County knows who these personalities are, I don't. The case went to trial and the trial judge said, 'yeah, county, you violated public meetings law,' and imposed fines. In doing so the trial judge said, 'you met under the public meetings statute by having these serial communications both through email and in person but not in the context of a meeting.' For whatever reason and I don't know if anybody really understands this, Lane County settles the case by agreeing to pay \$350,000 to the plaintiff. That ruling, which was dubious, was never appealed. You have in your Commission Handbooks that we gave you, legislative counsel's description of the ruling and criticism of that. It wasn't appealed. This is payback, the Handy case, because part of the settlement was that Handy had to pay the county towards the county's obligation in the settlement and that is what gave rise to this case. The Court of Appeals agreed in this new case with the trial court's ruling that these serial meetings, now this is a new set of serial meetings, would violate the public meetings law. As you can tell by the amicus who are listed on this case it caused a lot of heartburn and interest to a lot of people, much more so for county commissions and other public bodies where the members work together daily and have to really worry communicating, talking, seeing each other, emailing each other every day, driving to meetings together. County Commissioners, you won't find three of them in one car going to a meeting because they are worried about this.

After the original trial court opinion in *Dundee vs Handy* case there was a legislative work group that looked at legislation. It didn't go anywhere. So, it went to the Supreme Court and the Supreme Court said this is too hard for us and we don't need to decide whether in the public meetings law the word 'meet' has the same meaning as 'meeting.' I just want to lay this out real quickly, the public meetings law has sort of two main components. One is a directive that meetings of a public body have to be open to the public and meetings are defined as a convening of a public body when a quorum gathers to decided or deliberate towards a decision. So, it is a convening. It is clearly a

meeting where people come together and those have to be open to the public. The second main pillar of the public meetings law is that a governing body such as yourself cannot meet in private unless authorized to do so by the executive session laws. The Court of Appeals in this case decided upon different definitions for 'meeting' and 'meet.' That really was the issue that the Supreme Court was asked to decide on, and they said this is really complicated stuff and we are not going to do it. There is no resolution of that issue. Two weeks ago the Supreme Court accepted review on a new case where this issue is squarely in front of them again and if you thought this one was kind of mind numbing, this new one if you read the Court of Appeals it is *Tri-met vs Amalgamated Transit Union*. It is like so many of these, you get almost to the end and you think that person is winning and clearly the Court of Appeals agreed with the trial court. The question was whether the bargaining sessions between Tri-met and their union were subject to the public meetings law. The Court of Appeals says, 'no, these are not meetings under the public meetings law that are required to be open to the public.' They go through a lot of analysis, a lot of facts, and then the last page they say, 'but we just decided that 'meeting' and 'meet' mean different things and it may be that though it is not a meeting, they may meet.' So, they remanded to the trial court to think about that. They don't explain why it should make any difference in this case and I have read it a couple of times and I don't understand it but I think they felt they boxed themselves in so someone else should think about it. So, I will be back to talk to you in about a year about this one I am sure. Meanwhile, we are not going to ask you to deliberate or decide an issue through email or other types of serial meetings unless it is in the context of a meeting that is open to the public. That does not mean that the entire Commission cannot gather as a body at a restaurant and decide what to order because a quorum is not required to order a meal at a restaurant.

- 2:58:15 N. Cozine There was one more really interesting case on public meetings that came out just recently, right? The SAIF Corporation had an executive director that was...
- 2:58:28 T. Christ Just a sec, I am involved in that case.
- 2:58:30 N. Cozine Oh.
- 2:58:33 P. Levy Yeah, we don't have to...
- 2:58:35 T. Christ I can leave the room.
- 2:58:37 P. Levy That is okay, we don't...
- 2:58:40 N. Cozine It is just instructive. At some point we will have a discussion about it is this what can you do in executive session, what you can't and it is our responsibility to make sure we never put you in awkward position. So, that is

our goal and keeping you educated about why we are doing what we are doing is our goal. But we can defer that conversation for another day.

2:59:00 P. Levy This was brought to you simply because we have been following it for years and it is more interesting that anything else because you're not going to be in the position of these Lane County Commissioners who seem to be sui generis. (2.59.15)

Agenda Item No. 9 Executive Session – PDSC Contracting

2:59:22 Chair Ramfjord Alright, speaking of executive session, we are now moving into executive session to discuss PDSC contracting and I am going to make the appropriate announcement. The Public Defense Services Commission will now meet in executive session for the purpose of considering the probation for records that exempt by law from public disclosure or inspection under ORS 192.502(9)(a) and ORS 40.225. This executive session is being held pursuant to ORS 192.660(2)(f) which permits the Commission to meet in executive session for the purposes just stated. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session except to state the general subject of this session as previously announced. No decision may be made in executive session. At the end of executive session we will return to open session and welcome the audience back into the room.

3:00:29 P. Levy I think all we have in the room are staff, which is the way it usually is when we get to this point. Just to be clear, what I will be referring to and talking about is a document prepared for us by a lawyer who we retained to advise us about our contracting processes and other documents that we operate by and how they affect our status as...

Back from Executive Session

Agenda Item No. 10 OPDS Monthly Report

0:03 N. Cozine Alright, a few quick updates. Budget, you have our draft budget handouts which are our sort of talking points for the legislature. We believe our budget hearings will be in March, potentially toward the end but we do not have anything specific yet. As soon as we do, we will let you know. We are working on our budget slides and with stakeholders, contractors, and others on what those hearings will look like. I also wanted to mention that the Public Defense Advisory Group is under reconfiguration. We had had a series of retirements from leadership positions in public defense in the last several years and recognized that we needed to invite new directors and others to express interest in the group and so we will be having a new set of individuals,

many with experience on PDAG and some new folks in the month ahead. We are also experiencing some changes here at OPDS. Angelique Bowers will be leaving the agency at the end of the month and we are very fortunate, Stephanie are you here? Will you say a quick hello? Stephanie Petersen is joining us. Stephanie has been with the Judicial Department for the last nine years. Actually, my time with the Judicial Department overlapped with hers and she is jumping on board. She is working with Angelique now to get familiar with all the spreadsheets. We are just really fortunate that she was interested in joining us here at OPDS. Then, Ashley, who was so amazing in helping us compile all of our new versioned communication tools and our annual report has decided to pursue greener pastures in Idaho. We are very sad to see both Angelique and Ashley go, but we will be, we have one great replacement so far and we will be working on how to cover Ashley's work. So, you may see some changes on Commission communications here in the next month or two and I apologize if there are glitches. Every time we have a staffing change there will be those learning curves but we will do our best to keep everything consistent. Ashley created a great handbook for herself and whoever succeeds her. So, I think it should be smooth. Finally, Clackamas County, we were supposed to go to Clackamas County in December. We could go in March. We already have a fairly full March agenda including my review. Typically, in my review we have all of those who directly report to me come and visit with you. So, it puts a bit of a burden on staff if we are in Clackamas County for that. So, my preference would be to go ahead and have our March meeting here and then go up to Clackamas County in May. It pushes it out a little further than I would like but I think given the options it is the best course of action. Of course, in March we will be very busy with Legislative Session so a better time to stick around. As long as that is okay with you, that is how we will proceed. Does anyone else have reports? We have some other staffing changes we may want to talk about.

3:36 E. Lannet

I would just mention that a deputy two, well she was a deputy two for a year or so, she is departing. She is leaving actually to join O'Connor Weber. Lindsey Burrows, so after five years of service in our office she has become an excellent attorney. It is going to be a big hit to lose her but at least we know she is going out to do some more good work. With the changes to the qualification standards that Amy and Paul did, we are revisiting our appellate panel application process. It has just been kind of an institutional presence that we have several attorneys that we can call on for conflict cases if we have any overflow cases. We have posted those materials up. It is, I guess this is one form where I can say it, no one will hear it but they might read it later, is that we really don't have that many cases that are going to the panel because we have gotten to the point where we can take the capacity of what the appellate caseload is. However, we do have, like any law firm, conflicts and other situations where we need to let a client go out to someone else. We also have some support staff changeover that we are dealing with but that is going well.

If my presentation earlier raised more questions that I can answer or anything else, feel free to send me some feedback. Thanks.

5:17 Chair Ramfjord Alright, unless anybody has anything further I would say that we are adjourned. Alright, thank you. We are adjourned.

Meeting Adjourned

Attachment 2

***OFFICE OF PUBLIC DEFENSE SERVICES
PERSONNEL POLICIES AND PROCEDURES***

REVISED ~~November 1, 2015~~

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FOREWARD

The purpose of these personnel policies and procedures are to ensure all Employees enjoy the same rights, terms, and conditions of employment.

The Office of Public Defense Services is committed to continually improving and refining its personnel administration system. These Personnel Policies and Procedures will be reviewed in odd-numbered years beginning in 2015. A committee of both management-level and non-management level Employees will review the existing policies and procedures, make recommendations, and submit these to the Executive Director or his/her designee for presentation to the Public Defense Services Commission for adoption of the changes. In the event a law or rule change requires an update in the interim, the Executive Director will determine whether to implement immediately or convene a policy committee for review and recommendation to the Public Defense Services Commission.

Applicability

The following Policies and Procedures apply to all Office of Public Defense Services (OPDS) Employees on and after July 1, 2003, except where in conflict with the provisions of a collective bargaining agreement.

Agency Definitions

As used in the following Policies and Procedures:

The “Executive Director” is the Executive Director of OPDS.

“OPDS” means the Office of Public Defense Services.

“PDSC” or the “Commission” is the Public Defense Services Commission.

SECTION I: General Definitions

ADMINISTRATIVE AUTHORITY

The Executive Director of the OPDS or any other management-level Employee designated, in writing, as an Administrative Authority by the Executive Director.

ALLOCATION

The duties, responsibilities, authority, and required employment qualifications assigned to a position of an existing classification.

AMERICANS WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act (ADAAA) are federal laws protecting the rights of qualified individuals with a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having an impairment ~~disability~~ who are an Employee or applicant for employment.

ANNUAL SALARY ~~(MERIT)~~-INCREASE

Subject to approval by the Administrative Authority, an annual salary ~~(merit)~~-increase is a one-step pay increase given to a limited duration or regular status Employee on the Employee's salary eligibility date, provided the Employee's pay does not equal or exceed the maximum step of the current salary range.

BREAK IN SERVICE

A break in service is a separation from or interruption of paid employment which exceeds 15 consecutive calendar days.

CALENDAR MONTH

A calendar month is any month encompassing the first calendar day through the last calendar day inclusive.

CLASS OR CLASSIFICATION

A group of positions sufficiently similar in duties, responsibilities, authority, and employment qualifications to permit their combination under a single title based on common standards of selection and compensation.

CLASS SPECIFICATION

A class specification is a written description of a class containing a title and a statement of duties, responsibilities, authority, and qualifications that are broadly representative of the positions in the class.

CLASSIFICATION SYSTEM

The classification system is a uniform and consistent method of identifying, describing, and analyzing assigned work through evaluation of specific job factors. The product of the classification system is the allocation of each position to a classification, the assignment of a

class title, a written description of the duties commonly performed by positions allocated to the classification, and a comparative ranking of all classifications within OPDS.

COMPENSATION PLAN

A list of the designated salary ranges, and pay rates within those ranges, for each classification.

COMPENSATORY TIME

Paid leave (in lieu of cash payment) accrued at the rate of time and one-half for overtime hours worked.

CONFLICT OF INTEREST

A conflict, the appearance of a conflict, or the potential for either, between an Employee's personal or financial interests or other obligations and an Employee's obligation to act in the best interest of the OPDS and without improper bias.

CONTINUOUS SERVICE

Continuous service is uninterrupted employment. Interruption of employment occurs any time a break in service exceeds 15 consecutive calendar days.

DAY

A consecutive 24 hour period beginning at 12:00:01 a.m. (one second after midnight), and ending at 12:00 midnight.

DEMOTION, INVOLUNTARY

An Employer-initiated movement of a nontemporary Employee, for disciplinary reasons, from the Employee's classification and position to a classification and position having a lower salary range.

DEMOTION, VOLUNTARY

An Employee-initiated movement of a nontemporary Employee, for non-disciplinary reasons, from the Employee's classification and position to a classification or position having a lower salary range.

DIFFERENTIAL

A fixed percentage of pay added to an Employee's base pay in recognition of performance of a specialized set of skills, assigned by the supervisor, which are not normally a requirement of the position. Examples include bilingual differential or assignment of lead work for more than 10 work days.

DISMISSAL

An Employer-initiated separation from employment of a regular status or promotional trial service Employee as a result of improper conduct or inadequate performance, including situations that may be beyond the control of the Employee.

EXEMPT EMPLOYEE

Executive, administrative, or professional Employees as defined by the Fair Labor Standards Act (FLSA) paid on a salary basis and exempt from both minimum wage and overtime provisions of the FLSA.

FAIR LABOR STANDARDS ACT (FLSA)

A federal law governing minimum wage, overtime pay, recordkeeping, and youth employment standards. Sets forth criteria regarding work which may be exempt from these standards.

FAMILY MEDICAL LEAVE ACT (FMLA)

A federal law entitling eligible Employees to take job-protected leave for specified family and medical reasons. Also see Oregon Family Leave Act (OFLA).

FAMILY MEMBER, QUALIFIED (As defined by FMLA and/or OFLA)

Under FMLA, “family member” is a spouse, child, or parent. OFLA includes the FMLA qualified family members, and adds parent-in-law, grandparent or grandchild of an Employee, or an individual for whom the Employee is or was in a relationship of “in loco parentis”. Under FMLA rules, children who are the Employee’s biological, adopted, step or foster child under 17 or incapable of self-care are qualified, under OFLA there is no age limit defined.

FULL-TIME EMPLOYEE

A full-time Employee is one who normally is scheduled to work 40 hours each work week in a monthly pay period or any average of 40 hours per week over the course of a monthly pay period

INITIAL HIRE

Status of an Employee atThe first employment by the Office of Public Defense Services, or the re-employment of a former Employee after a break in service of two years or more.

JOB-SHARE

A full-time position held by two or more Employees working part-time. Each employee working a job-share position is treated as a part-time employee.

LAYOFF

An employer-initiated separation from employment due to lack of work, shortage of funds, organizational restructuring, or other circumstances not related to Employee performance.

LEAD WORK

Duties assigned in writing to a non-management service Employee to perform all of the following on a recurring daily basis, (1) to prioritize and assign tasks to efficiently complete work; (2) give direction to workers concerning work procedures and performance standards; (3) review the completeness, accuracy, quality, and quantity of work; and (4) provide informal feedback of Employee performance to the supervisor, if the classification for the Employee’s position does not include lead work duties in writing.

LIMITED DURATION POSITION

A position created for a project or special study or in anticipation of legislative approval of a regular position. A limited duration position has a specified end date that is no later than the last day of the current biennium.

LIMITED DURATION STATUS

Employment in a regular or limited duration position by initial hire (or by transfer, promotion, or voluntary demotion of an Employee) for a stated period of time, for a special study or project. The study or project is subject to renewal for a specified or unspecified period or subject to termination on or before the stated expiration date. Time worked as a limited duration Employee does not apply toward completion of a trial service period or toward attaining regular status.

MANAGEMENT-LEVEL EMPLOYEE

An Employee delegated the authority to formulate and carry out management decisions or who represents management's interest by taking or effectively recommending discretionary actions that control or implement employer policy and who has the discretion in the performance of these management responsibilities beyond the routine discharge of duties. A managerial Employee need not act in a supervisory capacity in relation to other Employees.

MERIT INCREASE

~~See Annual Salary Increase.~~ A salary increase awarded by an Appointing Authority to an Employee whose performance equals or exceeds the established standards, provided the Employee has not reached the maximum of the salary range.

MINIMUM QUALIFICATIONS

The minimum experience, training, knowledge and skill necessary for admission to a test or for successful entry and performance in a classification or position.

NON-EXEMPT EMPLOYEE

An overtime eligible Employee covered by the FLSA.

OREGON FAMILY LEAVE ACT (OFLA) and OREGON MILITARY FAMILY LEAVE ACT (OMFLA)

A state law governing family leave needs and bereavement leave. OMFLA governs leave granted to Employees who are the spouse of a member of the military forces on active duty. Also see Family Medical Leave Act (FMLA).

OVERTIME

Time worked (including paid leave taken) by a FLSA non-exempt n-Employee not subject to FLSA in excess of 40 hours in a work week.

PART-TIME EMPLOYEE

An Employee who normally is scheduled to work less than the equivalent of 40 hours each work week in a monthly pay period.

PERSONAL LEAVE

Paid leave given to nontemporary Employees at the beginning of each fiscal year, July 1st, and which exhausts on June 30th each year if not utilized.

PERSONNEL ACTION

Any action taken with reference to an Employee or a position including, but not limited to, appointment, rate of pay, promotion, demotion, transfer, layoff, dismissal, or classification.

POSITION

A group of duties, authorities, and responsibilities assigned by an Administrative Authority requiring the employment of full-time or part-time employment one person to perform the duties. Types of positions include regular, limited duration, and temporary.

POSITION DESCRIPTION

The written description of the specific work assigned to a position which describes the duties, authorities and responsibilities assigned by management, and identifies the essential functions of the job.

PROMOTION

The movement of an Employee from the Employee's current classification and position to a classification and position having a higher salary range.

PUBLIC EMPLOYEE'S BENEFIT BOARD (PEBB)

A State of Oregon agency that administers Employee insurance benefit plans.

PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)

A State of Oregon agency responsible for administration of the state Employee retirement plans.

RECLASSIFICATION

The change in allocation of an Employee, a position, or both from one existing class to another existing class as a result of a substantive change in the duties assigned to the position. The change in duties usually occurs gradually over a period of time and results in a change to a lower or higher classification.

RECOGNIZED SERVICE DATE

The date an Employee began working for OPDS or a State of Oregon agency (with the exception of temporary or volunteer work), adjusted by any break(s) in service of more than 15 consecutive calendar days, used to determine the Employee's retirement service credits and vacation accrual rate. The recognized service date does not change when leave without pay is less than 15 consecutive calendar days, due to military leave, to FMLA and/or OFLA leave, or Workers' compensation leave. A break in service of more than two years, for reasons other than approved leave without pay, voids all previous employment and reemployment sets a new recognized service date.

REEMPLOYMENT

The noncompetitive employment of a former regular or trial service status OPDS Employee to a position in a class of work with a salary range equal to or lower than the salary range for the classification that the Employee last held.

REGULAR POSITION

A position approved by the legislative assembly. A regular position, subject to administrative or organizational change, is anticipated to continue in future biennia.

REGULAR STATUS

Status attained upon successful completion of the most recent trial service period (initial or promotional). Time employed with temporary or limited duration status does not apply toward attaining regular status.

SALARY ELIGIBILITY DATE

The date an Employee is eligible for consideration for an annual salary increase. This date is one year after initial hire or rehire, or one year after a subsequent promotion, upward reclassification and annually thereafter until the Employee reaches the maximum rate of pay for their class.

SALARY RANGE

A range of pay established for each classification, normally including a minimum rate, maximum rate, and intermediate rates.

STATUS

The employment relationship between an Employee and OPDS. Types of status include limited duration, regular, temporary, and trial service.

SUPERVISOR

An individual delegated the authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other Employees, or responsibility to direct them, or to adjust their grievances or effectively recommend such action, if the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

SUSPENSION

The temporary, involuntary removal of an Employee from the work site with or without pay, usually for disciplinary reasons.

TEMPORARY INTERRUPTION OF EMPLOYMENT

A planned interruption of employment, not exceeding 15 continuous days, caused by lack of work, budget deficit, or other unexpected or unusual reasons or an unplanned interruption caused by environmental or other reasons.

TEMPORARY POSITION

A position created as a result of a non-recurring or periodic workload increase or due to a regular, trial service, or limited duration status Employee's absence. A temporary position has a specified end date that is usually no later than one year from the date the position was created.

TEMPORARY STATUS

A noncompetitively appointed Employee (in any type of position) for a period of up to one year and subject to renewal for a specific period of time. Employees with temporary status have no rights or benefits except as provided by state and Federal law.

TERMINATION

The involuntary separation of an Employee from state service.

TRANSFER

The lateral movement of an OPDS Employee from one position to another position in the same classification or to another position in a different classification having the same salary range.

TRIAL SERVICE PERIOD

A working test period during which an Employee is required to demonstrate, by conduct and actual performance of duties, the qualifications and fitness for the position. An Administrative Authority may extend the trial service period so long as the total trial service period does not exceed twelve months. Trial service is extended by any period of leave without pay in excess of 15 consecutive calendar days by adding to it the number of calendar days absent without pay, thereby making the completion date later than it would have been if leave without pay had not occurred.

TRIAL SERVICE STATUS

Trial service status is employment during the first six months following initial hire or rehire in a regular position (initial trial service) or the six months following a promotion (promotional trial service), unless the trial service is extended by the administrative authority. An Employee on trial service status retains that status upon transfer or promotion to a limited duration position.

UNDERFILL

The employment of a person in a classification with a salary range lower than the salary range of the budgeted or established classification level of the position. When applying this personnel rule, the qualification level of the Employee, not the position or classification, is the determining factor in the case of an underfill.

WORK OUT OF CLASS

The temporary assignment of an Employee to perform additional duties in their current position or essentially all of the duties, authority, and responsibility of a position classified at a higher salary level for a limited period of time.

WORK WEEK

A fixed and regular recurring period of 168 hours during seven consecutive 24-hour periods. The work week for all OPDS Employees shall begin at one second after midnight Sunday and end at midnight the following Saturday.

SECTION II: Equal Opportunity, Non Discrimination and Harassment Free Workplace

Policy

- I. OPDS offers equal employment opportunities without regard to race; color; national origin; sex (includes pregnancy-related conditions); sexual orientation; union orientation; gender identity or expression; religion; genetic information; marital status; age; physical or mental disability; veteran; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations of possible violations; or other status protected under applicable local, state, or federal law. OPDS requires that all Employees cooperate fully to ensure the fulfillment of this commitment in all actions and decisions, including:
- Hiring, placement, promotion, transfer, and discharge;
 - Recruitment, advertising, or solicitation for employment;
 - Compensation and benefits; and
 - Selection for training.

~~II. It is also the policy of OPDS that all Employees work in an environment where the dignity of each individual is respected. Harassment due to status protected under this policy is prohibited.~~

~~III. II.~~ OPDS will make reasonable accommodations for the known physical or mental disabilities of an otherwise qualified applicant or Employee, unless an undue hardship would result. Any applicant or Employee who requires an accommodation in the hiring process or to perform the essential functions of a job should contact the Human Resources Manager.

~~IV. III.~~ OPDS is committed to a workplace that offers equal employment opportunity in keeping with the Employer's policy and all Employees will affirmatively work to ensure that the workplace operates in accordance with this policy.

~~IV. It is also the policy of OPDS that all Employees work in an environment where the dignity of each individual is respected. Harassment, unwelcome, unwanted, or offensive conduct, based on or because of an Employee's ~~due to status~~ status under this policy is prohibited.~~

SECTION III: Professional Workplace

Policy

It is the policy of OPDS that mutual respect between and among managers, employees, temporary employees and volunteers is integral to the efficient conduct of business. All individuals work together to create and maintain a work environment that is respectful, professional and free from inappropriate workplace behavior.

- I. Professional workplace behavior supports the values and mission of OPDS, building positive relationships with others, communicating in a respectful manner, holding oneself accountable and pursuing change within the system.
- II. Inappropriate workplace behavior is unwelcome or unwanted conduct or behavior that causes a negative impact or disruption to the workplace or business of the agency, or results in the erosion of employee morale and is not associated with an employee's protected class status.¹

¹ Protected class under Federal Law: race, color, national origin; sex (including pregnancy-related conditions); religion, age (40 and older); disability; a person who uses covered leave by Federal Family and Medical Leave Act (FMLA); a person who uses military leave, a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; any other protected class as defined by federal law.

Protected class under Oregon Law: all federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act (OFLA); marital status; family relationship; sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

SECTION ~~IV~~V: Performance Assessment and Management

Policy

- I. OPDS maintains a Performance Management Process to assist in managing the performance of its Employees. This process shall promote the Employees' understanding of successful job performance and encourage their commitment to OPDS's mission, the goals and objectives.²
- II. OPDS provides training for its managers and supervisors in the administration of the Performance Management Plan.
- III. OPDS's Performance Management Plan includes the following requirements.
 - A. An assessment and written formal feedback regarding the Employees' performance at the conclusion of the initial or promotional trial service period.
 - B. Assessments and feedback from supervisors to promote professional development and assess training needs throughout the review period.
 - C. A written performance evaluation for each Employee. The evaluation shall be based on the Employee's position and duties and include:
 1. a discussion of the Employee's performance between the supervisor and Employee;
 2. documented performance achievements and/or deficiencies;
 3. training and education received throughout the review period and an identification of relevant training and education goals for the following review period;
 4. development of job-related performance measures in collaboration with the Employee that are consistent with the Employee's position description and relate to OPDS's mission, goals, and objectives for the next review period;
 - ~~5. an internal agency review process completed prior to finalizing and communicating performance to each Employee;~~
 - ~~6.5~~ signatures of the Employee and supervisor with a copy of the signed evaluation form provided to the Employee.
 - D. A copy of the performance evaluation will become a part of the Employee's personnel file located in Human Resources and retained for no less than three years.

² OPDS's mission, goals and objectives are set forth in ORS 151.211 to 151.219 included as Appendix A.

- E. An Employee may prepare written comments or rebuttal to their evaluation within thirty (30) calendar days of receiving the signed evaluation, which shall be attached to the evaluation form and become part of the Employee's personnel file.

SECTION IV: Reassignments and Layoffs

Policy

- I. OPDS shall establish fair and rational procedures for reassigning or laying-off Employees due to reorganization, reduced workloads or revenues, or to meet position reduction goals.
- II. An OPDS Employee may be reassigned or laid off through a reduction in work force because of lack of work, funds curtailment, reorganization, or other non-disciplinary reasons consistent with the needs and mission of OPDS that do not reflect discredit on the Employee.
- III. OPDS is committed to providing its Employees with options to remain employed with OPDS in lieu of layoffs if possible. Therefore, all work force adjustment measures within OPDS shall be explored prior to implementing layoffs, including reassignment to existing vacancies, voluntary terminations, or demotions. Should such work force adjustment measures be unavailable or infeasible, OPDS shall make reasonable efforts to inform laid off Employees of their options and the processes to be considered for other employment opportunities in state government and to minimize negative impacts on laid-off Employees to the extent possible.
- IV. This policy does not authorize the displacement or “bumping” within OPDS by any OPDS Employee.
- V. OPDS Employees laid off in accordance with this policy may request to be added to any applicable agency layoff list for the same, equal, or lower positions or classifications for which they are qualified, valid for a period of one (1) year.
- VI. An OPDS Employee who is reassigned or laid off pursuant to this policy may appeal the action to the Administrative Authority and the Executive Director in accordance with the written procedures described below.
- VII. Failure of OPDS, the Executive Director or Administrative Authority to comply with one or more provisions of this Policy or the accompanying Procedures in taking any action with regard to an Employee shall not invalidate the action unless the Employee is deprived of a constitutionally protected right and there is no possibility of correcting or reversing the deprivation of the Employee’s constitutionally protected right. When the potential deprivation of the Employee’s rights is brought to the attention of OPDS, the Executive Director or Administrative Authority may rescind the action, may take new action of the same or different nature, or may let the action taken stand.

Procedure

1. The PDSC shall determine the necessity to reduce OPDS’s work force due to lack of work, funds curtailment, reorganization, or other valid reasons based upon the needs

and mission of OPDS, and establish timelines to accomplish such work force reductions.

2. The Executive Director or Administrative Authority shall determine the number of positions, classifications or organizational units in OPDS affected by the pending work force reduction. In making this determination, the Executive Director or the Administrative Authority shall consider the needs and mission of OPDS, including the types of positions affected and remaining positions, the special knowledge, skills, and experience necessary to accomplish the mission and work of OPDS, and the diversity of Employees in OPDS as this factor affects OPDS's ability to accomplish its mission.
3. The Executive Director or Administrative Authority shall identify any vacant positions in OPDS and prepare a summary of the knowledge, skills and experience required of those vacant positions at the same or lower salary ranges of those positions affected by the pending work force reduction.
4. The Executive Director or the Administrative Authority shall identify all OPDS Employees by position or classification affected by the pending work force reduction and request updated information regarding their relevant knowledge, skills and experience.
5. The Executive Director or the Administrative Authority shall identify the OPDS Employees to be reassigned or laid off, taking into consideration the following factors in descending order of importance:
 - A. The relevant knowledge, skills and experience of each Employee in the positions, classifications or organizational units affected by the pending work force reduction, the diversity of OPDS's work force as it relates to the ability of OPDS to accomplish its mission, and the transition time for a potentially qualified Employee to be capable of performing the duties of a vacant or open position at OPDS;
 - B. The quality of performance and relative merit of each Employee in the positions, classifications, or organizational units affected by the pending work force reduction as determined by (i) the Employee's most recent performance evaluation, or (ii) a special performance evaluation for all Employees in positions, classifications or organizational units affected by the pending work force reduction;
 - C. The length of an affected Employee's service with OPDS, the State Public Defender or the Indigent Defense Services Division; and
 - D. The length of an affected Employee's service with any other Oregon state agency.

6. The Executive Director or the Administrative Authority shall consider reassignment options within OPDS for Employees identified for layoff.
7. At least thirty (30) calendar days prior to the effective date of layoff or reassignment, the Executive Director or the Administrative Authority shall provide written notice to the affected Employees of the reasons for the reassignment or layoff and the rights and options provided by the OPDS Reassignment and Layoff Policy and Procedures. In addition to the right to appeal, an Employee who is laid off may request to be added to the agency layoff list for the same, equal or lower positions or classifications for which an Employee is qualified.
8. The Executive Director or the Administrative Authority shall document the foregoing actions, submit this documentation to the Public Defense Services Commission, and maintain the documents for three (3) years from the date of the layoff. This documentation shall include reasons and rationale supporting the determination of individual layoffs in accordance with Procedure 5, above.
9. The Employee may appeal from the reassignment or lay off decision as follows.
 - A. The appeal shall be in writing and mailed or hand-delivered to the Administrative Authority not later than fifteen (15) calendar days after the effective date of the personnel action in question.
 - B. The Administrative Authority shall affirm or deny the appeal in writing not later than fifteen (15) calendar days after receipt of the appeal. The failure of the Administrative Authority to respond within fifteen (15) days after receipt of the appeal shall constitute a denial of the appeal, unless the parties mutually agree in writing to extend the time limit.
 - C. If the Administrative Authority denies the appeal, the Employee may appeal in writing to the Executive Director not later than (i) seven (7) days after the Administrative Authority's written decision was received, or (ii) in the absence of a written decision by the Administrative Authority, seven (7) days after the date that the appeal was deemed denied. The appeal shall be confined to the subject matter contained in the original appeal to the Administrative Authority.
 - D. The Executive Director shall rule in writing not later than fifteen (15) calendar days after receipt of the appeal. Failure of the Executive Director to respond within fifteen (15) days after receipt of the appeal shall constitute a denial of the appeal, unless the parties mutually agree in writing to extend the time limit.
 - E. The Employee may file in writing a discrimination claim not resolved to the satisfaction of the parties with the Civil Rights Division of the Oregon Bureau of Labor and Industries, and/or the federal Equal Employment Opportunity Commission.

10. Failure of OPDS, the Executive Director or the Administrative Authority to comply with one or more provisions of these Procedures in taking any action with regard to an Employee shall not invalidate the action unless the Employee is deprived of a constitutionally protected right and there is no possibility of correcting or reversing the deprivation of the Employee's constitutionally protected right. When the potential deprivation of the Employee's rights is brought to the attention of OPDS, the Executive Director or Administrative Authority may rescind the action, may take new action of the same or different nature, or may let the action taken stand.

SECTION VI: Discipline

Policy

I. Discipline is designed to educate and assist an Employee in correcting improper or inadequate conduct, performance, or behavior that OPDS finds inappropriate or deficient and ensure it is not repeated.

~~II.~~ OPDS may, at the discretion of the Executive Director, provide OPDS Employees with an opportunity to correct problems interfering with the accomplishment of the mission or operations of OPDS. The Executive Director shall maintain and administer written procedures consistent with the provisions of this Policy.

~~III.~~ Any OPDS Employee may be disciplined for inability or unwillingness to fully and faithfully perform the duties of the Employee's position satisfactorily. The reasons for discipline may include:

- A. conduct, performance, or behavior including acts or omissions on or off the job which may interfere with the mission or operations of OPDS or which affect the Employee's suitability for the position; or
- B. other conduct, performance, or behavior which affects the Employee's suitability for his or her position.

~~IV.~~ IV. A specific warning, in any reasonable form, of OPDS's concerns and reasonable opportunity to correct the problem shall be given to the Employee prior to the imposition of discipline unless the Employee knew or reasonably should have known the conduct, performance or behavior could lead to disciplinary action.

~~V.~~ V. The Executive Director or the Administrative Authority shall determine the severity of the disciplinary action based on the seriousness of the conduct, performance or behavior, the level of fault, or the unsuitability of the Employee, and the needs of OPDS. The severity of the discipline must have a reasonable basis in fact.

~~VI.~~ VI. Verbal warnings, work plans, coaching, counseling, ~~and~~ evaluations, and removal from trial service are not discipline and are not subject to appeal.

~~VII.~~ VII. The types of discipline which may be taken under this policy are:

- A. Written reprimand;
- B. Temporary salary reduction;
- C. Suspension without pay; and
- D. Involuntary d~~Demotion~~ when an appropriate vacancy, as determined by OPDS, exists at a lower level.

Note: Since the FLSA prohibits reduction of salary or deductions of less than one full week from an FLSA-exempt Employee's salary, with some exceptions under the law. FLSA-exempt Employees shall not be subject to temporary salary reduction, or suspension without pay of less than one full work week increment.

~~VII.VIII.~~ VIII. When disciplinary action is contemplated, the Executive Director or the Administrative Authority shall meet with the Employee to provide a reasonable opportunity for the Employee to respond before taking final disciplinary action. The Executive Director or the Administrative Authority shall notify the Employee in writing of disciplinary action.

~~VIII.IX.~~ IX. Failure of OPDS, its Executive Director, or the Administrative Authority to comply with one or more of the provisions of this Policy or the accompanying Procedures in taking any disciplinary action against an Employee shall not invalidate the action unless the Employee is deprived of a constitutionally protected right and there is no possibility of correcting or reversing the deprivation of the Employee's constitutionally protected right. When the potential deprivation of the Employee's rights is brought to the attention of OPDS, the Executive Director or the Administrative Authority may rescind the action, may take new action of the same or different nature, or may let the action stand.

Procedure

1. The Administrative Authority or designee investigates the alleged misconduct or deficient performance or other circumstances indicating that grounds may exist for disciplinary action or dismissal.
 - A. The Administrative Authority or designee meets with the Employee to hear the Employee's response.
 - B. The Employee may request to have a representative present with them at the investigatory meeting. The attendance of a representative may not obstruct the investigation.
 - C. The Employee may request to delay the meeting and such request will not be unreasonably denied by the Administrative Authority or designee.
2. In accordance with the foregoing OPDS Discipline Policy, OPDS may take the following disciplinary actions as follows:
 - A. Reprimand: The reprimand shall be in writing and shall reasonably inform the Employee of the conduct, performance, or behavior supporting the reprimand and the potential for further discipline if the conduct, performance or behavior is not corrected;
 - B. Temporary Salary reduction: The salary reduction shall be one or more steps within the Employee's classification salary range for a period of time determined

to be necessary to improve and monitor the conduct, performance, or behavior in question. A reprimand in lieu of salary reduction shall be imposed for Employees who are exempt under the FLSA. The Employee will be notified of the potential for further discipline if the conduct, performance or behavior is not corrected; and

- C. Suspension: The suspension shall be without pay for a specified period of time. For Employees exempt under the FLSA, the suspension is in increments of 40-hour work weeks or full days in cases of major safety violations. The Employee will be notified of the potential for further discipline if the conduct, performance or behavior is not corrected;
 - D. Demotion: This action is available when an appropriate vacancy, as determined by the agency, exists at a lower level, with a commensurate permanent reduction in salary. The Employee will be notified of the potential for further discipline if the conduct, performance or behavior is not corrected while performing the new job duties.
3. The Executive Director or the Administrative Authority shall notify the Employee in writing of disciplinary actions. The written notice shall contain:
- A. Action being taken: Reprimand, temporary reduction in pay, suspension without pay for a stated period of time, or demotion;
 - B. The date on which the action takes effect;
 - C. Grounds for the action. Grounds or cause as defined in Paragraph II(A) and (B) of the foregoing Discipline Policy;
 - D. Background: Any pertinent information such as length of service, classification, training, statements in position description, written policies and rules, descriptions of long-standing practices, and/or statements from performance evaluations that are relevant and apply to the current issue; and any other data or information which would have reasonably made the Employee aware of the conduct, performance or behavior to be expected;
 - E. Supporting facts: The dates, times, places and other facts known by OPDS sufficient to apprise the Employee of the acts, omissions, and conditions being charged;
 - F. Conclusion: A statement as to why the Employee's supervisor is concerned about the conduct, performance or behavior at issue. It is also meant to advise the Employee of the relative seriousness of the conduct, performance or behavior as viewed by the supervisor, as well as to advise the Employee that future conduct, performance or behavior of similar nature will result in more severe discipline; and

- G. Notice of appeal: A statement that the action taken may be appealed according to the appeal process described in procedure 4, below.
4. The written notice of disciplinary action may be hand delivered to the Employee or mailed by certified or registered mail to the Employee's last known address. The effective date shall be three (3) calendar days after the postmark date on the letter or the date hand delivery was accomplished.
 5. The Employee may appeal a disciplinary action as follows:
 - A. The appeal shall be in writing and mailed or hand-delivered to the Administrative Authority not later than fifteen (15) calendar days after the effective date of the personnel action in question.
 - B. The Administrative Authority shall affirm or deny the appeal in writing not later than fifteen (15) calendar days after receipt of the appeal. The failure of the Administrative Authority to respond with fifteen (15) days after receipt of the appeal shall constitute a denial of the appeal, unless the parties mutually agree in writing to extend the time limit.
 - C. If the Administrative Authority denies the appeal, the Employee may appeal in writing to the Executive Director not later than (i) seven (7) days after the Administrative Authority's written decision was received, or (ii) in the absence of a written decision by the Administrative Authority, seven (7) days after the date that the appeal was deemed denied. The appeal shall be confined to the subject matter contained in the original appeal to the Administrative Authority.
 - D. The Executive Director shall rule in writing not later than fifteen (15) calendar days after the receipt of the appeal. Failure of the Executive Director to respond within fifteen (15) days after receipt of the appeal shall constitute a denial of the appeal, unless the parties mutually agree in writing to extend the time limit.
 6. Involuntary demotions shall not be used if an Employee is not qualified for employment in the lower class or position, or if such action would cause a regular Employee in a lower class to be laid off.
 7. Documentation shall be maintained to support any actions taken under the OPDS Employee Discipline Policy and Procedures.
 8. Failure of OPDS, its Executive Director or Administrative Authority to comply with one or more of the provisions of these Procedures in taking any disciplinary action against an Employee shall not invalidate the action unless the Employee is deprived of a constitutionally protected right and there is no possibility of correcting or reversing the deprivation of the Employee's constitutionally protected right. When the potential deprivation of the Employee's rights is brought to the attention of

OPDS, the Executive Director or Administrative Authority may rescind the action, may take new action of the same or different nature, or may let the action stand.

| **SECTION VII: Dismissal**

Policy

- I. OPDS is authorized to dismiss an OPDS Employee for actions or omissions as provided by law or OPDS Personnel Policies and Procedures or which interfere with the accomplishment of the mission, goals or objectives of OPDS.
- II. The Executive Director or the Administrative Authority of OPDS may, at their discretion, provide an opportunity for an Employee to correct problems pursuant to the OPDS Employee Discipline Policy and Procedures before dismissal action is taken, unless the conduct or unfitness of the Employee warrants dismissal and the Employee knew or should have known that dismissal would be logical under the circumstances.
- III. When dismissal is contemplated, the Employee shall be given an opportunity to be heard in a pre-dismissal meeting.
- IV. Appropriate action shall be determined within any time periods noted in this Policy and the accompanying Procedures.
- V. A notice of pre-dismissal shall be in writing, sent by certified mail or hand-delivered to the Employee, and include: action being taken, statutory grounds, if any, background, supporting facts, conclusion, and notice of appeal process.
- VI. Failure of OPDS, the Executive Director or the Administrative Authority to comply with one or more provisions of this Policy or the accompanying Procedures in taking any action against an Employee shall not invalidate the action unless the Employee is deprived of a constitutionally protected right and there is no possibility of correcting or reversing the deprivation of the Employee's constitutionally protected right. When the potential deprivation of the Employee's rights is brought to the attention of OPDS, the Executive Director or the Administrative Authority may rescind the action, may take new action of the same or different nature, or may let the action taken stand.

