

Members

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Executive Director

Stephen Singer

**PUBLIC DEFENSE SERVICES COMMISSION
Amended Agenda**

Meeting will occur in person and virtually.

Due to space limitations, in person attendance requires reservation.

Please contact opds.info@opds.state.or.us by 5 PM on Tuesday, April 19, 2022 to make a reservation.

1133 Chemeketa NE Street
Salem, OR 97301
Thursday, April 21, 2022
10:00 AM – approx. 2:00 PM PT
Via Microsoft Teams Live Event*

This is a public meeting, subject to public meeting law and it will be digitally recorded. Remember to state your full name for the record, as it is required for making a record of the meeting. For action items requiring PDSC approval, a roll call vote will occur, unless the chair directs otherwise. The chair shall read any motion requiring PDSC approval into the record before a vote is taken. We are mindful of everyone’s busy schedule, particularly public defense providers, and we will adhere to the agenda of business unless the chair directs otherwise.

MEETING AGENDA

Approx. Time	Item	Lead(s)
5 min.	Welcome	Chair Ramfjord
10 min.	Client Insights Report <i>(Attachment 1)</i>	S. Singer & J. Gray-O’Connor
5 min.	Action Item: • Approval of Transcript – PDSC meeting 4-8-2022 <i>(Attachment 2)</i>	PDSC
15 min.	Immigrant Rights Project: Update	E. Deitrick, E. McKee & J.J. Rollin
5 min.	Action Item: • Approval of OPDS Employee Leave Provisions <i>(Attachment 3)</i>	W. Heckman
10 min.	Action Item: • Information Technology Subcommittee Members Designation	PDSC
10 min.	Budget Update <i>(Attachment 4)</i>	R. Amador

30 min.	Action Item: <ul style="list-style-type: none"> Approval of Draft E-Board Letters (Attachments 5 a, b, c, d, e, f, g, h, i) 	S. Singer & R. Amador
15 min.	Break timeframe will be determined by Chair during the meeting	All
5 min.	Update on Contract Language (Attachment 6 a, b, c, d)	S. Singer
30 min.	Public Comment***	All
100 min.	Action Item: <ul style="list-style-type: none"> Approval of RFQ for July 2022 Contracts (Attachments 7a, and separate Excel attachment: Master Spreadsheet Contracts22-23ProjectionFTERate) 	S. Singer
5 min.	Future Business	S. Singer

*To join the Microsoft Teams Live Event meeting, click this link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTYxYWFiZTkZjM2YS00MDM1LTk2NmEtZDkzZWU2YmVkNDQ2%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%22e2d550f7-f738-4d5a-9f2a-eb0c9857447%22%2c%22IsBroadcastMeeting%22%3atru%7d&btype=a&role=a

***If you are interested in providing public comment to the PDSC (either IN PERSON or virtual), please email interest to opds.info@opds.state.or.us. Deadline to submit interest is 5:00 PM PT Tuesday, April 19, 2022. Please include your full name, organization/entity name, email, phone number and whether you would like to present in person or orally via video conference. Each guest will be given up to 3-minutes to share comments. There will continue to be written Q&A available via the Microsoft Teams Live Event throughout the duration of the public meeting for all guests.

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 opds.info@opds.state.or.us.

Next meeting: **Thursday, May 19, 2022 10:00 AM – approx. 2:00 PM PT.**

Meeting dates, times, locations, and agenda items are subject to change by the Commission; future meetings dates are posted at: <https://www.oregon.gov/opds/commission/Pages/meetings.aspx>.

Attachment 1

Clients believe that the amount of time and contact they have with their attorney is insufficient

The purpose of this survey is to create an opportunity for the clients of public defender providers to offer feedback on the quality of their representation. This survey is part of the Agency's efforts to build its capacity to gather feedback from clients about their experience in order to better ensure the quality of representation to indigent clients.

The survey was advertised and distributed by public defense providers across the state of Oregon and through the aid of community partners, including Youth Rights & Justice, Oregon Youth Authority, jails, adult community corrections, Oregon State Hospital, Sponsors, Inc., Central City Concern, Bridges to Change, and others. The agency met with the Department of Corrections to explore the logistics of increasing the survey distribution but were unable to complete the review process in the time frame of this project.

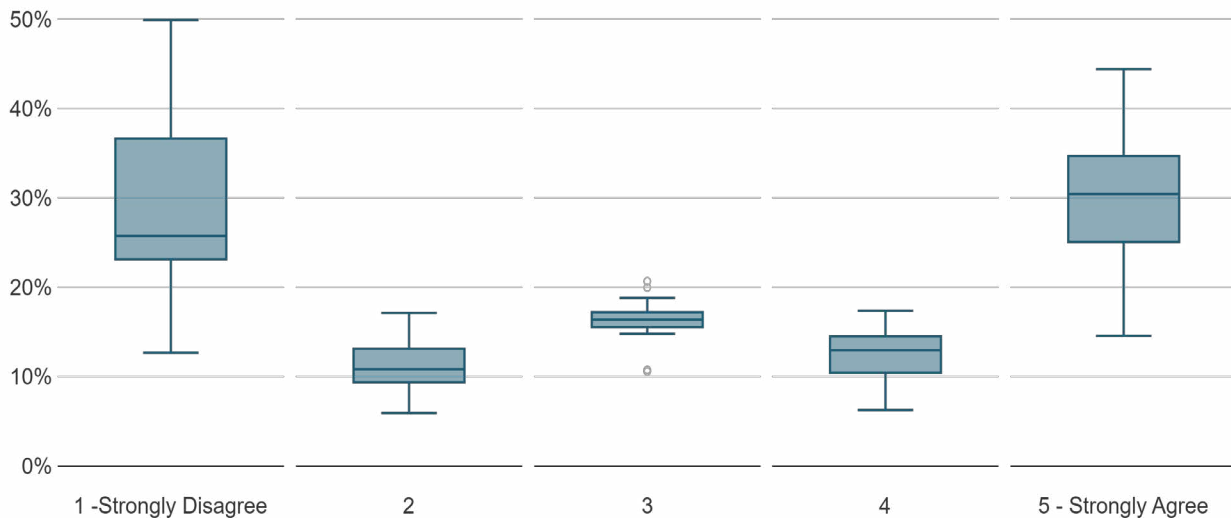
The Agency received a total of 754 completed survey responses and interviewed three individuals with lived experience as a client. These themes represent the feedback we received through both processes.

1. Clients expressed strong feelings regarding the quality of their representation, both negatively and positively. The survey responses regarding the quality of representation followed a bi-modal distribution with responses, responding “strongly agree” or “strongly disagree” for all questions. (Figure 6)

- “Quit taking on so many cases just for money. Show compassion towards clients facing life without and defend them like she should.”
- “My attorney didn’t give me options, he told me what I was doing. I was young and naive and trusted him. I wish he took the time to talk to me, explain things to me in a way that I would have understood.”
- “How do you improve perfection?”
- “I can’t think of one thing he should improve regarding his job. He was kind, consistent, organized and very helpful and did everything as close to perfect as one could ever get.”
- “Nothing, I felt there was the right efforts dedicated to helping me receive a positive outcome”
- “I think my attorney is a good guy already”
- “She was overall a good attorney. I don’t really have complaints.”
- “My new lawyer is amazing, and she came to see me talked my options over w/ me and she is great.”
- “I cannot think of a single thing. He couldn’t have done better. I had the best legal team. Thank you all so very much.”