Procedure

1. When dismissal is contemplated, the Executive Director or the Administrative Authority shall deliver to the Employee a written pre-dismissal notice indicating that dismissal is being considered. The pre-dismissal notice shall:
 - A. state the grounds, provide relevant background facts, and state supporting facts to the Employee, including such facts that are necessary to apprise the Employee of the nature of the charges;
 - B. indicate the time, date, and place for the pre-dismissal meeting which would allow the Employee an opportunity to refute the charges or present mitigating circumstances to the Executive Director or the Administrative Authority;

- C. provide the consequences of failure to appear at the pre-dismissal meeting; and
 - D. state that the Employee may be represented during the pre-dismissal proceedings.
2. The date of the pre-dismissal meeting shall not be sooner than five (5) calendar days and not later than fifteen (15) calendar days following the postmark date or date of personal delivery of the notice to the Employee. The parties may mutually waive the timelines established for the pre-dismissal meeting.
 3. Upon reasonable advance request by the Employee or the Employee's representative, the Executive Director or the Administrative Authority may reschedule the date and time of the pre-dismissal meeting.
 4. Pending the completion of the pre-dismissal process, the Employee may be:
 - A. authorized to continue the normal or alternative work assignment;
 - B. continued in the current employment status;
 - C. placed in an administrative assignment to work from home; or
 - D. placed on administrative assignment with pay.
 5. The Executive Director or the Administrative Authority shall conduct the pre-dismissal meeting. At the meeting, the Executive Director or the Administrative Authority shall:
 - A. verify that the Employee has read and understands the pre-dismissal notice; and
 - B. inform the Employee of their right to refute the charges and present mitigating circumstances and information, and provide the Employee with the opportunity to do so.
 6. The pre-dismissal meeting is not a formal hearing proceeding and does not include rights of direct examination or cross-examination of witnesses.
 7. If the Employee fails to appear at the pre-dismissal meeting or offer any refutation of the charges or present mitigating circumstances or information, in writing or otherwise, a decision shall be made without input from the Employee. The failure of the Employee to appear shall not be construed as an admission or a denial of any charges and shall have no bearing on any other rights, including post-suspension and post-termination remedies, which may be available to the Employee.
 8. If new facts are discovered during the pre-dismissal process:

- A. The Executive Director or the Administrative Authority may send a supplemental notice to the Employee incorporating the new facts as an additional basis for discipline and give the Employee an opportunity to refute the new charges if the new facts are unfavorable to the Employee; or
 - B. The Executive Director or the Administrative Authority may disregard the new facts and proceed with the original action based on the original charges if the new facts are unfavorable to the Employee, or if, in the judgment of the Executive Director or the Administrative Authority, the remaining facts justify dismissal; or
 - C. A portion of the charges may be withdrawn; however, no withdrawal by OPDS of any portion of the charges supporting a dismissal or other disciplinary action shall require OPDS to rescind the action or take new action.
9. The Executive Director or the Administrative Authority shall determine the appropriate action within 15 calendar days after completion of the pre-dismissal meeting. The Executive Director or the Administrative Authority may choose to impose other discipline as outlined in the OPDS Discipline Policy, in lieu of dismissal.
10. The Executive Director or the Administrative Authority shall notify the Employee of dismissal or alternative disciplinary action in writing. The written notice shall contain:
- A. The action being taken;
 - B. The date on which the action takes effect, which must be on or after the date of delivery of the written notice;
 - C. The grounds for the action as set forth in the OPDS Employee Dismissal Policy and these Procedures;
 - D. Relevant Background: Any pertinent information such as length of service, classification, training, statements in position description, written policies and rules, descriptions of long-standing practices, and statement from performance evaluations that are relevant and apply to the issue; specific performance standards; prior advisory, corrective, or disciplinary actions; and any other data or information which would have reasonably made the Employee aware of the conduct, performance, or behavior to be expected;
 - E. Supporting Facts: The dates, times, places and other facts known to OPDS sufficient to apprise the Employee of acts, omissions, and conditions being charged;
 - F. Conclusion: A statement as to why the Employee's conduct, performance, or behavior violates applicable law or OPDS Personnel Policies and Procedures or

interferes with the accomplishment of OPDS's mission, goals and objectives. For an Employee subject to alternative disciplinary action, the statement should inform the Employee of the relative seriousness of the conduct, performance, or behavior as viewed by the supervisor, and advise the Employee that future conduct, performance, or behavior of a similar nature will result in more severe discipline; and

- G. Notice of appeal: A statement that the action taken may be appealed according to the appeal process described in procedure 12, below.
11. The written notice of dismissal or alternative disciplinary action shall be hand delivered to the Employee or mailed by certified or registered mail to the Employee's last known address. The effective date shall be the date on which the hand delivery was accomplished or three (3) calendar days after the postmark date on the letter.
 12. The Employee may appeal the dismissal to the Executive Director or appeal other disciplinary action to the Administrative Authority as follows:
 - A. The appeal shall be in writing and mailed or hand-delivered to the Administrative Authority not later than fifteen (15) calendar days after the effective date of the personnel action in question.
 - B. The Administrative Authority shall affirm or deny the appeal in writing not later than fifteen (15) calendar days after receipt of the appeal. The failure of the Administrative Authority to respond within fifteen (15) days after receipt of the appeal shall constitute a denial of the appeal, unless the parties mutually agree in writing to extend the time limit.
 - C. If the Administrative Authority denies the appeal, the Employee may appeal in writing to the Executive Director not later than (i) seven (7) days after the Administrative Authority's written decision was received or (ii) in the absence of a written decision by the Administrative Authority, seven (7) days after the date that the appeal was deemed denied. The appeal shall be confined to the subject matter contained the original appeal to the Administrative Authority.
 - D. The Executive Director shall rule in writing not later than fifteen (15) calendar days after receipt of the appeal. Failure of the Executive Director to respond within fifteen (15) days after receipt of the appeal shall constitute a denial of the appeal, unless the parties mutually agree in writing to extend the time limit.
 13. Failure of OPDS, the Executive Director or the Administrative Authority to comply with one or more provisions of these Procedures in taking any action against an Employee shall not invalidate the action unless the Employee is deprived of a constitutionally protected right and there is no possibility of correcting or reversing the deprivation of the Employee's constitutionally protected right. When the potential deprivation of the Employee's rights is brought to the attention of OPDS, the

Executive Director or the Administrative Authority may rescind the action, may take new action of the same or different nature, or may let the action taken stand.

| **SECTION VIII: Leaves**

In order to promote the efficiency and effectiveness of OPDS Employees, ensure the health and well-being of Employees and their families, and recruit and retain valued Employees, OPDS provides the following paid and unpaid leave.

Vacation Leave

OPDS encourages its Employees to use vacation leave on an annual basis.

1. Monthly Accrual

A. *Full-time Employees.* Full-time Employees shall accrue vacation leave at a rate based on each full calendar month employed in accordance with the following schedule, which is based on the Employee’s recognized service date.

<u>Years of Service</u>	<u>Hours Per Year</u>	<u>Hours Per Month</u>
Through 5th year	120 (15 days)	10.00
After 5 th year to 10 th year	144 (18 days)	12.00
After 10 th year to 15 th year	168 (21 days)	14.00
After 15 th year to 20 th year	192 (24 days)	16.00
After 20 th year to 25 th year	216 (27 days)	18.00
After 25 th year	240 (30 days)	20.00

2. *Part-time Employees.* Part-time Employees shall earn vacation leave on a prorated basis.

3. *Initial Trial Service Employees.* During the initial trial service period, Employees are eligible to accrue vacation leave each month. Accrued vacation leave may be used at the completion of the initial trial service period. Use of vacation leave may be granted during an extension of the initial trial service period.

4. *Crediting of Vacation.* Vacation leave shall be credited to an Employee on the first day of the calendar month following the calendar month in which it was earned.

5. *Partial Month Accrual.* Vacation leave accrual for an Employee working less than a full calendar month in a pay period due to hire, termination, or leave without pay shall be computed on a prorated basis using the number of available work hours, based on the Employee’s schedule, in that month.

6. *Maximum Accumulation.* An Employee may accrue a maximum of 350 hours of vacation leave. Employees who accrue 350 hours must take vacation or forfeit payment for or use of additional hours earned that would cause the Employee's vacation balance to exceed 350 hours.
7. *Scheduling of Vacations.* Unless otherwise protected by law, rule or OPDS policy, the time when an Employee may take vacation leave shall be subject to the approval of the Administrative Authority or his/her designee with due regard to the Employee and the needs of OPDS.
8. *Illness During Vacation.* When an Employee is on vacation leave and circumstances arise that would qualify the Employee to use accrued sick leave, the Employee may charge that time to sick leave.
9. *Holiday During Vacation.* If a holiday occurs while an Employee is on vacation leave, the Employee shall charge that time as holiday leave.

~~10. *Effect of Movement Between Divisions.* When an Employee transfers, promotes, or demotes, from one division to another within OPDS, the Employee's accrued vacation leave shall also be transferred.~~

~~11.~~ 10. *Employees Hired from Another State Agency.* When an Employee from another State of Oregon agency is employed by OPDS without a break in service a maximum of 80 hours of accrued vacation leave may be transferred, at the discretion of the Administrative Authority or his/her designee, to OPDS. The Employee's recognized service date shall be used to determine the monthly OPDS vacation accrual rate. See Policy Section 1(A).

~~12.~~ 11. *Vacation Pay Upon Termination.* Unless an Employee requests to transfer vacation to another State of Oregon agency, an Employee (or, in the case of death, an Employee's beneficiary or estate) shall be compensated for a maximum of 250 hours of accrued and unused vacation leave. The rate of pay for vacation shall be the Employee's pay rate at time of termination, exclusive of other types of compensation such as differentials.

~~13.~~ 12. *Donation of Vacation Leave.* Vacation leave may be donated to another OPDS Employee when requested for sick leave purposes. See Donated Leave.

Sick Leave

OPDS is committed to complying with all applicable state and federal laws including FMLA, OFLA, and Workers' Compensation laws in the application of sick leave accrual and use.

1. Monthly Accrual.
 - A. *Full-time Employees.* Full-time Employees shall accrue sick leave at the rate of eight (8) hours for each full calendar month employed.
 - B. *Part-time Employees.* Part-time Employees shall earn sick leave on a prorated basis.
 - C. *Trial Service Employees.* During the trial service period, Employees are eligible to accrue and use sick leave upon accrual.
2. Crediting Sick Leave. Sick leave shall be credited to an Employee on the first day of the calendar month following the calendar month in which the leave was earned.
3. Partial Month Accrual. Sick leave accrual for an Employee working less than a full calendar month in a pay period due to hire, termination, or leave without pay shall be computed on a prorated basis using the number of available work hours, based on the Employee's schedule, in that month.
4. Maximum Accumulation. Sick leave shall accrue without limitation.
5. Notification.
 - A. *Leave Not Covered by Family Leave Laws.* It is the Employee's responsibility to notify the immediate supervisor of the need to use sick leave. If the Employee's absence is unanticipated, the Employee shall personally contact the immediate supervisor at the beginning of each missed day's regularly scheduled work time unless other arrangements have been approved by the supervisor. If the Employee's absence is anticipated, the Employee shall notify the supervisor of the need for leave as far in advance as possible.
 - B. *Leave Covered by Family and Medical Leave Laws.* If the Employee's absence is unanticipated, supervisor, the Employee or the Employee's personal representative shall contact Human Resources. In emergency situations, the Employee or the Employee's representative shall contact the Human Resources Manager as soon as possible during the 24-hour period immediately following the Employee's scheduled work time. If the Employee's absence is prescheduled, the Employee shall notify the Human Resources Manager of the need for leave at least 30 days in advance. See [OPDS Policy - Family and Medical Leave](#).
 - C. *Holiday During Sick Leave.* If a holiday occurs while an Employee is on paid sick leave, the holiday shall not be deducted from the Employee's accrued sick leave.

6. Accrued Sick Leave.

- A. *Personal*. An Employee who is absent because of his or her own physical illness or injury, or medical or dental appointment, must use accrued sick leave for the absence before use of any other paid or unpaid leave. An Employee who is receiving income from a disability benefit plan may opt to use leave without pay instead of sick leave while receiving such disability income. An Employee opting to use leave without pay may be required to provide evidence of such disability income to the Human Resources Manager.
- B. *Family*. An Employee may request, and must be allowed to use, accrued sick leave to care for a qualified family member (as defined by the FMLA and/or OFLA). See [OPDS Policy - Family and Medical Leave](#).

7. Use of Other Leave in Lieu of Sick Leave or When Sick Leave is Exhausted. Other leave may be used in lieu of sick leave, or when sick leave is exhausted, as follows:

A. Personal

Absence Qualifying Under FMLA and/or OFLA During FMLA and/or OFLA Leave Entitlement

An Employee who is absent because of his/her own FMLA and/or OFLA qualifying condition, and who has exhausted accrued sick leave, may request and must be allowed to use, any other form of accrued paid leave or leave without pay during the FMLA and/or OFLA leave entitlement. If the Employee uses accrued compensatory time, the amount of compensatory time taken shall not be deducted from the Employee's family leave entitlement(s). See OPDS Policy – Family and Medical Leave, Exhaustion of leave.

Absence Not Qualifying Under FMLA and/or OFLA or Absence After FMLA and/or OFLA Leave Entitlement

An Employee who has exhausted their accrued sick leave and is absent after exhausting FMLA and/or OFLA leave entitlement may request use of any other form of accrued paid leave or leave without pay for the absence. The use of such leave is subject to prior supervisor approval. See OPDS policy – Family and Medical Leave, Exhaustion of leave.

B. Family

An Employee may request, and must be allowed to use, any form of accrued paid leave or leave without pay prior to, or immediately after, exhausting accrued sick leave when the Employee will care for a qualified family member (as defined by the FMLA and/or OFLA) or when that person's condition does not meet the definition of serious health condition under the FMLA and/or OFLA, but that person is unable

to care for him or herself. In such cases, the Employee is responsible to make alternative care arrangements within a reasonable time.

8. If the Employee uses accrued compensatory time to care for a qualified family member (as defined by the FMLA and/or OFLA) when that family member's condition qualifies as a serious health condition under the FMLA and/or OFLA, the amount of compensatory time taken shall not be deducted from the Employee's family leave entitlement(s).
9. Proof Required. Unless otherwise provided in state or federal law (e.g. FMLA, OFLA, ADA, Workers' Compensation), the Human Resources Manager may require the Employee to submit substantiating evidence for the use of sick leave. This evidence includes, but is not limited to, a qualified health care provider's certificate. Where in the opinion of the Human Resources Manager circumstances warrant and applicable law permits, OPDS may require a second or third certificate or medical opinion from qualified health care providers. If the Human Resources Manager does not find the evidence adequate, the request for use of other leave in lieu of sick leave may be denied.
10. Workers' Compensation Application. The requirements of Oregon's Workers' Compensation laws apply as follows:
 - A. Reporting Requirements.
 - i. An Employee who is injured on the job or becomes ill as a result of the job shall immediately report the occurrence to Human Resources or the Administrative Authority.
 - ii. The Human Resources Manager or Administrative Authority shall respond to this report in accordance with the relevant provisions of the Workers' Compensation laws.
 - B. Use of Leave.
 - i. An Employee who is absent for more than three consecutive work days because of a job-incurred injury or illness may charge the absence to leave without pay or may use accrued sick leave. If the Employee has no accrued sick leave or exhausts accrued sick leave, the Employee may use accrued vacation, compensatory time, or personal leave. An Employee who takes leave without pay receives no compensation other than the time loss payments authorized by the Workers' Compensation insurance carrier (SAIF).³
 - ii. An Employee who is absent for three or fewer consecutive work days because of a job-incurred injury or illness shall charge the absence in accordance with Section 6(A) or 7(A) of this policy.

³ See ORS 656.210(1) and 656.210(2)(d)(3).

- iii. An Employee who is required by SAIF to attend a medical exam in relation to the Employee's workers' compensation claim shall charge the absence to leave without pay and may submit a claim to SAIF for earnings lost while attending the required medical exam.

C. Prorated Leave Charges.

An Employee who is absent for more than three consecutive work days because of a job-incurred injury or illness for more than three consecutive work days and who chooses to make prorated charges to accrued leave, shall do so by charging for every hour absent, 1/3 of one hour to accrued leave and 2/3 of one hour to leave without pay. The amount of time charged to leave without pay shall represent the amount of time loss compensation received from SAIF.

~~11. Effect of Movement Between Divisions. When an Employee transfers, promotes, or demotes from one division to another within OPDS, all of the Employee's accrued sick leave shall be transferred.~~

~~12.~~11. Effect of Reemployment. A former OPDS Employee who is hired into a non-temporary OPDS position within two years from the Employee's date of separation shall have previously accrued and unused sick leave restored.

~~13. Effect of Movement Between Divisions. When an Employee transfers, promotes, or demotes from one division to another within the OPDS, all of the Employee's accrued sick leave shall be transferred.~~

~~14.~~12. _____ Employees Hired From Another State Agency. An Employee from another State of Oregon agency who is hired by the OPDS within two years of separation from that agency shall have previously accrued unused sick leave transferred.

~~15.~~13. _____ Sick Leave Upon Termination. There shall be no compensation for unused sick leave upon termination of employment. OPDS will report unused sick leave to the Public Employees Retirement System.

~~16.~~14. _____ Use of Donated Vacation Leave for Sick Leave Purposes. After exhausting all paid leave time, an Employee may elect to receive paid sick leave which has been converted from vacation leave donated by other Employees. See [OPDS Policy - Donated Leave](#).

Other Types of Leave

To ensure that its Employees comply with their civic duties and commitments, and advance important personal and professional goals, OPDS provides other types of leave as set forth below. OPDS is committed to complying with all applicable laws requiring Employers to provide leave.

1. **Jury/Witness Leave.** ORS 10.061 and 10.090

While on jury duty or while appearing as a subpoenaed witness (other than as a party in the action), an Employee will receive full pay. The Employee must waive any jury fees except for expense reimbursement. OPDS may request and retain a copy of the jury summons and court release, if applicable, to support the leave.

2. **Military Leave.** ORS 408.240, 408.290, 399.065, 399.075 and 659A.086

A. *Eligibility for Military Leave With Pay.* An Employee eligible for leave with pay:

- i. must have been employed, including temporary appointments, by the State of Oregon or by any county, municipality, or other political subdivision of the state for six months or more immediately preceding the Employee's request for leave; and
- ii. is a member of any National Guard, National Guard Reserve or of any reserve component of the Armed Forces of the United States; and
- iii. has provided advance written or verbal notice of the absence, except in circumstances involving military necessity or where the giving of notice is otherwise impossible or unreasonable.

B. To receive pay for the annual active duty training, the Employee must provide, before, during, or after the leave, confirming documentation which indicates the call-up was for annual active duty training or active duty in lieu of annual training.

- i. If the Employee is called to active duty for a period longer than 15 calendar days, the Employee may be paid for the first 11 work days only if such time is served for the purpose of discharging an obligation of annual active duty for training.
- ii. If the Employee has been on military active duty training leave for 15 days or less, the Employee shall return to work at the beginning of the first regularly scheduled work period following completion of service, after allowance for safe travel home and an 8-hour rest period.

C. *Military Leave Without Pay.* ORS 408.240, 399.065, 399.075, and 399.230.

- i. An Employee is entitled to military leave without pay for military duty when an Employee is a member of the organized militia of Oregon, or a member of an organized militia of another state, and is called into active service. Leave will continue through any applicable decompression time.
- ii. The Employee will provide verbal or written notice of military service. OPDS will require military orders or other official documents for approval of the absence. The Employee may provide the documents prior to, during, or upon completion of the military training leave. In instances involving military necessity or where the giving of notice is otherwise impossible or unreasonable, the Employee will be relieved of this obligation.
- iii. An Employee may only be paid during active military leave or applicable decompression time if:
 - a. the Employee elects to be paid for accrued vacation leave, personal leave, and compensatory time;
 - b. the Employee is an FLSA-exempt Employee who works any part of a work week while on temporary military leave of up to 3 months; or
 - c. the Employee receives supplemental income through the Military Donated Leave policy.
 - d. the Employee is a member of the Oregon organized militia and is called to active duty under ORS 399.065 and 399.075, the Employee shall be paid in accordance with that statute. Otherwise, military leave and decompression time is without pay.
- iv. Accrued leave does not have to be exhausted before leave without pay is granted for military leave or subsequent decompression time.
- v. While the Employee is on military leave without pay, vacation, sick or personal business leave will not accrue. The Employee shall receive full credit for time spent on military leave and subsequent decompression time upon return to work. Refer to D(i) of this procedure.
- vi. An FLSA-exempt Employee who works any part of a work week while on temporary military leave (defined as up to 3 months), shall receive a full week's salary for that particular week. However, OPDS will only pay the difference between the amount received from the Employee's military pay and the state salary due for that particular week. During such week, the Employee shall receive full credit toward accrual of sick and vacation leave hours and will be paid for any holiday occurring during the week.

D. Return From Military Leave.

- i. Upon return from Military Leave, an Employee will receive his/her vacation accrual rate, salary eligibility date, and service credits as though the Employee had remained continuously employed. See ORS 408.270.
 - a. An Employee shall notify the Administrative Authority or Human Resources of the intent to return to work within 90 days of release from service if the period of service was more than 180 days. Otherwise, an Employee will resume the duties of employment within seven (7) calendar days of release from service.
 - b. An Employee's failure to return to work within the time periods specified in Uniformed Services Employment and Reemployment Rights Act ([USERRA](#)) shall result in termination of military leave, and the Employee shall be considered to have resigned.
 - c. If, due to disability resulting from military service, an Employee is not qualified to perform the duties of the position the Employee held at OPDS before going on leave but is qualified to perform the duties of another position in the office, the Employee will be reemployed in a position of equivalent seniority, status, and pay, so long as the Employee is qualified to perform the duties of the position, or could become qualified to perform them with reasonable efforts by the Employer.

3. Bereavement Leave.

- A. At the request of the Employee, the Administrative Authority or his/her designee shall grant up to 40 hours paid bereavement leave per occurrence because of the death of a qualifying family member (as defined by OFLA) to be used intermittently or in a block of time. At the discretion of the Administrative Authority or his/her designee, up to 24 hours of paid bereavement leave per occurrence may be granted because of death(s) of any other relative or person residing in the same household as the Employee. In determining the amount of time to grant, the Administrative Authority or his/her designee shall consider the significance of the relationship and need for travel time.
- B. With the prior approval of the Administrative Authority or his/her designee, accrued paid leave may be used to cover time away after paid bereavement leave is exhausted. Accrued sick leave may only be used in accordance with [OPDS policy - Sick Leave](#).
- C. Paid time off for bereavement shall be prorated for part-time Employees.

- D. See OPDS Policy – Family and Medical Leave regarding eligibility for bereavement leave under Oregon Family Medical Leave.

4. **Special Recognition Leave.**

- A. At the discretion of the Administrative Authority or his/her designee, Employees ineligible to receive overtime compensation under the FLSA may be granted up to 40 hours special recognition leave per calendar year. Use of such leave shall be scheduled in advance with the Employee’s supervisor.
- B. Eligible part-time Employees may be granted special recognition leave on a prorated basis.
- C. Special recognition leave may not be accrued, converted to vacation or sick leave, or converted to cash remuneration.
- D. Special recognition leave not used by December 31 of the year in which granted shall be forfeited.
- E. There is no eligibility waiting period for special recognition leave.

5. **Leave Without Pay.**

A. Conditions:

- i. An Employee desiring a leave of absence without pay must submit a written request to the Administrative Authority or his/her designee. The request must specify the duration and purpose of the leave.
- ii. Except as otherwise provided by law, any request for leave without pay must be submitted in advance of the leave. Except as provided by law, approval or denial of the request is at the discretion of the Administrative Authority or his/her designee when the absence of the Employee will not seriously impact the work of the agency
- iii. Normally, leave without pay will not be granted until all other appropriate accrued paid leave has been exhausted. See [OPDS Policy – Sick](#) leave for exceptions.
- iv. Employees cannot alternate the use of accrued leave and leave without pay; that is, leave without pay, if used, must be taken at the end of the leave period.

- A. **Effect On Leave Accrual.** Vacation and sick leave accrual for an Employee who worked less than a full calendar month in a pay period because of leave without pay shall be computed on a prorated basis using the number of available work hours, based on the Employee’s schedule, in that month.

- B. Effect on Recognized Service Date and Salary Eligibility Date. Leave without pay in excess of 15 consecutive calendar days shall result in a permanent adjustment of the Employee's service date. An Employee's recognized service date shall be adjusted by adding to it the number of calendar days absent without pay, thereby making the recognized service date later than it would have been if leave without pay had not occurred. No adjustment shall be made to Employees on FMLA or OFLA approved leave in a leave without pay status.
- C. Outside Employment. The Administrative Authority or his/her designee, prior to granting leave without pay to an Employee who is accepting employment outside OPDS, must obtain advance, written approval from the Administrative Authority or his/her designee.
- D. Effect on Trial Service Period. Leave without pay in excess of 15 consecutive calendar days shall not be considered continuous employment when determining the completion of the initial or promotional trial service period. An Employee's trial service period shall be adjusted by adding to it the number of calendar days absent without pay, thereby making the ending date of the trial service period later than it would have been if leave without pay had not occurred

6. Personal Leave.

- A. Full-time non-temporary Employees shall be granted 24 hours of personal leave on July 1 of each year. Leave will be prorated for an Employee hired after July 1 of the fiscal year as defined in [Appendix B](#) of this manual. There is no waiting period to use this leave, however use of such leave shall be subject to prior approval by the Employee's Administrative Authority or his/her designee.
- B. Part-time Employees shall be granted personal leave on a prorated basis.
- C. Personal leave may not be accrued, donated, converted to vacation or sick leave, or converted to cash remuneration.
- D. Personal leave balances not used by June 30 of each year shall be forfeited.
- E. When an Employee from another state of Oregon agency is employed by OPDS and the other agency grants personal leave for a calendar year, the personal leave may be transferred.

7. Leaves During Temporary Interruption of Employment.

A. Planned Temporary Interruption of Employment.

- i. A temporary interruption of employment, not exceeding 15 continuous calendar days, due to lack of work, budget deficit, or other unusual or unexpected circumstances, shall not be considered as a layoff if, at the termination of the situation that created the need for the interruption, all affected Employees are returned to work.
- ii. A temporary interruption due to lack of work or other unusual or unexpected circumstances other than a budget deficit may, at the Employee's option, be charged to accrued paid leave or leave without pay. FLSA-exempt Employees will not be required to charge absences of less than one full work week to accrued paid leave or leave without pay. Accrued sick leave may only be used in accordance with ODPDS Policy – Sick Leave.

B. A temporary interruption of employment due to budget deficit shall be charged to leave without pay by both FLSA-exempt and non-exempt Employees.

C. Unplanned Temporary Interruption of Employment Due to Hazardous Environmental Condition or Inoperable Facility.

- i. Hazardous Environmental Condition. Hazardous environmental condition includes, but is not limited to, fire, flood, earthquake, pollution, or inclement weather.
- ii. Inoperable Facility. An inoperable facility is one where essential services are lost to fire, mechanical failure, accident, weather, or other causes.

D. Official Closure Due to Hazardous Environmental Condition or Inoperable Facility. Official closure is defined as the employer-initiated closing of:

- i. all operations and the cessation of public access to a facility and all services when no Employee is allowed to remain at work; or
- ii. most, but not all, operations and public access to services in that location or another is continued on a limited basis when a minimum number of Employees, as determined by the Administrative Authority or his/her designee, are required to remain at work.
- iii. Declaration of Official Closure. The Executive Director shall be responsible for declaring an official closure or temporary interruption of employment.
- iv. Notification of Official Closure. When an official closure is declared prior to the start of the workday, Administrative Authorities shall make a reasonable effort

to notify Employees in a timely manner. In such cases, the Administrative Authority or his/her designee will use email, Flash Alert, and the Court Administrators recorded message to notify Employees of the official closure. The final responsibility for finding out whether the operation is open or closed lies with each Employee. See [OPDS Policy – Inclement Weather](#).

- v. Staffing During Official Closure. When a minimum number of Employees are required to remain at work, the Administrative Authority or his/her designee shall first determine whether FLSA-exempt Employees are available to remain. If no FLSA-exempt Employee is available or if an insufficient number of FLSA-exempt Employees are available to remain at work, then a necessary number of FLSA non-exempt Employees may be required to remain at work. An Employee shall not be required to remain at work if such a requirement would pose a threat to the Employee’s safety or the safety of a family member residing in the Employee’s household.

E. Charging of Time Off Due to Official Closure.

- i. Official Closures of More Than One Hour.

Employees shall be granted leave with pay not to exceed 16 hours in a calendar year. This leave may be deducted from the amount of paid leave taken by any Employee on paid leave at the time of the closure(s). When an official closure of the work site in excess of a total of 16 hours in a calendar year occurs, FLSA non-exempt Employees will have the option of charging the time in excess of 16 hours to accrued paid leave or leave without pay. Because the FLSA prohibits deductions of less than one full work week from an FLSA-exempt Employee’s salary, FLSA-exempt Employees will not be required to charge to accrued paid leave or leave without pay the time that is in excess of 16 hours, but less than one full work week. Accrued sick leave may only be used in accordance with [ODPS Policy – Sick Leave](#).

- ii. Official Closures of One Hour or Less.

Official closure of the work site of one hour or less shall be considered as regular hours worked.

- iii. Recording of Time Worked During Official Closure.

- a. FLSA-exempt Employees shall record time worked as regular hours [or as provided in a Collective Bargaining Agreement](#).
- b. FLSA non-exempt Employees who remain at work as required by the Administrative Authority or his/her designee during an official closure shall record time worked as regular hours for which they are paid and in addition

shall be provided compensatory time off at the rate of time and one half for each hour worked during the official closure

iv. Absences Due to A Hazardous Environmental Condition When An Official Closure Has Not Been Declared.

When a hazardous environmental condition does not result in official closure of the work site, but prevents individual Employees from reporting to work or necessitates their leaving work early, Employees will have the option of charging their absence to accrued paid leave or leave without pay. Sick leave may only be used in accordance with OPDS Policy – Sick Leave.

8. Pre-retirement Planning Leave.

- A. Pre-retirement leave shall be used to prepare for retirement or to investigate and attend retirement programs or retirement counseling.
- B. A full-time non-temporary Employee with five or more year's employment with a PERS-covered Employer shall be granted up to 28 hours of paid pre-retirement leave. The 28 hours of leave is the maximum amount of paid pre-retirement leave an Employee may take during the entirety of his/her employment with the State of Oregon.
- C. Part-time Employees shall be granted pre-retirement leave on a prorated basis.
- D. The scheduling of pre-retirement leave is subject to prior approval of the Administrative Authority or his/her designee. Such leave may not be converted to vacation, sick or personal leave, or to cash remuneration. Pre-retirement leave not used before retirement shall be forfeited.

9. Interview Leave.

An Employee shall be granted a reasonable amount of time off with pay to interview for other jobs within OPDS or with other State of Oregon agencies. Time off shall be granted for the time spent during the Employee's regularly scheduled workday and work hours in the interview.

10. Service Award Leave.

- A. All non-temporary Employees who have completed at least five years of non-temporary service with OPDS are eligible for service award leave.
- B. Only non-temporary continuous service with OPDS shall count toward service award eligibility. For the purposes of this section, continuous service in a non-temporary position shall count towards an Employee's service eligibility if either:

- the Employee was employed by the State Public Defender on October 1, 2001 and transferred to OPDS, or
- the Employee was employed by the Oregon Judicial Department and transferred to OPDS on July 1, 2003, or
- the Employee has been continuously employed with OPDS.

Time worked for OPDS before and after a break in service will be considered in determining eligibility. Service award leave is granted in one-time intervals to full-time Employees in accordance with the following schedule:

Years Employed	Service Award Leave Granted
5	5 hours
10	10 hours
15	15 hours
20	20 hours
25	25 hours
30	30 hours
35	35 hours
40	40 hours
45	45 hours

Part-time Employees shall be granted service award leave on a prorated basis.

- C. Service award leave must be scheduled in advance with the Administrative Authority or his/her designee and may be accrued. Service award leave shall not be converted to cash remuneration. Service award leave not used prior to retirement or termination of employment shall be forfeited.

11. Red Cross Disaster Relief Services Leave. ORS 401.378

The Administrative Authority or his/her designee may grant an Employee leave for performance of relief services in Oregon. Such leave may not exceed 15 workdays in any 12-month period. To qualify for such leave, the Employee must be a certified disaster services volunteer of the American Red Cross and the disaster must be designated at Level II or above by the American Red Cross.

12. Leave to Address Domestic Violence, Harassment, Sexual Assault or Stalking.
ORS659A.270 through 659A.290

- A. An Employee who works for a state agency on the date leave begins who is the victim of domestic violence, harassment, sexual assault or the parent or guardian of a minor child or dependent who is the victim of domestic violence, harassment, sexual assault or stalking is eligible for leave under this policy.

- B. Up to 160 hours of leave with pay each calendar year is available to an eligible Employee for the purposes specified in (C) below. The 160 hours of paid leave is in addition to any vacation, sick, personal business or other form of paid or unpaid leave available to the eligible Employee. An Employee must exhaust all other forms of paid leave before the Employee may use the paid leave established by this policy.
- C. An eligible Employee may use the 160 hours of employer-paid leave for any of the following purposes:
- i. To seek legal or law enforcement assistance or remedies to ensure the health and safety of the Employee or the Employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking;
 - ii. To seek medical treatment for or to recover from injuries caused by domestic violence, harassment, sexual assault or stalking of the eligible Employee or the Employee's minor child or dependent;
 - iii. To obtain, or to assist a minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking;
 - iv. To obtain services from a victim services provider for the eligible Employee or the Employee's minor child or dependent; or
 - v. To relocate or take steps to secure an existing home to ensure the health and safety of the eligible Employee or the Employee's minor child or dependent. Relocation includes:
 - a. Transition periods spent moving the eligible Employee or the Employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make security or other arrangements for such transitions;
 - b. Transportation or other assistance required for an eligible Employee or the Employee's minor child or dependent related to the domestic violence, harassment, sexual assault or stalking.
- D. An eligible Employee seeking leave under this policy must give reasonable advance notice of the intent to take leave unless giving the advance notice is not feasible. When taking leave in an unanticipated or emergency situation, an eligible Employee must give oral or written notice as soon as practicable. Notice may be given by any other person on behalf of an Employee taking unanticipated leave.

- E. Certification requirements. An Employee must provide, within a reasonable amount of time, written certification that the leave is for the Employee or the Employee's minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking; and the leave is taken for one of the purposes identified in (C)(i)-(v) of this policy.
- i. Intermittent Leave, Altered or Reduced Work Schedule. An Employee may take leave as provided in this policy in multiple blocks of time, intermittently, and/or supplementing an altered work schedule.
 - ii. To the extent the Employee's need for leave under this policy is also covered by FMLA and/or OFLA the leave types run concurrently.

Donated Leave

OPDS administers a donated leave program that allows Employees to support other Employees in serious need of leave by donating paid vacation leave time to be used for sick, bereavement, or military leave needs.

Any OPDS Employee (Donor) may voluntarily donate accrued vacation leave in full-hour increments to another non-temporary OPDS Employee (Requestor) provided the Requestor to whom the leave is to be donated requires the leave for sick, bereavement, or military leave and meets the requirements below.

Sick leave

The requesting Employee:

- A. is absent due to their own FMLA and/or OFLA qualifying reason, or to care for a qualifying family member (as defined by FMLA and/or OFLA), with a condition that qualifies as a serious health condition under the FMLA and/or OFLA, and expected to continue for at least 15 consecutive calendar days after the employee and
- B. has exhausted all accrued paid leave, and
- C. is not receiving workers' compensation or disability payments, and
- D. is not the subject of pending disciplinary action, and
- E. has the approval of the Human Resources Manager to receive donated leave.

Bereavement leave

The requesting Employee:

- A. meets the OFLA eligibility requirements, and
- B. is absent due to the death of a qualifying family member as defined under OFLA, and
- C. has exhausted all accrued paid leave, and
- D. has the approval of the Human Resources Manager to receive donated leave.

Military Donated Leave

As provided in ORS 659A.086, the requesting Employee:

- A. is a member of the organized militia of this state and is called in to active service of this state under ORS 399.065(1) or state active duty under ORS 399.075, or
- B. is a member of the organized militia of another state and is called into active status service by the Governor of the respective state, and

- C. holds regular status (i.e. has completed initial trial service), and
 - D. is in a leave without pay status during active military duty status, and
 - E. has the approval of the Human Resources Manager to receive donated leave.
1. *Conversion of Donated Leave.* Donated vacation leave shall be converted to the receiving Employee's sick leave account by multiplying the amount of leave donated by the donating Employee's hourly rate of pay (exclusive of differentials) and by then dividing this amount by the receiving Employee's hourly rate of pay (exclusive of differentials).
 2. *Maximum Donated Leave That May Be Received.*
 - A. Sick leave purposes: 480 hours per incident.
 - B. Bereavement leave purposes: 40 hours per occurrence.

NOTE: Donated bereavement leave can impact long- and short-term disability benefits. Before applying for donated leave while receiving disability benefits, consult the agency payroll office for information on how donated bereavement leave will impact your special circumstances.
 - C. Military leave purposes: May not receive more than the amount the Employee was earning in total compensation on the date the Employee began the military leave of absence.
 3. *Unused Donated Leave.* Unused donated leave shall be returned to the donor.

| **SECTION IXVIII: Holidays**

Policy

I. OPDS shall observe the following holidays:

New Year's Day on January 1;

Martin Luther King, Jr.'s Birthday on the third Monday in January;

President's Day on the third Monday in February;

Memorial Day on the last Monday in May;

Independence Day on July 4;

Labor Day on the first Monday in September;

Veterans Day on November 11;

Thanksgiving Day on the fourth Thursday in November; and

Christmas Day on December 25.

II. In addition to the foregoing holidays, OPDS shall observe as a holiday every day appointed as a holiday in accordance with ORS 187.020.

III. If a holiday falls on Saturday, it shall be observed on the preceding Friday. If a holiday falls on Sunday, it shall be observed on the following Monday.

IV. If the courts are closed on the Friday after Thanksgiving, that day will be considered a holiday. If the courts are open on the Friday after Thanksgiving, Employees will be expected to work a regular day and will be granted eight (8) hours paid leave to be used as a floating holiday between the day before Thanksgiving and January 31st of the following year.

Procedure

1. Holiday Leave shall be granted as follows:

A. Full-time Employees. A full-time Employee shall be granted eight hours of holiday leave for each holiday.

B. Part-time Employees. A part-time Employee shall be granted holiday leave for each holiday based upon the same percentage or fraction of a month as the Employee is normally scheduled to work.

- C. Effect of Leave Without Pay. Exclusive of the holiday, an Employee on unpaid leave for more than 32 consecutive work hours (prorated for part-time Employees) shall not be granted the paid holiday if the holiday falls during the period of leave without pay.
- D. Employees Working an Alternate Schedule. If an Employee is on an alternate work schedule, the administrative authority may:
- i. make appropriate schedule adjustments for the work week in which the holiday falls that result in a total of 40 hours work time and holiday leave (or, for a part-time Employee, the normal number of weekly hours); or
 - ii. permit the Employee to use paid leave or leave without pay to account for the scheduled hours in excess of the holiday leave.
- E. Employees Required to Work on a Holiday.
- i. An Employee, regardless of salary range, who is required by an Administrative Authority to work on a holiday and whose shift commences on the holiday shall be entitled to compensatory time for the entire shift worked.
 - ii. If the holiday falls on a Saturday or Sunday and is observed on a Friday or Monday and an Employee is required to work on both the actual holiday and the day of observance, the Employee shall receive compensatory time for the entire shift worked on either the actual holiday or its day of observance by the OPDS.
 - iii. Compensatory time shall be at the rate of time and one-half. The rate at which an Employee is paid for working on a holiday shall not exceed the rate of time and one-half in addition to regular pay.
- F. Effect of Appointment and Separation on Holiday Leave.
- i. *Appointment.* All nontemporary Employees appointed on a holiday observed on the first regularly scheduled work day of the month shall be paid for the holiday pursuant to the other provisions of this rule. No appointments shall be made effective on holidays observed on other than the first day of the month.
 - ii. *Separation.* An Employee who separates from employment in a month including a holiday on the last regularly scheduled work day of the month shall be paid for the holiday if the Employee actually works on the work day immediately preceding the holiday and is otherwise eligible to receive holiday leave.

| **SECTION IX: Overtime**

Policy

- I. OPDS shall determine the status under Fair Labor Standards Act (FLSA) of each of its Employees as either exempt or non-exempt from the Act, using the guidelines set forth in FLSA. OPDS shall keep accurate records of the status of its Employees under FLSA and any overtime accrued by its non-exempt Employees.
- II. OPDS Employees covered by the Fair Labor Standards Act (FLSA) as non-exempt Employees are eligible for overtime compensation.
- III. An OPDS Employee who is eligible for overtime compensation shall not work overtime without advance approval by the Executive Director or the Administrative Authority. The Executive Director or the Administrative Authority may require an Employee to work overtime if the operations or mission of OPDS necessitate it.

Procedure

1. All overtime worked shall be recorded on an Employee's time sheet. Overtime work shall be compensated at the rate of one and one-half (1.5) times the Employee's current hourly rate of pay.
2. OPDS may elect to compensate an Employee by cash payment or by compensatory time. A maximum of 240 hours compensatory time may be accrued. An Employee who has accrued 240 hours compensatory time must receive cash payment for additional further overtime work.
3. Compensatory time may be requested by the Employee or required by the Executive Director or the Administrative Authority. The use of compensatory time shall be scheduled in advance with the Employee's supervisor. The supervisor shall grant an Employee's request to use accrued compensatory time unless doing so would unduly disrupt OPDS's operations.
4. An Employee shall be allowed to use accrued compensatory time for qualifying family leave purposes. The amount of compensatory time taken shall not be deducted from an Employee's family leave entitlements under FMLA or OFLA.
5. An Employee who resigns or whose employment is terminated shall be paid for accrued compensatory time at the Employees regular hourly rate at the time of termination.

SECTION XI: Recruitment and Hiring

Policy

- I. OPDS's recruitment and hiring processes shall be fair, impartial and designed to ensure that positions are filled by the most qualified job applicants available and by individuals well suited to perform the work required of the position.
- II. Hiring for vacant positions shall be based on merit as determined by a comparison of a job applicant's qualifications with the requirements and duties of the vacant position. All individuals selected to fill a vacant position at OPDS must meet the minimum and special qualifications defined for that position.
- III. OPDS shall establish procedures for the recruitment, screening, selection and hiring of job applicants and for the transfer and advancement of current OPDS Employees in accordance with this Policy.
- IV. All Employees serve a 6 month trial service period following the date of hire or promotion during which they are expected to demonstrate, by conduct and actual performance of duties, the qualifications and fitness for the position.

Methods of Recruitment for Vacant Positions

- A. OPDS shall fill vacant positions through the following methods.
 - i. Competitive Recruitment Methods:
 - a. Open Competitive Recruitment. Any OPDS Employee or member of the public may apply for the vacant position
 - b. Limited Recruitment. Only permanent OPDS Employees may apply for the vacant position.
 - ii. Noncompetitive Recruitment Methods:
 - a. Transfer. Any qualified OPDS Employee may request a transfer, or be transferred, to a vacant position.
 - b. Voluntary Demotion. Any qualified OPDS Employee may request a voluntary demotion to a vacant position.
 - c. Involuntary Demotion. The Executive Director or the Administrative Authority may, for disciplinary reasons, demote an Employee to a position with a lower salary range provided the Employee is qualified to fill the lower range position.

d. Reemployment.

(1) A former OPDS Employee may request to be reemployed in a position for which the Employee is qualified with a salary range equal to or lower than the salary range for the position the Employee last held. An OPDS Employee may be reemployed only once within the one-year period following resignation, voluntary demotion, layoff, or downward reclassification. Reemployment shall be subject to the discretion of the Executive Director.

(2) Reemployment following retirement. Pursuant to ORS 238.082, an OPDS Employee who wishes to retire may request to be reemployed in a position for which the Employee is qualified with a salary range equal to or lower than the salary range for the position the Employee last held. An OPDS Employee may be reemployed only once within the one-year period following retirement. Reemployment following retirement shall be at the discretion of the Public Defense Services Commission upon recommendation of the Executive Director, but shall be authorized only when there is a documented business need for the employment, or reemployment is necessary to ensure adequate transfer of knowledge.

e. Vacant Management Positions. At the discretion of the Executive Director, vacancies in the Administrative Authority and other vacant OPDS positions with management or supervisory responsibilities may be filled without resort to any of the foregoing Recruitment Methods.

B. An Underfill Appointment may be authorized by the Executive Director for the following reasons.

i. Employee Development:

Subject to approval of the Executive Director, a position may be under-filled for the purposes of providing an Employee with the opportunity to develop the skills and qualifications necessary to fill the position on a permanent basis. Recruitment for such an opportunity shall be conducted in accordance with Procedure (A)(i). The length of the under-fill and requirements to satisfactorily complete the developmental experience shall be documented prior to the appointment but shall not exceed 24 months from date of appointment. Upon satisfactorily meeting the under-fill conditions, the Employee shall be reclassified up to the level of the position.

ii. Administrative Need:

Subject to the approval of the Executive Director, a position may be under-filled if, due to organizational changes, the budgeted level of a position is

higher than OPDS's needs require. Recruitment for such an under-fill appointment shall be conducted in accordance with Procedure (A)(i).

Job Announcements, Notice of Transfer Opportunities, and Applications

- A. Announcements shall be issued for all vacant positions subject to Competitive Recruitment Methods as follows:

Announcements of job vacancies shall be posted at <https://www.governmentjobs.com/careers/oregon> and an email sent to all OPDS Employees. Announcements of job vacancies to be filled shall be posted at least ~~fourteen (14)~~**ten (10)** calendar days before job applications are due. Announcements shall specify the class title, salary range, location, type of recruitment, nature of the assigned work, qualifications, manner of making application, and notification that a criminal history check may be required. Other pertinent information about the position, such as work hours and special working conditions, may be included in job announcements.

- B. Notice of Job Transfer Opportunities shall be issued as follows:

Notices of internal transfer opportunities shall be sent via email to all OPDS Employees and issued at least seven (7) calendar days before applications for job transfers are due. Such notices shall specify the class title, salary range, location, type of transfer, nature of the assigned work, qualifications, manner of making application, and notification a criminal history check will be conducted (if applicable). Other pertinent information about the position, such as work hours and special working conditions, shall be included in the notice.

- C. Application Forms are required as follows:

Applications for Open Competitive recruitments shall be submitted electronically as defined in the job announcement posted at www.oregon.gov/jobs<https://www.governmentjobs.com/careers/oregon> with a link on the OPDS website.

Applications for internal recruitment or job transfer shall be submitted in the form prescribed by the hiring manager and as detailed in the email announcing the job opening.

- D. Effective Period of Applications.

Subject to the discretion of the Executive Director, all applications received in response to a job announcement or notice of job transfer opportunity may remain in effect for up to ~~one year~~**6 months** after the closing date in the announcement or notice. Applications received in response to job announcements may be used to fill future vacancies in the same or lower class.

Requests for Job Transfers or Voluntarily Demotions

A. Job Transfers shall be accomplished in the following manner.

An OPDS Employee may submit a written request to the Administrative Authority to transfer from the current position to a vacant position with the same class or salary range as the Employee's current position. The requesting Employee must meet the minimum qualifications and the established screening criteria to be interviewed for the vacancy. Requests for job transfers must be approved by the supervisor and Executive Director.

B. Voluntary Demotions shall be accomplished in the following manner.

An OPDS Employee qualified to fill a vacant position with a lower classification or salary range may submit a written request to the Administrative Authority for a voluntarily demotion. Requests for voluntary demotions must be approved by the supervisor and Executive Director.

Hiring Process

A. The following requirements apply to Applications received in response to Job Announcements issued in accordance with OPDS' Competitive Recruitment Methods.

i. Screening Job Applications

The process of screening applications for vacant positions shall be fair and impartial and shall relate to the duties and requirements of the vacant position. Screening methods shall objectively measure the qualifications of applicants and may include skills testing, employment or personal references, and internal or external evaluations of applicants' job qualifications, education, and employment history and comply with controlling law regarding Public Employers. Refer to Applicant Sorting and Veterans Preference Process in [Appendix C](#).

ii. Interviews of Job Applicants

The Executive Director, the Administrative Authority or designee shall select qualified job applicants for an interview based upon the results of the foregoing screening process. The Executive Director, the Administrative Authority and/or a panel of other OPDS Employees may conduct the interviews of qualified job applicants. In extraordinary circumstances and with the approval of the Executive Director or the Administrative Authority, a qualified applicant may be selected to fill a vacant position without an interview.

iii. Selection and Notification of Job Applicants

The final selection of a job applicant to fill a vacant position shall be approved by the Executive Director or designated Administrative Authority. OPDS shall notify in writing all job applicants who are not selected to fill a vacant position. In the event OPDS decides not to fill a vacant position, OPDS shall notify all applicants in writing of that decision.

- B. OPDS shall document its job recruitment, screening, and evaluation of applicants and retain these materials for 10 years. All other recruitment and selection records shall be retained for 3 years after the position is filled or the recruitment was cancelled.
- C. OPDS shall confirm its offers of employment to selected job applicants in writing and require those applicants to accept the terms and conditions of OPDS' offer of employment in writing. Selected applicants who fail to accept OPDS' offer of employment in writing shall be deemed to have declined the offer.
- D. At the discretion of the Executive Director, OPDS may require criminal history checks of final applicants for positions. OPDS shall notify all applicants of this requirement in the job announcement for that position. A felony or misdemeanor conviction may prohibit an applicant from qualifying for a position with OPDS.

In determining if a criminal conviction prohibits an applicant's employment with OPDS, the Executive Director shall consider the following factors:

- i. the nature and gravity of the offense or offenses;
- ii. the time that has passed since the conviction(s) or completion of the sentence; and
- iii. the nature of the position sought.

Arrests in the absence of subsequent convictions shall not prohibit an applicant's employment with OPDS. OPDS shall keep confidential all records of a job applicant's arrests or convictions.

SECTION XII: Use of Publicly Owned Equipment

Policy

- I. It is the policy of OPDS to comply with all statutory and ethical standards related to use of publicly owned equipment and to provide for allowable personal use on a limited and defined basis.
- II. OPDS provides publicly owned equipment at taxpayer expense for official business use. State law defines ethical and appropriate use. In addition, OPDS must protect proprietary and confidential information, keep systems and internal controls secure, and keep the workforce productive. Therefore, OPDS's general policy is to use publicly owned equipment for business purposes only and in a cost-effective manner.
- III. At the same time, OPDS strives to provide a supportive work environment for Employees and recognizes that situations exist where limited personal use is allowable and appropriate.

Definitions

DE MINIMIS ADDITIONAL COST: "De minimis additional cost" means that the equipment use results in (a) no additional tangible cost, or (b) a cost for which a compensable rate is not practical to set (e.g., negligible "wear and tear" on the equipment or negligible use of overhead expenses or supplies).

ECONOMIC BENEFIT: ORS 244.040(1)(a) prohibits using one's official position or office for personal financial gain or cost avoidance, such as: (a) reducing personal costs by purchasing personal goods or (b) reducing personal costs by using publicly owned equipment services at a "state rate," at a lesser cost rate (e.g., using office long-distance lines for personal calls and reimbursing the state at the more favorable government rate), or (c) avoiding personal costs by using publicly owned equipment instead of personal equipment (e.g., using publicly owned email or internet services for personal purposes if such use allows the user to avoid purchasing comparable services).

IMPROPER USE: Illegal, unethical, inappropriate, or unauthorized use of publicly owned equipment as delineated in Section II.

PERSONAL USE: Using equipment for purposes other than authorized OPDS work. Examples of allowed personal uses: Placing a prescription refill order, checking an online bank statement, or accessing a personal phone service provider's web page to resolve a billing error.

PUBLICLY OWNED EQUIPMENT: Any and all publicly owned property and other resources. This includes equipment, workspace, systems, and supplies provided for work purposes. Examples include state vehicles, desks, lockers, telephones (land and cellular), pagers, photocopiers, facsimile machines, document scanners, personal computers and related peripheral equipment and software, iPads, office supplies, postage meters and mail services, internet connectivity, access to internet services, and electronic mail.

REIMBURSEMENT COST: Tangible costs to OPDS (such as for a personal photocopy or fax) that an Employee may reimburse OPDS or other public-funded entity in accordance with OPDS policy. The reimbursement rate cannot be so low as to result in economic benefit and must be limited to low volume and only occasional and appropriate uses.

WORK TIME: For this policy only, “work time” is distinguished from “personal time” as follows:

For overtime-eligible Employees, “work time” is the individual’s designated paid hours of work, excluding paid break time, unpaid mealtime, and approved leave time.

For overtime-exempt Employees, “work time” usually means normal OPDS public business hours of operation or the individual’s designated work hours, if different, excluding paid break time, unpaid mealtime, and approved leave time. (Since overtime-exempt Employees work on a salaried basis, without hour-for-hour compensation, “work time” is less subject to constant definition.)

1. Allowable Personal Use

This policy acknowledges that the world of work includes social and personal components.

For example, a business transaction using public equipment (e.g., telephone, email, fax, internet) may include some limited and appropriate personal interaction.

Similarly, public equipment may be used (on a limited and appropriate basis) for social and personal matters that are the normal "fabric" of the workplace, such as recognition of personal and family milestones (e.g., birthdays, weddings, anniversaries, births, deaths); posting of postcards from vacationing staff; displaying/sharing personal photographs; local food menus/telephone/fax; and the like.

OPDS recognizes two narrowly defined exceptions to the general policy of “business use only.”

Personal Use During Non-Work Time

Personal use is allowable during non-work time **if all** of the following conditions are clearly met:

- the use is not improper (as defined in Section 2 below);
- the use results in no cost, or in de minimis additional cost (excluding reimbursement cost) to OPDS or the state;
- the use is minimal and insignificant in terms of time or quantity; and
- the supervisor has not prohibited the type of use.

Personal Use During Work Time

Personal use is allowable during work time **only if all** of the above conditions are clearly met, and:

- the use is essential and brief; and

- the use cannot reasonably wait until non-work time.

2. Improper Use

Improper use at any time (work time or non-work time) includes:

- violating any law or OPDS rule or policy;
- conducting any illegal activity or unlawful communication;
- using for economic benefit (including operating or supporting a personal business);
- (except as provided in A. and B. below) personal lobbying, soliciting, recruiting, selling or persuading, for or against, commercial or noncommercial ventures, products, organizations, religions, or political causes;

Exception A: Authorized Charitable Drive

The administrative authority may authorize a charitable event, organization, or effort. In any such case, internal communication to OPDS staff will be considered as work related. Examples include the Governor's Food and Toy Drives and the Charitable Fund Drive.

Exception B: Designated OPDS Physical Space for Personal Use

An administrative authority may designate de minimis OPDS physical surface space for limited and appropriate personal use by Employees. Such space could include a bulletin board or other surface space in a lunch room or other appropriate workspace not normally accessible to the public. Uses could include a posting of personal (i.e., noncommercial) items for sale; notice of an Employee garage/yard sale; short-term local school or other appropriate fund raiser (e.g., magazine drive or Girl Scout cookie order forms) so long as participation is clearly voluntary; a community event notice where an Employee is involved; and the like.

- revealing or publicizing proprietary or confidential information;
- representing personal opinions as those of OPDS;
- exposing OPDS to unnecessary liability of any kind;
- personal (non-work related) publishing or posting to personal web pages, internet groups, chat rooms, web pages, [blogs](#), or “list servs”;
- creating, posting, emailing, or otherwise distributing false, indecent, lewd, threatening, or discriminatory remarks, proposals, jokes, stories, anecdotes, etc.;
- creating, downloading, viewing, storing, copying, or transmitting any pornographic, sexually explicit, or sexually oriented materials (unless a legitimate business requirement);
- gambling (including legal), placing a wager of any kind, or playing games of chance involving cards, dice, or other means of keeping score for money or other thing of value, including those that can be accessed through the internet and those installed as software; **Note:** This use, while not inherently “improper,” is included as a matter of policy to decrease the appearance of improper use by OPDS Employees.
- playing computer games such as card games (e.g., solitaire), word games (e.g., crossword puzzles), video games, including those that can be accessed through the

internet and those installed as software; **Note:** This use, while not inherently “improper,” is included as a matter of policy to decrease the appearance of improper use by OPDS Employees.

- using an OPDS land telephone to place a personal long-distance toll call (even if reimbursed);
- causing congestion, overload, delay, or disruption of service to any OPDS system or equipment;
- streaming or downloading audio or video for personal use;
- intentionally interfering with the normal operations of any internet gateway;
- installing software on OPDS equipment without prior approval;
- downloading any software or electronic file without reasonable and required virus protection measures in place;
- uploading or downloading commercial software or other products in violation of copyright (e.g., “burning” CDs); and
- using equipment or technology in any other way that results in an appearance of impropriety or discredit to the OPDS.

This list is intended to provide examples of improper use; it is not necessarily exhaustive or complete.

3. Privacy Expectations

Use of equipment, particularly computers and networks, is subject to monitoring and audit. Any file or record, including electronic, associated with use of publicly owned equipment is subject to public records law and may be a public record. This policy explicitly denies any internal expectation of privacy within OPDS by any user for business or personal use. However, OPDS will preserve confidentiality required by law.

The administrative authority or designee may access or inspect any publicly owned equipment (or space) and may remove an individual’s access to publicly owned equipment (or space) for administrative or operational reasons with, or without, advance notice to the user.

4. Sanctions

Any person who violates this policy is subject to appropriate sanction including loss of use, or limits on use, of equipment and disciplinary proceedings according to OPDS policies or other adverse actions and penalties.

| **Section XIII: Conflict of Interest**

Policy

- I. OPDS has the responsibility to ensure staff members engage in activities consistent with the OPDS mission and values in delivering OPDS programs and services. Employees are held personally responsible for complying with the provisions in Oregon Government Ethics law. Refer to ORS Chapter 244 – [Government Ethics](#).
- II. In situations in which Employees are engaged in activities that could constitute a conflict of interest, OPDS has the responsibility to review each situation and determine whether a conflict exists.
- III. Employees will:
 - a. abstain from using information received in the course of OPDS employment to further private interests of self or others.
 - b. withdraw from processing, unless otherwise authorized by an administrative authority, any court document or matter involving anyone who is a personal acquaintance or relative of the Employee or a member of the Employee’s family.
 - c. use OPDS property, equipment (including electronic systems), and funds only for the official business of OPDS in accordance with laws, rules, policies, and procedures unless a specific exception is stated within those laws, rules, policies, and procedures.
 - d. abstain from the use of OPDS employment to influence (or attempt to influence) others or to gain (or attempt to gain) preferential treatment for self or others.
 - e. refuse to accept money or other consideration, except for honoraria as defined by ORS 244.020(7) unless otherwise restricted by the administrative authority, from anyone other than OPDS for activities which are part of the Employee’s official duties.
 - f. abstain from engaging in outside employment or activities that constitute a conflict of interest as determined by the administrative authority.
- IV. Any Employee with a potential conflict of interest shall promptly advise the administrative authority.
- V. Employees appointed, employed, or volunteering with OPDS faced with an actual or potential conflict of interest must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met.

- VI. The appointing authority will review the notice within a reasonable time, record the actual or potential conflict of interest in the official records, and provide direction to the Employee in disposing of the conflict.

APPENDIX A

PUBLIC DEFENSE SERVICES COMMISSION

151.211 Definitions for ORS 151.211 to 151.221. For purposes of ORS 151.211 to 151.221:

- (1) “Bar member” means an individual who is an active member of the Oregon State Bar.
- (2) “Chief Justice” means the Chief Justice of the Supreme Court.
- (3) “Commission” means the Public Defense Services Commission.
- (4) “Director” means the public defense services executive director appointed under ORS 151.216.
- (5) “Office of public defense services” means the office established by the commission under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system. [2001 c.962 §1; 2007 c.71 §43]

Note: 151.211 to 151.225 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 151 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

151.213 Public Defense Services Commission; membership; terms. (1) The Public Defense Services Commission is established in the judicial branch of state government. Except for the appointment or removal of commission members, the commission and Employees of the commission are not subject to the exercise of Administrative Authority and supervision by the Chief Justice of the Supreme Court as the administrative head of the Judicial Department.

(2) The commission consists of seven members appointed by order of the Chief Justice. In addition to the seven appointed members, the Chief Justice serves as a nonvoting, ex officio member. The Chief Justice shall appoint at least two persons who are not bar members, at least one person who is a bar member and who is engaged in criminal defense representation and at least one person who is a former Oregon state prosecutor. Except for the Chief Justice or a senior judge under ORS 1.300, a member may not serve concurrently as a judge, a prosecuting attorney or an Employee of a law enforcement agency. A person who is primarily engaged in providing public defense services may not serve as a member of the commission.

(3) The term of a member is four years beginning on the effective date of the order of the Chief Justice appointing the member. A member is eligible for reappointment if qualified for membership at the time of reappointment. A member may be removed from the commission by order of the Chief Justice. If a vacancy occurs for any cause before the expiration of the term of a member, the Chief Justice shall make an appointment to become immediately effective for the unexpired term.

(4) A chairperson and a vice chairperson shall be appointed by order of the Chief Justice every two years with such functions as the commission may determine. A member is eligible for reappointment as chairperson or vice chairperson.

(5) A majority of the voting members constitutes a quorum for the transaction of business.

(6) A member of the commission is not entitled to compensation for services as a member, but is entitled to expenses as provided in ORS 292.495 (2). [2001 c.962 §2; 2003 c.449 §15]

Note: See note under 151.211.

151.216 Duties. (1) The Public Defense Services Commission shall:

(a) Establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.

(b) Establish an office of public defense services and appoint a public defense services executive director who serves at the pleasure of the commission.

(c) Submit the budget of the commission and the office of public defense services to the Legislative Assembly after the budget is submitted to the commission by the director and approved by the commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall present the budget to the Legislative Assembly.

(d) Review and approve any public defense services contract negotiated by the director before the contract can become effective.

(e) Adopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies.

(f) Adopt policies, procedures, standards and guidelines regarding:

(A) The determination of financial eligibility of persons entitled to be represented by appointed counsel at state expense;

(B) The appointment of counsel;

(C) The fair compensation of counsel appointed to represent a person financially eligible for appointed counsel at state expense;

(D) Appointed counsel compensation disputes;

(E) Any other costs associated with the representation of a person by appointed counsel in the state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908,

419C.206, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any other provision of law that expressly provides for payment of such compensation, costs or expenses by the commission;

(F) Professional qualifications for counsel appointed to represent public defense clients;

(G) Performance for legal representation;

(H) The contracting of public defense services;

(I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses only if in-state expert witnesses are not available or are more expensive than out-of-state expert witnesses; and

(J) Any other matters necessary to carry out the duties of the commission.

(g) Establish a peer review system for the approval of nonroutine fees and expenses incurred in cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review shall be conducted by a panel of attorneys who practice in the area of criminal defense.

(h) Establish a complaint process that allows district attorneys, criminal defense counsel and the public to file complaints concerning the payment from public funds of nonroutine fees and expenses incurred in cases.

(i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services Account established by ORS 151.225 for the costs of personnel and other costs associated with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court Administrator.

(2) Policies, procedures, standards and guidelines adopted by the commission supersede any conflicting rules, policies or procedures of the Public Defender Committee, State Court Administrator, circuit courts, the Court of Appeals, the Supreme Court, the Psychiatric Security Review Board and the Oregon Health Authority related to the exercise of the commission's administrative responsibilities under this section and transferred duties, functions and powers as they occur.

(3) The commission may accept gifts, grants or contributions from any source, whether public or private. However, the commission may not accept a gift, grant or contribution if acceptance would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the Public Defense Services Account established by ORS 151.225 and expended for the purposes for which given or granted.

(4) The commission may not:

(a) Make any decision regarding the handling of any individual case;

(b) Have access to any case file; or

(c) Interfere with the director or any member of the staff of the director in carrying out professional duties involving the legal representation of public defense clients. [2001 c.962 §§3,106; 2003 c.449 §§1,2,42; 2005 c.843 §23; 2011 c.708 §20; 2012 c.107 §42]

Note: See note under 151.211.

151.219 Public defense services executive director; duties. (1) The public defense services executive director shall:

(a) Recommend to the Public Defense Services Commission how to establish and maintain, in a cost-effective manner, the delivery of legal services to persons entitled to, and financially eligible for, appointed counsel at state expense under Oregon statutes, the Oregon Constitution, the United States Constitution and consistent with Oregon and national standards of justice.

(b) Implement and ensure compliance with contracts, policies, procedures, standards and guidelines adopted by the commission or required by statute.

(c) Prepare and submit to the commission for its approval the biennial budget of the commission and the office of public defense services.

(d) Negotiate contracts, as appropriate, for providing legal services to persons financially eligible for appointed counsel at state expense. No contract so negotiated is binding or enforceable until the contract has been reviewed and approved by the commission as provided in ORS 151.216.

(e) Employ personnel or contract for services as necessary to carry out the responsibilities of the director and the office of public defense services.

(f) Supervise the personnel, operation and activities of the office of public defense services.

(g) Provide services, facilities and materials necessary for the performance of the duties, functions and powers of the Public Defense Services Commission.

(h) Pay the expenses of the commission and the office of public defense services.

(i) Prepare and submit to the commission an annual report of the activities of the office of public defense services.

(j) Prepare and submit to the Legislative Assembly a biennial report on the activities of the office of public defense services.

(k) Provide for legal representation, advice and consultation for the commission, its members, the director and staff of the office of public defense services who require such services or who are named as defendants in lawsuits arising from their duties, functions and responsibilities. If requested by the director, the Attorney General may also provide for legal representation, advice

and consultation for the commission, its members, the director and staff of the office of public defense services in litigation.

(2) The director may designate persons as representatives of the director for the purposes of determining and paying bills submitted to the office of public defense services and determining preauthorization for incurring fees and expenses under ORS 135.055. [2001 c.962 §§4,106a; 2003 c.449 §§3,4]

Note: See note under 151.211

APPENDIX B

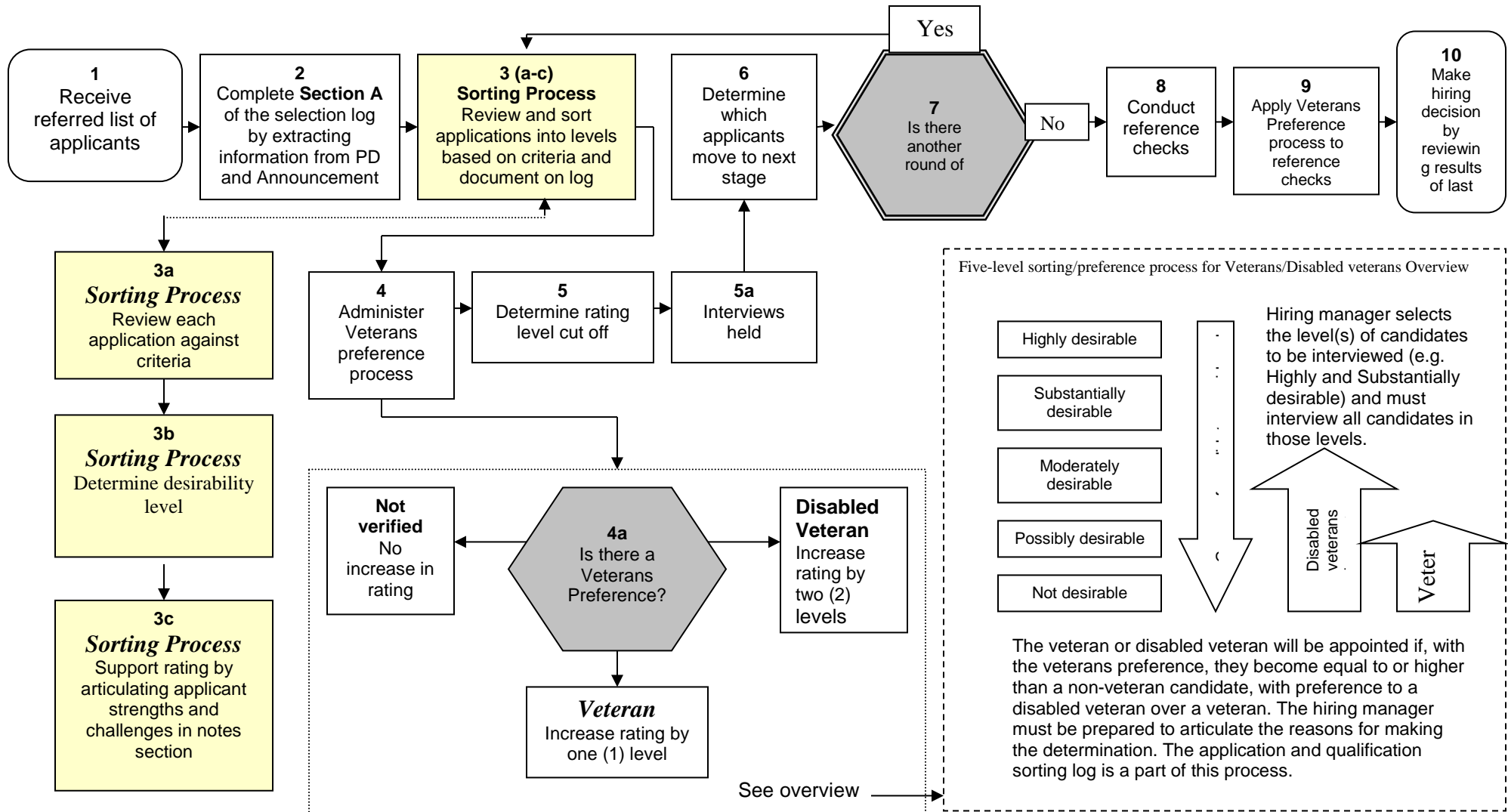
Personal Business Leave will be pro-rated when an Employee is hired after the start of the fiscal year (July 1). Employee starts employment in the month of:

July	24 hours credited
August	22 hours credited
September	20 hours credited
October	18 hours credited
November	16 hours credited
December	14 hours credited
January	12 hours credited
February	10 hours credited
March	8 hours credited
April	6 hours credited
May	4 hours credited
June	2 hours credited

APPENDIX C

Applicant Sorting and Veterans Preference Process

Refer to OAR 839-006-0435



Attachment 3



PUBLIC DEFENSE PAYMENT POLICY AND PROCEDURES

Public Defense Services Commission
Office of Public Defense Services

Effective April 1, 2017

PUBLIC DEFENSE PAYMENT POLICY AND PROCEDURES

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DRAFT

The following Public Defense Payment Policies and Procedures (PDPPP) are adopted by the Public Defense Services Commission (PDSC), pursuant to ORS 151.216 (1)(f)(B) through (E). The PDPPP govern all appointment and expense matters, effective December 1, 2003. This is the fourteenth revision and is effective April 1, 2017.

SECTION 1 – APPOINTMENT OF COUNSEL FOR ELIGIBLE PERSONS

1.1 IN GENERAL

- 1.1.1 Appointment of counsel and payment of related expenses at state expense, payable from funds within the Professional Services Account (PSA), are subject to and limited by statutes, state case law, policies adopted by the PDSC, and the terms of public defense services contracts.
- 1.1.2 For purposes of this policy statement, a person whom the court has determined to be financially eligible for assigned counsel at state expense shall be referred to as “client”.

1.2 APPOINTMENT OF COUNSEL

- 1.2.1 Courts may only appoint counsel at state expense in those types of cases in which there is express authority, by statute or case law, for payment of assigned counsel from the PSA. (*see Exhibit 1 – Appointment Type Codes*).
- 1.2.2 Counsel appointed by courts in cases where there is no authority for payment from the PSA will **not** be paid from the PSA.
- 1.2.3 Courts shall appoint contract attorneys, when available, prior to appointing private bar attorneys.

1.3 APPOINTMENT AGREEMENT

- 1.3.1 By accepting an appointment to represent a client, assigned counsel agrees to abide by relevant statutes and this payment policy, except as expressly provided otherwise in a public defense services contract.

1.4 TYPES OF APPOINTED COUNSEL

- 1.4.1 “Counsel at state expense” or “assigned counsel” is limited to counsel appointed by state courts where there is statutory or case law authority for payment of assigned counsel from the PSA.

- 1.4.2 Assigned counsel is counsel appointed by a court at state expense and may be contract or private bar.
- 1.4.3 Contract counsel is counsel appointed under a public defense services contract.
- 1.4.4 Contract appointments or contract cases are appointments made under a public defense services contract and are subject to that contract.
- 1.4.5 Private bar counsel is an attorney appointed to a private bar case, and may include a contract attorney appointed to a case outside the attorney's contract.
- 1.4.6 Private bar appointments or private bar cases are appointments made other than pursuant to a public defense services contract. These appointments are assignments to individual attorneys, not to firms. The individual attorney is responsible for the case to which he or she is appointed.