Figure 6 – Bimodal distribution of attorney ratings N=721

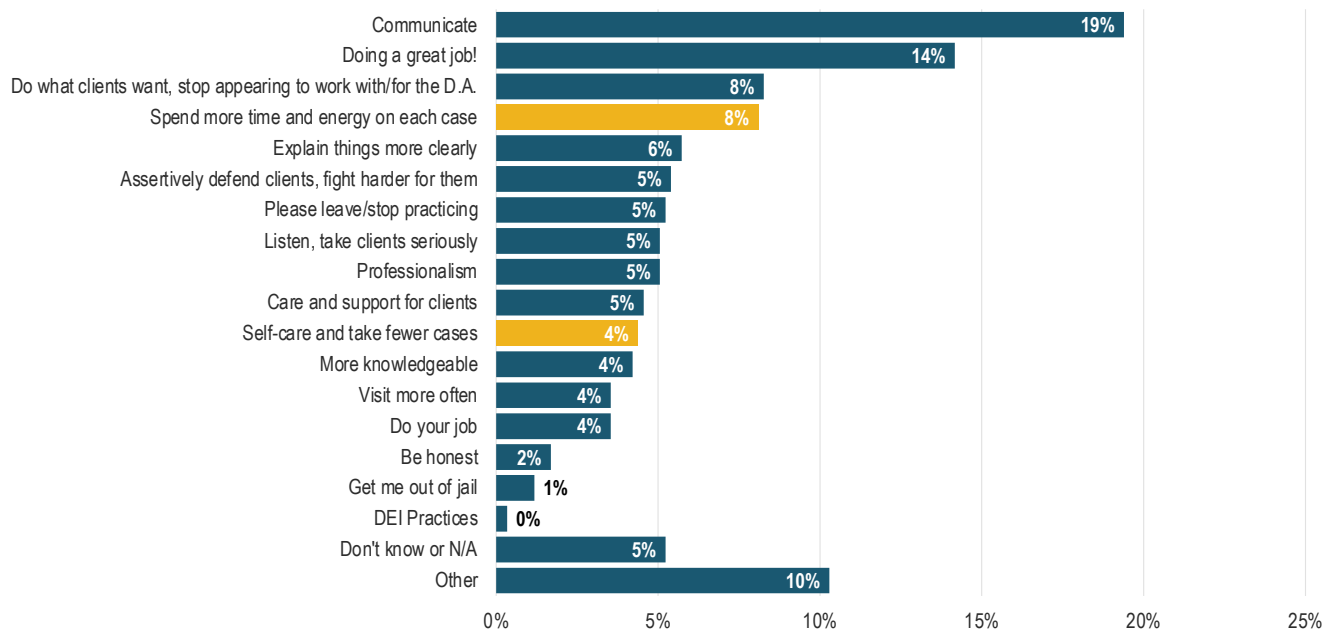
Clients were asked to rate their agreement (on a scale of 1 to 5) with 17 different statements regarding their experience with their attorney. (see Appendix 1.3) This chart summarizes the distribution of the frequency of each score. For example: in each of the 17 statements, between 15-45% of respondents rated it a 5, and the median is 30%.



2. The attorney relationship is profoundly important to clients and clients believe that attorneys may have hundreds of clients' cases they are balancing. Clients acknowledged the time constraints on their attorneys yet would like to have more time to discuss their case and to know that their attorney is listening to their needs and desires. (Figure 7)

- “My current attorney is representing 4 of the 11 guys in my dorm alone and is almost completely unavailable to talk or communicate with.”
- “He needs to be more prepared and do more research on the cases he is assigned to.”
- “Stop looking at your watch when you come in for 15-minute meetings...the ONE time you come to see me in 2 months.”
- “My attorney needs less cases.”
- “Take on less cases so he can concentrate on the cases he has better.”

Figure 7 – Take a lower caseload and spend more time on my case N=593
 What is one thing you think your attorney should do to improve?

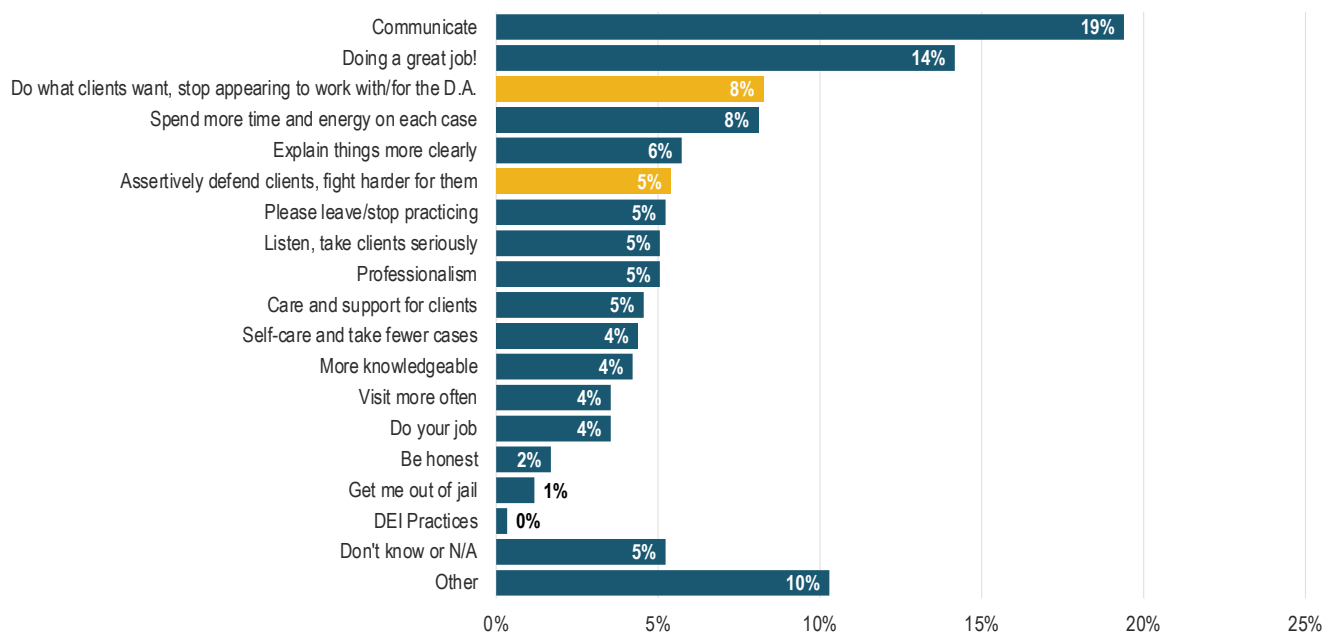


5. Clients expressed concern that public defenders were too closely aligned with the District Attorney's offices. Clients indicated that their attorneys pursued plea agreements too often and suspected that plea bargains were done at the convenience of their attorneys and not in the best interest of their clients. (Figure 9)

- “My attorney needs to communicate, try a defense other than take a deal.”
- “Honestly, they don't care about us they just want us to take a plea deal, so they don't have to work the case.”
- Actually try to defend me and stop trying to make pleas, 95% of Douglas County system is plea deals, what does that tell you?”
- “I think that the attorney shouldn't take more cases than they can handle. My attorney never even saw my discovery. They are too worried about their relationship with the DA and what kind of deal they can get you. What about the innocent?”

Figure 9 – Regular pursuit of plea agreements affect reputation N=593

What is one thing you think your attorney should do to improve?



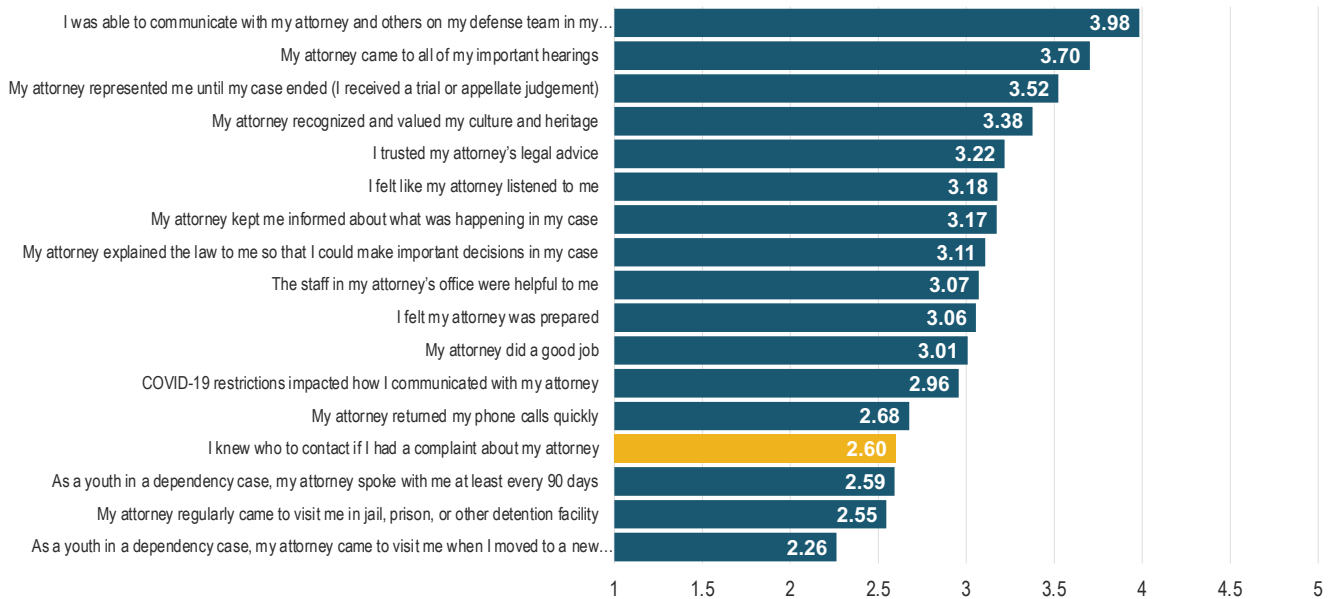
6. Clients wanted additional guidance for judging the quality of their representation. Clients often cited the outcome of their case as the primary mechanism for judging the quality of their representation or expressed confusion about what their attorney could do to improve.