1.5 APPOINTMENT OF CO-COUNSEL

1.5.1 Circumstances Supporting Appointment

- A. A court has discretion to appoint co-counsel when the court finds that appointment is reasonable and necessary considering both the circumstances of the case and lead counsel's circumstances and needs.
- B. Lead counsel must file a motion with the court to appoint co-counsel and must file a supporting affidavit that explains why the appointment is reasonable and necessary.
- C. The Office of Public Defense Services (OPDS) discourages appointing co-counsel except in the following:
 - 1. Capital cases,
 - 2. Complex or lengthy murder or serious felony cases when qualified lead counsel would not be able to take the case unless co-counsel were appointed, or
 - 3. No qualified lead counsel is available within the area and appointment of co-counsel would help local counsel obtain experience to qualify as lead counsel for future appointments of this type.

1.6 ASSOCIATE COUNSEL – Limitation on Use in Private Bar Cases

- 1.6.1 Public defense funds will **not** compensate associates of the assigned counsel or assigned counsel for time spent on a case by attorney associates unless OPDS has preauthorized the use of associate counsel or the use of associate counsel is limited to exigent circumstances where the service of associate counsel is ministerial.
- 1.6.2 In requesting preauthorization from OPDS for use of an associate other than in exigent circumstances, the assigned counsel shall describe in detail:
 - A. The type(s) of legal services the associate would provide; and
 - B. How the time expended by an associate will reduce the time that assigned counsel will need to expend without increasing the total cost to the state.
- 1.6.3 Assigned counsel will supervise and have full responsibility for the services performed by an associate.
- 1.6.4 Assigned counsel may not delegate those functions that require the ability and experience for which counsel was assigned, including the handling of evidentiary hearings, trials or oral arguments.

1.7 SUBSTITUTION OF APPOINTED COUNSEL

- 1.7.1 **Need for consultation with OPDS**
 - A. A court may substitute one appointed counsel for another only when:
 - 1. In the exercise of its discretion, the court determines that appointed counsel who is seeking to withdraw cannot ethically continue to represent the client and except as describes in Section 1.7.2, the court consults with OPDS regarding counsel to whom the case will be assigned, or
 - 2. In other circumstances, when the interests of justice so require, and after consultation with OPDS regarding the need for substitution of counsel and counsel to whom the case is assigned.

1.7.2 Reassignment within Public Defender Office, Law Firm or Consortium

The court does not need to consult with OPDS regarding the substitution of counsel if appointed counsel and counsel to whom the case will be reassigned are part of the same public defender office, law firm or consortium under contract with the PDSC.

1.7.3 Limits on matters which may be discussed regarding need for substitution under 1.7.1 (a)(ii)

In consultation with the court regarding the need for substitution, OPDS may only:

- A. Obtain information regarding the reason for substitution;
- B. Obtain information which may affect public defense planning in future cases;
- C. Provide information to the court regarding the cost of substitution; and
- D. Discuss options available to the court in terms of counsel to whom the case might be assigned and cost factors related to each option.

1.7.4 Consultation Regarding Substitution of Case Types

Consultation between the court and OPDS may include discussion of the procedure for handling substitution in a category of case types as well as the procedure in an individual case.

1.8 RECOUPMENT OF ATTORNEY FEES AND EXPENSES

1.8.1 At the conclusion of a case in which the court appointed counsel at state expense, the court may order the person to pay a reasonable amount for the cost of appointed counsel and for expenses authorized under ORS 135.055. Pursuant to ORS 151.505(2), determination of reasonable costs by a court may be made by reference to a Schedule of Compensation established by PDSC.

1.8.2 PDSC will provide and update as necessary a Schedule of Compensation, which describes the typical cost to PDSC to provide representation for listed case types and the average amount expended for each case type in non-routine expenses authorized under ORS 135.055.

SECTION 2 – PRIVATE BAR ATTORNEY FEES AND BILLINGS

2.1 HOURLY RATE SCHEDULE

2.1.1 Noncapital Cases

- A. Except in capital cases or as otherwise expressly authorized by OPDS, the hourly rate for attorney fees for private bar lead counsel, co-counsel or associate counsel is limited to the rate in the Schedule of Guideline Amounts.
- B. The hourly rate applies to trial and appellate level cases and juveniles charged with aggravated murder.

2.1.2 Capital Cases, Adult Defendants

- A. Private bar attorney fees at the trial court level for adult defendants are limited to the rates shown in the Schedule of Guideline Amounts for lead counsel, co-counsel or associate counsel.
- B. The rates also apply to direct appeal and post-conviction relief cases and to post-conviction relief appeals where the underlying case had a conviction resulting in a sentence of death.

2.2 REQUESTS FOR INCREASED HOURLY ATTORNEY RATE

2.2.1 Exceptions to Schedule of Guideline Amounts:

- A. Only OPDS may allow an exception to increase the private bar hourly rate when:
 - 1. Counsel shows compelling circumstances; and
 - 2. OPDS finds that no feasible alternative exists.

2.2.2 Compelling Circumstances include, but are not limited to, circumstances that:

- A. Would impose substantial financial hardship on counsel because of the anticipated length or complexity of the proceedings; or
- B. Establish that an increased hourly fee in that case should result in overall savings to the PSA.

2.2.3 Circumstances that are not compelling include:

- A. The scheduled rate is less than counsel’s standard billing rate;
- B. The case or client is difficult or unpopular, unless this circumstance may cause counsel substantial financial hardship at the scheduled rate; and
- C. Counsel has received higher rates in other public defense cases.

2.2.4 Procedure to Request Increased Hourly Rate

- A. Counsel must submit a request for an increased hourly rate, no more than, 30 days after appointment in the case.
- B. In most circumstances, the increased hourly rate will be retroactive to the time of the appointment.
- C. Private bar counsel or counsel considering appointment must email a request letter to OPDS at mail@opds.state.or.us.
- D. The request must document the compelling reasons that warrant an exception to the guideline rate.
- E. OPDS will review counsel’s request and will confirm in writing the decision and the terms of any exception OPDS has allowed.
- F. When the nature of the case requires the court to expedite an appointment and a decision on the increased rate may determine whether the proposed private bar counsel accepts the case, the court may consult with OPDS for tentative approval. The tentative approval is subject to OPDS’s timely receipt of the written request.

2.3 BILLING FOR SERVICES

- 2.3.1 ORS 135.055(4) provides private bar counsel, on completion of all services, to submit a statement of all reasonable fees and expenses to OPDS;
 - A. Supported by an invoice and appropriate receipts; and

- B. Certified by appointed counsel to be true and accurate.
- 2.3.2 The PDSC Executive Director or OPDS designee will review the statement and determine whether the hours and expenses are reasonable, necessary and properly payable from public defense funds.
- 2.3.3 OPDS will pay only for legal services related to the specific appointment.
- 2.3.4 OPDS will not compensate counsel or other providers for time spent preparing invoices or payment requests, keeping time records, attending seminars, or otherwise managing one's office and career.

2.4 PROVIDER'S FEE STATEMENT FOR ATTORNEY FEES AND ROUTINE EXPENSES

- 2.4.1 Assigned counsel must use and complete the Public Defense Provider's Fee Statement for Attorney Fees and/or Routine Expenses and an invoice with supporting documentation to include:
 - A. Your business name
 - B. Remittance address
 - C. Tax identification or vendor number
 - D. Dates of services itemized by day, in tenths or hundredths of an hour
 - E. Mileage details including departure and destination city
 - F. Appropriate receipts for expenses

2.5 BILLING FOR CONSULTING WITH ASSIGNED COUNSEL ON APPEAL OR POST-CONVICTION RELIEF

- 2.5.1 Assigned counsel on an original trial-level case may bill for time and expenses expended in consulting with counsel on the client's appeal or post-conviction relief case.
- 2.5.2 Time and expenses by original assigned counsel consulting with respondent's counsel in a post-conviction relief or appeal proceeding (e.g. Department of Justice) is *not* a public defense expense.

2.6 TIMELY SUBMISSION OF PAYMENT REQUESTS

2.6.1 Trial Level Cases – Criminal and Juvenile Delinquency

- A. For all cases in which services are completed, appointed counsel must submit payment requests to OPDS within 60 days of the date the court enters in the register of actions:
 - 1. An order allowing or requiring counsel to withdraw; or
 - 2. Final judgement or disposition.

- B. Counsel may bill for time dealing with post-judgment matters if those matters are concluded within 60 days after the judgement is entered. Counsel’s time and expenses for consultation with assigned counsel on appeal or post-conviction relief may be billed beyond the 60-day limit.

- C. In cases where services to the client are not complete, counsel may submit payment requests to OPDS no sooner than 30 days and no later than 90 days from the date:
 - 1. The client enters into a program or agreement which delays final adjudication; or
 - 2. The client fails to appear or the court issues a warrant; or
 - 3. The court determines the client is unable to aid and assist.

2.6.2 For Juvenile Dependency (proceeding up to the time of entry of a disposition) and post-disposition matters

- A. Counsel must submit a request for payment within 60 days of:
 - 1. Entry of an order disposing of the original matter of the petition; or
 - 2. Entry of an order disposing of a discrete post-dispositional matter before the court, such as a review hearing.

- B. Counsel should bill monthly at each billable event such as a permanency, review or Citizens’ Review Board hearing.

2.6.3 Appellate Level Cases

- A. Counsel may bill for time and expenses after the original brief is filed.
- B. A final billing should be submitted within 60 days of the appellate judgment.

2.7 LATE SUBMISSIONS

- 2.7.1 A written explanation showing good cause must be included with the late submission to excuse the delay.
- 2.7.2 OPDS will review the written explanation and approve or disallow payment based upon the reason.

2.8 INTERIM BILLINGS

2.8.1 Aggravated Murder and Murder Cases

- A. Assigned counsel may submit interim billings for aggravated murder and murder cases and post-conviction relief cases where the underlying case contained a conviction for aggravated murder or murder, both at the trial and appellate level.
- B. Fee statements may be submitted monthly but no less than quarterly.

2.8.2 All Other Case Types

- A. OPDS will not pay interim requests for attorney fees and expenses unless OPDS has authorized interim billing.
- B. An interim request is any request submitted before appointed counsel has completed all services in a trial-level case; for appellate cases, an interim request is a request submitted prior to filing the original brief.
- C. An exception to this policy will be made when sentencing is delayed more than 60 days after a finding of guilty or entry of guilty plea.
- D. Approval process to interim bill
 - 1. To request approval for interim billing, counsel must email a letter to OPDS at accounts.payable@opds.state.or.us. The request must document the compelling reasons that warrant authorization to submit an interim billing (e.g. a case has been pending for greater than six months) with a fee statement and invoice.

2. An interim billing request must be submitted with each invoice and will be reviewed on its own merits.
3. When approving final payment requests, OPDS will not reduce earlier approved amounts, except to:
 - a. Correct arithmetic or clerical errors; or
 - b. Ensure total representation costs are not excessive.

SECTION 3 – CASE EXPENSE GUIDELINES

3.1 CASE EXPENSE GUIDELINES

- 3.1.1 Public Defense funds will not be used to pay expenses for a person who is determined financially eligible for appointed counsel, but who is not represented by appointed counsel, unless a statute or case law expressly provides otherwise. Statutes that provide otherwise are:
 - A. ORS 40.325 (OEC 604) on interpreters in criminal cases, and ORS 138.500 on fees for transcripts in appellate cases. These statutes do not require the client to have appointed counsel.
 - B. ORS 135.055 provides that a person who is financially eligible for appointed counsel, but who is pro se or has retained counsel, may request preauthorization of non-routine expenses to be paid from the PSA. Reimbursable expenses must be reasonable and necessary to the investigation, preparation, or presentation of the case.

3.2 GUIDELINE AMOUNTS

- 3.2.1 The Schedule of Guideline Amounts are guidelines, for most fees and expenses. The guideline amount is not equivalent to a pre-approved cost and is not a substitute for preauthorization.
- 3.2.2 Counsel must obtain needed services by the least expensive means available and within the guideline amount whenever possible. Expenses above the guideline amount may be approved if reasonable and necessary.
- 3.2.3 Counsel should provide relevant portions of the guidelines, including amounts and billing procedures, to prospective service providers **before** incurring any costs for services expected to be paid from public defense funds.

3.3 RECEIPTS

- 3.3.1 In general, providers must submit an original receipt for an expense unless otherwise stated in this policy. An original receipt may be electronic (scanned and submitted by email or fax) or in paper format.
- 3.3.2 A copy of the provider's credit card statement or cancelled check may be submitted if an original receipt is not available. If the provider does not have documentation to support the expense, the provider must state in writing:
- A. What the expense was for,
 - B. the amount of the expense, excluding any non-public defense expenses (e.g. room service, car rental insurance),
 - C. to whom it was paid, and
 - D. why the provider does not have a receipt.

The provider must sign and date this statement and submit it with the payment request.

- 3.3.3 The provider must keep reasonable underlying records in case OPDS requires further documentation.

3.4 TYPES OF EXPENSES

- 3.4.1 Expense categories are overhead, routine and non-routine.
- 3.4.2 Overhead expenses, including services performed by an employee or an independent contractor of provider, are not reimbursable, except in extraordinary circumstances with the preauthorization of OPDS. Overhead expenses, except as otherwise expressly provided in this policy, includes, but are not limited to:
- A. Travel time and expense between home and office;
 - B. Paraprofessional Services (law clerk, legal assistant, paralegal, and secretarial services);
 - C. Timekeeping and bill preparation;
 - D. Rent and utilities;
 - E. Office equipment and supplies;
 - F. Library materials;
 - G. Computerized legal research software, installation and monthly access fees.

- 3.4.3 Absent a contract, OPDS will pay for overhead expenses as non-routine expenses only if,
- A. For appointed counsel, OPDS finds that:
 - 1. The case will require counsel to incur a duplication of overhead expenses, where for example the court grants a change of venue and counsel requires support services at the new venue while maintaining similar services at his or her primary office; or
 - 2. The expense will be outweighed by savings in attorney fees, such as work done by a law clerk.
 - B. For non-attorney providers, OPDS finds that:
 - 1. The provider's services are reasonable and necessary and that the standard rate for such services does not include certain overhead expenses;

3.5 ROUTINE EXPENSES FOR APPOINTED COUNSEL

- 3.5.1 OPDS will reimburse counsel or pay directly to the provider actual costs without preauthorization for the following items within the limits described below and as outlined in the Schedule of Guideline Amounts.
- 3.5.2 **Discovery:** The custodian's actual cost of printing electronic discovery, but not more than a reputable private vendor would charge for making copies. In addition, OPDS will pay for one copy for the client. Any additional copies must be preauthorized.

OPDS will not pay premiums for expedited copies unless appointed counsel gives a reasonable explanation of why this situation could not have been avoided.

- A. *For criminal cases*, discovery is material obtained from the District Attorney.
- B. *For a juvenile case*, discovery is material obtained from the District Attorney, County Juvenile Department or the Department of Human Services.
- C. *For post-conviction relief cases*, discovery is a copy of trial counsel's file, appellate counsel's file, the District Attorney's file, the court file, and the material obtained from the defendant in the post-conviction case (e.g., the Superintendent of the Department of Corrections).

- D. Discovery materials include audio and video media, photographs and other similar items obtained from the sources described above.

3.5.3 Interpreter Services: For out-of-court attorney/client communication, counsel should use interpreters who are certified by the Office of the State Court Administrator, under ORS 45.291.

- A. If no certified interpreter is available, counsel should use a qualified interpreter, as defined in ORS 45.275(8)(b).
- B. Attorney/client communication includes written communication to and from the client.
- C. If the hourly rate for interpretation is within the guideline amount, and the services are for attorney/client communication, the service of the interpreter does not need to be preauthorized.
- D. Preauthorization is not needed in court appointed cases for interpretation within the guideline rates for authorized investigation, mitigation, psychiatric, and polygraph services.
- E. OPDS will pay the hourly rate shown in the schedule for interpreters. In addition, OPDS will pay actual travel time at one-half the current hourly rate and mileage at the current reimbursement rate.
- F. Any mileage over 60 miles round trip must be preauthorized.
- G. For interpreters whose rates exceed the guideline amount, counsel must request preauthorization from OPDS.
- H. OPDS will pay a one-hour minimum if the service provided requires less than one hour.
- I. Mileage will be calculated and paid per the distances on the Oregon Department of Administrative Services (DAS) mileage chart, city to city. For cities not included on the DAS chart, Google maps' city to city distances will be used.
- J. Interpreters may bill for travel time reimbursement when the interpreter travels over 40 miles one-way in order to interpret for the OPDS. Interpreters may bill for travel time at a rate of ½ of the hourly rate, per travel hour. Travel time will be billed at a standard rate of 1.2 minutes per mile, defined as 1 hour for every 50 miles traveled, regardless of the actual time traveled.

- K. If the interpretation service is provided by telephone and the interpreter is not at the same location as counsel when the service is provided, the interpreter should indicate that on the Interpreter Fee Statement worksheet and fill in the name of counsel for whom the service was provided. Indicating “telephone approval” on the signature line is not sufficient.
 - L. OPDS will not pay for counsel to use an interpreter to deliver a message to or request information from the client unless counsel or counsel’s staff person participates in the communication.
 - M. An interpreter may not bill OPDS more than once for the same period of time.
 - N. Actual time of service must be recorded even if an appointment was less than one hour and the interpreter is claiming the fee for one hour of service.
 - O. OPDS will pay for actual time worked for services that combine translation and transcription of written communications between the attorney and the client.
 - P. Interpreters shall bill for time and expenses on the Interpreter Fee Statement form and the Interpreter’s Travel Worksheet and shall bill no more than every two weeks.
 - Q. Counsel, or a person designated by counsel, must certify the interpreter’s time by signing the Interpreter Fee Statement form.
 - R. Other Interpreter services not related to attorney/client communication, such as translation and transcription of recorded interviews must be preauthorized.
- 3.5.4 **Medical, School, Birth, DMV and Other Similar Records:** When the cost of an individual record does not exceed \$200 for aggravated murder and murder cases or \$100 for all other case types.
- 3.5.5 **911 Recordings and Emergency Communication Recording Logs:** When the cost of an item does not exceed \$200 for aggravated murder and murder cases or \$100 for all other case types.
- 3.5.6 **Telephone Charges:** Long-distance telephone charges and collect calls from a client in a jail, prison, hospital or other similar government institutions.
- 3.5.7 **Photocopying and Scanning:** Amounts per page only as shown in the schedule. Copies made or scanning services provided by a vendor must be supported by a receipt if over \$25.

- 3.5.8 **Fax Charges:** Long-distance charges for documents sent will be paid the same as for regular long-distance telephone calls. Faxes received will be paid the same rate as in-house copies.
- 3.5.9 **Routine Mileage and Parking:** Routine mileage does not include travel between counsel's office and the courthouse or other location where a hearing or judicial appearance is scheduled unless specifically authorized.
- A. Out-of-state mileage requires preauthorization if over 60 miles outside the Oregon state line.
 - B. The departure and destination city are required for mileage reimbursement.
 - C. Case related attorney mileage that is out of county, or in county and over 60 miles round trip, is routine mileage.
 - D. The actual cost of parking, when the travel qualifies for mileage payment, may be reimbursed. An original receipt is required if the cost of parking is over \$25 for any one period.
- 3.5.10 **Postage:**
- A. First-class mail. Receipt required if the cost to send an individual item exceeds \$25;
 - B. Express mail, only if counsel shows that express mail was reasonable and necessary and the additional expense was not caused by counsel's delay;
 - C. Messenger service other than for routine filings, only if counsel shows it was reasonable and necessary or that the method of delivery was the most economical available.
- 3.5.11 **Service of Process:**
- A. ORS 21.300 (1)(a) provides that no fee shall be charged to the state by the county sheriff for cases in which the party requesting service has counsel appointed at state expense.
 - B. Counsel should use the most economical method available.

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- C. If the investigator for the case, who is paid from the PSA, provides for service, the investigator will be paid the hourly rate for time spent locating and serving or attempting to serve a witness as long as the number of hours does not exceed the total hours preauthorized.
- D. If a different investigator is used for the sole purpose of providing process service, the investigator will be paid the amount in the schedule for each location where service is made or attempted.

3.5.12 **Lay Witness Fees and Mileage:** Upon submission of documentation, OPDS will reimburse counsel the amount paid for the attendance of a lay witness as long as the per diem amount and mileage do not exceed those set by statute, ORS 44.415.

- A. Payment in excess of the statutory amounts is a non-routine expense and requires preauthorization.
- B. OPDS will not pay the salary or expenses of law enforcement officers required to accompany incarcerated witnesses.

3.5.13 **Other Routine Expenses:** For similar expenses as described in excess of the limits stated in the policy, counsel should submit a written explanation with proper documentation that shows the expense to be both reasonable and necessary and properly payable from public defense funds unless OPDS has preauthorized the expense.

3.6 NON-ROUTINE EXPENSES

3.6.1 OPDS will reimburse counsel or other providers for non-routine public defense expenses only if the expense is authorized in advance of incurring the expense, see ORS 135.055.

3.6.2 *Non-routine expenses include*, but are not limited to:

- A. Expert witness fees and expenses;
- B. Investigation and Mitigation;
- C. Psychological, psychiatric and other medical examinations, evaluations and reports;
- D. Polygraph examinations;
- E. Law clerk, legal assistant, and paralegal time;
- F. Travel expenses, such as meals, lodging, airfare and rental cars; and
- G. Out-of-state travel expenses.

- 3.6.3 OPDS will reimburse or pay directly to the provider non-routine expenses only if the expense was preauthorized and is:
- A. Within the guideline amounts listed in the schedule, or
 - B. In excess of scheduled guideline amounts when:
 - 1. Appointed counsel shows compelling circumstances that justify deviation from guideline amounts; and
 - 2. Except for reimbursement for counsel (e.g. law clerk, lay witness fees and paralegal).
- 3.6.4 OPDS will authorize the use of an out-of-state expert only if a qualified in-state expert is not available or the use of an out-of-state expert is more economical.
- 3.6.5 A request for preauthorization of a non-routine expense must be submitted on the Request for Preauthorization of Non-Routine Expense form.
- 3.6.6 The form should be submitted by email to OPDS/Financial Services at NRE@opds.state.or.us or by fax at 503-378-4463.
- 3.6.7 Counsel must include with the form a narrative stating the date counsel was appointed, the most serious charge (if criminal), the type of service or expense requested, the reason the service or expense is necessary and reasonable for proper representation, and what results counsel expects to obtain with the service or expense requested.
- 3.6.8 It is not necessary to submit an affidavit.
- 3.6.9 For aggravated murder and murder cases at the trial level and post-conviction relief or appellate cases in which the underlying case had a charge of aggravated murder or murder, once the initial approval has been given for fact and mitigation investigation, subsequent requests for additional hours for the same provider may be submitted up to 14 days past the effective date being requested.
- 3.6.10 The requirement for preauthorization remains for all other case types and for other types of services for aggravated murder and murder cases.
- 3.6.11 If approved, OPDS will generate an authorization form which is also the provider's fee statement form.

3.6.12 **AUTHORIZATIONS MAY ONLY BE BILLED AGAINST ONCE.**

3.6.13 Non Routine expense authorizations must be billed against within two years of the issue date.

3.6.14 If a request is denied in full or in part, OPDS will generate a partial authorization or denial.

3.6.15 Counsel may request reconsideration by submitting to OPDS a letter requesting reconsideration and including additional support for counsel's request.

3.6.16 If OPDS denies in whole or in part the request for reconsideration, counsel may appeal the denial to the Presiding Judge in the court in which the subject case is pending or the Chief Judge or Chief Justice when the request involves an appellate case.

3.6.17 Counsel must notify OPDS in writing that the matter is being appealed, and copy OPDS with any documents submitted to the court.

3.7 POST AUTHORIZATION OF NON-ROUTINE EXPENSES

3.7.1 Under limited circumstances, OPDS may authorize non-routine expenses after the expense has been incurred.

3.7.2 Counsel must explain, when making a request to OPDS for post authorization of an expense, what exigent circumstances exist that require counsel to incur the expense before requesting preauthorization or before OPDS could act on the request.

3.8 COMPLIANCE WITH APPLICABLE REQUIREMENTS

3.8.1 Investigators, mitigation experts and other expert providers who perform case-related services in another state or country are responsible for complying with all applicable requirements, including but not limited to, licensing that another state or country may impose for the performance of investigative or other services in those jurisdictions.

3.8.2 All out-of-state services and travel must be preauthorized by OPDS.

3.8.3 Out-of-state investigators, mitigation experts and other experts approved to perform services in Oregon are responsible for complying with any applicable requirements, including but not limited to, licensing that the State of Oregon may impose for the performance of investigative or other services.

3.9 PROCEDURES TO REQUEST PAYMENT

- 3.9.1 For reimbursement of routine case expenses incurred, counsel must submit payment requests with the request for attorney fees.
- 3.9.2 Non-attorney providers should submit payment requests directly to OPDS for preauthorized non-routine expenses except for paralegal and lay witness fees.

3.10 USE OF NON-ROUTINE EXPENSE PREAUTHORIZATION AND FEE STATEMENT FORM

- 3.10.1 Non-attorney providers should submit bills for services directly to OPDS, by mail, email at accounts.payable@opds.state.or.us or fax to 503-378-4463.
- 3.10.2 To request payment, non-attorney providers must use the Non-Routine Expense Preauthorization and Fee Statement form generated by OPDS when the service or expense is preauthorized.
- 3.10.3 A Travel Claim worksheet, which details travel expenses, should be completed and submitted with the fee statement form if travel expenses are being claimed for reimbursement.

3.11 SERVICES AT THE REQUEST OF APPOINTED COUNSEL

- 3.11.1 If a provider provides services at the request of appointed counsel, the provider should obtain from the attorney a copy of the Non-Routine Expense Preauthorization and Fee Statement form for the services, which is generated by OPDS and emailed to the attorney when the service is approved.
- 3.11.2 The provider must fill in the provider's name, address, tax identification number, phone number, service rate (if applicable) and billed amount. The certification statement at the bottom of the form must be signed and dated and the provider must attach a detailed invoice that describes the services provided and specifies the date(s) of service.
- 3.11.3 For transcript services, providers must submit a fee statement for transcription and describe on the fee statement form the number of pages, the cost per page and the designation of record.

3.12 MISSED APPOINTMENTS

3.12.1 The party, counsel, or court responsible for the missed appointment is responsible to pay for it.

3.12.2 OPDS will pay for a missed appointment only:

- A. When a client is responsible for the missed appointment because of illness, injury, lack of capacity, or other good cause that:
 - 1. prevented the timely cancellation of the appointment; and
 - 2. Is not attributable to another party, to counsel, or to the court; or
 - 3. When the client requesting the appointment was personally responsible for the missed appointment and cannot show good cause;

3.12.3 The maximum OPDS will pay for a missed appointment under the above circumstance is 50% of the original approved amount, unless the provider has a set missed appointment rate.

3.12.4 OPDS will review, on a case by case basis, requests for a second or later appointment for the same purpose.

3.12.5 The person seeking payment from public defense funds has the burden to establish that the client was not responsible for the missed appointment.

3.13 GUIDELINE AMOUNTS FOR NON-ROUTINE EXPENSES

3.13.1 The amounts shown in the Schedule of Guideline Amounts are guideline amounts only, for most expenses.

3.13.2 **Transcript Services:** For the purpose of this policy, transcription is the process of converting a stenographic or electronically recorded word to a written document. The rate for transcript services is set in statute, see ORS 21.345.

- A. For transcripts of court proceedings or other reporting services when requested by appointed counsel, OPDS will pay no more than the scheduled rate per page for the creation of the transcript.

- B. No appearance or other fees for transcript except as provided below, OPDS will not pay any additional fees, such as:
 - 1. Costs incurred attending depositions;
 - 2. Appearance fees;
 - 3. Reviewing notes or similar tasks related to taking testimony or preparing transcripts.
- C. OPDS will pay additional fees only if it's before the expense is incurred and a deviation is granted by OPDS based on compelling circumstances.
- D. Number of Originals and/or Copies: OPDS will pay for one original but no copies when appointed counsel, another party or the court is the first person to request transcription.

3.13.3 Investigation and Mitigation: Not to exceed the hourly rate shown in the schedule.

- A. The hourly rate includes all overhead expenses, including secretarial services.
- B. Time should be billed in tenths of an hour (ex. 6 minutes = 0.1 hours) or hundredths of hours (ex. 15 minutes = 0.25 hours).
- C. OPDS will pay for investigation and mitigation services only after it has been determined that investigation is reasonable and necessary.
- D. All requests for and approvals of investigation services must include a conservative, projected maximum amount and number of hours.
- E. If OPDS finds that the case may require extensive investigation, OPDS will approve investigation in conservative increments.
- F. OPDS will reimburse the following **out-of-pocket expenses for investigators:**
 - 1. Telephone calls: Actual cost of long-distance telephone calls and collect calls from a client.
 - 2. Fax transmittals: Reimbursed at the rate of a regular long-distance telephone call. For faxes received, provider may request reimbursement at the same rate as for in-house copies.

3. Scanning or copying of documents: Actual costs with detailed documentation and within the guideline amounts. Reimbursement for services provided by a vendor must be supported by a receipt, if over \$25.
 4. Postage and shipping: Most economical method of shipping must be used. Original receipt required if the cost to send an individual item is over \$25.
 5. Mileage: Case related mileage at the guideline amount will be reimbursed for private vehicle use for both in-state and out-of-state, when authorized, unless commercial transportation is more economical.
 - a. Out-of-state mileage requires preauthorization if over 60 miles outside the Oregon state line.
 6. Parking: Actual costs when incurred during routine travel may be reimbursed in an amount not to exceed the guideline amounts. Receipts required if over \$25.
 7. Records: Medical, school, birth, 911 recordings, emergency communication recordings and logs and other similar records, including film, film developing, photos, audio and video tapes, compact discs, exhibit materials when the cost of an individual record does not exceed \$200 for aggravated murder and murder cases or \$100 for all other types of cases.
 8. In-house production of digital photographs at the guideline amount.
 9. Other items similar to those described in this section with proper documentation that shows the expense to be both reasonable and necessary and properly payable from public defense funds.
- G. Provider should submit a written explanation with any request for payment of out-of-pocket expenses not listed in this section or in excess of the limits shown in the Schedule of Guideline Amounts unless OPDS has preauthorized the expense.

3.13.4 **Paraprofessionals:** When OPDS makes the findings required in Section 3.4.2, counsel will be reimbursed for paraprofessional services as a non-routine expense at the rate shown in the schedule.

- A. Counsel should include in the request for this service a description of the tasks to be assigned. Paraprofessionals include law clerks, legal assistants, paralegals, trial assistants and secretarial services.
- B. Reimbursement for travel expenses must be preauthorized.
- C. Requests for payment must include the following supporting documents:
 - 1. Time records listing the service dates, time expended in tenths or hundredths of hours, and tasks performed on the case by the paraprofessional on each date listed; and
 - 2. Counsel's statement and the paraprofessional's statement certifying that the time records are accurate.

3.13.5 Psychiatrists, Physicians, Psychologists and Other Experts

- A. Hourly Rate: OPDS will pay the rates shown in the schedule, which include all overhead expenses.
- B. Reimbursement for travel expenses must be specifically preauthorized.
- C. When a medical expert is required to testify, the trial court and counsel should accommodate these witnesses, whenever possible, by taking testimony out of order.
- D. Standby Fees: OPDS will pay standby fees for experts only when the court or opposing counsel is responsible for incurring the standby expense. For example, the trial court refuses to take testimony out of order or grants opposing counsel's belated request for a continuance over appointed counsel's objection after the expert is on standby.

3.13.6 Forensic Investigation

- A. The hourly fee includes all overhead expenses.
- B. Routine case-related mileage may be reimbursed.
- C. Parking costs may be reimbursed in an amount not to exceed the guideline amount. A receipt for parking is required if the amount for any period exceeds \$25.

3.13.7 **Nonresident Attorneys:** OPDS will pay the rate shown in the schedule or the minimum public defense hourly rate of the state or county in which the attorney resides, whichever is more.

3.13.8 **Polygraph:** OPDS will pay an amount not to exceed the total shown in the schedule for examination and report.

- A. Reimbursement for travel expenses must be preauthorized.
- B. OPDS will authorize polygraph services only when the service is necessary to an adequate trial defense or negotiated disposition.
- C. OPDS will not authorize polygraph expenses for testing the truthfulness of communications between a client and appointed counsel.

3.13.9 **Preauthorization Requirements for Travel Expenses**

- A. Mileage, meals, lodging, airfare and other similar travel costs are non-routine expenses except for mileage and parking defined as routine expenses for counsel investigators and other experts.
- B. OPDS must review and approve proposed travel before the expenses are incurred.
- C. Travel Time: OPDS will reimburse providers for travel time when the provider could not reasonably spend the time working on the case. If the provider works or could reasonably work on the case while traveling, OPDS will pay only for the time spent working. OPDS will not pay for the provider's time spent commuting from the provider's home to the office.
- D. Airfare: Arrangements for airfare must be made through OPDS.
 - 1. When a request for airfare is preauthorized, OPDS will notify the travel agency having the state contract that the expense for the provider has been approved. OPDS will provide the travel agency with the pertinent information regarding the trip.
 - 2. The attorney or other provider must contact the travel agency to make the travel arrangements.
 - 3. Authorizations for airfare expire after **60 days**.

4. The cost of airfare is billed directly to OPDS.
 5. Purchasing airfare outside the state contract: A provider may purchase airfare outside the state contract, with approval from OPDS, if the purchase price of the ticket is less than the contract price and the provider pays for the ticket in advance and requests reimbursement from OPDS. The provider should obtain cancellation insurance. Additional costs incurred because the provider failed to obtain cancellation insurance are not reimbursable.
- E. Car rental: Arrangements for a rental car may be made through the travel agency having the state contract for airfare.
1. OPDS will reimburse the provider for a compact car. Rental of any other size or type of vehicle must be specifically approved.
 2. The provider should rent from the least expensive rental agency.
 3. In addition to the cost of the rental car, OPDS will reimburse for fuel, not mileage, upon submission of an original receipt.
 4. The provider is responsible for any insurance costs related to the car rental.
- F. Mileage and Parking: Reimbursable mileage is paid at the guideline rate shown in the schedule.
1. Parking costs may be reimbursed, without specific preauthorization, if the travel qualifies for mileage reimbursement or if other travel expenses have been preauthorized.
 2. Submission of an original receipt is required if the parking cost is more than \$25 for any one period of time.
 3. If a private vehicle is used for a trip when the use of a rental car or air travel is an option and is more economical than personal vehicle mileage, OPDS will pay the traveler the amount of the most economical method of travel. When determining the amount to pay, OPDS will consider the overall cost of the trip, including travel time.

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Section 3: Case Expense Guidelines continued

G. Meals: Generally, a meal allowance will be approved only when lodging is authorized.

1. Day trip meals may be approved when specifically requested and if the traveler's departure or return time and the distance traveled are such that lodging would be justified.
2. Receipts for meals are not required.
3. If the traveler does not record departure and return times, the schedule below shall apply:

Day of Travel	Meal	Per Diem Amount
First day	Dinner only	\$24
Second and subsequent full days	Full per diem	\$51
Last day	Breakfast and Lunch	\$27

4. If the person traveling records departure and return times, the amount of the meal allowance on the first and last day of travel is determined by the time the traveler departs and returns. The following schedule below shall apply:

Meal Allowance	Per Diem Amount	Departure Time	Return Time
Breakfast	\$12	Before 6:00 am	After 9:00 am
Lunch	\$15	Before 11:00 am	After 2:00 pm
Dinner	\$24	Before 5:00 pm	After 8:00 pm

H. Lodging: OPDS must preauthorize lodging expenses for all providers.

1. Original receipts must be submitted with the travel worksheet and fee statement.
2. In-state lodging: Total cost of lodging, excluding taxes not to exceed the amount shown for each county in the Schedule of Guideline Amounts.
3. The traveler must request a government or commercial rate. If the hotel requires proof of state affiliation, OPDS can provide a letter on the providers' behalf.
4. Out-of-state lodging: The Federal GSA Guidelines are used for out-of-state lodging per diem amounts.

5. The traveler must request a government or commercial rate. If the hotel requires proof of state affiliation, OPDS can provide a letter on the providers' behalf.
6. Non-commercial lodging: Lodging of \$25 may be claimed if a traveler arranges for non-commercial accommodations.
7. The traveler should submit a brief written explanation as to the types of alternate accommodations used unless it was specifically authorized.
8. Direct Billing: OPDS may approve direct billing from a hotel.
 - a. Direct billing must be approved in advance and is on a case by case basis.
 - b. If approved, the direct bill is only valid for that specific case.
- I. Client Clothing: OPDS may authorize the purchase of clothing for a client if the client needs appropriate attire for court appearances.
 1. Counsel agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is available prior to submitting a request to OPDS.
 2. If counsel receives preauthorization to purchase clothing for a client, that clothing must be provided to a "clothing room" upon completion of the case.
 3. Dry cleaning or commercial laundering of purchased or borrowed clothing, prior to return or donation to a "clothing room," is considered a routine expense and may be reimbursed.

3.14 REQUEST FOR DEVIATION FROM CASE EXPENSE GUIDELINES

3.14.1 Counsel may request a deviation for these expenses only **before** the expenses are incurred.

3.14.2 OPDS may grant deviation from the expense guidelines only when all the following are true:

- A. OPDS finds the expense is reasonable and necessary;
- B. Counsel requests deviation in writing before incurring the expense or explains what exigent circumstances existed requiring counsel to incur the expense before requesting the preauthorization or deviation (see Section 3.7); and

- C. The request specifies the circumstances that compel increased expenses, such as the inability to find any local competent provider to render the service within the guideline amount.

SECTION 4 – BILLINGS/PREAUTHORIZATION DISPUTE RESOLUTION

4.1 ADJUSTMENT NOTICE

- 4.1.1 When OPDS approves an amount different than what was requested by a provider, OPDS will send to the provider a Notice of Adjustment to Fee Statement if the difference is more than \$5.00.
- 4.1.2 The notice will include:
 - A. The amount requested;
 - B. The amount to be paid;
 - C. A description of the reason(s) for the adjustment; and
 - D. The right to request reconsideration.
- 4.1.3 Within 30 days of the date of the notice of adjustment, the provider may request reconsideration by submitting to OPDS an explanation of the facts and reasons to support the request, and supporting documentation, if any.