- “I think my attorney might look better in different hair styles.”
- “My attorney should shave his beard.”
- “My attorney needs to dress better to improve.”
- “Win my case. That's all I care about it.”
- “I really don't know.”

7. Clients reported a lack of clarity on who to contact if they had a complaint against their attorney (Figure 10)

- “In 13 months my attorney has done nothing but put off 60 days at a time and show up to see me 15 minutes before a court. I don’t understand why I have a public defender and not “pro bono” with co-counsel since my case is capital/death penalty?”
- “I’ve had two attorneys and I don’t even know what they have to do to actually have a consequence.”

Figure 10 – Lack of clarity on how to file complaints about attorneys N=721
How strongly do you agree or disagree with each of these statements?



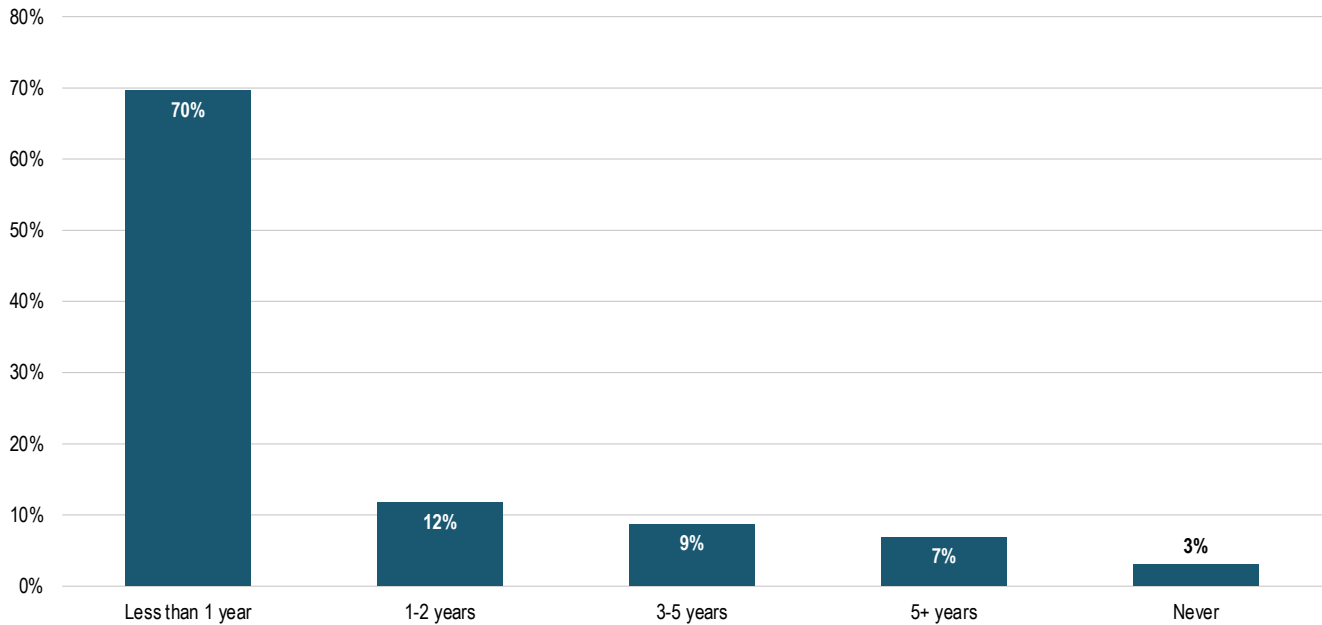
Implications:

- The agency needs to develop more effective ways of monitoring and improving the quantity and quality of attorney/client communications, particularly around plea negotiations, litigation options, and the attorney's role.
- The agency should focus on educating clients about its role in ensuring quality representation and the options clients have if they have complaints about their attorney.

Appendix

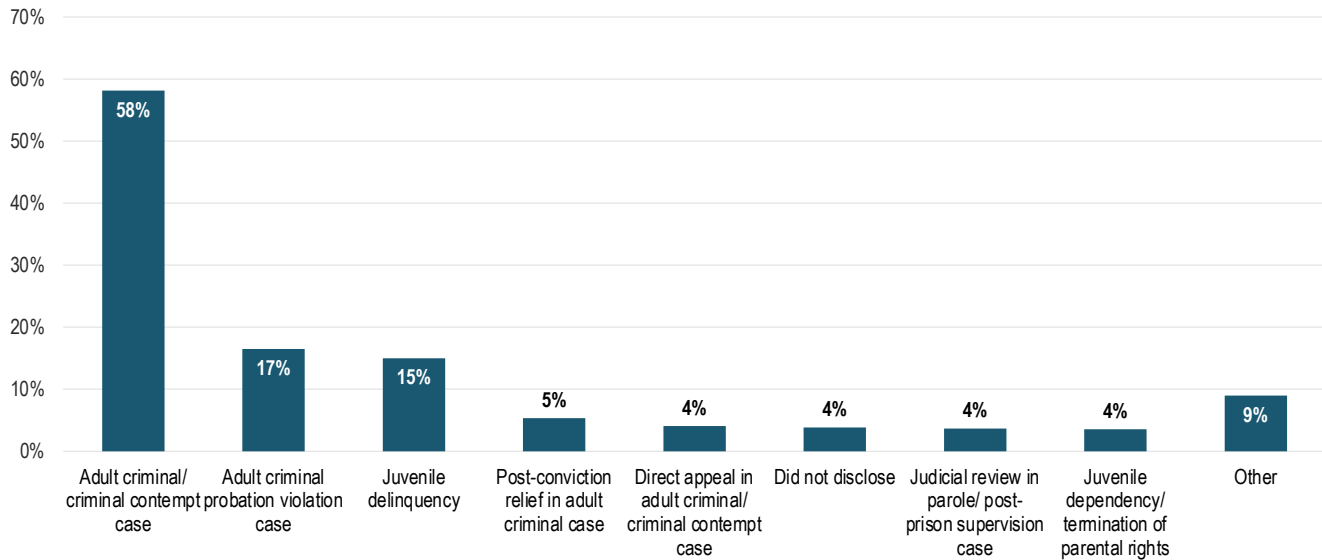
Appendix 1.1 – Duration since last interaction N=743

How long has it been since you had an interaction with a public defender?



Appendix 1.2 – Case Type N=733

In my most recent case, I was represented by a public defender in the following type of case.



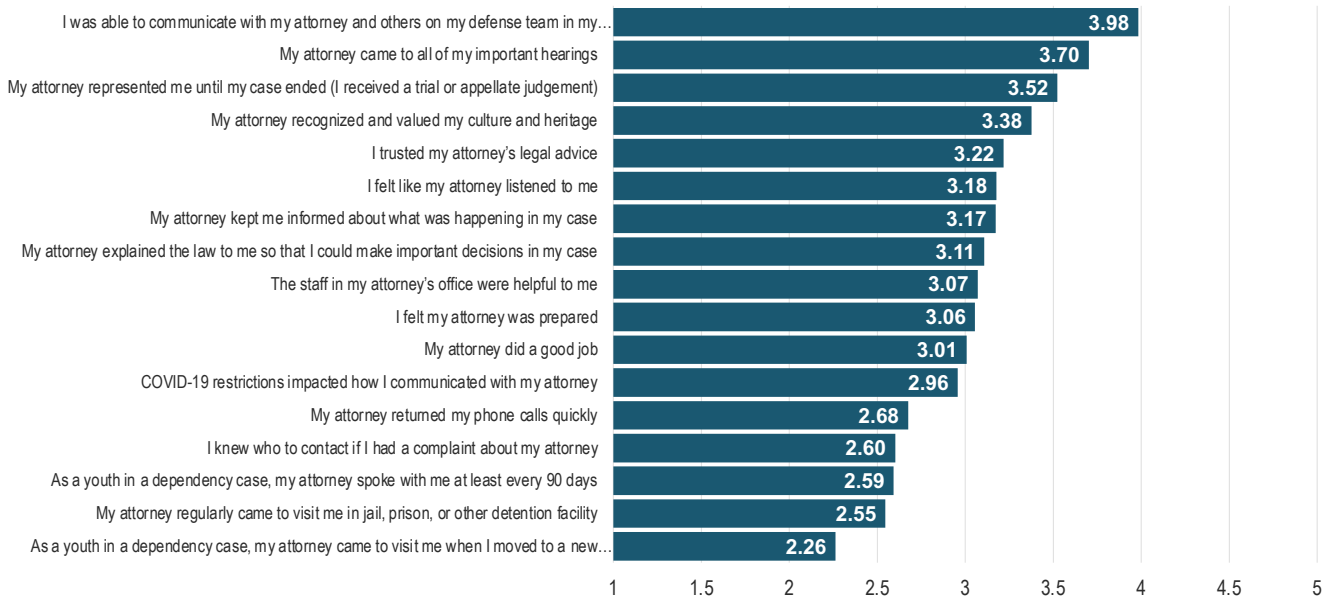
Appendix 1.2a – All Case Type N=733

In my most recent case, I was represented by a public defender in the following type of case.

	%	Count
Adult criminal/criminal contempt (violation of restraining order) case	58%	426
Adult criminal probation violation case	17%	121
Juvenile delinquency	15%	110
Post-conviction relief in adult criminal case	5%	39
Direct appeal in adult criminal/criminal contempt (violation of restraining order) case	4%	30
Did not disclose	4%	28
Juvenile dependency/termination of parental rights	4%	26
Judicial review in parole/post-prison supervision case	4%	27
Direct appeal in adult criminal probation violation case	2%	18
Civil commitment	2%	15
Direct appeal in post-conviction relief case	2%	13
Direct appeal in juvenile delinquency case	1%	10
Direct appeal in dependency case	1%	5
Post-conviction relief in juvenile delinquency case	1%	5
Direct appeal in civil commitment case	1%	4
Other	1%	6
NET	100%	733

Appendix 1.3 – Attorney ratings N=721

How strongly do you agree or disagree with each of these statements?



Appendix 1.4 – Qualities in a good Attorney N=754

What are the top three most important qualities in a good attorney?



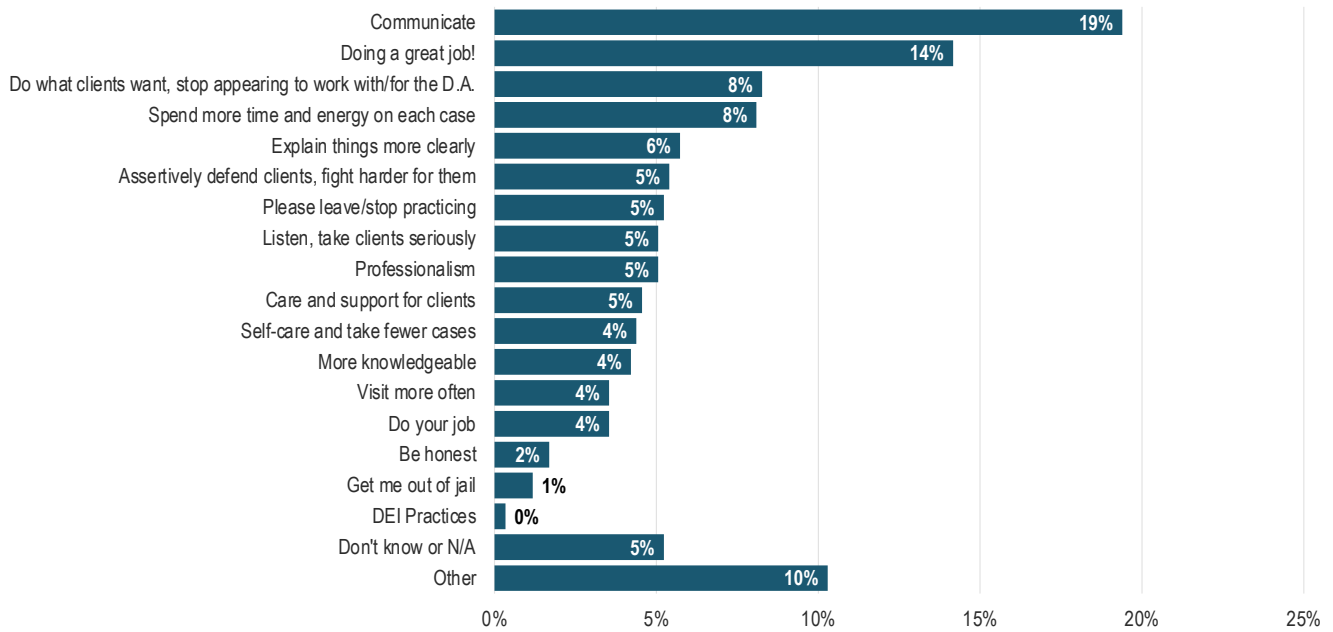
Figure 1.5 – Describe your Attorney N=754

What are the top three words you would use to describe your attorney?



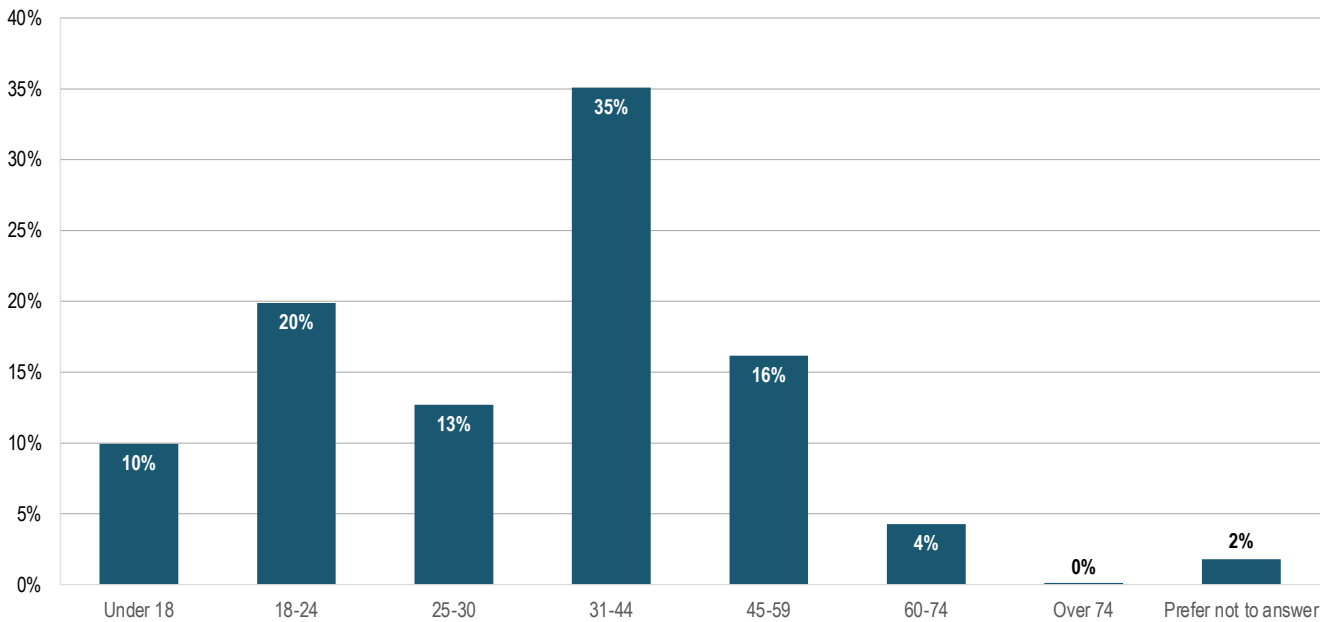
Appendix 1.6 – Opportunities for Improvement N=593

What is one thing you think your attorney should do to improve?



Appendix 1.7 – Survey Respondents by Age N=724

What is your age?



Appendix 1.8 – Survey Respondents by Level of Education N=727

What is your highest level of education?