4.2 REQUEST FOR RECONSIDERATION

- 4.2.1 Within 30 days of the date the request for reconsideration is submitted, the Executive Director of OPDS, or the person designated by the Executive Director, will review the request and issue a final determination.
- 4.2.2 A notice shall inform the provider that OPDS either has granted the request for reconsideration or has denied the request in whole or in part for the reasons stated in the original Notice of Adjustment or for other reasons, which OPDS will list in the notice.
- 4.2.3 The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

4.3 APPEAL FOR BILLINGS AND PREAUTHORIZATION

- 4.3.1 If OPDS denies in whole or in part the request for reconsideration, the provider may appeal the denial to the Presiding Judge in the court in which the subject case is pending or the Chief Judge or Chief Justice when the request involves an appellate case.
- 4.3.2 A motion requesting the court’s review of the disallowance must be filed within 21 days of the date of the reconsideration letter from OPDS to the provider. Provider shall copy OPDS with all appeal documents presented to the court.
- 4.3.3 The court will notify the provider and OPDS in writing when a decision has been made.

SECTION 5 – CONFIDENTIALITY OF BILLING AND NON-ROUTINE EXPENSE INFORMATION

5.1 CONFIDENTIALITY

- 5.1.1 In order for OPDS to carry out its obligation under ORS 135.055, ORS 151.216 and other statutes regarding payment of counsel and authorization and payment of non-routine expenses in public defense cases, it is necessary for OPDS to receive information that may be confidential or privileged, or both.
- 5.1.2 ORS 135.055(9) prohibits disclosure of requests and administrative orders for preauthorization of non-routine fees and expenses, and billings for such fees and expenses, to the district attorney before the conclusion of the case.
- 5.1.3 ORS 135.055(10) permits disclosure to the district attorney of the total amount of moneys determined to be necessary and reasonable for non-routine fees and expenses at the conclusion of the trial in the circuit court.
- 5.1.4 ORS 40.255(5) provides that the lawyer-client privilege is maintained for communications made to OPDS for the purpose of seeking preauthorization for, or payment of, non-routine fees or expenses.
- 5.1.5 ORS 192.502(4) exempts from disclosure under the Public Records Law information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

5.1.6 In light of the foregoing statutory provisions, the PDSC adopts the following policy.

It is the policy of the PDSC that OPDS staff will keep confidential all information regarding the cost of representation of a client and non-routine expense requests for a particular case, except as follows:

- A. It may release, upon request at the conclusion of the trial, the total amount of money paid for representation in the case.
- B. It shall disclose information regarding non-routine expense requests in a particular case and the cost of representation of a client to:
 - 1. The attorney who represents or represented the client in the particular case;
 - 2. The attorney who represents the client in a matter arising out of a particular case;
 - 3. Or upon written request, the client, except that OPDS shall not disclose information to the client that it is prohibited from disclosing under state or federal law.
- C. This policy does not prohibit OPDS from disclosing statistical information that cannot be identified with any particular case.
- D. OPDS may disclose to appropriate authorities information regarding non-routine expense requests and the cost of representation when such information is reasonably believed to be evidence of, or relevant to, alleged criminal activity on the part of the court-appointed attorney or other OPDS paid providers.
- E. OPDS shall disclose information regarding the cost of representation as required by law.

EXHIBIT 1
APPOINTMENT TYPE CODES AND RANKING FOR
TRIAL AND APPELLATE CASES

Rank	Code	Description
1	CMUR	Aggravated Murder, Adult Defendant
2	PCRA	Aggravated Murder Postconviction Relief - Sentence of Death
3	PCR	All other Postconviction Relief cases
4	MURD	Murder and Juvenile Charged with Aggravated Murder
5	AM11	Measure 11 Class A Felony
6	BM11	Measure 11 Class B Felony
7	JM11	Measure 11 A/B Felony - 15, 16 or 17 year old juvenile charged as adult
8	AFEL	Class A Felony
9	BFEL	Class B Felony
10	CFEL	Class C Felony
11	DFEL	Felony Driving Under the Influence
12	DVIO	Domestic Violence Assault IV Felony
13	UFEL	Unclassified Felony
14	DUIS	Misdemeanor Driving Under the Influence
15	MISS	Misdemeanors (Excluding DUIS/DWSS/OTMS and contempt)
16	DWSS	Driving While Suspended/Revoked Misdemeanor
17	OTMS	Other Traffic Misdemeanors
18	SCDV	Show Cause Diversion
19	EXTR	Extradition
20	CONT	Contempt (Includes misdemeanor contempt. Excludes FAPA & SUPP)
21	FAPA	Family Abuse Prevention Act Contempt
22	SUPP	Support Contempt
23	MHMI	Civil Commitment
24	HC	Habeas Corpus
25	PCR	Post-Conviction Relief (except Aggravated Murder PCR)
26	FPV	Felony Probation Violation
27	DPV	DUII Probation Violation
28	MPV	Misdemeanor Probation Violation
29	OTHR	Other (Please specify type of appointment or case.)
30	JUTP	Termination Parental Rights/Contested Adoption - Parent
31	JUTC	Termination Parental Rights/Contested Adoption - Child
32	JDEP	Juvenile Dependency - Parent
33	JDEC	Juvenile Dependency - Child
34	JPDP	Juvenile Post-disposition Review Hearing - Parent
35	JPDC	Juvenile Post-disposition Review Hearing - Child
36	JUDF	Juvenile Delinquency - Felony
37	JUDM	Juvenile Delinquency - Misdemeanor
38	JUDO	Juvenile Delinquency - Other (Modification, Emancipation, etc.)
39	JPV	Juvenile Delinquency - Probation Violation

DISPOSITION TYPE CODES AND DESCRIPTIONS

Code	Description
ACQC	Acquitted - Court Trial
ACQJ	Acquitted - Jury Trial
ADAK	Affirmed Without Opinion
ADAL	Affirmed On Appeal
ADAM	Affirmed, Reversed & Remanded in Part
CLCC	Convicted of Lesser Charge - Court Trial
CLCJ	Convicted of Lesser Charge - Jury Trial
CNVC	Convicted of Highest Charge - Court Trial
CNVJ	Convicted of Highest Charge - Jury Trial
COM	Committed
CONS	Consolidated for Plea
CONT	Continued (e.g., probation violations)
DENY	Denied, Petition or Writ
DIVR	Diversion/Conditional Discharge
DSCC	Civil Compromise
DSM	Dismissed
DSMA	Dismissed on Appellant's Motion
DSMC	Dismissed by Appellate Court (court's own motion)
DSMR	Dismissed by Respondent
DSMS	Dismissed by Stipulation
EMAN	Emancipated
EXTR	Extradited
GRNT	Granted, Petition or Writ
INSA	Guilty But Insane
INTM	Interim Billing
JUDP	Jurisdiction Found/Disposition Ordered
JUNF	Jurisdiction Not Found
MSTR	Mistrial
OTHR	Other Disposition
OTPA	Other Post-Adjudicative, Post-Commitment, Or Post-Conditional Release
PLGY	Pled to Highest Charge
PLLC	Plead to Lesser Charge
PRT	Parental Rights Terminated
RCOM	Recommitted
REVK	Revoked
RMND	Remanded
RMWR	Remanded to Trial Court
RVR	Reversed
RVRD	Reversed and Remanded
RVWO	Reversed Without Remand
TERM	Terminated
WAIV	Waived Extradition
WTBN	Bench Warrant
WTHD	Withdrew

**EXHIBIT 2
SCHEDULE OF GUIDELINE AMOUNTS**

ATTORNEY FEES - TRIAL AND APPELLATE LEVEL CASES		
Non-capital Case	\$46 per hour	Includes juveniles charged with aggravated murder.
Capital Case, Lead Counsel	\$61 per hour	
Capital Case, Co-counsel	\$46 per hour	
Out-of-State	\$46 per hour	Or the minimum public defense hourly rate of the state in which the attorney resides, whichever is more.
NON-ATTORNEY FEES (Must be preauthorized by OPDS)		
Paraprofessional	\$15 per hour	
Transcription	\$3.00 per page for original	Electronic submission-no postage paid.
Guardian Ad Litem	\$45 per hour maximum	For attorney and non-attorney providers
Investigator – Non-Capital Case	\$29 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Investigator – Bilingual	\$34 per hour	
Fact Investigator - Capital Case	\$40 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Mitigation Investigator - Capital Case	\$45 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Polygraph Exam	\$400 flat fee for exam and report	Reimbursement for travel expenses must be specifically preauthorized.
Psychiatrist and Psychologist	\$150 per hour	Travel expenses must be specifically preauthorized.
All Other Experts	Varies on type of service and provider qualifications	Preauthorization required
INTERPRETER FEES (For attorney/client communication, does not require preauthorization by OPDS)		
Qualified Interpreter	\$28 per hour	Travel time at one-half the hourly rate and mileage at the guideline rate.
Certified Interpreter	\$43.50 per hour	
ROUTINE CASE EXPENSES FOR COUNSEL & INVESTIGATORS (Preauthorization not required)		
Blank CD/DVD, case and label	\$1.00 each	For media, case and label
Film Developing/Photograph Production, In-house and Vendor	Actual cost if vendor. Photos in-house at \$0.40 for 3 x 5 or 4 x 6. \$1.20 for full page.	Receipt required if produced by vendor.
Photocopies and Scanning, In-house	Maximum \$0.10 per page	Also applies to in-coming faxes.
Photocopies and Scanning by Vendor	Maximum \$0.15 per page	Receipt required.
Photocopies, State Court/Other Government Entities	Maximum \$0.25 per page	Certification costs also paid if necessary. Receipt required.

Mileage from 1/1/2015 to 12/31/2015 From 1/1/2016 to 12/31/16 From 1/1/2017 to present	Maximum \$0.575 per mile Maximum \$0.54 per mile Maximum \$0.535 per mile	Excludes counsel's trips between office and courthouse unless specifically authorized.
Parking - routine travel	Actual cost	If trip qualifies for mileage payment. Receipt required if over \$25.
Telephone	Actual cost	Long-distance charges, including those for faxes, and charges for collect calls from client held at an institution.
Discovery	Actual cost when supported by a receipt	Material obtained from district attorney, DHS or county juvenile department.
Postage	First-class mail	
OJIN Online Searches	\$0.25 per minute of usage	When provider has subscription for OJIN.
Service of Process	\$30 per location of service	Use of sheriff's office is encouraged.
Special Delivery	UPS, Federal Express, USPS Express mail, messenger service	Explanation and receipt required
Other Items		See Section 3.5 for details.
TRAVEL EXPENSES (Must be preauthorized by OPDS)		
Meal Allowance Amounts - When on overnight business and departure and return times are not reported	\$24 for first day of travel \$27 for last day of travel \$51 for each full day between first and last	May qualify for additional allowance for first and last day depending on time of departure and return if traveler notes times on worksheet. <u>Receipts are not required.</u>
Breakfast - When on overnight trip	Maximum \$12.00	If leaving home or office prior to 6:00 a.m. or return is after 9:00 a.m.
Lunch - When on overnight trip	Maximum \$15.00	If leaving home or office prior to 11:00 a.m. or return is after 2:00 p.m.
Dinner - When on overnight trip	Maximum \$24.00	If leaving home or office prior to 5:00 p.m. or return is after 8:00 p.m.
Mileage (other than routine mileage for counsel, investigators and forensic experts)	See date ranges and rates listed above.	Must be preauthorized for providers other than attorneys, investigators and forensic experts.
Parking	Actual cost	Receipt required if over \$25.
Rental Car	Varies	Compact vehicle (unless otherwise preauthorized) plus fuel with submission of original receipts. Insurance costs will not be reimbursed.
Airfare	Varies	Through state contract. Contact OPDS.

**LODGING, MAXIMUM PER NIGHT (excluding taxes)
Must be preauthorized by OPDS for all providers**

2017 OREGON RATES

\$91	\$116	\$110	\$105	\$110	\$97	\$169	\$130
Standard Rate (Applies for all locations without specified rates)	Clackamas	Clatsop	Deschutes	Lane	Lincoln	Multnomah	Washington
Out-of-State Lodging	Please follow the GSA Guidelines for Out-of-State Lodging. The traveler should request the government rate. GSA Website: http://www.gsa.gov/portal/content/104877 - "Search by State"						
Non-Commercial Lodging	\$25 allowance when traveler uses alternative accommodations. Provide a short written explanation.						

Attachment 4

2017 RFP/Contract Timeline

PDSC RFP Approval	March 16
Informational Webinar	April 4
RFP Issued	May 1
Deadline	June 20
PDSC Executive Session Review of Contracting Plan ...	Aug 24
Contract Calls/Correspondence	Aug-Oct
PDSC Contract Approval	Oct 27
Finalize Contracts	Nov-Dec

Attachment 5

Attachment 5a

Field Code Changed

PUBLIC DEFENSE SERVICES COMMISSION

REQUEST FOR PROPOSALS

FOR

PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

BEGINNING

JANUARY 1, ~~2016~~2018

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PART IV - CONTRACT GENERAL TERMS

PART I - GENERAL INFORMATION

1.1 Request For Proposals (RFP) Description

The Public Defense Services Commission (PDSC) is seeking contract proposals to provide legal services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense. Proposals must demonstrate that the legal services meet Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice.

PDSC is accepting proposals for all categories of cases in all counties. The contracts awarded may have one-year ~~or~~, two-year, ~~or four-year~~ terms beginning January 1, ~~2016~~2018, or other such length of term and beginning date as determined by PDSC.

This RFP contains the applicable procedure, instructions and requirements for proposals. It is organized in four parts:

- Part I General Information
- Part II Proposal Application Instructions and Requirements
- Part III Proposal Application Summary and Proposal Outline
- Part IV Contract General Terms

1.2 Applicable Contracting Procedure

ORS 151.216 authorizes PDSC to adopt policies and procedures ~~for-regarding~~ the contracting of public defense services. As part of the Judicial Branch, PDSC is not subject to the Department of Administrative Services administrative rules and procedures that govern contracting for personal services contracts. PDSC adopts the policies, procedures, instructions, requirements and other provisions of this RFP as the PDSC procedures for contracting for personal services. The model rules of the Oregon Attorney General do not apply to PDSC contracting but will be reviewed each time the Attorney General modifies them to determine whether PDSC should modify the policies and procedures contained herein.

1.3 Authority

ORS 151.219 authorizes the PDSC executive director to negotiate contracts for legal services for financially eligible persons in proceedings in which:

- 1) a state court or magistrate has the authority to appoint counsel to represent the financially eligible person, and
- 2) the PDSC is required to pay compensation for that representation.

PDSC may contract with individual attorneys, groups of attorneys, private firms, and full-time, not-for-profit public defender organizations for these services.

Awarding these contracts is a proprietary function of PDSC. All such contracts are:

- 1) subject to PDSC's express approval under ORS 151.216(1)(d), and
- 2) contracts with independent contractors for personal services.

PDSC reserves the right to reject any or all proposals received by reason of this RFP or to negotiate separately in any manner necessary to serve the best interests of the PDSC and the state. PDSC reserves the right to seek clarifications of proposals and to award a contract(s) without further discussion of the proposals submitted. PDSC reserves the right to amend or cancel this RFP without liability if it is in the best interest of the state and public to do so.

1.4 Funding Source

The Legislature appropriates funds to the Public Defense Services Commission to pay ~~for legal representation attorney compensation~~ and other expenses related to the legal representation of financially eligible persons for which PDSC is responsible, including contract payments under ORS 151.219.

1.5 Firms Certified by the Office of Business Inclusion and Diversity ~~Minorities, Women and Emerging Small Businesses~~

Pursuant to ORS 200.035, PDSC shall provide timely notice of RFPs and contract awards to the ~~Governor's Policy Advisor for Economic and Business Equity Advocate for Minorities, Women and Emerging Small Businesses~~ if the estimated value of the contract ~~exceeds is~~ \$510,000 or more.

~~As noted in Governor Kitzhaber's Executive Order 12-03: "Minority-owned and women-owned businesses continue to be a dynamic and fast-growing sector of the Oregon economy. Oregon is committed to creating an environment that supports the ingenuity and industriousness of Oregon's Minority Business Enterprise [MBE] and Women Business Enterprise [WBE]. Emerging Small Business [ESB] firms are also an important sector of the state's economy."~~

~~Oregon MWESB-certified firms~~ Firms certified by the Office of Business Inclusion and Diversity, as defined in ORS 200.055, have an equal opportunity to participate in the performance of contracts financed in whole or in part with state funds. By submitting its proposal, proposed contractor certifies that it will take all necessary and reasonable steps to ensure that MWESB certified firms are provided an equal opportunity to compete for and participate in the performance of any contract resulting from this procurement. Proposed contractor further certifies and agrees that it has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin, and it has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, ~~women-woman, disadvantaged, service-disabled veteran~~, or emerging small business enterprise certified under ORS 200.055.

It is the expectation of PDSC, that the proposed contractor will develop an effective and thoughtful approach to the solicitation of ~~MWESB~~ certified firms to perform work on this project.

1.6 Schedule of Events

Release of RFP	May 1, 2017 5
Proposal Submission Deadline (<i>Received via email by 11:59pm</i>)	June 20 6 , 2017 5
Commission review of statewide contracting plan	July 30 August 24, 2017 5
Commission review of death penalty contracting plan	September 17, 2015 August 24, 2017
<u>Notice of intent to award contracts</u>	October 16, 2017
<u>Commission review of proposals and</u>	October 27, 2017
<u>award of contracts</u>	

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PDSC presently intends to award public defense legal services contracts according to the ~~above time~~ schedule of events described above. By publishing this schedule, PDSC does not represent, agree, or promise that any contract will be awarded on a specified date or any other time in any particular county or judicial district. PDSC intends, however, to adhere to these time frames as closely as possible.

PDSC will provide notice of its intent to award contracts to all applicants at least seven (7) days before the award of contracts, unless exigent circumstances require a shorter period of notice.

1.7 General Proposal Review Procedures

The instructions and information necessary to prepare and submit proposals are found in Part II of this RFP. PDSC will evaluate proposals based on the contents of the applications, ~~their review by the affected court(s)~~, and any other information available to PDSC. Applicants must submit a completed application using the forms and format provided. Applications must be received by PDSC by 11:59 p.m. on the submission deadline date. The following events will then occur.

A. Inadequate Proposals

PDSC may immediately reject proposals that do not meet the minimum RFP requirements. If a proposal is unclear or appears inadequate, PDSC may give the applicant an opportunity to further explain or provide additional information. If PDSC finds the explanation or additional information inadequate, PDSC's decision to reject the proposal will be final and not subject to appeal.

B. Facially Adequate Proposals

PDSC will evaluate proposals that meet the administrative and contractual minimum requirements as set forth in Part II of the RFP. PDSC will evaluate each proposal based on its total characteristics and any other information available to PDSC. During the evaluation period, PDSC may:

- 1) request additional information from applicants to clarify information or material in the proposal;
- 2) consult with judges, court administrative staff, and others who have knowledge of the applicant or the local caseloads and practices to aid in the review of the proposal's merits; and
- 3) request individuals with experience and expertise in the proposed case types to review the apparent qualifications of the applicants, the strengths and weaknesses of the management service delivery plans submitted by applicants and the apparent cost-effectiveness and quality of the various proposals.

C. Negotiations

PDSC must ensure that each contract is compatible with:

- 1) the needs of the particular court(s), county(ies), judicial district(s), region(s), and the state;
- 2) other public defense contracts in place or contemplated; and
- 3) budget allocations.

During negotiations, PDSC may discuss adjustments to proposed costs, caseload types, coverage, level of services, or service providers necessary to meet these objectives.

D. Contract Awards

Award of any contract will be final only when the applicant and the PDSC have properly completed and executed the contract documents.

E. General Contract Terms

PDSC will offer all applicants the same general contract provisions. Successful applicants will enter into a contract substantively similar to the general contract document in Part IV of this RFP, unless otherwise specifically agreed by PDSC.

An applicant may request in the proposal to amend general terms of the contract. PDSC must approve any change. Applicants who do not otherwise accept the general terms contract in Part IV may be disqualified.

1.8 Proposal Evaluation Criteria

PDSC shall evaluate proposals based on the criteria listed below. PDSC reserves the right to reject any proposals that do not comply with the RFP requirements. PDSC shall be the sole determiner of the relative weight given any criterion. Although price is an important criterion, the intent is to provide financially eligible persons with effective legal representation. The applicant with the lowest cost proposed will not necessarily be awarded a contract. PDSC reserves the sole right to make this determination.

CRITERIA:

- 1) The proposal and any modifications ~~is~~ are complete and timely, in conformance with the RFP.
- 2) The applicant and any additional attorneys providing services under the contract meets the minimum attorney qualification standards for the types of cases proposed, as specified in PDSC's Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense.
- 3) The proposed plan for delivery of services is adequate to ensure effective legal representation. Among the factors PDSC may consider are the quality of legal representation, the experience of the attorneys, staffing patterns, available support staff and other services, and caseload per attorney.

- 4) The applicant has the ability to perform the contract effectively and efficiently and to provide representation in the types of cases proposed. Among the factors PDSC may consider are financial ability, personnel qualifications, and successful experience providing public defense services under contract or on a private bar basis.
- 5) The cost for services is reasonable. PDSC may consider factors that affect the cost, including those outside the applicant's control, such as district attorney (DA) negotiation practices, local jail facilities, ~~and~~ court programs and procedures, and the region of the state in which services will be provided.
- 6) The budget is reasonable, and expenses are prorated to the proportion of applicant's time to be devoted to the contract. Among the factors PDSC may consider are the ratios of administrative cost, support services, and non-personnel expenses to direct legal services, as well as compensation, benefit, and other resource levels.
- 7) The proposal is consistent with the needs and best interests of the court(s), county(ies), judicial district(s), and region(s) involved. Among the factors PDSC may consider are the other service methods and service providers available, the applicant's ability to work with the court(s) and within its procedures, and the mix of service providers.
- 8) The proposal is consistent with the needs and best interests of the state as a whole. Among the factors PDSC may consider are the other service methods and mix of service providers available, ~~and~~ the applicant's ability to work with other groups affected by the contract, legislative mandates, ~~or~~ and other directives that affect the entire statewide contracting patterns or terms.
- 9) Contractor's plans to attract and retain a diverse work force, including of persons providing services under the contract who are fluent in the languages of persons in the community to be served by contractor.
- 10) Contractor's plans to become or remain informed about current trends and developments in the provision of public defense services statewide and nationally, such as by attendance at conferences that focus on these matters.
- 11) Contractor's plans to become or remain informed and involved in matters affecting its local public safety system, such as involvement with a Local Public Safety Coordinating Council and/or Criminal Justice Advisory Council and/or Juvenile Court Model Court Team.

In addition to the criteria listed above, PDSC will evaluate the available caseload, the current number of contractors or private bar providers, and the relative cost of administering ~~current~~ contracts ~~and/or new contract proposals~~.

PDSC has the sole discretion to apportion or not to apportion caseloads between applicants AND to award or not to award contracts. PDSC reserves the right to solicit proposals after the close of the RFP process if, in a particular jurisdiction, no sufficient contract proposal is received, caseload exceeds original estimates, or other circumstances require an additional provider.

1.9 Proposal Records

Materials submitted by applicants will not be available for public review until all contracts awarded pursuant to this RFP have been fully executed.

Written inquiries on preparing applications may be directed to Caroline Meyer, Contracts Manager at OPDS at:

caroline.meyer@opds.state.or.us

PART II - PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS

This part of the RFP contains the instructions and requirements for preparing and submitting proposals for public defense legal services contracts.

2.1 Submitting Proposals

The applicant is responsible for any costs incurred in preparing or delivering the proposal. The applicant is responsible for ensuring that the proposal is received timely by the Public Defense Services Commission.

There is no implied promise to award a contract to any applicant based upon the submission of a proposal.

A. Form of Submission

Proposals MUST be submitted as an email attachment in a Portable Document Format (PDF) that has been formatted with optical character recognition (OCR) a ~~searchable Portable Document Format (PDF)~~. The PDF must not be password protected nor copy protected.

Any text in the body of the transmitting email will not be reviewed and will not be considered part of the proposal.

The email should be sent to: mail@opds.state.or.us

B. Deadline

Proposals must be received by PDSC no later than 11:59 p.m. on the submission deadline date.

The submission deadline for all proposals is June 206, 2015-7

If the applicant fails to submit the proposal(s) in accordance with the deadline to PDSC, PDSC will disqualify the proposal(s), unless authorization for late submission is granted in writing by PDSC. Consideration for late submission will be based on PDSC's needs, both regional and by case type, and the reason for the late submission.

2.2 Application Format

Applicants must use the attached application format for submission of all proposals and must answer all questions or state the reason why a specific question is not relevant to the particular proposal. PDSC may disqualify any proposal that is not in the required format or is incomplete.

2.3 Acceptance of RFP and General Contract Terms

- A. Applicants are responsible for reviewing the terms and conditions of the RFP and the general terms of the contract.
- B. By signing and returning the application form, the applicant acknowledges that the applicant accepts and intends to abide by the terms and conditions of the RFP. Further, the applicant accepts the terms and conditions of the general terms of the contract contained in Part IV, unless and only to the extent that the applicant proposes exceptions as described below.
- C. The applicant must clearly state in the proposal any proposed exceptions to the general terms of the contract, including reasons to support the exceptions and estimated efficiencies and/or cost savings. PDSC reserves the right to accept, reject, or negotiate exceptions to the contract terms.
- D. Any changes to the general terms of the contract terms proposed by PDSC will be provided, in writing, to each applicant.

2.4 Multiple Proposals

An applicant may submit more than one proposal. Each proposal must be complete in itself. The proposal must state whether it is in addition to or an alternative to other proposals submitted by the applicant.

2.5 Modification of Proposals

A. When Permitted

Applicants may not modify proposals after the submission deadline, unless PDSC agrees thereto, upon written request by applicant. Until that ~~date~~the submission deadline, an applicant may modify its proposal(s) in writing. Modifications must be:

- 1) prepared on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) must state whether the new document supersedes or modifies the prior proposal.

B. Delivery

Applicants must deliver any modifications in the same manner as required by Section 2.1.A for original proposals.

C. Included in Proposal File

All documents relating to the modification of proposals will be made part of the proposal file.

2.6 Mistakes in Submitted Proposals

A. When Corrections Permitted

PDSC will permit applicants to correct mistakes on a proposal only to the extent correction is not contrary to PDSC's interest or to the fair treatment of other applicants. PDSC has sole discretion to allow an applicant to correct a mistake. PDSC will notify the applicant if and when PDSC allows corrections to proposals.

B. Procedure When PDSC or Applicant Discovers Mistake

If PDSC or the applicant discovers a mistake before the proposal deadline, the applicant may amend the error using the procedures for proposal modification in Section 2.5 above.

PDSC will proceed as follows when PDSC discovers or is notified of mistakes in proposals after the submission deadline but before contract awards are made:

1) Minor Inaccuracies

PDSC may waive or correct minor inaccuracies or insignificant mistakes. Minor inaccuracies are:

- a) matters of form rather than substance that are evident from the proposal documents; or
- b) insignificant mistakes that do not prejudice other applicants; e.g., the inaccuracy or mistake does not affect price, quantity, quality, delivery, or contractual conditions.

2) Mistakes Where Intended Correct Proposal is Evident

If the mistake and the intended correct proposal are clearly evident on the face of the proposal or can be determined from accompanying documents, PDSC may consider the proposal. Examples of mistakes that may be clearly evident on the face of the proposal are typographical errors, transposition errors, and mathematical errors.

3) Mistakes Where Intended Correct Proposal is Not Evident

PDSC may not consider a proposal in which a mistake is clearly evident on the face of the proposal but the intended correct proposal is not evident or cannot be determined from accompanying documents, including requests for correction or modification under Sections 2.5 and 2.6.

C. Included in Proposal File

All documents relating to correcting a mistake will be made part of the proposal file.

2.7 Withdrawal of Proposals

A. Request to Withdraw

An applicant may withdraw a proposal at any time by written request. Requests to withdraw a proposal from consideration must be:

- 1) on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) submitted to PDSC in the same manner as required by Section 2.1.A for original proposals.

B. Included in Proposal File

All documents relating to the withdrawal of proposals will be made a part of the proposal file.

2.8 Evaluation of Proposals

PDSC will begin to evaluate proposals upon receipt, subject to the procedures and criteria described in Part I.

2.9 Categories of Cases Available for Contract

A proposal for public defense legal services may include coverage of all, some, or any of the following categories of cases for which financially eligible persons have a right to appointed counsel payable from the ~~Public-Defense~~Professional Services Account:

- Capital Murder (death penalty)
- Noncapital Murder
- Felony
- Misdemeanor
- Probation Violation
- ~~Juvenile~~ Dependency
- Juvenile Delinquency
- Post-Conviction Relief
- Habeas Corpus
- Civil Commitment
- Extradition
- Contempt
- Psychiatric Security Review Board
- ~~Post-Conviction Relief and Habeas Corpus Appeals~~

Applicants should refer to Part IV, the General Terms of the contract, section 10 for specific definitions of the categories.

2.10 Number of Cases

A. Available Caseload

To obtain the number of contract cases and/or workload likely for a particular court, county, or case type, the applicant should contact the Office of Public Defense Services at [\(503\) 378-2478](tel:503-378-2478).

B. Fixed Caseloads and Value- or Hourly-Based Workloads

PDSC will contract for:

- 1) fixed workload by value of cases for non-death penalty contracts; or
- 2) hourly-based workloads for death penalty contracts.

C. Proposed Caseload

The applicant should propose no more than the number of cases or hours for which the applicant can provide effective and efficient representation and adequate ~~staff~~ support resources [including other persons providing services under the contract](#).

2.11 Cost of Services

A. Expenses Included in Contract Price

Public defense contractors are responsible for all reasonable and necessary expenses that are ordinary and related to the proper preparation and presentation of the case.

PDSC bears the costs outside of any public defense contract for:

- 1) discovery;
- 2) transcripts;
- 3) witness fees and expenses; and
- 4) non-routine case expenses that are preauthorized (e.g., expert witnesses; psychiatric exams; and investigation requiring an investigator's services, unless applicant has staff investigator(s) for this purpose).

Applicants should not include ~~these~~ case-related expenses [listed above](#) in calculating the cost of providing contract services.

B. Reasonable Expenses

Applicants should project the cost of ~~occupancy maintaining an office, adequate support resources including other persons providing services under the contract, staff,~~ or other contract expenses at rates no greater than customary for the community and the type of service or expense. PDSC will not pay premium rates. PDSC expects contractors to

provide facilities reasonably adequate to ensure an environment conducive to providing effective and efficient legal services and to maintaining the dignity of clients, attorneys, and other persons providing services under the contract staff, and clients.

C. Factors to Consider

In calculating overall case cost figures, applicants should consider the percentage of appointments by case type (the "mix" of cases) and the percentage of appointments that:

- 1) usually terminate before trial or contested adjudication, and at what stages and why they terminate (such as, withdrawals, dismissals, multiple cases negotiated together, and bench warrants); and
- 2) usually go to trial or contested adjudication.

The applicant may consider any other relevant factors in constructing costs, as long as these factors do not jeopardize the delivery of adequate legal services at the prices proposed. Applicants must describe in the application all factors or premises on which costs are based.

2.12 Proposal Application Format (Part III of RFP)

The application format consists of:

- 1) Application Summary;
 - a) Caseload Information
 - b) Proposals Including Juvenile Case Types
 - c) Methodology, Explanations and Benefits
- 2) Certification Form; and
- 3) Proposal Outline divided into the following sections:
 - a) Service Delivery Plan
 - b) Proposed Estimated Allocation of Contract Funds
 - c) Proposed List of Contract Attorneys
 - d) Proposed List of Other Persons Providing Services under the Contract~~Contract Non-Attorney Staff~~
 - e) Certificate of Attorney Qualification and Supplemental Questionnaire
 - f) Proposed Contractor Certificate of Compliance with Applicable Oregon Tax Laws
 - g) Proposed Contractor Independent Contractor Certification Statement
 - h) Overall Consortium Proposed Allocation of Contract Funds

THE FOLLOWING PAGES APPL. 1 THROUGH APPL. 16 ARE THE RFP APPLICATION AND PROPOSAL OUTLINE.

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

PART III

PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE

**(TO BE COMPLETED AND SUBMITTED TO PDSC
BY APPLICANTS WHO DO NOT CURRENTLY CONTRACT WITH PDSC)**

PART III - PROPOSAL APPLICATION SUMMARY AND OUTLINE

3.1 APPLICATION SUMMARY

APPLICANT INFORMATION

County or Counties to be served: _____

Formal Name of Applicant: _____

Contact Person for Proposal: _____

Address: _____

Telephone: _____ Fax: _____

Email (required): _____

Fed. I.D. No.: _____ **or** S.S.N.: _____

Type of Business Entity (*e.g. LLC, Non-Profit, Corporation*):

A. CASELOAD INFORMATION

Case Types Covered: All case types as defined in the general terms of the contract document that are subject to this RFP excluding:

Complete the section below:

Case Types	Value	# of Cases	Total Value
First Year			
	\$		\$
	\$		\$
	\$		\$
	\$		\$
First-Year Total			\$
Second Year			
	\$		\$
	\$		\$
	\$		\$
	\$		\$
Second-Year Total			\$
Contract Total			\$

(Add additional years if necessary.)

B. PROPOSALS INCLUDING JUVENILE CASE TYPES: If funding becomes available, is applicant interested in contracting for juvenile case types according to the Parent Child Representation Program for representation in juvenile cases? (See Parent Child Representation Program Annual Report 2015-2016 for program description, https://www.oregon.gov/OPDS/docs/Reports/PCRP_report_PDSC_Jan_2017.pdf.)

C. METHODOLOGY, EXPLANATIONS AND ESTIMATES

- 1) Service Cost Basis. For the types of cases, number of cases~~extent of coverage~~, and services proposed, explain how costs were projected and the premises underlying the projection.
- 2) Case Costs.
 Explain:
 - a) how the various case types were weighted;
 - b) how the cost varies by case type; and

c) if applicable, how staff investigator, paralegal, and/or interpreter costs were factored.

Estimate:

d) what percentage of each case type is disposed by jury trial, court trial, plea, dismissal, withdrawal, and bench warrant;

e) the average number of attorney hours required for each case type proposed;

f) the cost of providing contract counsel at arraignments to advise defendants regarding plea offers or resolution of probation violation or contempt matters if a program were established to facilitate early resolution of cases. Describe the time required and the potential number of cases involved; and

g) the percentage of attorney time and staff time of other persons providing services under this contract required for administrative duties, CLE, and other professional duties not related to a particular case.

3) Other Information. Include any other relevant information that PDSC should consider in evaluating proposal costs.

~~C. PROPOSAL STAFFING SUMMARY ("FTE" means "full-time equivalent"; e.g., four attorneys each committing 50% of their full time to contract work equals two FTEs.)~~

~~Number of Attorneys _____ / FTE _____~~

~~Number of Secretarial/Receptionist Staff _____ / FTE _____~~

~~Number of Paralegals/Legal Assistants _____ / FTE _____~~

~~Number of Administrative Staff _____ / FTE _____~~

~~Number of Investigators _____ / FTE _____~~

~~Number of Interpreters _____ / FTE _____~~

~~Number of Other Staff _____ / FTE _____~~

~~Identify "Other Staff" type: _____~~

3.2 CERTIFICATION FORM

I hereby certify that I have the authority to submit this proposal on behalf of the applicant and that I have read and understand the terms and conditions of the general terms of the contract.

Signature

Date

Typed or Printed Name of Authorized Representative

Title or Representative Capacity

Applicant Name

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3.3 PROPOSAL OUTLINE

The following is an outline of the information each applicant must provide. All questions must be answered and all requested information must be completed. If a certain question or requested information is "Not Applicable" to the applicant's proposal, please note "NA."

A. SERVICE DELIVERY PLAN

The purpose of a public defense legal services contract is to provide cost-effective delivery of legal services that meet Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice. Please describe, in detail, applicant's service delivery plan and how it will ensure effective and efficient legal representation. Include information on the following:

1. Persons providing services under the contract~~Contractor Staff Services~~. Describe legal, support, and other services to be provided under the contract. Include any express limitations on the range of services.

In addition to providing the information requested above, each attorney included within applicant's proposal must complete a Certificate of Attorney Qualification and Supplemental Questionnaire, to be included with applicant's proposal (see pages Appl. 12-14). The Certificate of Attorney Qualification is available for download at: <https://www.oregon.gov/OPDS/docs/CBS/Attorney%20Qualification%20form1%20202016.pdf>.

2. Case Services. Describe the caseload and case types to be covered. Include any limitations in coverage by case type. Include description of specialty court coverage, if applicable. ~~Include any differing values per type of case that applicant proposes.~~
3. Service Delivery. Describe how applicant will provide ~~timely~~, effective, and efficient case-related services. Include:
 - a) how the court would assign cases to applicant;
 - b) how applicant would ensure representation at first appearances;
 - c) how applicant would assign cases to attorneys;
 - d) how applicant would provide for interviews with both in-custody and out-of-custody clients in accordance with the general terms of the contract;
 - e) how applicant would process cases from assignment through reporting to PDSC; and
 - f) how applicant would work with the court to coordinate services with other contractors and with the court.
4. Facilities. Describe applicant's office(s). Include information on:
 - a) office sharing arrangements;
 - b) conference room(s);
 - c) access to materials for legal research and writing~~library (size and contents);~~
 - d) disabled-ADA compliant access (if none, describe alternative arrangements for meeting ~~disabled~~ clients or witnesses with disabilities) (if applicant is a consortium, describe the ~~disabled~~ access or alternative arrangements for each consortium member's office); and
 - e) number of separate law firms/sole practitioners included.

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Does each of applicant's attorneys have ~~their~~his/her own office?

Does each of applicant's attorneys have their own office in the jurisdiction in which the applicant is seeking to provide services?

Are any offices housed in a residence?

Does applicant or any of its members own or have an interest in the office building(s)?

If yes, please explain: _____

5. Equipment. Describe equipment or information systems applicant has or will obtain to improve the provision of services under the proposal. If applicant uses or will use a computer system, please specify hardware and software to be used.