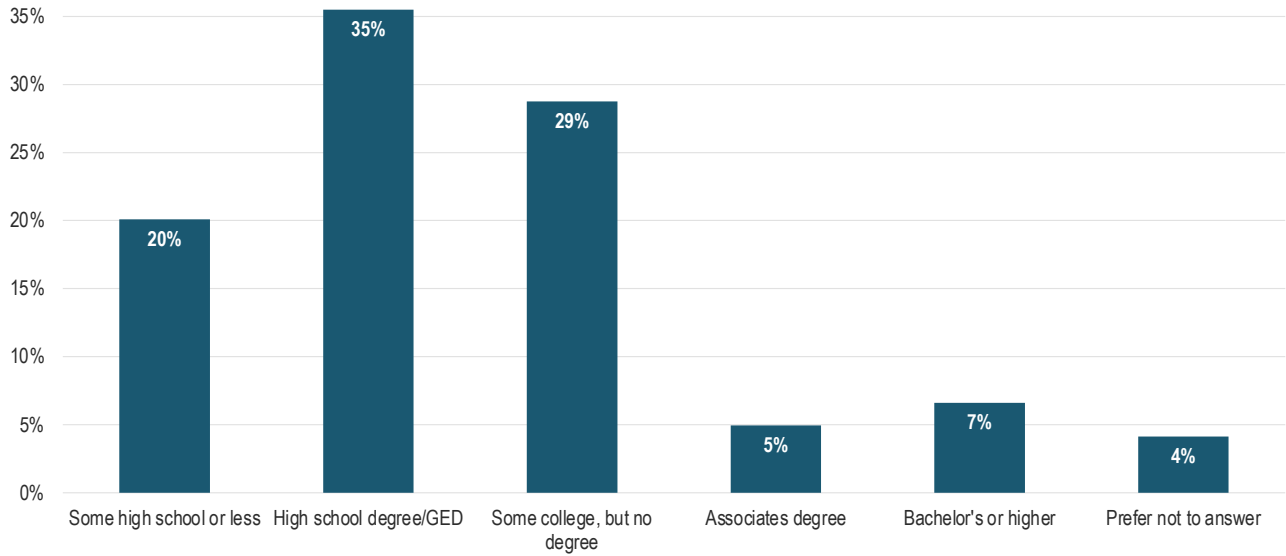
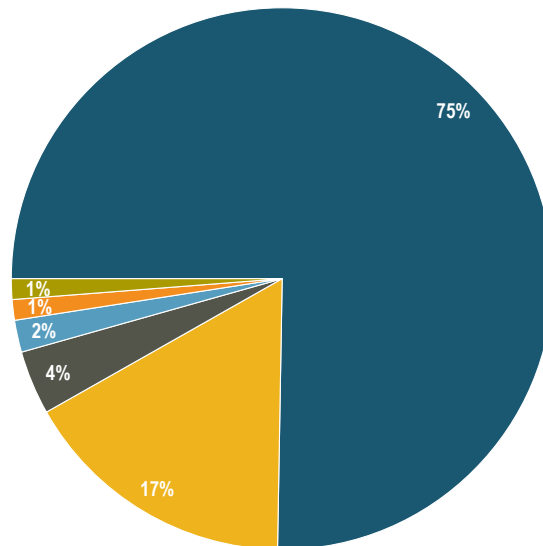


Figure 1.9 – Survey Respondents by Gender N=732

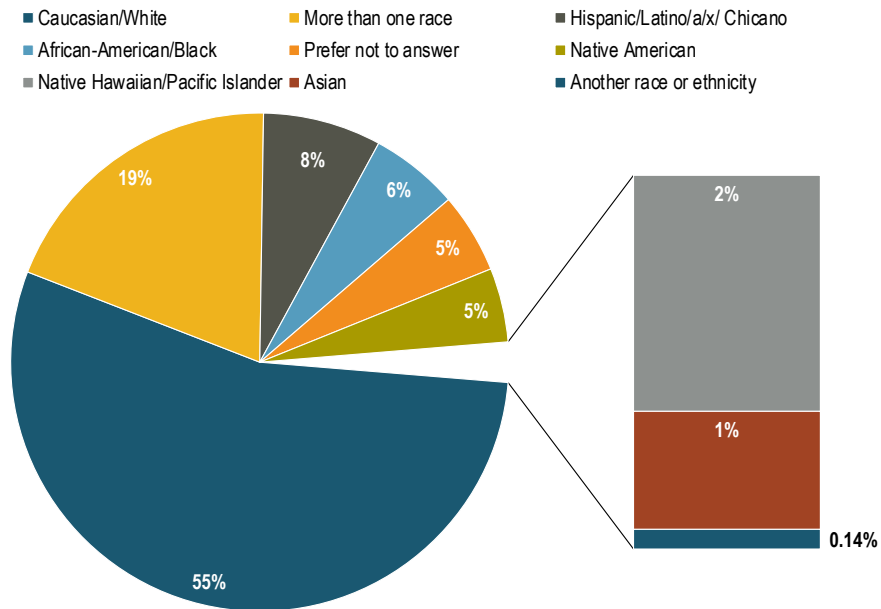
What is your current gender?

■ Man ■ Woman ■ Prefer not to answer ■ Transgender ■ Non-binary ■ A gender not listed here



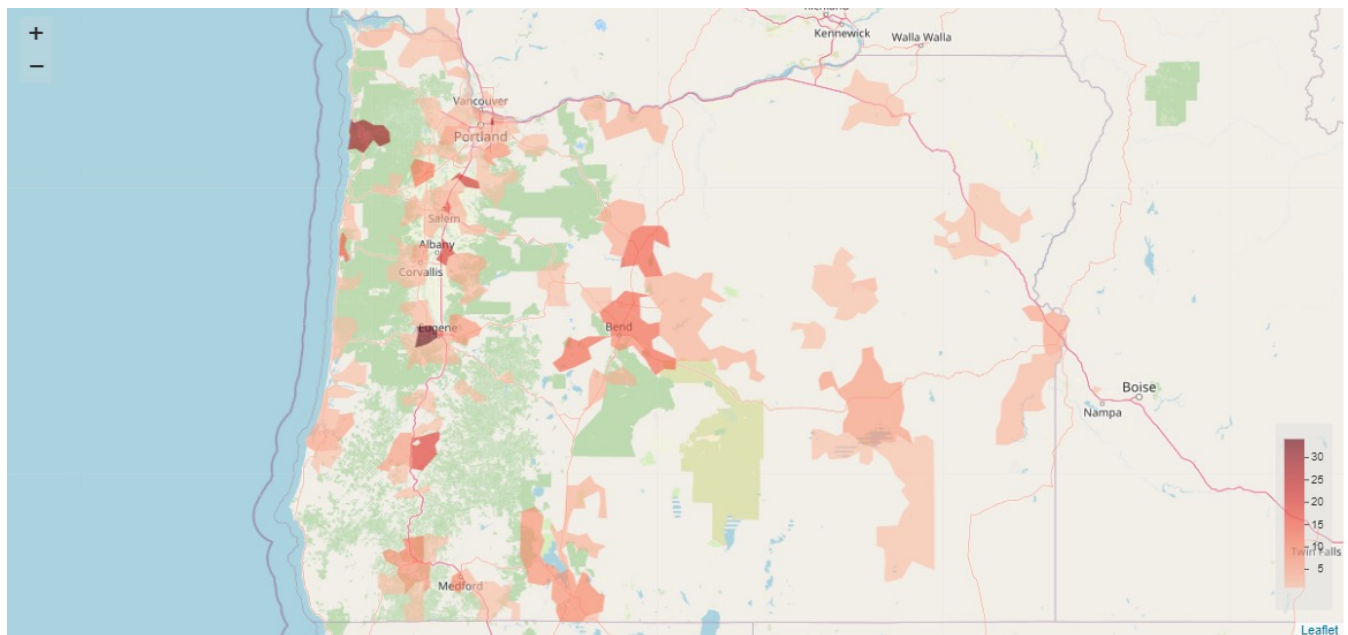
Appendix 1.10 – Survey Respondents by Race/Ethnicity N=729

What is your racial background?



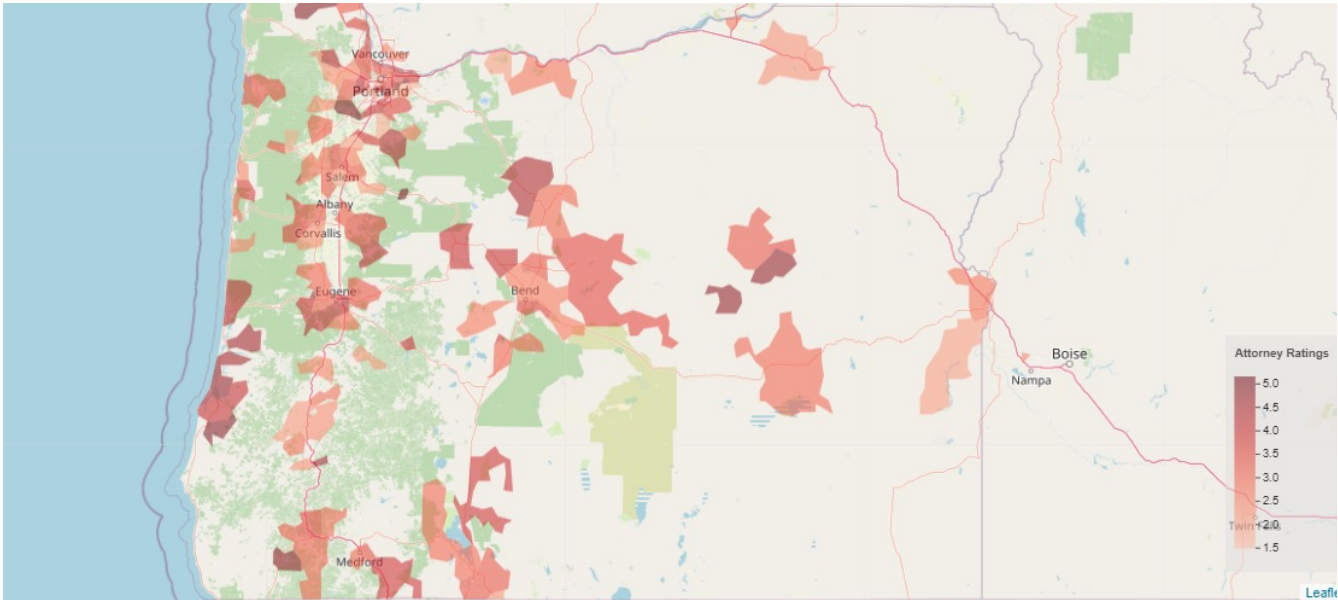
Appendix 1.11 – Survey Respondents' Zipcodes N=646

What is your ZIP code?



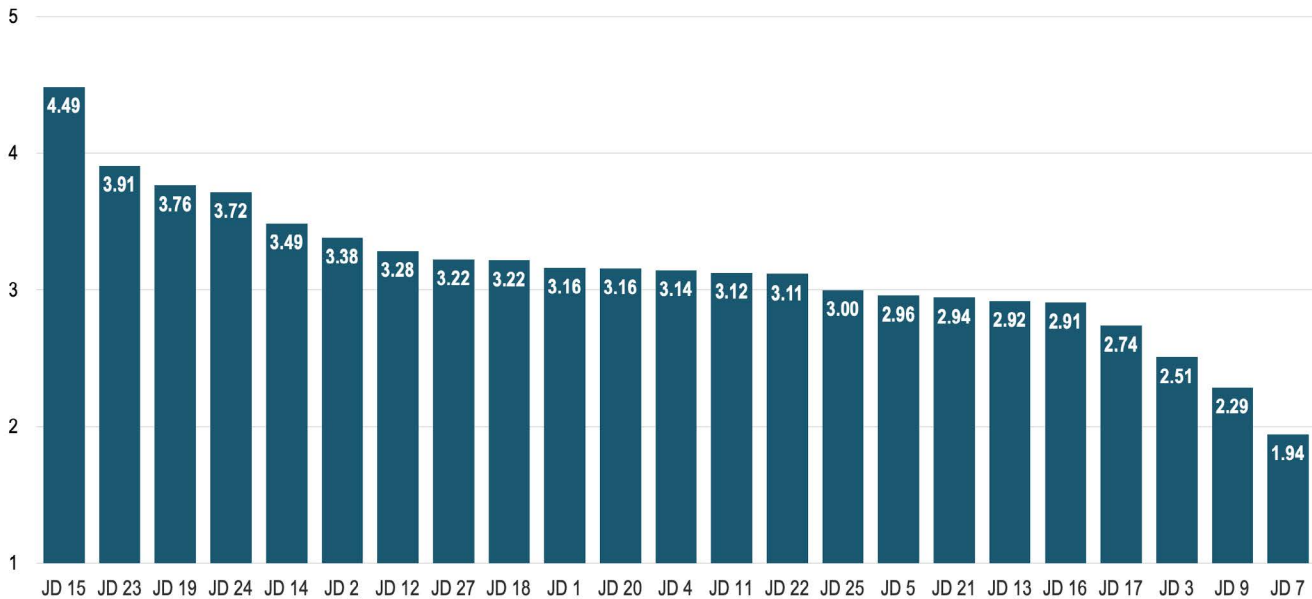
Appendix 1.12 – Average attorney ratings by zip code N=646

Clients were asked to rate their agreement with statements regarding their attorney on a scale of 1 to 5, 1 being very negative and 5 being very positive.



Appendix 1.13 – Average attorney ratings by jurisdiction N=646

Clients were asked to rate their agreement with statements regarding their attorney on a scale of 1 to 5, 1 being very negative and 5 being very positive.



- | | | | |
|-------------------------------|-----------------------------|--------------------------|------------------------------|
| JD 1-Jackson Co. | Wheeler and Hood River Co. | JD 14-Josephine Co. | JD 21-Benton Co. |
| JD 2- Lane Co. | JD 8-Baker Co. | JD 15-Coos and Curry Co. | JD 22-Jefferson and Cook Co. |
| JD 3-Marion Co. | JD 9- Malheur Co. | JD 16-Douglas Co. | JD 23-Linn Co. |
| JD 4-Multnomah Co. | JD 10-Union and Wallowa Co. | JD 17-Lincoln Co. | JD 24-Grant and Harney Co. |
| JD 5-Clackamas Co. | JD 11-Deschutes Co. | JD 18-Clatsop Co. | JD 25- Yamhill Co. |
| JD 6-Umatilla and Morrow Co. | JD 12-Polk Co. | JD 19-Columbia Co. | JD26-Lake Co. |
| JD 7-Sherman, Wasco, Gilliam, | JD 13-Klamath Co. | JD 20-Washington Co. | JD 27-Tillamook Co. |

Attachment 2

Chair Per Ramfjord: Ready to get started. Welcome, everyone, to the April 8th, 2022, meeting of the Public Defense Services Commission. This is a public meeting subject to public meeting law and it will be digitally recorded. Remember to state your name for the record as it is required for making a record of the meeting. For action items requiring PDSC approval, a roll call vote will occur unless the chair directs otherwise. The chair shall read any motion requesting PDSC approval into the record before a vote is taken. We're mindful of everyone's busy schedules, particularly public defense providers, and we will adhere to the agenda as set forth here today. First of all, I just want to make a comment about yesterday's historic approval of a public defender to the Supreme Court, first Black woman as well. I think that's something that we should all celebrate.

Chair Per Ramfjord: And next up, we're going to take things a little out of order today because the Chief Justice very, very much wants to participate in the discussion regarding strategic planning. She had another meeting that began at 7:30, so she hopes to be here as soon as possible. So, we'll start with the approval of the minutes, and we'll talk a little bit about the contracts after that, if that's acceptable to everyone. And then hopefully, when the Chief shows up, we will move into the discussion regarding strategic planning. So, with that, is there a motion to approve the minutes from the prior meeting?

Commissioner Steven Wax: So moved.

Commissioner Thomas Christ: Second.

Chair Per Ramfjord: Any discussion? All in favor? Aye.

Commission: Aye.

Chair Per Ramfjord: Any opposed? All right, motion carries. Okay. With that, why don't we go into the discussion regarding the contracts, Executive Director Singer.

Executive Director Stephen Singer: Thank you. Thank you very much. Just for the record, Stephen Singer, Executive Director, Oregon Office of Public Defense Services. Nice to have everybody in person. Well, not everybody but a large number of people in person. This is my first in-person meeting.

Chair Per Ramfjord: I do think it's worth announcing that it's just a bit over two years since we last met in person so it is a momentous occasion.