6. Quality of services. ~~Professional Education and Supervision Plan.~~ Describe plans to ensure contractor can and will provide services in accordance with professional standards. Describe plans to ensure that persons providing client representation services under the contract meet the standards of representation set forth in Section 7.1.1 of the contract. for professional development and supervision of all attorneys, direct support, and administrative staff. Include:
 - ~~a) training;~~
 - ~~b) CLE;~~
 - ~~c) educational methods to maintain current awareness of new developments in criminal and public defense-related case law and procedures; and~~
 - ~~d) supervision and development of less experienced attorneys.~~

7. Readiness Status. Describe what applicant needs to do to be ready and able to begin services on the proposed contract effective date. If more time is needed, explain why and when applicant will be available. Include information on positions that need to be filled and equipment or facilities that need to be procured. If positions need to be filled, describe recruitment procedures and affirmative action plans.

8. Local Factors. Identify and discuss, in detail, local factors that affect caseload and case processing that may affect cost.

- ~~9. Financial Safeguards. Describe the financial safeguards and procedures that you have in place to ensure that contract funds received from PDSC are used for the purpose of providing public defense services and are not vulnerable to theft, embezzlement, or misappropriation. Board of Directors. Contractor shall be governed by a board of directors that includes at least two independent members who do not provide services under the entity's contract and are not elected by those who do. In lieu of a board of directors, Contractor shall demonstrate effective and appropriate financial safeguards and quality assurance mechanisms. Describe either the composition of applicant's board of directors, or the financial safeguards and quality assurance mechanisms.~~

10. Other Information. Include any other information you believe is important or relevant to PDSC's review of the service delivery plan.

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11. Contract Terms. Include any requests to modify terms in the general terms of the contract. Explain the purpose of and need for modification and how it will affect the service delivery plan and cost. Again, PDSC has sole discretion to allow modification of any contract term.

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B. PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

All applicants must complete the forms 1. through 6. contained on the following ~~five~~ pages and estimate how contract funds would be allocated to cover service costs.

If applicant is a consortium, submit a separate form 1.- 6. for each firm or member. In addition, ~~you must~~ compile all members' estimated allocations into one, overall consortium contract fund allocation form, form 7. To arrive at allocation figures, each member should estimate by line item the amount of funds reasonably necessary to perform the public defense services contemplated under the proposal. Generally, an attorney who would be spending 50 percent of ~~his/hor~~their total billable time on public defense contract cases may allocate no more than 50 percent of total rent and other overhead costs to the proposed allocation.

Under no circumstances will the PDSC fund any lobbying or other political activities for a public defense contractor.

Each consortium must provide expense information in the allocation categories for all members, not just for the umbrella corporation or other umbrella entity. Any nonprofit organization or consortium that has expenses related to its Board of Directors' or Trustees' meetings should include that expense information with the proposed estimated allocation as well as any other expenses not otherwise listed.

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A. 1. APPLICANT'S PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

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Directions: USE THIS FORM FOR INDIVIDUAL ATTORNEYS, LAW FIRMS, and NON-PROFIT PUBLIC DEFENDER ORGANIZATIONS. DO NOT USE FOR OVERALL CONSORTIUM CONTRACT FUND ALLOCATION (use form G. for overall consortium contract fund allocation). Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A." Add any necessary categories not listed below. **Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work.** (Use additional pages if needed for longer-term proposals.)

1. GROSS SALARIES	<u>First Year</u>	<u>Second Year</u>
Attorneys (estimated gross income to attorneys after attorneys' overhead and F.I.C.A. self-employment taxes are deducted) ____ # ____ FTE	_____	_____
Secretarial/Reception/Clerical Staff ____ # ____ FTE	_____	_____
Paralegal/Legal Assistant Staff ____ # ____ FTE	_____	_____
Investigation Staff ____ # ____ FTE	_____	_____
Other Staff (identify _____) _____ # ____ FTE	_____	_____
SUBTOTAL:	_____	_____
 2. STAFF BENEFITS		
F.I.C.A. Self-Employment Tax (if applicable)	_____	_____
F.I.C.A. (Employer's portion or Social Security only)	_____	_____
Unemployment Insurance	_____	_____
Health and Other Insurance	_____	_____
Workers' Compensation	_____	_____
Retirement Program	_____	_____
SUBTOTAL:	_____	_____
 3. STAFF EXPENSES		
Malpractice Insurance check ____ PLF or ____ NLADA	_____	_____
Other Professional Insurance (describe _____)	_____	_____
OCDLA--Membership Dues	_____	_____
OSB--Membership Dues	_____	_____
Other Membership Dues Necessary to Contract (explain _____)	_____	_____

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3. STAFF EXPENSES (continued)

First Year **Second Year**

Professional Licenses/Certificates (explain _____)	_____	_____
Education Training/CLE's--Attorneys	_____	_____
Education Training--Other Staff (explain _____)	_____	_____
Attorney Travel	_____	_____
Other Staff Travel	_____	_____
SUBTOTAL:	_____	_____

4. OVERHEAD (OCCUPANCY)

Office Rent/Lease	_____	_____
Office Insurance	_____	_____
Building Utilities	_____	_____
Building Maintenance	_____	_____
Real Estate Taxes (if separate from rent)	_____	_____
SUBTOTAL:	_____	_____

5. OVERHEAD (OPERATIONS)

Phone Services (Equipment/Local Calls)	_____	_____
Long Distance Calls	_____	_____
Office Supplies	_____	_____
Postage	_____	_____
Outside Photocopying/Printing	_____	_____
<u>Library Access to materials for legal research and writing</u>	_____	_____
Subscriptions	_____	_____
Other Case Expenses (explain _____)	_____	_____
SUBTOTAL:	_____	_____

6. OVERHEAD (NONCAPITAL EXPENSES)

Furniture & Equipment Leases		
Description	Annual Cost	
_____	_____	_____
_____	_____	_____

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6. OVERHEAD (NONCAPITAL EXPENSES) (continued)	<u>First Year</u>	<u>Second Year</u>
Equipment Repairs/Maintenance	_____	_____
SUBTOTAL:	_____	_____
7. OVERHEAD (OTHER)		
Personal Property Taxes	_____	_____
Professional Contract Services (specify)	_____	_____
Miscellaneous (specify)	_____	_____
SUBTOTAL:	_____	_____
8. TOTAL OPERATIONS (total of 1-7)	_____	_____
9. CAPITAL (Items costing over \$500 each and funded separately)		
Computer--Hardware	_____	_____
Description Quantity Unit Cost		

Computer--Software	_____	_____
Description Quantity Unit Cost		

Office Furniture	_____	_____
Description Quantity Unit Cost		

Office Equipment	_____	_____
Description Quantity Unit Cost		

SUBTOTAL:	_____	_____
GRAND TOTAL* (total of 8 and 9):	=====	=====

*** Grand total must equal total proposed annual contract price.**

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G2. PROPOSED LIST OF CONTRACT ATTORNEYS

Directions: List every attorney performing work under the ~~2016~~2018-197 contract, by firm where applicable, the number of projected annual cases (both criminal and juvenile) to be assigned under the contract, and the amount expected annually from contract funds. List vacant positions as well. Additionally, Contractor certifies that each attorney performing services under the ~~2016~~2018-17-19 contract is listed in Appendix A2, that the percentage of contract work and annual funds represented on Appendix A2 is true and accurate to the best of their knowledge, and that each attorney listed satisfies the qualification standards that PDSC has established for the types of cases to which that attorney is or will be assigned.

Firm or office	Attorney name (last, first)	Bar #	Annual projected number of cases assigned										Annual hours dedicated to non-contract work		Annual projected distribution of contract funds (dollar amount)		
			Murder	Major felony	Lesser felony	Misdemeanor	Major felony (juvenile delinquency)	Lesser felony (juvenile delinquency)	Misdemeanor (juvenile delinquency)	Juvenile dependency	Juvenile termination	Civil commitment	Post-conviction relief	Type of work (i.e. contract administration, retained work, pro-tem judge)		Annual hours	

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D3. PROPOSED LIST OF ~~CONTRACT NON-ATTORNEY STAFF~~ OTHER PERSONS PROVIDING SERVICES UNDER THE CONTRACT

Directions: List every non-attorney position performing work under the ~~2016~~2018-17-19 contract, by firm where applicable, the name of the employee in each position, the percentage of their time annually allocated to work under the contract, and the amount they receive annually from contract funds. List vacant positions as well. Contractor certifies that each non-attorney performing services under the ~~2016~~2018-17-19 contract is listed in Appendix B3, and that the percentage of contract work and annual funds represented on Appendix B-3 is true and accurate to the best of their knowledge.

Firm or o Office	Employee Name (Last, First)	Position Title	FTE Contract Work	Current -Annual Projected Distribution of Contract Funds (dollar amount)
-----------------------------	--------------------------------	----------------	----------------------	--

Total FTEs: _____

Appl. 13

RFP - January 1, 2018~~6~~

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E4. CERTIFICATE OF ATTORNEY QUALIFICATION AND SUPPLEMENTAL QUESTIONNAIRE FOR NON-CAPITAL CASES

(Submit one certificate and questionnaire for each attorney proposed to provide contract services. [The Certificate of Attorney Qualification and Supplemental Questionnaire for non-capital cases is available for download at: https://www.oregon.gov/OPDS/docs/CBS/Attorney%20Qualification%20form1%202016.pdf](https://www.oregon.gov/OPDS/docs/CBS/Attorney%20Qualification%20form1%202016.pdf))

Name: _____ Bar Number: _____
Address: _____ Email: _____

Foreign language fluency in: _____
Phone Number: _____ Years of Experience: _____
Fax Number: _____ Practice of Law _____ Criminal _____
Cell/Pager: _____ Juvenile _____ Appellate _____
For appointments in the following county(ies): _____

TRIAL LEVEL	APPELLATE LEVEL
Murder _____	Murder _____
Lead Counsel _____	Lead Counsel _____
Co-counsel _____	Co-counsel _____
Major Felony _____	Major Felony _____
Lesser Felony _____	Lesser Felony _____
Misdemeanor _____	Misdemeanor _____
Juvenile Delinquency _____	Juvenile Delinquency _____
Major Felony _____	Major Felony _____
Lesser Felony _____	Lesser Felony _____
Misdemeanor _____	Misdemeanor _____
Juvenile Dependency _____	Juvenile Dependency _____
Juvenile Termination _____	Juvenile Termination _____
Civil Commitment _____	Civil Commitment _____
Contempt _____	Contempt _____
Habeas Corpus _____	Habeas Corpus _____
Post-Conviction Relief _____	Post-Conviction Relief _____
Murder _____	Murder _____
Other Criminal _____	Other Criminal _____

Please check only one box below:

I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. 5-21-09) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 2.B, I have submitted supporting documentation and explained how I am qualified for those case types.

OR

I certify that the above-named attorney will be working at a public defense organization as described in Standard III.2.C, which has provided the information required under Standard V.3.B.

Signature _____ Date _____

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SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:

5. Number of years and location(s) of legal practice outside Oregon:

6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)

7. What percentage of your present practice involves handling public defense cases?

8. Briefly describe the nature and extent of your work experience in the area(s) of law which you have certified and any related areas of law.

9. Before which courts and judges have you regularly appeared in case proceedings which you have certified?

10. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?

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11. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.

12. List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.

13. Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)

14. Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings:

15. Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?

16. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.

17. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

SIGNATURE

DATE

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F5. PROPOSED CONTRACTOR CERTIFICATE OF COMPLIANCE WITH APPLICABLE OREGON TAX LAWS

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

Mark only one: (X)

_____ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

_____ authorized to act in behalf of _____,
(name and address of firm, corporation, or partnership [PLEASE TYPE])

hereby certify under penalty of perjury that _____
(name of firm, corporation, or partnership [PLEASE TYPE])

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 119, and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Federal ID # or
Social Security #: _____

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

My commission expires: _____

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G.6 PROPOSED CONTRACTOR INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters ~~316, 656, 657~~ and 670.600:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. ~~You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.~~
3. You ~~are customarily engaged in an independently established business, as follows: furnish the tools or equipment necessary to do the work.~~
4. ~~You have the authority to hire and fire employees to perform the work.~~
5. ~~You are paid on completion of the project or on the basis of a periodic retainer.~~
6. ~~You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.~~
7. ~~You represent to the public that you are an independently established business, as follows:~~

YOU MUST MEET ~~FOUR (4)~~ THREE (3) OR MORE OF THE FOLLOWING:

- ___ A. You ~~maintain a business location separate from the business or work location of the person or organization for whom services are provided, work primarily at a location separate from your residence.~~
- ___ B. You ~~bear the risk of loss related to the business or provision of services, have purchased commercial advertising, business cards, or have a trade association membership.~~
- ___ C. You ~~provide contracted services for two or more different persons within a 12-month period, or you routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts or provide similar services, use a telephone listing and service separate from your personal residence listing and service.~~
- ___ D. You ~~make significant investment in the business through means such as purchasing tools or equipment necessary to provide the services, paying for the premises or facilities where the services are provided, or paying for licenses, certificates or specialized training required to provide the services, perform labor or services only pursuant to written contracts.~~
- ___ E. You ~~have the authority to hire other persons to provide or to assist in providing the services and have the authority to fire those persons, perform labor or services for two or more different persons within a period of one year.~~

I hereby certify that the applicant qualifies as an independent contractor as described above ~~information is correct.~~

Signature _____ Date _____

Entity _____

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7. OVERALL CONSORTIUM PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

Directions: USE THIS FORM FOR OVERALL CONSORTIUM CONTRACT FUND ALLOCATION. Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A." Add any necessary categories not listed below. Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work. (Use additional pages if needed for longer-term proposals.)

1. CONTRACT ALLOCATION TO ATTORNEYS First Year Second Year

Attorneys (estimated total contract payment to attorneys)
_____ =

2. CONSORTIUM STAFF SALARY AND BENEFITS

Administrative Staff # FTE
(estimated gross income to staff)

Other Staff or Administrators (identify by name: _____)
(estimated gross income to others)

_____ # FTE

SUBTOTAL:

3. OVERHEAD (CONSORTIUM)

GRAND TOTAL*

*** Grand total must equal total proposed annual contract price.**

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Attachment 5b

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

PART IV
CONTRACT GENERAL TERMS

Appl. 20

RFP - January 1, ~~2016~~2018

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**PART III OF 2017~~5~~ REQUEST FOR PROPOSALS
FOR PUBLIC DEFENSE LEGAL SERVICES CONTRACTS
BEGINNING JANUARY 1, 2018~~6~~
(for existing contractors)**

Parts I, II and IV of the 2017~~5~~ Request For Proposals apply to this proposal and are available online at <http://www.oregon.gov/OPDS/CBS/pages/requestsforproposals.aspx>

Formal Name of Applicant _____

Contact Person for Proposal _____

Address _____

Telephone Number _____ Fax Number _____

Email address _____

Please provide the following information.

1. Describe any changes to your current contract that would be required to enable you to continue to provide legal representation without a reduction in the quality of representation. Examples might include the need to increase ~~employee salaries~~ payments to persons providing services under your contract to address issues of recruitment and retention; the need to add additional attorneys to reduce caseloads; the need to upgrade hardware/software. Include an explanation as to why the changes are needed and the estimated additional funding that would be required to achieve these goals.
2. Describe ~~any the~~ measures you have taken or plan to take to meet the provisions of revised Section 7 ~~provisions~~ of the Contract General Terms, including the following: concerning obligations of Contractor, including the quality assurance obligations of contract administrator set out in those provisions. Include any costs that may be associated with these measures:
 - a. 7.1 – Performance Obligations of Appointed Counsel
 - b. 7.2 – Quality Assurance Obligations of Contract Administrator
 - c. 7.6 – Reports to PDSC
3. Describe any system or resource changes which occurred during the current contract term or will likely occur in the future, that have or will affect the contract workload.
4. Are the types of cases you propose to accept under a new contract different from your current contract? If yes, please indicate what changes you propose.
5. Are there any terms or conditions in your current contract or in the General Terms included in the 2017~~5~~ Request For Proposals you propose be modified or clarified for a new contract? If so, please explain.
6. ~~Every contractor for public defense legal services shall be governed by a board of directors that includes at least two independent members who do not provide services under the entity's contract and are not elected by those who do. In lieu of a board of directors, a contractor shall demonstrate to OPDS staff and the commission effective and appropriate~~

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~~financial safeguards and quality assurance mechanisms. Describe either the composition of your board of directors, or the financial safeguards and quality assurance mechanisms you have in place and procedures that you have in place to ensure that contract funds received from PDSC are used for the purpose of providing public defense services and are not vulnerable to theft, embezzlement, or misappropriation.~~

7. Additional information you request be considered.

8. **~~A. For non-death penalty contracts:~~**

~~Section 7.2.3 of the 2016-17 Contract General Terms contains specific CLE requirements for each contract attorney. Beginning in 2016 we will collect this information annually for all attorneys working under contract, to provide the data necessary to comply with the PDSC Key Performance Measures.~~

~~Section 7 of the Specific Terms of the current contract contains the following provision:~~

~~All lawyers representing children, parents, or guardians in dependency cases are required to attend at least 16 hours of continuing legal education related to the practice of juvenile law during the term of this Contract.~~

~~Please provide documentation of the CLE hours to date for the lawyers to whom this applies using the form provided at the end of this document.~~

~~B. For death penalty contracts:~~

~~Please complete the 2015 Revised Capital Attorney Certification Form and include it with this response to the Request For Proposals, if you have not previously completed this form. If you have previously completed this form, please provide an update if your answers to Section IV(e) have changed. Please also provide a listing of the CLE programs that you have attended since January 2016⁴ that satisfy the requirements set forth in Section VII of the form.~~

I hereby certify that:

1. the information contained in this summary proposal and its appendices is, to the best of my knowledge, accurate;
2. I have the authority to submit this proposal on behalf of the applicant; and
3. I have read and understand the terms and conditions of the relevant General Terms of the contract.

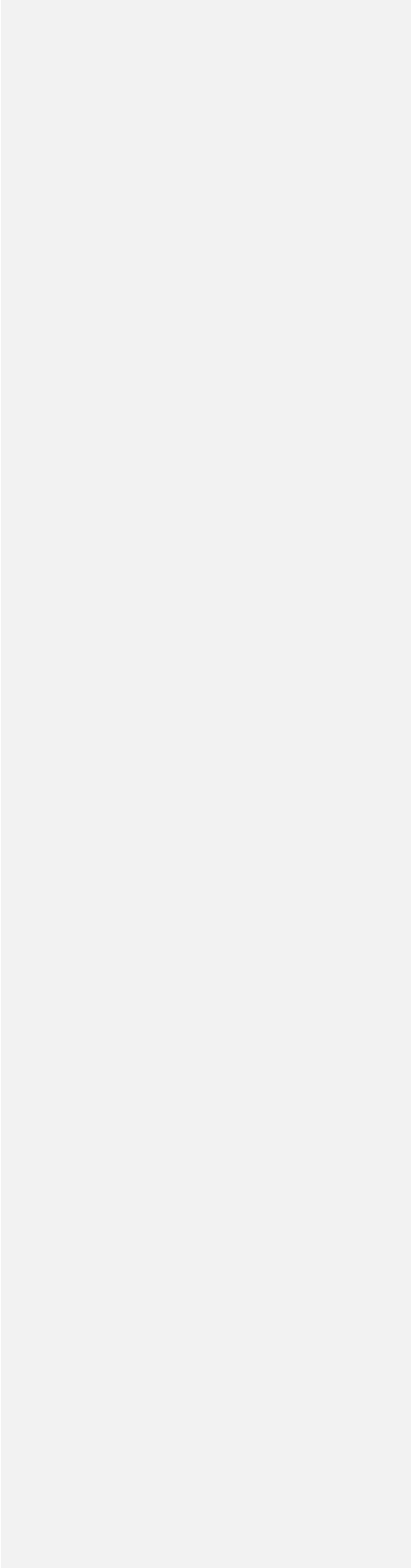
Signature

Date

Typed or Printed Name of Authorized Representative

Title or Representative Capacity

Applicant Name



**APPENDIX A
PROPOSED LIST OF CONTRACT ATTORNEYS**

Directions: List every attorney performing work under the 2018-19 contract, by firm where applicable, the number of projected annual cases (both criminal and juvenile) to be assigned under the contract, and the amount expected annually from contract funds. List vacant positions as well. Additionally, Contractor certifies that each attorney performing services under the 2018-19 contract is listed in Appendix A, that the percentage of contract work and annual funds represented on Appendix A is true and accurate to the best of their knowledge, and that each attorney listed satisfies the qualification standards that PDSC has established for the types of cases to which that attorney is or will be assigned.

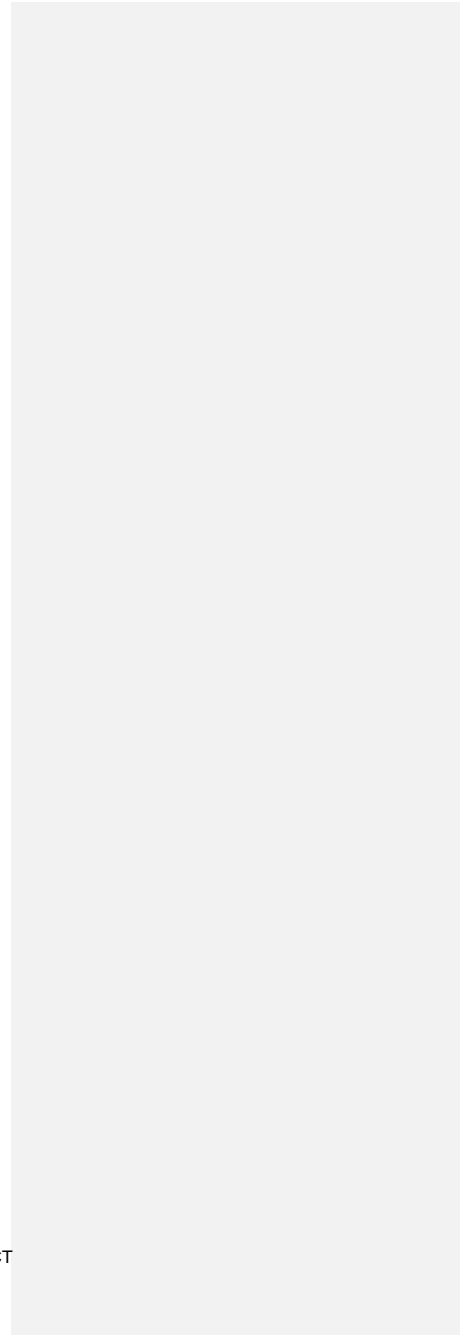
Firm or office	Attorney name (last, first)	Bar #	Annual projected number of cases assigned										Annual hours dedicated to non-contract work		Annual projected distribution of contract funds (dollar amount)
			Murder	Major felony	Lesser felony	Misdemeanor	Major felony (juvenile delinquency)	Lesser felony (juvenile delinquency)	Misdemeanor (juvenile delinquency)	Juvenile dependency	Juvenile termination	Civil commitment	Post-conviction relief	Type of work (i.e. contract administration, retained work, pro-tem judge)	

**APPENDIX A
PROPOSED LIST OF CONTRACT ATTORNEYS**

Directions: List every attorney performing work under the 2016-17 contract, by firm where applicable, the number of projected annual cases (both criminal and juvenile) to be assigned under the contract, and the amount expected annually from contract funds. List vacant positions as well. Additionally, Contractor certifies that each attorney performing services under the 2016-17 contract is listed in Appendix A, that the number of projected cases, description and hours of other work, and annual funds represented on Appendix A is true and accurate to the best of their knowledge, and that each attorney listed satisfies the qualification standards that PDSC has established for the types of cases to which that attorney is or will be assigned.

Firm or Office	Attorney Name (Last, First)	Bar #	Annual Projected Caseload		Annual Hours Dedicated to Other Work		Current Annual Projected Distribution of Contract Funds (dollar amount)
			Criminal	Juvenile	Type of Work (i.e. contract administration, retained work, pro-tem judge)	Hours	

Comment [OJD1]: These forms will be updated consistent with the long-form RFP.



APPENDIX B

PROPOSED LIST OF OTHER PERSONS PROVIDING SERVICES UNDER THE CONTRACT

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Directions: List every non-attorney position performing work under the 2018-19 contract, by firm where applicable, the name of the employee in each position, the percentage of their time annually allocated to work under the contract, and the amount they receive annually from contract funds. List vacant positions as well. Contractor certifies that each non-attorney performing services under the 2018-19 contract is listed in Appendix B, and that the percentage of contract work and annual funds represented on Appendix B is true and accurate to the best of their knowledge.

<u>Firm or office</u>	<u>Employee Name (Last, First)</u>	<u>Position Title</u>	<u>FTE Contract Work</u>	<u>Annual Projected Distribution of Contract Funds (dollar amount)</u>
-----------------------	--	-----------------------	------------------------------	--

PROPOSED LIST OF CONTRACT NON-ATTORNEY STAFF

Directions: List every non-attorney position performing work under the 2016-17 contract, by firm where applicable, the name of the employee in each position, the percentage of their time annually allocated to work under the contract, and the amount they receive annually from contract funds. List vacant positions as well. Contractor certifies that each non-attorney performing services under the 2016-17 contract is listed in Appendix B, and that the percentage of contract work and annual funds represented on Appendix B is true and accurate to the best of their knowledge.

<u>Firm or Office</u>	<u>Employee Name (Last, First)</u>	<u>Position Title</u>	<u>FTE Contract Work</u>	<u>Current Annual Projected Distribution of Contract Funds (dollar amount)</u>
-----------------------	--	-----------------------	------------------------------	--

Total FTEs: _____

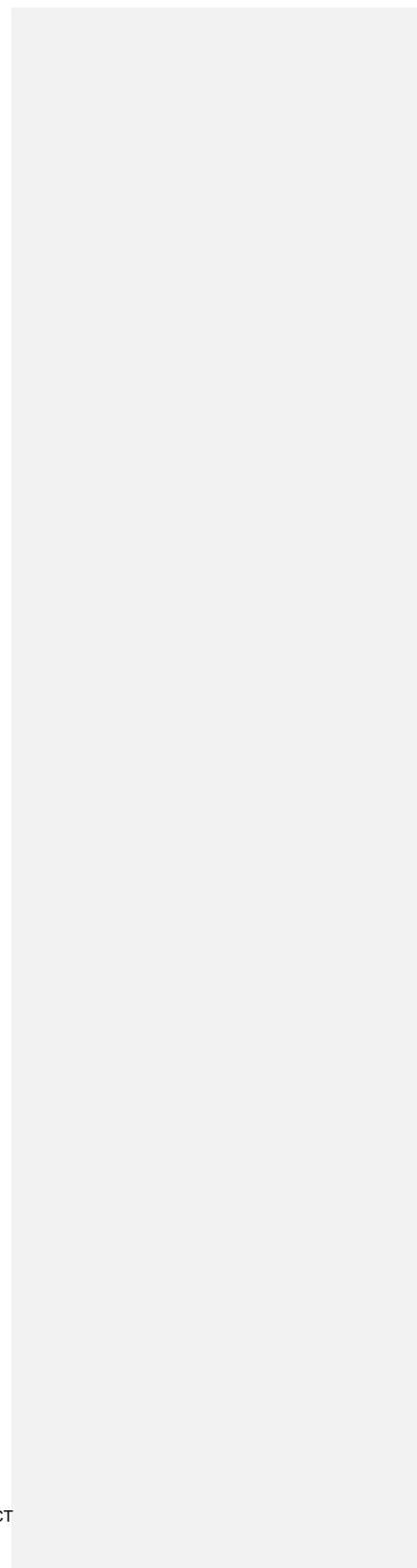
APPENDIX C
(To Be Completed by Not-for-Profit Public Defenders Only)
PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

Directions: Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A." Add any necessary categories not listed below. **Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work.**

1. GROSS SALARIES	<u>First Year</u>	<u>Second Year</u>
Attorneys (estimated gross income to attorneys after attorneys' overhead and F.I.C.A. self-employment taxes are deducted) _____# _____FTE	_____	_____
Secretarial/Reception/Clerical Staff _____# _____FTE	_____	_____
Paralegal/Legal Assistant Staff _____# _____FTE	_____	_____
Investigation Staff _____# _____FTE	_____	_____
Other Staff (identify _____) _____# _____FTE	_____	_____
SUBTOTAL:	_____	_____
 2. STAFF BENEFITS		
F.I.C.A. Self-Employment Tax (if applicable)	_____	_____
F.I.C.A. (Employer's portion or Social Security only)	_____	_____
Unemployment Insurance	_____	_____
Health and Other Insurance	_____	_____
Workers' Compensation	_____	_____
Retirement Program	_____	_____
SUBTOTAL:	_____	_____
 3. STAFF EXPENSES		
Malpractice Insurance check _____ PLF or _____ NLADA	_____	_____
Other Professional Insurance (describe _____) _____)	_____	_____
OCDLA--Membership Dues	_____	_____
OSB--Membership Dues	_____	_____
Other Membership Dues Necessary to Contract (explain _____) _____)	_____	_____

3. STAFF EXPENSES (continued)	<u>First Year</u>	<u>Second Year</u>
Professional Licenses/Certificates (explain _____)	_____	_____
Education Training/CLE's--Attorneys	_____	_____
Education Training\Other Staff (explain _____)	_____	_____
Attorney Travel	_____	_____
Other Staff Travel	_____	_____
SUBTOTAL:	_____	_____
4. OVERHEAD (OCCUPANCY)		
Office Rent/Lease	_____	_____
Office Insurance	_____	_____
Building Utilities	_____	_____
Building Maintenance	_____	_____
Real Estate Taxes (if separate from rent)	_____	_____
SUBTOTAL:	_____	_____
5. OVERHEAD (OPERATIONS)		
Phone Services (Equipment/Local Calls)	_____	_____
Long Distance Calls	_____	_____
Office Supplies	_____	_____
Postage	_____	_____
Outside Photocopying/Printing	_____	_____
<u>Library Access to materials for legal research and writing</u>	_____	_____
Subscriptions	_____	_____
Other Case Expenses (explain _____)	_____	_____
SUBTOTAL:	_____	_____
6. OVERHEAD (NONCAPITAL EXPENSES)		
Furniture & Equipment Leases	_____	_____
Description Annual Cost		

Equipment Repairs/Maintenance	_____	_____
SUBTOTAL:	_____	_____



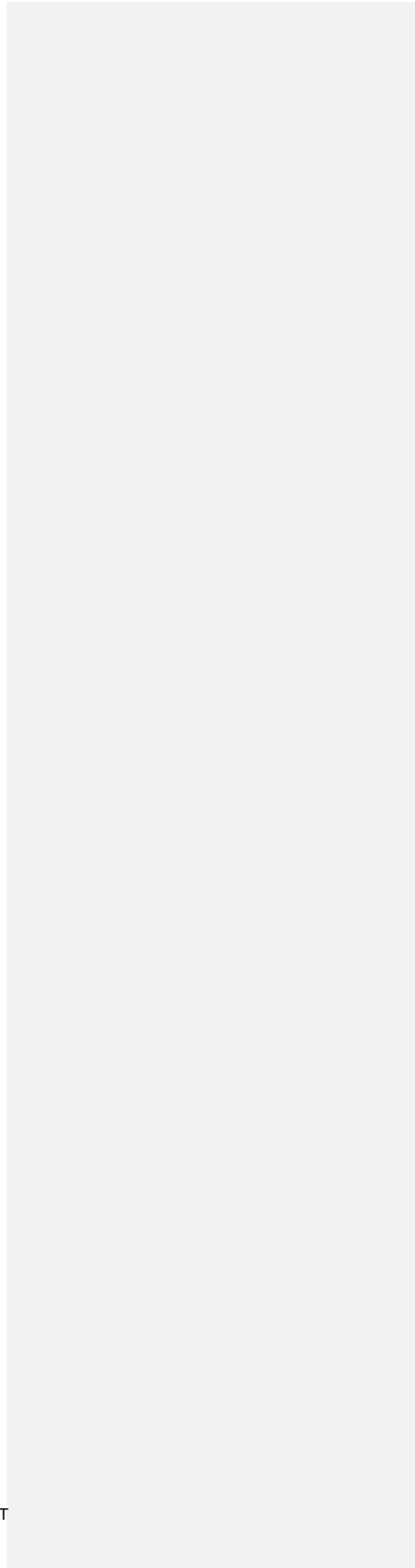
7. OVERHEAD (OTHER)	<u>First Year</u>	<u>Second Year</u>
Personal Property Taxes	_____	_____
Professional Contract Services (specify)	_____	_____
Miscellaneous (specify)	_____	_____
SUBTOTAL:	_____	_____
8. TOTAL OPERATIONS (total of 1-7)	_____	_____
9. CAPITAL		
Computer--Hardware	_____	_____
Description Quantity Unit Cost		

Computer--Software	_____	_____
Description Quantity Unit Cost		

Office Furniture	_____	_____
Description Quantity Unit Cost		

Office Equipment	_____	_____
Description Quantity Unit Cost		

SUBTOTAL:	_____	_____
GRAND TOTAL (total of 8 and 9):	=====	=====
<u>Grand total must equal total proposed annual contract price.</u>		



**APPENDIX D
PROPOSED CONTRACTOR
CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS**

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

Mark only one: (X)

_____ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

_____ authorized to act in behalf of

(name and address of firm, corporation, or partnership [PLEASE TYPE])

hereby certify under penalty of perjury that

(name of firm, corporation, or partnership [PLEASE TYPE])

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 119, and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Federal ID # or
Social Security #: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____

**APPENDIX E
PROPOSED CONTRACTOR
INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT**

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapter 670.600:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You are customarily engaged in an independently established business, as follows:

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YOU MUST MEET THREE (3) OR MORE OF THE FOLLOWING:

- A. You maintain a business location separate from the business or work location of the person or organization for whom services are provided.
- B. You bear the risk of loss related to the business or provision of services.
- C. You provide contracted services for two or more different persons within a 12-month period, or you routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts or provide similar services.
- D. You make significant investment in the business through means such as purchasing tools or equipment necessary to provide the services, paying for the premises or facilities where the services are provided, or paying for licenses, certificates or specialized training required to provide the services.
- E. You have the authority to hire other persons to provide or to assist in providing the services and have the authority to fire those persons.

I hereby certify that the applicant qualifies as an independent contractor as described above.

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters 316, 656, 657 and 670:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You furnish the tools or equipment necessary to do the work.
4. You have the authority to hire and fire employees to perform the work.
5. You are paid on completion of the project or on the basis of a periodic retainer.
6. You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.
7. You represent to the public that you are an independently established business, as follows:

YOU MUST MEET FOUR (4) OR MORE OF THE FOLLOWING:

- ~~== A. You work primarily at a location separate from your residence.~~
- ~~== B. You have purchased commercial advertising, business cards, or have a trade association membership.~~
- ~~== C. You use a telephone listing and service separate from your personal residence listing and service.~~
- ~~== D. You perform labor or services only pursuant to written contracts.~~
- ~~== E. You perform labor or services for two or more different persons within a period of one year.~~
- ~~== F. You assume financial responsibility for defective workmanship and breach of contract, as evidenced by performance bonds or liability insurance coverage.~~

I hereby certify that the above information is correct.

Signature _____ Date _____

Entity _____

Office of Public Defense Services

Juvenile CLE Contract Compliance Form
(Please type responses. Hand-written forms will not be accepted.)

Contract Specific Term: "All lawyers representing children, parents, or guardians in dependency cases are required to obtain at least 16 hours of continuing legal education credit related to the practice of juvenile law during the term of this Contract."

Last Name: _____

First Name: _____

OSB No: _____

Date	CLE (Title)	Sponsored By	General Credit(s)	Ethic Credit(s)

I certify I have attended the above listed CLE's during the 2014 through 2015 contract term and am in compliance with the specific term included in the contract under which I represent children, parents, or guardians in dependency cases.

Signature _____ Date: _____

(Typed or electronic signature and date stamp is required.)

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Attachment 5c

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
GENERAL TERMS**

JANUARY 1, 201~~8~~6 TO DECEMBER 31, 201~~9~~7

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GENERAL TERMS

1 DEFINITIONS AND CASE CREDIT RULES

1.1 Interpretation of Terms

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

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

1.4 Definitions

1.4.1 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

1.4.2 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

1.4.3 Public Defender

A "public defender" is a nonprofit organization employing attorneys and other staff established to provide contract services to persons qualifying for court-appointed legal representation.

1.4.4 Law Firm

A "law firm" is a sole practitioner, partnership, or professional corporation which provides contract services to persons qualifying for court-appointed legal representation and which may also engage in non-court-appointed legal representation.

1.4.5 Consortium

A "consortium" is a group of attorneys or law firms that is formed for the sole purpose of providing contract services to persons qualifying for court-appointed legal representation. In addition to participating jointly to provide contract services, Consortium members retain their separate identities and may engage in non-court-appointed legal representation.

1.4.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.7 Appointment

An "appointment" is the assignment of a contractor to represent or advise an eligible person on any matter under the terms of this contract.

1.4.8 Case

A "case" is any action in this state in which Contractor has been appointed to represent a client under the terms of this contract in a matter to which there is a right to appointed counsel at state expense. Specific definitions of case types are listed in Section 10.

1.4.9 Credit

A "credit" is an event or circumstance which counts toward Contractor's satisfaction of this contract.

1.4.10 Value

The "value" of a credit is the rate by type of credit as set forth in the Caseload and Case Value Matrix.

1.4.11 Complex Case

A "complex case" is an appointment on a case type valued at \$2,600 or more. Withdrawal or substitution for any reason from a complex case changes the credit type to "Other" (OTHR).

1.5 Rules for Counting Appointments

An appointment is credited, according to the following provisions:

1.5.1 Criminal Complex Case Credit

An appointment to a client indicted on a complex case is one credit. No extra credit may be taken for multiple incident dates or charges.

1.5.2 Criminal Appointment Case Credit (Non-Complex Case Credit)

- (a) An appointment on criminal charges alleged to have occurred on specific calendar days is one credit for each count charged in the charging instrument alleged to have occurred on different specific calendar days, regardless of the number of victims involved, up to a maximum of five credits per case.
- (b) An appointment on criminal charges alleged to have occurred on indeterminate dates (e.g., "on or between January 1, 1996, and July 1, 1996") is a credit for each count charged in the charging instrument which can be determined to allege different calendar days, up to a maximum of five credits per case.
- (c) Separate counts in a charging instrument that allege alternative theories of criminal liability on the same date are only one credit.
- (d) One additional OTHR credit may be claimed when Contractor is appointed on a criminal matter that includes one or more counts of criminal forfeiture.
- (e) No additional credit may be taken due to the following circumstances:
 - (i) more than one charging instrument (including Uniform Traffic Citation) is filed; or
 - (ii) more than one case number is assigned.

1.5.3 Case Type Credit

Unless Section 1.4.11 applies, the case type credited is for the most serious offense alleged to have occurred on a specific calendar day, even if the charge is later changed to a different case type. For cases in which the most serious charge is a Class C felony, the most serious offense is assault IV domestic violence, DUII felony, or Class C felony, in this order.

1.5.4 Credit for Recommended Representation

Except for complex cases, if a contract case proceeding has been interrupted for the following reasons and time intervals, Contractor receives a new credit if:

- (a) **365 Days After Aid and Assist Delay**
More than 365 days have passed since the client was originally found unable to aid and assist and the client is brought before the court for a rehearing on the issue or trial; or
- (b) **180 Days After Bench Warrant**
More than 180 days have passed since a bench warrant was issued; or
- (c) **18 Months with Repeated Bench Warrants**

More than 18 months have passed since Contractor was originally appointed and the case is recommenced and no additional credit has been received because of Section 1.5.4(b); or

- (d) **180 Days After Dismissal**
More than 180 days have passed since a dismissal of a case; or
- (e) **After Appeal or Post-Conviction Relief**
A new trial or sentencing follows an appeal or post-conviction relief; or
- (f) **After Interlocutory Appeal**
A case resumes at the trial level, following an interlocutory appeal by the state; or
- (g) **After Mistrial or Hung Jury**
A new trial is scheduled after a mistrial or hung jury.

1.5.5 Probation Violation Credit

An appointment on a probation violation proceeding arising out of a criminal or civil contempt sentencing(s) is one probation violation credit for each court case number to which Contractor is appointed. Provided, however, that if Contractor is appointed to more than one case number, additional credit is received only for those case numbers in which the convictions involve different incident dates. Contractor receives no additional credit for appointments on new alleged probation violations if the original probation violation matter on which Contractor was appointed has not been adjudicated.

1.5.6 Show Cause Hearing for Diversion or Conditional Discharge Agreement

An appointment for a show cause hearing to address non-compliance issues related to a diversion agreement, conditional discharge agreement or any other type of deferred or delayed adjudication agreement is an SCDV credit if:

- (a) Contractor did not receive a credit for the underlying charge; or
- (b) more than 180 days have passed since Contractor represented the eligible person at a previous court appearance.

1.5.7 Juvenile Case Credit

1.5.7.1 General Provisions

A petition which is amended from or to a delinquency or dependency petition or the dismissal of one type of petition and refiled of another type of petition is not a new credit.

1.5.7.2 Prepetition Matters

The prepetition appointment to represent a youth in a delinquency matter or a child in a dependency matter continues through disposition on any petition that is later filed on the prepetition allegations and no additional case credit is received.

1.5.7.3 Delinquency Petitions

An appointment on a delinquency case is credited under the provisions set out in Sections 1.5.2 - 1.5.4.

1.5.7.4 Dependency and Termination Petitions

An appointment to represent children, parents, or legal guardians on a dependency petition is one credit regardless of the number of petitions filed (see Section 1.5.7.4.1 for exceptions). Case credit in a dependency proceeding covers representation from appointment to the court's entry of the dispositional order required under ORS 419B.325, or as otherwise authorized by PDSC. An appointment to represent children, parents, or legal guardians on a termination of parental rights petition is always one credit.

1.5.7.4.1 Representation of Multiple Children

An appointment to represent two or more related children in a dependency proceeding is a maximum of two credits if:

- (a) the petition names as parents different mothers of different children; or
- (b) the petition names as parents different fathers of different children, not including any putative father unless the putative father also appears in the case; or
- (c) the children are living in more than one location.

1.5.7.4.2 Maximum Credit for Representing Parents

The maximum number of credits that may be counted when a Contractor attorney represents more than one parent or legal guardian in a dependency proceeding is one.

1.5.7.5 Postdispositional Juvenile Hearings

A postdispositional juvenile hearing is limited to a hearing before the court or Citizen Review Board (CRB) that is held after the juvenile court enters the dispositional order required under ORS 419B.325 or ORS 419C.440, or as otherwise authorized by PDSC. Postdispositional juvenile matters are a new credit for each hearing attended by Contractor. A single postdispositional hearing, even if it involves matters relating to more than one original juvenile petition, counts as only one postdispositional credit. Postdispositional hearings do not include probation violation hearings.

1.5.7.6 Juvenile Probation Violation Hearings

Juvenile probation violation hearings are governed by Section 1.5.5.

1.5.7.7 Waiver Proceedings

Contractor shall receive one additional "Juvenile Other" (JUDO) credit beyond that assigned for the original appointment for each waiver proceeding under ORS 419C.349.

1.5.8 Mental Health Case Credit

An appointment to represent an allegedly mentally ill, pursuant to ORS 426.070, or a person alleged to have an intellectual disability, pursuant to ORS 427.235, is one credit. The appointment ends at the original disposition of that matter.

1.5.9 Contempt Case Credit

An appointment to represent a client on a contempt case is one credit. Contractor receives no additional credit for appointments on new allegations of contempt if the original contempt allegation on which Contractor was appointed has not been adjudicated.

1.5.10 Post-Conviction Relief Case Credit

An appointment to represent a client on petitions filed at the same time or petitions with sequential numbers counts as one credit for each separate prosecution that is challenged by the petitions, with a maximum of five credits. The appointment ends at the original disposition of that matter, unless otherwise authorized by PDSC.

1.5.11 Habeas Corpus Case Credit

An appointment to represent a client on a petition for a writ of habeas corpus is one credit if Contractor does not represent the petitioner on the charge to which the habeas corpus case is related. Petitions filed at the same time or petitions with sequential numbers count as one credit. The appointment ends at the original disposition of that matter, unless otherwise authorized by PDSC.

1.6 Appointments That Do Not Qualify for Credit

1.6.1 Verification Removal

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case credit where:

(a) Finding of Ineligibility

The court finds, after screening or verification, that the client is not financially eligible for appointed counsel at state expense; or

(b) Withdrawal of Application for Counsel

The court withdraws counsel because the client withdraws the application for appointed counsel before the court completes verification.

~~1.6.2—Client Retains Counsel~~

~~An appointment to represent a client who later retains Contractor or, in the case of a consortium, retains the same consortium member, on the same case does not qualify for credit.~~

1.6.23 Reassignment Within Consortium

If a case is reassigned within a consortium for any reason, no new credit may be claimed.

2 MUTUAL RIGHTS

2.1 Waiver

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

2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

2.3 Termination

The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts

Except as to agreements between a consortium and its member attorneys. Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

3.3 PDSC Rights for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
 - i. for repeated instances of failure to comply; or
 - ii. for failure to comply within 30 days after PDSC suspends this contract.

3.4 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document.
(See Section 6.1)

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of any duty or obligation under this contract;
- (b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services; provided, however, that good faith actions of counsel undertaken to advance or preserve a constitutional or statutory right of a client shall not be deemed cause for termination;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate legal services under this contract or fulfill the obligations of this contract.

3.5.2 No Appointments After Notice

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

3.6 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

3.7 Increasing Workload: Renegotiation at PDSC Option

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the probable number of available cases increases substantially;
- (b) Contractor demonstrates that it has a sufficient number of attorneys and other staff persons providing services under the contract to manage the additional workload; and
- (c) PDSC determines that renegotiation is in the state's interest.

PDSC will not be required to pay Contractor for credits in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor's assignment to such excess cases.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval. PDSC and its agents will comply with the American Bar Association's "Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor" (2002) when conducting any fiscal or performance audit or review.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

3.8.3 Other Information

Upon the PDSC's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.4, 4.5 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the question or concern identified.

3.8.4 Timely Reports by PDSC

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

3.9 Use of Equipment Purchased with Contract Funds

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract. ~~Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.~~

~~3.10 — Return of Equipment Purchased with Contract Funds~~

~~Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:~~

- ~~(a) — Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;~~
- ~~(b) — had an original dollar value of \$500 or more; and~~
- ~~(c) — whose useful life exceeds the term of this contract.~~

~~3.11 — Limit on Return of Equipment to PDSC~~

~~Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.~~

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

4.2 Court Appointments Outside Contract

Contractor may accept additional court appointments to cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional appointments do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "representation", set forth in Section 7.1, for cases assigned under this contract.

4.3 Request for Additional Credit

Contractor may make a written request for additional credit for cases Contractor believes required an extraordinary amount of time, effort, or expense, on cases closed since the preceding periodic review (see Section 5.7). Only PDSC may approve additional credit for cases assigned under this contract. Contractors shall not make requests of the court or court staff to approve additional credit.

4.3.1 In General

Contractor shall submit in writing any materials needed to show extra services beyond the contract and the amount of additional credit proposed.

4.3.2 Complex Cases in Which Contractor Withdraws

Contractor shall submit any materials needed to show extra services performed prior to a withdrawal for any reason on a complex case and the amount of additional credit proposed beyond one OTHR credit.

4.4 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe attorney/client consultations or to review information in case files that is:

- (a) privileged because of the attorney/client relationship; or
- (b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.5 Personnel Records

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.2 Compliance with Applicable Law

5.2.1 In General

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status.

5.2.2 Laws Incorporated by Reference

The provisions of ORS 279B.220, 279B.230, and 279B.235 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

5.3 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall:

- (a) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;
- (b) become effective for willful breach not less than 14 days from delivery; and
- (c) become effective not less than 60 days from delivery for non-willful breach.

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Caseload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

5.6 Renegotiation Shall Minimize Reductions in ~~Staff~~Persons Providing Services Under the Contract

PDSC shall renegotiate with all Contractors affected by case decreases to apportion decreases in a manner that minimizes reductions in ~~staffpersons providing services under the contract~~. Such renegotiations shall:

- (a) reduce the total number of cases for the contract period and adjust the monthly payments to Contractor accordingly; or
- (b) have Contractor refund or otherwise repay to the State any moneys saved.

5.7 Periodic Review

At the request of either party, PDSC and Contractor will periodically review case assignment trends, requests for additional credit and any other matters needed to determine contract compliance or any necessary contract modifications.

5.7.1 Review of Assignments to Multiple Contractors and Mixture of Cases

In counties where more than one Contractor provides legal services, periodic review shall include a review by PDSC of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates and the rates contemplated under the contracts, PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected, to the extent total cases are available. Similarly, if the periodic review discloses a substantial disparity between the case mix under the contract and the case mix actually assigned to Contractor, PDSC shall notify the court and Contractors that appointment case mix must be adjusted and corrected, to the extent total cases are available. (See Section 7.8.2.5)

5.7.2 Fungibility

The parties agree that PDSC is contracting for the provision of legal representation by Contractor, as measured by value, and that the estimated workload, by case type, is the parties' expectation as to the distribution of the cases which may be available during the contract period. The parties expressly agree that Contractor may substitute one type of case for another, for the purposes of contract performance, with cases being fungible, except as specifically provided to the contrary in this contract.

5.8 Other Contractors and Vendors

PDSC may undertake or award other contracts for additional or related work. Contractor shall cooperate with PDSC and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for public defense services.

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

~~5.9 Management Conference~~

~~Contractor's administrator or administrator's designee shall attend an educational conference on the topic of public defense management each year one is sponsored by either the Oregon Criminal Defense Lawyers Association, the Office of Public Defense Services (OPDS) or another sponsor approved by PDSC. If no representative of Contractor is available to attend such a conference, Contractor will make arrangements, in consultation with the assigned OPDS contract analyst to ensure that the community served by Contractor is represented at such a management conference.~~

6 OBLIGATIONS OF PDSC

6.1 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers, including the private bar. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the requirement to provide representation that satisfies

state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

6.2 Contract Payment

Payment under this contract shall be based on the Payment Schedule included in the Specific Terms.

6.3 Payments in Addition to Contract Price

PDSC shall pay for the following case expenses from funds available for the purpose:

- (a) Discovery
Discovery expenses include material provided by DHS or a county juvenile department for representation in a juvenile case. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, district attorney or court files pertaining to the underlying case;
- (b) Preauthorized Non-Routine Expenses
Non-routine case expenses requested by Contractor and preauthorized by PDSC or other authority designated to approve non-routine expenses in compliance with the requirements of ORS 151.216 and ORS 135.055(3). ~~Preauthorized of non-routine expenses shall be sought in compliant with the PDSC Public Defense Payment Policies and Procedures; Unless the services are performed by Contractor's staff or subcontractors, non-routine expenses include, but are not limited to:~~
 - ~~(i) medical and psychiatric evaluations;~~
 - ~~(ii) expert witness fees and expenses;~~
 - ~~(iii) interpreters who charge a rate above the guideline amount as shown in the payment policy, or interpreters for services other than attorney/client communication;~~
 - ~~(iv) polygraph, forensic and other scientific tests;~~
 - ~~(v) investigation expenses; and~~
 - ~~(vi) any other non-routine expenses PDSC or other authority designated to approve non-routine expenses preauthorizes and finds necessary and reasonable for the investigation, preparation, negotiation, and presentation of a case;~~
- (c) Lay Witness Fees
Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;
- (d) Copying Clients' Files
The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;
- (e) Copying Direct Appeal Transcripts for PCR Trial-Level Representation
The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;
- (f) Records
Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and
- (g) Process Service
The cost for the service of a subpoena as long as the rate per location does not exceed the guideline amount as shown in the payment policy.

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7 OBLIGATIONS OF CONTRACTOR

7.1 Performance Obligations of Appointed Counsel

7.1.1 Standard of Representation

Appointed counsel shall fulfill applicable state and national standards of performance, including those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center and National Legal Aid and Defender Association. Counsel shall also satisfy applicable state and federal constitutional requirements for the provision of adequate and effective assistance of counsel, and meet state and federal statutory requirements for counsel in the applicable proceedings. And counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

7.1.2 Representation at all Stages of a Proceeding

Contractor shall provide representation in all proceedings related to the legal matter that is the subject of the representation, including but not limited to proceedings below. Representation under this contract does not include related Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations and probate proceedings, and other civil proceedings not otherwise provided for under this contract.

7.1.2.1 Pre-appointment representation

Subject to the express prior approval of PDSC, where an individual would be eligible for appointed counsel at state expense if charged with a crime or served with a petition in juvenile court but exigent circumstances preclude an appointment order, contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of a client.

7.1.2.2 Appearance at first proceedings

- (a) Contractor shall provide representation at all scheduled arraignments, shelter hearings and other initial appearances in criminal and juvenile cases.
- (b) Notwithstanding subsection (a), Where PDSC has approved in writing other arrangements for representation at first proceedings, contractor is not required to provide representation.
- (c) Contractor shall establish and follow procedures to ensure prompt notification to the court and client of the specific attorney assigned to each case.

7.1.2.3 Representation following the commencement of proceedings

Contractor shall provide representation, meeting the standard of representation set forth in Section 7.1.1 of the contract, during the pendency of a case through judgment or other final order of the court on the case, including but not limited to:

- (a) Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions; and,
- ~~(b) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705;~~
- ~~(c)~~ (b) Filing a petition for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,

To the extent ethically permitted, representing a client at a show cause hearing to determine the client's financial eligibility for appointed counsel.

7.1.2.4 Post-judgment proceedings

Following the entry of judgment or other final order in a case, counsel shall:

- (a) Seek modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- (b) Complete questionnaires, forms or other process necessary to obtain appellate counsel for clients requesting an appeal;
- (c) Seek court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;

- ~~(e)~~(d) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705;
- ~~(e)~~(e) Consult with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and
- ~~(e)~~(f) Upon request, provide copies of the entire file to appellate or post-conviction relief counsel.

7.1.3 Client Contact

7.1.3.1 In-custody Initial Contacts

Contractor shall, whenever possible, speak to and conduct initial interviews in person with in-custody clients:

- (a) Within 24 hours of appointment; or
- (b) By the next working day if the court appoints Contractor on a Friday, or if the day following the appointment is a holiday.

7.1.3.2 Out-of-Custody Contacts

Within 72 hours of the appointment, Contractor shall arrange for contact with out-of-custody clients, including notification of a scheduled interview time or what the client must do to schedule an interview time.

7.1.4 Contractor Responsibilities Regarding Financially Ineligible Clients

Contractor shall consult Oregon State Bar Formal Ethics Opinion 2005-34, in conjunction with state and federal constitutional provisions, in determining what course to follow if Contractor learns that a client is ineligible for state-funded legal services under this contract.

7.1.5 Withdrawal From Case Only on Court Approval

Contractor may withdraw from representation following appointment by the court only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course. Contractor shall ensure continuous representation of a client until withdrawal is approved and then assist in the prompt establishment of a new attorney/client relationship.

7.2 Quality Assurance Obligations of Contract Administrator

7.2.1 ~~Training and Supervision~~ Quality Assurance Procedures

Contractor shall ensure that persons providing client representation under this contract meet the standards of representation set forth in Section 7.1.1 of this contract. In doing so, Contractor ~~shall~~ should establish and implement, as appropriate for contractor's entity structure, ~~written~~ quality assurance procedures consistent with the practices ~~set forth~~ recommended in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010); ~~including but not limited to procedures for recruiting high-quality attorneys and staff, procedures for training and supervising contract attorneys and staff, regular performance evaluations of contract attorneys and staff, procedures to receive and promptly address complaints about the performance of contract attorneys and staff, and procedures to remedy performance deficiencies by contract attorneys and staff.~~

7.2.2 Case Assignment and Workload

Contractor shall ensure that the attorney assigned to represent a client under this contract:

- (a) Possesses the qualifications for representation of the case-type involved, as set forth in the PDSC's Qualification Standards for Court-Appointed Counsel, and has been approved for appointment to the applicable case type by PDSC. Contractor shall provide to PDSC the name and current qualifications, including a Certificate of Attorney Qualification and Supplemental Questionnaire, of any attorney providing representation under this contract, including attorneys who begin providing representation during the term of the contract.
- (b) Has a current workload, including private practice cases not covered by this contract, that will not interfere with competent and diligent representation that fulfills the Standard of Representation set forth in Section 7.1.1 of this Contract.
- (c) Will provide continuous representation by the same attorney, when possible, from the commencement of proceedings continuously until the final disposition of the case.

7.2.3 Continuing Legal Education Requirements

Contractor shall ensure that all contract attorneys providing representation under this contract:

- (a) Obtain 12 hours of continuing legal education credits related to the practice of juvenile law during each year of this contract, if the attorney is handling juvenile court cases;
- (b) Obtain 12 hours of continuing legal education credits related to the practice of criminal law during each year of this contract, if the attorney is handling criminal court cases; and
- (c) For attorneys with mixed caseloads including both juvenile and criminal cases, obtain 12 hours of continuing legal education credits during each year of this contract, apportioning those credits between programs related to juvenile and criminal law according to the percentage of the attorney's cases assigned under this contract in each of those practice areas.

7.2.4 Report to PDSC

Upon request, Contract shall provide to PDSC ~~copies of a description of its written~~ quality assurance procedures, including documentation demonstrating current compliance with those procedures; provided, however, that PDSC shall not have access to client information that is privileged because of the attorney/client relationship, or confidential personnel information, unless the client or Contractor personnel expressly, knowingly, and voluntarily provides such access in writing or unless such permission is not legally required.

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its subcontractors, employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its subcontractors, employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor, Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 656 and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor and each law firm or sole practitioner member of a consortium shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

7.3.6 Malpractice Insurance

During the entire contract period, and at the Contractor's own expense in whole or in part from contract funds, Contractor shall ensure that each of its attorneys has malpractice insurance coverage in the minimum amount required by the Oregon State Bar. Contractor shall provide proof of such insurance to PDSC on request.

7.3.7 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly receipted, expended, and accounted for.

7.3.8 Oregon Judicial Case Information Network (OJCIN)

For juvenile cases, Contractor shall limit use of OJCIN, including the Oregon Judicial Information Network (OJIN) and the Oregon eCourt Case Information Network (OECI) to access only those cases that involve parties Contractor represents.

7.3.9 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Staff Capacity and Equipment

7.4.1 Staffing LevelsNumber of Persons Providing Services

Contractor shall secure, at its own expense in whole or in part from contract funds, all subcontractors, members, personnel or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support staff services to perform its contract obligations.

7.4.2 Certification to PDSC

Contractor shall provide a certification from any attorney added during the contract that the attorney has read this contract, including the payment schedules and other specific terms, and understands the obligations of attorneys providing services under the contract and the duties and responsibilities of the contract administrator.

7.4.3 Interpreters

For out-of-court attorney/client communications, Contractor may use staff who are either qualified, as defined by ORS 45.275(9)(c), or who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. For in-court interpretation, Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor comply with all certification requirements established by OSCA and the Code of Professional Responsibility for Interpreters in Oregon.

7.5 Record Keeping

7.5.1 Case Records

Contractor shall preserve all case documents, notes, files, physical evidence or any other items created or received in the course of the representation of a client in an orderly and organized manner such that it can readily be made available to successor counsel, if one is appointed or retained. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection by PDSC, or PDSC's designee or agent.

7.5.2 Financial Records

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

7.5.3 Retention Period

For purposes of this contract only, Contractor agrees to preserve all appointment, service and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to preserve all case files a minimum of ten (10) years from the date the case is closed for all cases except aggravated murder and Measure 11 cases. Case files in aggravated murder and Measure 11 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to PDSC

7.6.1 Case Inventory

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly case inventory report for the preceding month. Contractor may submit amended case inventory reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly case inventory report to be amended.

7.6.2 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by PDSC, to track the disposition of, or withdrawal from, all cases reported under the contract. Contractor shall maintain data on other case activity upon the request of PDSC. Contractor shall make the data available for PDSC review upon request.

7.6.3 Caseload Reports

Contractor shall maintain data, at the request of PDSC and in a format authorized by PDSC, on the current number and type of open cases of each contract attorney, including any private practice noncontract cases. Contractor shall make the data available for PDSC review upon request.

7.6.4 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment until PDSC receives the report and supporting documentation.

7.6.5 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

7.7 Costs, Expenses and Client Clothing

7.7.1 Costs and Expenses

Except for the expense items listed in Section 6.3, Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial; and
- (c) staff services, including routine travel expenses, if Contractor has staff investigators, interpreters, or polygraphers.

~~Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express written authorization of PDSC.~~

7.7.2 Client Clothing

Prior to requesting preauthorization to purchase clothing for a client's court appearance, Contractor agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is available. (Contact PDSC for a current list.) If Contractor receives preauthorization to purchase clothing for a client, that clothing shall be provided to a "clothing room" upon completion of the case.

7.8 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

- (a) Contractor's ability to carry out this contract, including changes in ~~staff names and number of attorneys names, staffing levels providing services under this contract, number of non-attorneys providing services under the contract~~, and office location;
- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

7.8.2 Specific Notices and Responses Required

7.8.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 - 7.3.6 and immediate notice of the cancellation of any such policies.

7.8.2.2 ~~Staffing~~Persons Providing Services Under the Contract

Contractor shall provide, to PDSC and the affected court, notice of the names of attorneys ~~who are hired or leave Contractor's employ providing services under this contract~~ and any other substantial ~~staffing~~ changes ~~in the number of persons providing services under this contract~~. Upon request by PDSC, Contractor shall provide a current list of attorneys and ~~staff positions non-attorneys providing services under this contract by full time equivalent~~, and provide timely responses to PDSC surveys or other inquiries concerning the diversity of attorneys and ~~staff employed by or otherwise others~~ performing services for Contractor.

7.8.2.3 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall demonstrate to PDSC its continued ability to meet contract requirements or shall propose reductions in caseload and/or value if Contractor is unable to meet contract requirements because of such organizational change.

7.8.2.4 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

(a) Criminal Charges

~~An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract member of Contractor's attorney or investigator staff~~ has been charged with a crime.

(b) Criminal Conviction

~~An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract member of Contractor's attorney or investigator staff~~ has been convicted of a crime.

(c) Formal Bar Complaint

A formal accusation of misconduct has been filed by the Oregon State Bar against ~~a member of Contractor's attorney staff~~ an attorney performing services for Contractor.

(d) Bar Discipline

Disciplinary action is taken by the Oregon State Bar against ~~one of Contractor's attorney staff~~ an attorney performing services for Contractor.

(e) Uninsured Practice of Law

~~A member of Contractor's attorney staff~~ An attorney performing services for Contractor has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

7.8.2.5 Nonassignment of Available Cases or Early Quota

Contractor shall notify PDSC immediately upon determining that:

(a) the court is not assigning Contractor to cases available for appointment; or

(b) Contractor will reach its total contract quota before the expiration of the contract.

Within forty-five (45) days of notification to PDSC that the court is not assigning Contractor to cases available for appointment, PDSC shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

7.9 No Dual Payments for Contract Work

Contractor shall not:

(a) expend funds under this contract for work performed outside this contract without PDSC authorization;

(b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or

(c) ~~accept or keep credit for a case for which Contractor's attorney is subsequently retained~~ be privately retained or otherwise accept payment from a client on a matter on which Contractor has been appointed by the court.

7.10 Independent Audit Required

Contractor shall, from contract funds, be subject to an annual independent audit by a CPA firm and shall provide a copy to PDSC.

7.11 Limits on Full Time Public Defender Attorneys

Attorneys employed full time by nonprofit public defender offices shall not accept employment for legal services on a retained basis and shall not accept appointment to a public defense case outside this contract without the authorization of PDSC.

7.12 Limits on Pro Bono Work

Nonprofit public defenders may provide pro bono representation only for:

- (a) cases covered by contractor's or another's malpractice insurance; and
- (b) cases that are:
 - (i) related to cases to which contractor's attorneys have been appointed; or
 - (ii) unrelated to contract cases, provided the pro bono services are rendered outside of the contract.

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by ^{Key: Public Defender} ^{Consortium or Law Firm} or casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

9 RISKS OF CONTRACTOR

9.1 Refund for Shortage

If Contractor's actual caseload value, at the expiration or termination of the contract, is less than the workload value set forth in this contract, Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

9.2 Wind-Down Procedures

Unless PDSC agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall complete timely and adequate legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination.

9.2.1 Negotiations

If the contract expires or terminates, PDSC and Contractor shall negotiate wind-down procedures. Whenever possible, Contractor shall wind down pending cases within three months of contract expiration or termination by completing or, with PDSC's agreement, reassigning the cases.

9.2.1 Negotiations

Except when PDSC terminates the contract for cause under Section 3.5 and unless otherwise agreed, the parties shall, whenever possible, agree on wind-down procedures before the contract expires or terminates. If the parties cannot agree on wind-down procedures, PDSC alone shall decide what state funds, if any, will finance wind-down procedures based on what PDSC reasonably believes is necessary to ensure that the clients' right to adequate assistance of counsel and that Contractor's legal obligations are met.

9.2.2 Reduction in Contractor's Caseload

If Contractor's caseload or contract amount is reduced significantly resulting in layoffs, whether as a result of contract modification or contract renewal, PDSC and Contractor may negotiate wind-down procedures.

10 APPOINTMENT TYPE DEFINITIONS

() denotes the applicable appointment code.

10.1 Criminal Cases

10.1.1 Appointments After Diversion or Conditional Discharge Agreement (SCDV)

For all criminal cases, Contractor shall report separately on cases where Contractor is first appointed:

- (a) after the defendant enters into a diversion or conditional discharge agreement or any other type of deferred or delayed adjudication agreement, and
- (b) when the court orders the defendant to show cause why the agreement should not be terminated.

Contractor shall report these cases as SCDV rather than as the original case type.

10.1.2 Capital Murder Case (CMUR)

A capital murder case is any appointment to represent a person charged with aggravated murder as defined by ORS 163.095 except as provided under paragraph 10.1.3., below.

Key: Public Defender Consortium or Law Firm

10.1.3 Noncapital Murder Case (MURD)

A noncapital murder case is any appointment to represent a person charged with:

- (a) murder as defined by ORS 163.115; and
- (b) aggravated murder where the person is a juvenile under 15 years of age who is waived to circuit court on the charge (a convicted juvenile cannot be sentenced to death or life without parole under ORS 161.620) or aggravated murder where the person was 15, 16 or 17 years of age on the date the crime is alleged to have occurred (no death sentence may be imposed under ORS 137.707(2)).

10.1.4 Felony Case

A felony case is any appointment to represent a person charged with one or more crimes described by ORS 161.525, excluding capital murder and noncapital murder. It includes manslaughter and negligent homicide. A case is a felony case if it includes a felony charge at any time after defendant appears in circuit court, even if later reduced to a misdemeanor.

10.1.4.1 Measure 11 Felony (AM11, BM11, JM11)

Other than murder, a felony that is the subject of ORS 137.700 or ORS 137.707. AM11 is a Class A Measure 11 felony with an adult defendant; BM11 is a Class B Measure 11 felony with an adult defendant; and JM11 is a Class A or Class B Measure 11 felony where a 15-, 16- or 17-year-old is indicted as an adult in circuit court.

10.1.4.2 Class A Felony (AFEL)

A Class A felony is a crime that a statute expressly designates as a Class A felony, other than an AM11 case.

10.1.4.3 Class B Felony (BFEL)

A Class B felony is a crime that a statute expressly designates as a Class B felony, other than a BM11 case.

10.1.4.4 Class C Felony (CFEL)

A Class C felony is a crime that a statute expressly designates as a Class C felony, other than a DUII felony (DFEL), or domestic violence Class C felony (DVIO).

10.1.4.5 DUII Felony (DFEL)

A DUII felony is a DUII case in which an element of the crime charged is that the defendant has at least three prior DUII convictions within the past ten years (ORS 813.010(5)).

10.1.4.6 Domestic Violence Class C Felony (DVIO)

An Assault IV case which is elevated to a Class C felony under ORS 163.160(3).

10.1.4.7 Unclassified Felony (UFEL)

A felony crime that the statute(s) do not expressly designate as a Class A, B, or C Felony.

10.1.5 DUII (DUII)

A DUII case is any appointment to represent a person charged with driving under the influence of intoxicants, other than DUII felony (DFEL).

10.1.6 Misdemeanor Case (MISS)

A misdemeanor case is any appointment to represent a person charged with one or more crimes described by ORS 161.545 or by local ordinance as a misdemeanor, excluding DUII, misdemeanor contempt and the misdemeanor traffic cases defined below.

10.1.7 Misdemeanor Traffic Case

A misdemeanor traffic case is any appointment to represent a person on a misdemeanor traffic charge for which a convicted defendant may be incarcerated as an original sentence under the Oregon Vehicle Code, other than a traffic offense charged as a felony or DUII. For statistical purposes, report cases in the following categories:

- (a) Misdemeanor Driving While Suspended (DWSS).
- (b) Other Traffic Misdemeanor (OTMS).

10.1.8 Extradition Case (EXTR)

An extradition case is any appointment to represent a person in a proceeding under the Uniform Criminal Extradition Act, ORS 133.743 - 133.857. It includes representation on a writ of habeas corpus filed in a pending extradition proceeding.

10.2 Probation Violations

10.2.1 Probation Violation

A probation violation is any appointment or reappointment to represent a person in a proceeding concerning an order of probation, including but not limited to the revoking thereof, arising out of a criminal or civil contempt conviction(s) and sentencing(s), under Section 1.5.5. For reporting purposes, Contractor shall report each type of probation violation case by the following subcategories:

10.2.1.1 Felony Probation Violation (FPV)

A felony probation violation case is any appointment to represent a person in a probation proceeding arising out of a felony conviction.

10.2.1.2 Misdemeanor Probation Violation (MPV)

A misdemeanor probation violation case is any appointment to represent a person in a probation proceeding arising out of a contempt case, or a misdemeanor conviction, except DUII.

10.2.1.3 DUII Probation Violation (DPV)

A DUII probation violation is any appointment to represent a person in a DUII probation proceeding arising out of a DUII conviction.

10.3 Contempt Cases

10.3.1 Contempt Case

A contempt case is any appointment to represent a person charged with contempt of court. For statistical purposes, report cases in the following three categories:

10.3.1.1 Family Abuse Prevention Act (FAPA)

Contempt for violating a Family Abuse Prevention Act (ORS 107.700 - 107.735) restraining order.

10.3.1.2 Support (SUPP)

Contempt for failure to comply with an order or judgment in domestic relations or juvenile court proceeding for the payment of suit money, attorney's fees, spousal support, child support, maintenance, nurture, or education.

10.3.1.3 Contempt (CONT)

Misdemeanor contempt or any other contempt that is not a FAPA or SUPP contempt.

10.4 Civil Commitment Cases

10.4.1 Civil Commitment Case (MHMI)

A civil commitment case is any appointment to represent a person in a proceeding brought under ORS Chapter 426 or 427.

10.5 Juvenile Cases

10.5.1 Juvenile Case

A juvenile case is any appointment or a reappointment to represent a person(s) in a proceeding brought under ORS Chapter 419B or 419C. For statistical purposes, report juvenile cases in the following categories:

10.5.1.1 Juvenile Felony (JUDF)

If committed by an adult, alleged act would constitute a felony.

10.5.1.2 Juvenile Misdemeanor (JUDM)

If committed by an adult, alleged act would constitute a misdemeanor.

10.5.1.3 Juvenile Other (JUDO)

- (a) if committed by an adult, alleged act would constitute a violation or infraction;
- (b) alleged act is a status offense;
- (c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);
- (d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340);
- (e) appointments under ORS 420A.203 (Eligibility for second look; report to sentencing court; hearing; disposition);
- (f) appointments under ORS 181.823(12) (Relief from reporting requirement; juvenile offenders); and
- (g) appointment to a juvenile case for which no other juvenile case type applies.

10.5.1.4 Probation Violation or Motion to Modify (JPV)

Proceeding based on allegation(s) that the child has violated the terms of probation or a proceeding based on a motion to modify a disposition.

10.5.1.5 Juvenile Dependency Case

A juvenile dependency case is any appointment to represent a person based on a new petition alleging that a child is within the jurisdiction of the juvenile court under ORS 419B.100(1)(a) - (h).

- (a) Parent (JDEP): Appointment to represent parent(s) or guardian(s).
- (b) Child (JDEC): Appointment to represent child(ren).

10.5.1.6 Postdispositional Proceeding

A postdispositional proceeding is any appointment in a juvenile court proceeding to represent a person at a court [hearing](#) or CRB review hearing [and shelter care hearings](#) held after the original disposition [required under ORS 419B.325 or ORS 419C.440](#). It does not include probation violation proceedings or family unity meetings.

Probation violation proceedings are a separate category under delinquency.

- (a) Parent (JPDP): Appointment to represent parent(s) or guardian(s).
- (b) Child (JPDC): Appointment to represent child(ren).

10.5.1.7 Termination of Parental Rights Case

A termination of parental rights case is any appointment to represent the parent or child in a proceeding under ORS 419B.498 - 419B.530 [or](#) in a contested adoption matter under ORS 109.330 and [Zockert v. Fanning](#), 310 Or 514 (1990) [or](#) in a contested permanent guardianship proceeding under ORS 419B.365. Guardianship proceedings under ORS Chapter 125 are excluded.

- (a) Parent (JUTP): Appointment to represent parent(s) or guardian(s), including contested adoption proceedings.

- (b) Child (JUTC): Appointment to represent child(ren), including contested adoption proceedings.

10.6 Other Civil Cases

10.6.1 Habeas Corpus Case (CVHC)

A habeas corpus case is any appointment to represent a person in a proceeding for a writ of habeas corpus under ORS 34.355, excluding:

- (a) habeas corpus petitions filed in a pending extradition proceeding; and
- (b) habeas corpus petitions filed for a client whom Contractor represents on a related matter (not a separate appointment under the contract).

10.6.2 Post-Conviction Relief Case (CVPC)

A post-conviction relief case is any appointment to represent a person under ORS 138.510 - 138.686.

10.6.3 Psychiatric Security Review Board Case (PSRB)

A Psychiatric Security Review Board case is any appointment by the PSRB to represent a person under ORS 161.346(11).

10.7 Other Cases (OTHR)

Another case is: a complex case from which Contractor withdraws; an appointment under ORS 136.611 (Material Witness Order); an appointment under ORS 137.771(2) (Sexually Violent Dangerous Offenders); an appointment under ORS 138.694 (DNA testing); a criminal forfeiture credit; or an appointment to a case for which no other case type applies.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

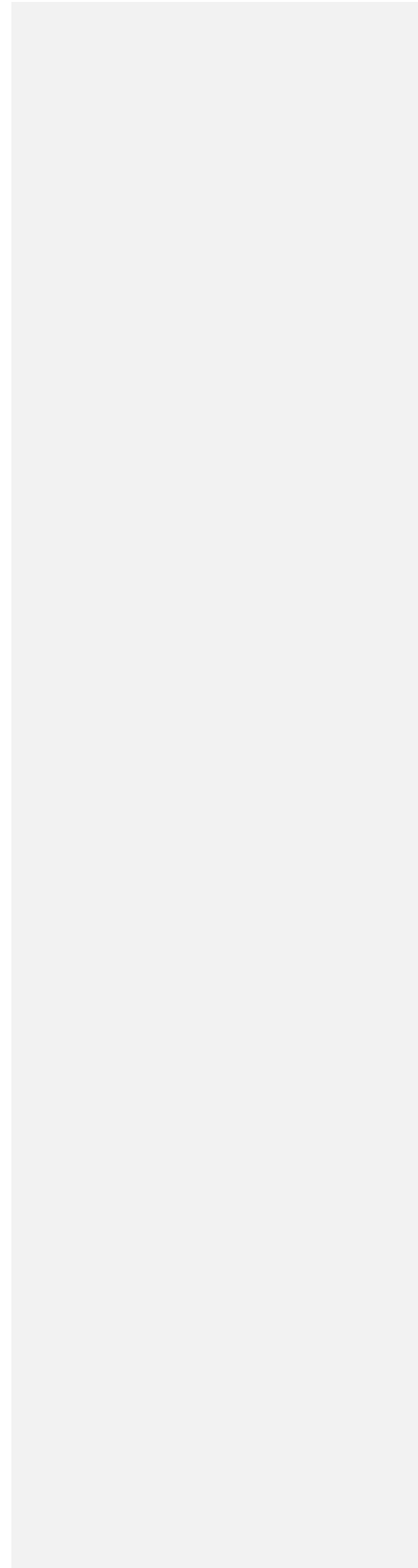
**NANCY COZINE, EXECUTIVE DIRECTOR
PUBLIC DEFENSE SERVICES COMMISSION**

DATE

CONTRACTOR

DATE

TITLE OR REPRESENTATIVE CAPACITY



**CONTRACT BETWEEN PDSC AND
CONTRACTOR PAYMENT SCHEDULE**

End of Month (Unless noted)	Monthly Payment
January <u>20162018</u>	
February <u>20162018</u>	
March <u>20162018</u>	
April <u>20162018</u>	
May <u>20162018</u>	
June <u>20162018</u>	
July <u>20162018</u>	
August <u>20162018</u>	
September <u>20162018</u>	
October <u>20162018</u>	
November <u>20162018</u>	
December 2016	
<i>First-Year Subtotal</i>	\$0
January <u>20172019</u>	
February <u>20172019</u>	
March <u>20172019</u>	
April <u>20172019</u>	
May <u>20172019</u>	
June <u>20172019</u>	
July <u>20172019</u>	
August <u>20172019</u>	
September <u>20172019</u>	
October <u>20172019</u>	
November <u>20172019</u>	
December <u>20172019</u>	
<i>Second-Year Subtotal</i>	\$0
Total Payments	\$0

**CONTRACT BETWEEN PDSC AND CONTRACTOR CASELOAD
AND CASE VALUE MATRIX**

Case Types	Value	Number of Cases	Total Value
1/1/186 - 12/31/186			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
First-Year Total		0	\$0
1/1/197 - 12/31/197			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0

Attachment 5d

Addendum to January 1, ~~2014-2018~~ to December 31, ~~2015~~2019
Public Defense Legal Services Contract (“Contract”)
Between the Public Defense Services Commission (“PDSC”) and XXXXX
(“Contractor”)

PDSC and Contractor agree that all terms and provisions stated in the Contract and all previous addenda to the Contract remain in effect except as specifically agreed and set forth below.