Executive Director Stephen Singer: That's great and I hope it's a sign of things to come, that things continue on this way. So, in terms of the contracting process, just to give everybody sort of a heads up, we're going to end up going into probably a lot more detail than has previously been gone into in terms of the contracting process and where we are at and where things are at and how we got there. But I do think it's helpful in terms of transparency, both for the commission and for the provider community, that we do that, that there's an understanding of everything we've been doing. I also think it illustrates some of the problems and a lot of the problems that we have currently with the system because of all of the things that we have to do. So, having an understanding of everything that it takes to get the system as it's currently structured where it needs to be is extremely helpful. With that, what I'm going to do is turn it over to our new Chief Criminal Trial Counsel, Laurie Bender, who is going to give an overview of where we are currently at and what we are currently operating under in terms of the system across the state. Ms. Bender.

Laurie Bender: Thank you.

Executive Director Stephen Singer: The floor is yours.

Laurie Bender: Good morning, commissioners. I know some of you but not all of you. I'm relatively new to the OPDS community, and so for me, having sort of a visual of where we are at was helpful. So, in your packets and before you at the table is a map, or two maps, of the adult criminal... Oh, my name is Laurie Bender, B-E-N-D-E-R.

[Laughter]

Laurie Bender: So, before you is a couple of maps of the contract entities statewide. These are not all the contract entities, we have other entities that we contract with statewide. For instance, post-conviction relief entity and PSRB and there are some other entities. But for the most part, this shows the adult criminal contract entities and the juvenile PCRCP and non-PCRCP entities. At 2B and 2D are spreadsheets that correspond with the maps 2A and 2C, and provide you with sort of a visual and a overview of the number of contract entities we contract with, including both the public defender offices, the consortia, and the individual firms. Now, the individual firms and the consortia also have juvenile components, so

those are not specified on the map, but if you see FTEs under these consortia or the individual firms, that will include a portion of the juvenile contractors. So, this is really just an overview, it's a broad brush of kind of where we are at currently, and we hope that it would provide some discussion and some basis for further discussion about the makeup of those different entities. Thank you.

Executive Director Stephen Singer: One of the things I would ask before we move on to the next section regarding timelines is anyone at this point, especially from the Commission, has questions about the maps or the overview they want to ask either of me or Ms. Bender, please feel free. As Ms. Bender indicated, the bottom map which covers juvenile, both PCRP and non-PCRP, may look a little blank but that's because a lot of – as Ms. Bender indicated – the entities in the top portion, they have both juvenile and criminal contracts. And consistent with HB 5030, the contracts that you will see and that you've got in your packet are now, consistent with 5030 separated, so that we have separate juvenile and criminal contracts, and they are not combined together into the document.

Chair Per Ramfjord: Yes, I would just note one thing which is that we always hear about how there's so much more driving time associated with Grant and Harney County. I think the map probably sort of underscores that in a very visual way.

Executive Director Stephen Singer: Right. It does show you the difficulty. And one of the reasons we also wanted to have the map, we'll get to this later, but one of the contract changes we have made is to require providers in neighboring jurisdictions will use a mileage rather than just a neighboring or adjacent jurisdiction, that providers who are under capacity in neighboring jurisdictions can be required to take cases in neighboring jurisdictions within a mileage rate that's 100 miles that we set where there is a backlog, or an under capacity issue, where the caseload is too high. But it was important to look at it geographically on a map before we made those kinds of decisions for that specific reason that the chair raised. It is important to understand the distances and what's involved when you talk about that.

Chair Per Ramfjord: Commissioner Christ.

Commissioner Thomas Christ: So, on the top map, three counties – Sherman, Gilliam, and Wheeler – show no provider entity. I assume that there is some crime in

those counties and there are some defendants. Are they handled by somebody else?

Laurie Bender: Yes. In Wasco County, just adjacent to Sherman County, there's a consortium. It's the Seventh District, so it has a law firm, Yat Morris Law Firm, and then the triangle there is the consortia. And that covers Wheeler, Sherman, Wasco, Hood River, and Gilliam.

Commissioner Thomas Christ: Okay. So, you just couldn't place it on the county line like you did with some others?

Laurie Bender: Yeah.

Commissioner Thomas Christ: Okay, I get it.

Laurie Bender: There's five counties.

Executive Director Stephen Singer: And it is one judicial district which is why it's all combined.

Commissioner Thomas Christ: Okay.

Chair Per Ramfjord: Just for the record, I know that the Chief has joined the meeting. Chief, we started a little bit on the contracts prior to discussing strategic planning because you were going to join a little later. I don't know what your schedule is, if you'd like us, we can break and do the strategic planning discussion now and then move back into contracts, or we could complete the contract discussion but I think that's going to take a little time. I know your schedule is tighter than some of the others here, and I just want to make sure that we do this in a manner that accommodates that.

Chief Justice Martha Walters: Thank you very much, Chair Ramfjord. Good morning, everybody. I'm sorry to be joining late. I am going to be with you all morning, so we can come back to strategic planning whenever you want to.

Executive Director Stephen Singer: Can I make a suggestion to the chair and to the commission, which is that we deal with the overview and the contract timeline restrictions. And then before we get into the lengthy discussion of the 2022 contracts and get into the detail of the contracts, that that's where we then take a break from contracts, talk about strategic planning and go through the strategic planning, and then return to the contracts, if that's acceptable to the chair and the commission.

Chair Per Ramfjord: Okay, that's fine.

Executive Director Stephen Singer: I believe there were some other questions regarding the overview and the maps.

Chair Per Ramfjord: Yes?

Commissioner Christine Thomas: Commissioner Chris Thomas. I wanted to make sure that I'm not making any assumptions about the map and where things are placed on it. So, it does not seem that these are placed where folks are found geographically, as in their offices. This is more of a around the area that folks are serving? Okay. So, coming from thinking about this from a Eastern and Central Oregon perspective and coming from GOBHI, of course, thinking about rural and frontier counties, thank you, you will hear me saying that a lot. I'm noticing where we have pretty big gaps in Eastern and Central Oregon, and I'd be curious to see a map about not only around the general area but where folks are actually located, because I think this gives us a good idea of what the availability is for folks as far as geography. As Executive Director Singer spoke to, the geography around travel, especially when we're thinking about when the weather is not as fabulous as it is right now, which happens pretty early and stays pretty late in Eastern Oregon. So, I would be interested in seeing that. I think it could add an interesting perspective.

Executive Director Stephen Singer: And I think that is something we can work on producing which is where they're physically located, right. As one of the OPDS staff, I think it was from the contracts team, noted, if you look at Klamath County, there is not a county line road that goes along the county line where all the offices are located.

Executive Director Stephen Singer: That is not, in fact, how it looks on the ground. So, they were simply put on the county line to reflect that they are handling cases in both jurisdictions. If only that were the case.

Commissioner Christine Thomas: Yes.

Executive Director Stephen Singer: It would make things easier but unfortunately that's not our reality. Thought Commissioner Wax may have had a question as well?

Commissioner Steven Wax: Not right now, thank you.

Executive Director Stephen Singer: Okay. Were there any questions about the overview of where our FTE is? And you can see, I know it's small, but the numbers beneath show the FTE that we are currently contracted for in those jurisdictions. It does reflect, in many cases, especially where the bottom map is blank, it is a combined FTE of both criminal and juvenile, and the juvenile includes both delinquency, and care and dependency. Okay. If there's no further questions on that, with the chair's permission, I would request that we move on to a discussion of the July 2022 contract timeline discussions. And what I would like to do is introduce Heather Pate. She's sitting here hanging out. Heather, you are Heather Pate.

Executive Director Stephen Singer: She is a manager at and manages both the CSS Division and our contracts analyst team, and she is going to go over the contracting timeline so that you all get an appreciation of where things are at. One thing I do want to highlight is that, from where we sit right now, the contracting timelines are very tight. And to be just perfectly blunt about it, that's my issue. That's nobody else's issue. It's not the commission's issue, it's not the contracts team issue, it's not Mr. DeForest or anybody else's issue. That's my issue. It has taken me, as you know from the interviews when I was hired, I had initially planned to take about a year to basically listen, learn, and gain an appreciation of the system before I embark on any long-term strategic planning and large-scale changes.

Things didn't quite work out that way. As you all know, we were immediately hit with a continuing and persistent emerging number of unrepresented clients in the large populated jurisdictions. We also had a complicated February session which ended up very well, thanks largely to the work of Mr. DeForest and Ralph Amador, our Budget and Finance Manager, who is not here. I don't know if he's joined us online, he's under the weather, he is sick. It's not COVID but he does have a significant illness and he did not want to spread it around to everyone.