1. PARTIES TO CONTRACT

- a. Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and XXXXX ("Contractor").

2. TERM OF CONTRACT

- a. The contract term shall be from ~~August 1, 2014~~ January 1, 2018 through December 31, ~~2017~~ 2019.

3. SCOPE OF CONTRACT

- a. The contract applies only to juvenile cases.

4. NOTICE

- a. Each party shall provide to the other all notices regarding this contract:
 - i. in writing, and
 - ii. delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:
 1. PDSC: Public Defense Services Commission
mail@opds.state.or.us
 2. Contractor: XXXXXX

Field Code

5. GENERAL TERMS

- a. CLIENT: a “client” is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.
- b. JUVENILE CASE (“case”): A juvenile case is any appointment or reappointment to represent a person(s) in a proceeding brought under ORS 419B or 419C or as required in a contested adoption proceeding consistent with *Zockert v. Fanning*. A juvenile case begins on the date of appointment (or reappointment) of counsel and continues until appointment of counsel is terminated or relieved by the court. A juvenile case does not include a ballot measure 11 case.

~~e. CASE MANAGEMENT SYSTEM: Hardware, software, or a combination of both which enables case management and reporting throughout the life of a juvenile case.~~

6. OBLIGATIONS OF CONTRACTOR

- a. Provide comprehensive representation at all stages of a juvenile case. Comprehensive representation includes, but is not limited to:
- i. Attending all meetings where DHS and/or other state actors or parties are present and discussing matters relevant to the case.
 - ii. Meeting with client to review available discovery before all court hearings, including shelter hearings where practicable.
 - iii. Advocating for client at all court hearings, including shelter hearings.
 - iv. Meeting and communicating regularly with clients including:
 1. Before court hearings and CRB reviews.
 2. In response to contact by the client.
 3. When a significant change of circumstances must be discussed with the client.
 4. Whenever notified that the child's placement has changed.
 5. When a lawyer is apprised of emergencies or significant events impacting the child.
 - v. Utilize independent investigators and social workers, as appropriate, to provide comprehensive representation.
 - vi. Observe Oregon State Bar Performance Standards: Specific Standards for Representation in Juvenile Dependency Cases. (See http://www.osbar.org/surveys_research/performancestandard/index.htm).
 - vii. Conduct a thorough, continuing, and independent review and investigation of the case consistent with Performance Standard 3.7.
- b. Advocate for systemic changes where necessary to improve outcomes for parents and children.
- c. Change business processes as necessary to provide high quality parent/child representation including, but not limited to:
- i. Develop a method to maintain regular client contact with the client throughout the case.
 - ii. Have staff available to respond to immediate client questions when the attorney is in court.
 - iii. Conduct an initial interview of the client, when possible, within 72 hours of appointment.
 - iv. Have staff available to adequately support attorney functions.
- d. Engage in regular and consistent client communication as specified in the Oregon State Bar Performance Standards. It is generally recommended that attorneys spend~~Ask attorneys to dedicate~~ approximately 1/3 of their time ~~to~~ meeting with clients, 1/3 ~~of attorney time~~ on case preparation, and 1/3 on court appearances and case related meetings.
- e. Use a case management system or other data collection method that will provide data reports demonstrating time spent on client communication, case preparation, court appearances, case-related meetings, case-related outcomes, and use of social workers and investigators.
- f. Comply with reasonable requests for data from PDSC.

Field Code

- g. Attend quarterly meetings to review data and ensure sufficient support to achieve program expectations.
- ~~h. Ensure attorneys and, if appropriate, support staff attend multidisciplinary training.~~
- ~~i.h.~~ Develop and implement a plan to increase or decrease case count so that full time representation is limited to no more than 80 juvenile cases per attorney. Provide plan details and timelines to PDSC.
- ~~j. Provide a plan to achieve adequate compensation, taking into account salary and benefits, to attorney(s) and staff which must equal or exceed \$66000 for a full time attorney and \$30000 for a full time staff.~~
- k.i. Contract administrator should carry a reduced caseload to allow for adequate administration time. The amount to which caseload is reduced shall be agreed upon by administrator and PDSC.
- l.j. Contractor shall notify PDSC of any change in Contractor's organization that might affect the number of individuals providing services staffing under the contract prior to staffing such change.

7. OBLIGATIONS OF PDSC

- ~~a. If requested, provide an initial configuration and initial support for a comprehensive case management system.~~
- ~~b.a.~~ Provide independent social workers case managers to assist attorneys in juvenile cases by evaluating services, identifying additional appropriate services in the community, connecting clients with appropriate services when necessary, and interceding when conflict occurs between clients and providers.
- ~~e.b.~~ Organize quarterly meetings to review data and ensure sufficient support to achieve programs expectations.
- ~~d.c.~~ Provide multidisciplinary opportunities for training at the county level continuing legal education.
- ~~e.d.~~ Facilitate stakeholder discussion at the state level to support pilot PCR county system improvement efforts.

8. MUTUAL OBLIGATIONS

- a. Parties agree to work together, in good faith, to successfully implement pilot program.
- b. Parties agree to work toward accomplishing shared goals:
 - i. Provide competent, effective, and quality legal representation throughout the life of the case.
 - ii. Reduce the number of cases in which the time to establish jurisdiction is greater than 60 days in the county.
 - iii. Reduce the number of children in foster care in the county.
 - iv. Reduce the time to achieve permanency in the county.
 - v. Increase the frequency of attorney representation of parents and children at shelter hearings in the county.
 - vi. Increase the number of children who are reunified with their parent(s) in the county.

9. WORKLOAD

- a. In order to comply with performance standards, generally an attorney should limit~~Limit~~ full time representation to no more than 80 open juvenile cases. PDSC recognizes that the target goal of 80 open cases may fluctuate as cases are received, assigned and closed. An insignificant, short-term, temporary variance from the target goal of 80 cases is permitted.
- b. If case count consistently falls below or above 2015% of estimated caseload for 6 consecutive months, parties shall negotiate compensation as appropriate.
- c. A contract administrator may request a good cause variance from the ~~target goal~~caseload limit; PDSC may approve or deny such request.
- d. Case count adjustments:
 - i. Termination of parental rights (TPR), delinquency with M11 potential or potential for extreme collateral consequences, or contested adoption case equals 2 juvenile cases due to complexity.
 - ii. On a juvenile case with more than one child reflected on the petition, each additional child equals .5/juvenile case due to additional workload of additional children.
 - iii. Youth client who is subject of delinquency petition and also dependency petition equals 2 juvenile cases.
 - iv. The maximum case count for a dependency, delinquency or TPR case is 3.
- e. Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

10. TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE

- a. For representation provided pursuant to this contract addendum, PDSC shall pay Contractor a total of XXXXXXXX during the term of this contract addendum. PDSC shall pay the total workload value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

11. CONFLICTS

- a. The terms of this Agreement shall control over any conflicting terms in any referenced contract, agreement or document.

12. MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONTAINED IN THE 20XX
2017 REQUEST FOR PROPOSALS AND 20XX2018-2019XX PUBLIC DEFENSE
LEGAL SERVICES CONTRACT CONSTITUTES THE ENTIRE AGREEMENT

BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGESTHAT IT HAS READ THIS ADDENDUM, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**Nancy Cozine, Executive Director
Office of Public Defense Services
Public Defense Services Commission**

Date

XXXXX

Date

Title or Representative Capacity

CONTRACT BETWEEN PDSC AND XXXXX AMENDED MATRIX

CONTRACT BETWEEN PDSC AND XXXXX AMENDED PAYMENT SCHEDULE

CONTRACT BETWEEN PDSC AND XXXXXX CONTRACT ATTORNEYS AND STAFF

Attachment 5e

SPECIFIC TERMS

1 PARTIES TO CONTRACT

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and XXXX ("Contractor").

2 TERM OF CONTRACT

The contract term shall be from January 1, 201~~8~~6 through December 31, 201~~9~~7.

3 NOTICE

Each party shall provide to the other all notices regarding this contract:

- (a) in writing, and
- (b) delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:
Public Defense Services Commission
mail@opds.state.or.us

Contractor:
XXXX
email address

4 TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$XXXX during the term of this contract. PDSC shall pay the total workload value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

5 CASE TYPES

Contractor shall provide legal representation in the ~~Circuit Oregon state courts Court~~ for the types of cases listed below:

- (a) capital murder cases;
- (b) or other cases, at the request of PDSC.

6 WORKLOAD

6.1 Estimated Number of Hours

Contractor's workload is estimated to be XXXX hours for the contract term. Up to 90 hours may be administrative hours and contract administration unrelated to a particular case.

6.2 Caps, Limitations, or Parameters on Number of Certain Cases

Subject to PDSC's prior approval on each case, Contractor may substitute hours spent on other cases in any county.

7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

7.1 Reimbursement for Routine Expenses

The following supplements and amends Section 6.3 of the General Terms of the Contract.

7.2 Authorized Expenditures

Contractor agrees to request reimbursement under this agreement for:

- (a) those types of expenses defined and enumerated herein;
- (b) such expenses that are "necessary," as defined below;
- (c) such expenses that are "reasonable," as defined below;
- (d) such expenses that directly relate to cases assigned to contract attorneys under this and any prior contracts with PDSC; and
- (e) such expenses that are incurred by an assistant or investigator, who is salaried under this Contract.

7.3 Reconsideration of Disallowed Expenses

Contractor may request reconsideration and provide additional documentation of these expenses to PDSC according to the procedure described in the [Public Defense Payment Policy and Procedures policy](#).

7.4 Definitions

7.4.1 Routine Expenses

Case-related expenses that are reasonable and necessary to provide an adequate defense that are defined as expenses under ORS 135.055 AND which are not related to office overhead, salaries, benefits, out-of-state travel, airfare, personal services (such as psychologists, ~~interpreters,~~ and expert witnesses). Routine expenses, for the purpose of reimbursement, primarily include in-state travel expenses, audio and video tapes, records and copy services from outside sources.

7.4.2 Necessary Expenses

Case-related expenses such that there would be a significant risk of error in the proceedings if the services were not provided or the expenses were not incurred.

7.4.3 Reasonable Amount

In instances where the [payment](#) policy establishes maximum allowable costs and unless otherwise specifically agreed herein, the presumed "reasonable amount" of an expense is the policy guideline rate. In other instances, a "reasonable amount" is presumed to be the market value of the service or expense or the amount necessary for the provider of the service or expense to recover only its actual cost of providing the service or item. For services or items where there is no opportunity for competitive services or production of items (where the provider is a captive entity) (for example, cost of medical records), Contractor should notify ~~the director~~ [PDSC](#) of any costs that exceed what Contractor believes is reasonable.

7.4.4 Contractor

The attorney, attorney's legal assistant, attorney's staff investigator or mitigation specialist who is paid a salary under the Contract.

7.4.5 Home County

For the purposes of travel expense reimbursement, XXXX County shall be considered Contractor's home county.

7.5 Types of Expenses Subject to Reimbursement Under this Agreement

7.5.1 Travel-Related Expenses

Travel-related expenses are limited to mileage reimbursement, parking fees, meals and lodging incurred outside Contractor's home county.

7.5.1.1 Mileage and Parking

The amount reimbursed for mileage and parking shall be the rate set by the payment policy.

7.5.1.2 **In-State Lodging**

Reimbursement for lodging is limited to actual costs incurred when Contractor is outside the home county and cannot reasonably avoid incurring this expense and the expense is necessary. Contractor shall seek commercial or government rates. The maximum allowable amount for lodging is the current rate for reimbursement according to the payment policy. Amounts exceeding the lodging expense maximums will be disallowed unless the higher rate has been preauthorized by ~~the director of the Contract and Business Services Division (CBS) of the Office of Public Defense Services, or the director's designee.~~ PDSC.

7.5.1.3 **Meals**

Meal allowance amounts are those set forth in the payment policy. Receipts need not be submitted when requesting a meal allowance.

7.5.1.3.1 **Meals in Conjunction with Overnight Travel**

Contractor is entitled to claim a meal allowance for meal expenses incurred in conjunction with overnight travel.

7.5.1.3.2 **Meal for Day Trips**

If Contractor does not incur lodging costs but, due to departure or return times, could justify a lodging expense, Contractor is entitled to claim a meal allowance based upon the following travel times.

- (a) Breakfast allowance - Leave before 6:00 a.m. or return after 9:00 a.m.
- (b) Lunch allowance - Leave before 11:00 a.m. or return after 2:00 p.m.
- (c) Dinner allowance - Leave before 5:00 p.m. or return after 8:00 p.m.

~~7.5.1.3.3 **Telephone**~~

~~Contractor may be reimbursed for case-related telephone charges incurred while traveling.~~

~~Contractor may be reimbursed for one telephone call per day to Contractor's office to conduct business not related to a contract case when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00.~~

~~Contractor may be reimbursed for one personal telephone call per day when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00.~~

7.5.2 **Routine Expenses Not Related to Travel**

~~Contractor may seek reimbursement for routine expenses according to Section 3.5 of the Public Defense Payment Policy and Procedures.~~

- ~~(a) Discovery costs.~~
- ~~(b) On-line computer research charges.~~
- ~~(c) Photocopy and printing costs, not to exceed the maximum amounts listed in the policy.~~
- ~~(d) Postage and delivery costs, if the cost of sending an individual item is \$1.00 or greater and is supported by a receipt.~~
- ~~(e) Long distance and collect telephone charges when the cost of an individual call is \$1.00 or greater.~~
- ~~(f) Other case expenses or fees, limited to the following:~~
 - ~~1. potentially relevant medical, mental health, school, corrections, child welfare, internal affairs, and~~

~~arrest/conviction records;~~

~~2. search fees;~~

~~3. film and photograph processing;~~

~~4. dry cleaning or laundering of client's clothing;~~

~~5. copies of audio or video recordings and logs, including but not limited to those obtained from law enforcement, prosecution and emergency communication services;~~

~~6. copies of photographs or contact sheets of photographs from prosecution, law enforcement, or medical examiner/autopsy;~~

~~7. service of process fees where counsel documents the necessity of incurring such expenses (rather than utilizing the sheriff's office(s) or case investigators) was outside counsel's reasonable control; and~~

~~8. materials other than ordinary office supplies for, or items that will serve as, exhibits for court proceedings where the cost per item does not exceed \$25 and the total expense for the type of exhibit(s) does not exceed \$100.~~

7.6 Types of Expenses Excluded From Payment Under this Agreement Unless Preauthorized

~~(a)~~ Expenses not specifically described in the contract that require preauthorization as non-routine expenses or that are presumed to be covered under the base contract as overhead expenses.

~~(b)~~ Airfare and vehicle maintenance.

~~(c)~~ Non-direct travel expenses, such as dry cleaning or laundry services.

~~(d)~~ Direct client expenses, such as haircuts, clothing or glasses.

~~(e)~~ Transcripts.

~~(f)~~ Expenses required to secure the attendance of an out-of-state witness.

~~(g)~~ Computer software programs.

7.7 Amendment to Model Contract Term 7.5.2

Section 7.5.2 of the General Terms does not apply to this contract.

7.8 Amendment to Model Contract Term 7.6.1

Replace "Case Inventory" with "Time".

8 MERGER CLAUSE

This writing together with the general terms contained in the ~~summer-2017~~ request for proposals constitutes the entire agreement between the parties. There are no other oral or written understandings, agreements or representations regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. If made, such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Nancy Cozine, Executive Director
Public Defense Services Commission

Date

XXX

Date

Title or Representative Capacity

CONTRACT BETWEEN PDSC AND XXXX

PAYMENT SCHEDULE

CONTRACT BETWEEN PDSC AND XXXX

CASELOAD AND CASE VALUE MATRIX

1/1/186 - 12/31/186	Hourly Rate	Number of Hours	Total Value
	\$100	XX	\$0
First-Year Total		XX	\$0
1/1/197 - 12/31/197	Hourly Rate	Number of Hours	Total Value
	\$100	XX	\$0
Second-Year Total		XX	\$0
Contract total		XX	\$0

Attachment 5f

**PUBLIC DEFENSE MITIGATION INVESTIGATION CONTRACT
BETWEEN PUBLIC DEFENSE SERVICES COMMISSION AND**

[CONTRACTOR NAME]

**GENERAL TERMS
AND
SPECIFIC TERMS**

CAPITAL MURDER CASES

JANUARY 1, 201~~8~~⁶ TO DECEMBER 31, 201~~9~~⁷

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GENERAL TERMS

1 DEFINITIONS

1.1 Interpretation of Terms

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

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

1.4 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

1.5 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

1.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.7 Case

A "case" is any action in this state in which court-appointed counsel has been appointed to represent a client in a matter to which there is a right to appointed counsel at state expense.

2 MUTUAL RIGHTS

2.1 Waiver

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

2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

2.3 Termination

The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts

Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

3.3 PDSC Rights for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
 - i. for repeated instances of failure to comply; or
 - ii. for failure to comply within 30 days after PDSC suspends this contract.

3.4 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document. (See Section 6.1)

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of any duty or obligation under this contract;
- (b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services; provided, however, that good faith actions of counsel undertaken to advance or preserve a constitutional or statutory right of a client shall not be deemed cause for termination;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate mitigation investigation under this contract or fulfill the obligations of this contract.

3.5.2 No Acceptance of Cases After Notice

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

3.6 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

3.7 Increasing Workload: Renegotiation at PDSC Option

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the workload will increase substantially due to the number of available cases; and
- (b) Contractor demonstrates that it has a sufficient number of ~~staff persons providing services under the contract~~ to manage the additional workload
- (c) PDSC determines that renegotiation is in the state's interest.

Formatted: No underline

PDSC ~~will not be required to~~ pay Contractor for hours in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor performing the work.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) often as PDSC reasonably may deem necessary during the contract term.

3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

3.8.3 Other Information

Upon the PDSC's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.3, 4.4 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the question or concern identified.

3.8.4 Timely Reports by PDSC

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

3.9 Use of Equipment Purchased with Contract Funds

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract. ~~Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.~~

~~3.10 — Return of Equipment Purchased with Contract Funds~~

~~Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:~~

- ~~(a) Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;~~
- ~~(b) had an original dollar value of \$500 or more; and~~
- ~~(c) whose useful life exceeds the term of this contract.~~

~~3.11 — Limit on Return of Equipment to PDSC~~

~~Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.~~

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

4.2 Public Defense Cases Outside Contract

Contractor may accept additional public defense cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional cases do not interfere with Contractor's ability to fulfill this contract. PDSC shall not

pay Contractor outside the contract for any services falling within the definition of "mitigation investigation", set forth in Section 7.1, for cases accepted under this contract.

4.3 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe mitigation investigator/client or mitigation investigator/attorney consultations or to review information in case files that is:

- (a) privileged because of the mitigation investigator/client or mitigation investigator/attorney relationship; or
- (b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.4 Personnel Records

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.2 Compliance with Applicable Law

5.2.1 In General

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status.

5.2.2 Laws Incorporated by Reference

The provisions of ORS 279.312, 279.314, 279.316, and 279.320 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

5.3 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall:

- (a) be in writing;
- (b) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;
- (c) become effective for willful breach not less than 14 days from delivery; and
- (d) become effective not less than 60 days from delivery for non-willful breach.

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Workload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

6 OBLIGATIONS OF PDSC

6.1 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the

requirement to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

6.2 Payments in Addition to Contract Price

PDSC shall pay for case expenses as described in the Public Defense Payment Policies and Procedures and this section of the contract from funds available for the purpose.

Contractor agrees to request reimbursement under this agreement for those types of expenses defined and enumerated herein;

- (a) such case-related expenses that are reasonable and necessary to provide an adequate defense that are defined as expenses under ORS 135.055 AND which are not related to office overhead, salaries, benefits, out-of-state travel, airfare, personal services (such as psychologists, ~~and interpreters~~, expert witnesses). Routine expenses, for the purpose of reimbursement, primarily include in-state travel expenses, audio and video tapes, records and copy services from outside sources;
- (b) such case-related expenses that there would be a significant risk of error in the proceedings if the service were not provided or the expense were not incurred; and
- (c) such case-related expenses that are reasonable. In instances where the [Public Defense Payment Policy and Procedures policy](#) establishes maximum allowable costs and unless otherwise specifically agreed herein, the presumed "reasonable amount" of an expense is the policy guideline rate. In other instances, a "reasonable amount" is presumed to be the market value of the service or expense or the amount necessary for the provider of the service or expense to recover only its actual cost of providing the service or item. For services or items where there is no opportunity for competitive services or production of items (where the provider is a captive entity) (for example, cost of medical records), Contractor should notify the director of any costs that exceed what Contractor believes is reasonable.

6.2.1 Types of Expenses Subject to Reimbursement

6.2.1.1 In-State Lodging

Reimbursement for in-state lodging is limited to actual costs incurred when Contractor cannot reasonably avoid incurring this expense and the expense is necessary. Contractor shall seek commercial or government rates. The maximum allowable amount for lodging is the current rate for reimbursement according to the [payment](#) policy. Amounts exceeding the lodging expense maximums will be disallowed unless the higher rate has been preauthorized by the the Office of Public Defense Services.

6.2.1.2 Meals

~~Meal allowance amounts are those set forth in the policy. Receipts need not be submitted when requesting a meal allowance.~~

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6.2.1.32 Meals in Conjunction with Overnight Travel

Contractor is entitled to claim a meal allowance for meal expenses incurred in conjunction with overnight travel. Meal allowance amounts are those set forth in the [payment](#) policy. Receipts need not be submitted when requesting a meal allowance

6.2.1.43 Meals for Day Trips

If Contractor does not incur lodging costs but, due to departure or return times, could justify a lodging expense, Contractor is entitled to claim a meal allowance based upon the following travel times. The amounts allowed are those set forth in the [payment](#) policy for that meal.

- (a) If Contractor leaves home before ~~6~~5:00 a.m., Contractor is entitled to the breakfast allowance amount.
- (b) If Contractor leaves home before ~~6~~5:00 a.m. and does not return until after 2:00 p.m., Contractor is entitled to the breakfast and lunch meal allowance amounts.
- (c) If Contractor does not return home until after ~~8~~9:00 p.m., Contractor is entitled to the dinner allowance amount.

6.2.1.4 Telephone Expenses While Traveling

~~Contractor may be reimbursed for case-related telephone charges incurred while traveling. Contractor may be reimbursed for one telephone call per day to Contractor's office to conduct business not related to a contract case when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00. Contractor may be reimbursed for one personal telephone call per day when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00.~~

6.2.1.55 Routine Expenses Not Related to Travel

Contractor may seek reimbursement for routine expenses according to Section 3.5 of the Public Defense Payment Policy and Procedures.

Discovery costs:

- (a) On-line computer research charges.
- (b) Photocopy and printing costs, not to exceed the maximum amounts listed in the policy.
- (c) Postage and delivery costs, if the cost of sending an individual item is \$1.00 or greater and is supported by a receipt.
- (d) Long distance and collect telephone charges when the cost of an individual call is \$1.00 or greater.
- (e) Potentially relevant medical, mental health, school, corrections, child welfare, internal affairs, and arrest/conviction records;
- (f) Film and photograph processing;
- (g) Copies of audio or video recordings, logs and photographs, including but not limited to those obtained from law enforcement, prosecution and emergency communication services;
- (h) Service of process fees where counsel documents the necessity of incurring such expenses (rather than utilizing the sheriff's office(s) or case investigators) was outside counsel's reasonable control;
- (i) Materials other than ordinary office supplies for, or items that will serve as exhibits for court proceedings where the cost per item does not exceed \$25 and the total expense for the type of exhibit(s) does not exceed \$100; and
- (j) Other items similar to those described in this section with proper documentation that shows the expense to be both reasonable and necessary and properly payable from public defense funds. Provider should submit a written explanation with any request for payment of an out-of-pocket expense not listed in this section unless the OPDS has preauthorized the expense. An original receipt, invoice or copy of a cancelled check is required if item is obtained from an outside vendor.

6.2.2 Types of Expenses Excluded From Payment Unless Preauthorized

Expenses not specifically described in the contract that require preauthorization as non-routine expenses or that are presumed to be covered under the base contract as overhead expenses.

- (a) Airfare and vehicle maintenance.
- (b) Non-direct travel expenses, such as dry cleaning or laundry services.
- (c) Direct client expenses, such as haircuts, clothing or glasses.
- (d) Transcripts.
- (e) Expenses required to secure the attendance of an out-of-state witness.
- (f) Computer software programs.

7 OBLIGATIONS OF CONTRACTOR

7.1 Standards of Mitigation Investigation

Contractor shall provide mitigation investigation for the purpose of providing cost-effective delivery of services that will allow counsel to meet constitutional, statutory, and other legally mandated standards of representation. Contractor will provide timely, effective, and efficient case-related services in compliance with the ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases (June 2008).

7.2 Contractor Responsibilities Regarding Financially Ineligible Clients

Contractor shall notify the client's court-appointed counsel if Contractor learns that a client is ineligible for state-funded mitigation investigation under this contract.

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its subcontractors, employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its subcontractors, employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor, Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 656 and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

7.3.6 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly receipted, expended, and accounted for.

7.3.7 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Record Keeping

7.4.1 Service Records

Contractor shall maintain current information on individual cases assigned pursuant to this contract showing services provided and hours of time expended. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection of PDSC, or PDSC's designee or agent.

7.4.2 Financial Records

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

7.4.3 Retention Period

For purposes of this contract only, Contractor agrees to preserve all service records and supporting documentation regarding contract work performed for a period of three (3) years after the expiration of this contract.

7.5 Reports to PDSC

7.5.1 Time Records

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly time report for the preceding month. Contractor may submit amended time reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly time report to be amended.

7.5.2 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment and subsequent payments until PDSC receives the report and supporting documentation.

7.5.3 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

7.6 Costs and Expenses

Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial, except for those described in 6.2; and
- (c) staff services, unless specifically authorized by PDSC to be paid outside this contract.

~~Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express-written authorization of PDSC.~~

7.7 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

- (a) Contractor's ability to carry out this contract, including changes in office location;
- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

7.7.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

7.7.2 Specific Notices Required

7.7.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 and immediate notice of the cancellation of any such policies.

7.7.2.2 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall demonstrate to PDSC its continued ability to meet contract requirements or shall propose reductions in caseload and/or value if Contractor is unable to meet contract requirements because of such organizational change.

7.7.2.3 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

(a) Criminal Charges

A member of Contractor's staff has been charged with a crime.

(b) Criminal Conviction

A member of Contractor's staff has been convicted of a crime punishable by a term of incarceration of one or more years or involving moral turpitude.

7.7.2.4 Early Quota

Contractor shall notify PDSC immediately upon determining that Contractor will reach its total contract quota before the expiration of the contract.

7.8 No Dual Payments for Contract Work

Contractor shall not:

(c) expend funds under this contract for work performed outside this contract without PDSC authorization;

(d) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds.

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

9 RISKS OF CONTRACTOR - REFUND FOR SHORTAGE

If Contractor's actual workload value, at the expiration or termination of the contract, is less than the workload value set forth in this contract, Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

SPECIFIC TERMS

1 PARTIES TO CONTRACT

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and _____ ("Contractor").

2 TERM OF CONTRACT

The contract term shall be from January 1, 201~~8~~6 through December 31, 201~~9~~7.

3 NOTICE

Each party shall provide to the other all notices regarding this contract:

- (a) in writing, and
- (b) delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:

mail@opds.state.or.us

Contractor:

_____(Contract Administrator email address)

4 TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE

PDSC shall pay Contractor at the hourly rate of \$ ___ for mitigation investigation provided pursuant to this contract for the period January 1, 201~~8~~6 through December 31, 201~~9~~7. Payment will be made within 30 days of receiving and reconciling Contractor's service records. Payments shall be made by direct deposit into the account designated by Contractor.

5 CASE TYPES

Contractor shall provide mitigation investigation in the Circuit Court for the types of cases listed below:

- (a) capital murder cases;
- (b) other cases, at the request of PDSC.

6 WORKLOAD

6.1 Caps, Limitations, or Parameters on Number of Certain Cases

Subject to PDSC's prior approval on each case, Contractor may substitute hours spent on other cases in any county.

6.2 Limitation of Number of Mitigator Hours

In no event will PDSC pay for work performed under this contract in excess of 4,000 hours over the course of this contract without the prior written approval of PDSC following notice by contractor that this limitation may be exceeded.

7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

[Describe here as needed.]

8 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONTAINED IN THE 2015 REQUEST FOR PROPOSALS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**NANCY COZINE, EXECUTIVE DIRECTOR
PUBLIC DEFENSE SERVICES COMMISSION**

DATE

CONTRACTOR

DATE

TITLE OR REPRESENTATIVE CAPACITY

**CONTRACT BETWEEN PDSC AND CONTRACTOR
PAYMENT SCHEDULE**

End of Month (Unless noted)	Monthly Payment
January 2016 2018	
February 2016 2018	
March 2016 2018	
April 2016 2018	
May 2016 2018	
June 2016 2018	
July 2016 2018	
August 2016 2018	
September 2016 2018	
October 2016 2018	
November 2016 2018	
December 2016 2018	
<i>First-Year Subtotal</i>	\$0
January 2017 2019	
February 2017 2019	
March 2017 2019	
April 2017 2019	
May 2017 2019	
June 2017 2019	
July 2017 2019	
August 2017 2019	
September 2017 2019	
October 2017 2019	
November 2017 2019	
December 2017 2019	
<i>Second-Year Subtotal</i>	\$0
Total Payments	\$0

**CONTRACT BETWEEN PDSC AND CONTRACTOR
CASELOAD AND CASE VALUE MATRIX**

	Hourly Rate	Number of Hours	Total Value
1/1/186 - 12/31/186			
	\$0	0	\$0
			\$0
First-Year Total		0	\$0
1/1/197 - 12/31/197			
	\$0	0	\$0
			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0

Attachment 6

Attachment 6a



Oregon

Office of Public Defense Services

1175 Court Street NE
Salem, Oregon 97301-4030
Telephone: (503) 378-3349
Fax: (503) 378-4463
www.oregon.gov/opds

March 1, 2017

Representative Jeff Barker, Chair
Representative Andy Olson, Vice-Chair
Representative Jennifer Williamson, Vice-Chair
House Committee on Judiciary
Oregon State Legislature

Dear Members of the Committee,

In its 1967 landmark decision *In re Gault*, the U.S. Supreme Court established a constitutional right to counsel in the juvenile justice system.¹ But for many years following this decision, legal scholars and policy advocates debated how youth can meaningfully exercise that right in juvenile justice matters.² Over the past decade, the U.S. Supreme Court has increasingly recognized the significance of the science of adolescent development to legal analysis, with the consequence that youth are no longer treated as simply young adults.³

Yet in many ways courts in Oregon have continued to treat youth as exactly that, young adults, in how it approaches a youth's decision to waive counsel. In Oregon, no law exists that prevents a youth from waiving counsel. However, the law does require the court to discuss the decision with each youth on the record or in writing. Before waiving counsel, each youth must understand the charges filed and the risks of proceeding without counsel.⁴ Because the actual practice of appointment and implementation of procedural safeguards varies by county, gaps exist. Most notably, there is no requirement that the youth consult with counsel prior to waiving the right to counsel.

¹ *In re Gault*, 387 U.S. 1, 27 (1967).

² Pokempner, Shah, Houldin, Dale, and Schwartz, *The Legal Significance of Adolescent Development on the Right to Counsel: Establishing the Constitutional Right to Counsel for Teens in Child Welfare Matters and Assuring a Meaningful Right to Counsel in Delinquency Matters*, Harvard Civil Rights-Civil Liberties Law Review Vol. 4 (2012).

³ *Roper v. Simmons*, 543 U.S. 551 (2005), holding capital punishment unconstitutional for crimes committed under age 18. *Graham v. Florida*, 560 U.S. 48 (2010), holding juveniles cannot be sentenced to life imprisonment without parole for non-homicide offenses. *J.D.B. v North Carolina*, 564 U.S. 261 (2011), holding age is relevant for *Miranda* waiver purposes. *Miller v. Alabama*, 567 U.S. ____ (2012), holding mandatory life without parole sentences are unconstitutional for juveniles. *Montgomery v. Louisiana*, 577 U.S. ____ (2016), holding *Miller* applies retroactively.

⁴ *State v. Riggins*, 180 Or. App. 525 (Or. Ct. App. 2002).

The ability of a youth to waive counsel without first consulting with counsel is problematic. A youth who is the subject of a juvenile court petition may be required to make decisions with significant long-term consequences at a time when the youth is ill-equipped to do so. Because adolescent brains are still developing, they are unable to process information and consider consequences in the same fashion as adults. Stress and psychosocial factors influence their perceptions and judgments. As a result, youth are less likely to perceive the long-term consequences of their actions without guidance and feedback.⁵ They are more susceptible to influence and more likely to defer to authority figures who may have their own reasons for discouraging appointment of counsel.⁶

In 2010, several University of Oregon Law School Child Advocacy Fellows presented research on waiver of counsel in Oregon to PDSC. The students gathered data from the Oregon Judicial Department and surveyed individual juvenile department directors regarding waiver of counsel. While practices varied widely across the state, the students reported between 32% and 39% of youth appeared in court unrepresented. The waiver rate ranged from 12% in felony cases to 97% in formal accountability agreements.

As a result of this testimony, PDSC directed OPDS then-director Ingrid Swenson to convene an informal advisory group to gather information and propose solutions. This group worked in partnership with the Oregon Judicial Department and, in particular, Chief Justice Demuniz, to develop a uniform, developmentally appropriate, waiver colloquy to be read by the court prior to a waiver of counsel. Ms. Swenson reported to PDSC in 2011 that anecdotal information suggested an increase in appointments of counsel in delinquency cases.

Data on court appointment in delinquency cases confirms both a reduction in the waiver of counsel by youth and continued county inconsistencies in the procedures of appointment and waiver. In 2015, 3% of youth (103) were unrepresented in either felony or misdemeanor cases. However, the rate of waiver is significantly higher for probation violation proceedings and formal accountability agreements. The frequency of waiver in probation violation proceedings is noteworthy; sanctions often include placement in juvenile detention and may include commitment to the Oregon Youth Authority.

In recognition of the fundamental differences between juveniles and adults, a number of states have imposed procedural protections on waiver of counsel in the juvenile justice system. Often in the form of legislation or rule, these strategies include prohibition on waiver of counsel, parental permission, and consultation with counsel prior to waiver. Oregon is one of 13 states that do not provide additional procedural safeguards for youth.

⁵ *Supra* n 2.

⁶ *Id.*

Requiring consultation with counsel prior to waiver is a best practice. The National Juvenile Defender Center suggests waiver should of counsel should be rare and only after meaningful consultation with counsel.⁷ The Institute of Judicial Administration-American Bar Association Standards for Juvenile Justice state that youth should have counsel appointed at every stage of the proceedings.⁸ In 2015, the US Department of Justice filed a Statement of Interest in a Georgia class action case challenging the adequacy of counsel for youth, *N.P. v Georgia*.⁹ The Department found waiver of counsel without first speaking with counsel to be a denial of the constitutionally protected right to counsel. According to the Department, “a state further deprives children of their right to counsel if its courts allow them to waive that right without first consulting with competent counsel.”

The Constitution guarantees every youth accused of delinquency whose liberty interest is at stake the right to counsel. This right is fundamental to the fair operation of the juvenile justice system. Juvenile waivers must be afforded particular scrutiny in view of the unique characteristics of age and immaturity. Caselaw, scientific research, and practical experience reinforce the conclusion that children must have safeguards which acknowledge their vulnerability. The procedural safeguard of ensuring consultation with counsel prior to waiver is a concrete recognition that youth are different than adults and must be afforded special consideration.

Thank you for your consideration of this important issue.

Sincerely,

Amy S. Miller
Deputy General Counsel
Office of Public Defense Services

⁷ National Juvenile Defender Center Juvenile Defense Standards (2013), <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>.

⁸ The Institute of Judicial Administration-American Bar Association Standards for Juvenile Justice (1996), <https://www.ncjrs.gov/pdffiles1/ojjdp/166773.pdf>.

⁹ US Department of Justice Statement of Interest in *N.P. v Georgia* (2015), <http://njdc.info/wp-content/uploads/2015/03/DOJ-Statement-of-Interest-in-NP-v-State-of-Georgia-Filed-Copy.pdf>.

Attachment 6b

Unrepresented Youth: petitions filed in 2015