But it took me a couple of months to actually get a handle on the system and emergencies dealing with the backlog, the sudden request, and coming out of that for emergency funding and for data and information, so that the legislature could act on that emergency funding. And my very quick understanding that we did not want to live under the current contracts for another year, that that was simply not feasible. Those contracts were not working, either from the public defense perspective or from the system as a whole, so we

need to make some changes is why we are where we are. But that is on me and on nobody else, either with the commission or with the agency. It's simply a product of a steep learning curve and me not being as quick as I probably should be at getting up to speed and understanding the complexities of the system. So, with that introduction, Ms. Pate, if you could outline for the commission and everyone the timelines that we are working on for the July 2022 contract.

Heather Pate:

Sure. Good morning, Chief Justice Walters, Chair Ramfjord, and commissioners. I'm Heather Pate, the Program Services Manager. On page 25 of your packet is the timeline that we're looking at. The first date for you to be aware of on the timeline is April 15th, that's the date by which all materials are due internally so that we can compile the next packet for the next commission on April 21st. April 21st is the next regularly scheduled commission meeting where you will have the opportunity to discuss and go over those materials that you receive in your packet. April 22nd we plan to publish the RFQ, leaving it open for providers to respond through May 6th. May 6th is the close date for that RFQ. The month of May will be devoted to reviewing the RFQ submissions, developing contracts for those submissions, and working with providers to get contracts completed and signed. June 7th date is the day by which internally we need to have all the contracts back from providers so that we can write write-ups for the commission packet, have them vetted, and compiled so that that packet can go out a week prior to the June 23rd meeting, which is the decision meeting, so that we have contracts by July 1st. I'm happy to...

Chair Per Ramfjord:

So, the timeline calls for stakeholder outreach between now and the 15th. Obviously, I think the stakeholders are very interested in their contract terms and the changes that are being proposed here, which I understand are also not final. We'll have an opportunity to discuss those further at the meeting on the 21st. But I'm curious what kind of a process you're envisioning for securing that input from stakeholders as we move forward.

Executive Director Stephen Singer:

Excellent question, great question. Thank you for asking, Chair Ramfjord. Again, Stephen Singer, Executive Director at the Office of Public Defense Services. Our plan right now is we are in the process of scheduling and are hoping to have it scheduled for next week. Basically, the meeting session with the provider community, principally the initial invitees are going to include the entire OCDLA board, entire ODCA consortia board, and then representative

samples, representative population of the nonprofit public defense offices. Those are our three principal provider groups. But we are also going to, while we are in the process of gathering them for sessions starting next week, we will also be inquiring of them if there are others they believe that we need from the community, that they are also brought in.

And I'm glad that you pointed out that the contracts, both in terms of language and in terms of forecasting and standards that we are developing, they are currently in draft form. One of the advantages of this meeting is normally, under the current situation – which is not what we're going to try and start in next year, we're going to try and do this way earlier – but under the current situation, you would have gotten these materials a week or so in advance of the April 21st meeting. We recognize that you have not had a lot of time with these materials, given the timing in which we gave them to you. We wanted to get them to you all and out to the provider community in advance of this meeting, which puts us further in advance of the April 21st meeting and allows for more time. There will allow for the commission now and between this meeting on the 21st to give feedback and also allow for our stakeholder outreach and for us to get feedback from the stakeholder community, from the provider community, between now and the 21st. So, still what you get on the 21st will be draft and not finalized. It's up to the commission to ultimately approve and have it finalized. But hopefully this process will, at least within the time constraints we currently have, allow for feedback both from the commission and the provider community.

Chair Per Ramfjord: Go ahead, Commissioner Thomas.

Commissioner Christine Thomas: Curious what is the nature of how we're going to be getting feedback of the provider community. Will that be written through emails, will there be outreach meetings, what will that look like?

Executive Director Stephen Singer: There will be actual outreach meetings. We're going to try and get as many people together in person as we can. Others who can't attend in person, it'll be a hybrid like this meeting. It will be essentially like this but with the provider community.

Chair Per Ramfjord: So, I would say I'm glad to hear that you're encouraging others to participate if they feel it's appropriate. I think that we want to be as open and inclusive with the provider community as possible on this thing. So, I think that's a good thing so we'll look forward to hearing about that. And I think at the next commission meeting, if you think

that there's an ability to sort of present some of that feedback in an adjusted format that we can process a little bit more quickly, that would be great. And obviously, if there are specific providers who want to comment at that April 21st meeting, I would encourage them to be prepared to do so.

Executive Director Stephen Singer: We will make sure that we capture the provider feedback and put it in a presentable form so that the commission has a sense of what the feedback was from the provider community – good, bad, or indifferent.

Chair Per Ramfjord: Thank you. Commissioner Christ.

Commissioner Thomas Christ: This is a procedural issue you've covered for, but for me at least, and I think some other commissioners, it would be really helpful to receive comments from providers in written form in advance of the meeting. I don't want to discourage anyone from showing up at the meeting and speaking, commenting, but it is really, really hard to digest all that stuff on the fly at the same meeting that you're being asked to make a decision on these changes. So, if someone feels strongly about any proposal, I encourage you to get it to us through the agency in written form as far in advance of that meeting as possible so we all have time to think about it and understand it in advance of being called upon to make a decision on it.

Executive Director Stephen Singer: And Commissioner Christ, I appreciate you raising that because now I've also put in our notes one of the things we can do during our stakeholder outreach is emphasize that, both through in-person communications and through emails and other mailings, outreach. We obviously have lists we send out to all of our providers and programs that go to all of our providers, and we can send out several reminders about that ahead of the April 21st meeting so that we can hopefully encourage as much of that as possible.

Chair Per Ramfjord: Okay. Are there other questions or comments about this phase of the contracts discussion? Yes, Commissioner Thomas.

Commissioner Christine Thomas: One more question about feedback. I recall at our last meeting, we would be hearing feedback from the clients around the services that we provide, and I think that that may be helpful information for all of us as well when we're thinking about contracting. As we've seen in the behavioral health community, the services that we provide are only as helpful as they are helpful to the people that we are providing those services to. And sometimes, we think that we are

providing services that really hit the mark, and because of positions that we have in life, we may be off a little bit on that assumption. And so I think it may be helpful to have that information as well, to make sure that the voices of the folks that we are serving are centered in this conversation around contracts as well as the lawyers that we are working with.

Executive Director Stephen Singer: I'm so glad you asked. And there's somebody in the audience who is really, really glad you asked because now she will, much to her chagrin, get an opportunity to speak. There is a draft addendum to the insight report, which is in the works to get to you all well before the April 21st meeting, which is working on compiling, as the previous insight report did for the other stakeholders, to give you all the feedback from the client community. Ms. Severe, you want to just talk about in terms of what things are looking like, just in terms of the timeline for that?

Erin Severe: Yes. So, Commissioner Thomas, Chair Ramfjord, Erin Severe, we are expecting the insight report to be complete by April 21st so there should be a whole presentation on things that have been gathered.

Executive Director Stephen Singer: All right. I think we're at the point where if the chair so desires, we can take a break from the contracts for a moment because the next phase is fairly detailed and fairly in the weeds and fairly lengthy, and switch over to strategic planning so we can accommodate the Chief Justice.

Chair Per Ramfjord: Let me make a few preliminary comments about your strategic planning process. This process is something that we've been converging on from various directions over a considerable period of time, particularly after the issuance of the Sixth Amendment Center study. The Governor's Office actually worked to convene a Public Defense Transformation Advisory Committee pre-COVID that involved people from various branches of government in what is designed to be a stakeholder process that would allow for the ultimate decisions on how public defense in this state should be reformed and how it should look in the future.

That process was interrupted, in part by COVID. And then part of it is part of House Bill 2003, various elements of the provider community really sought to have similar stakeholder processes, similar commission basically to oversee the development of public defense in the state. I will admit that the commission itself didn't feel that it had quite an adequate role in that and opposed having

that element in the legislation. It was taken out but there was a commitment, I think, that they made that we would engage in a similar kind of process going forward. I think the agency is committed to doing that, I think we would like to do that. I think the American Bar Association study only makes it all the more urgent that we do so. And the agency did start on the idea of planning a strategic planning process that involved the Coraggio Group and others.

Members of this commission, in the last meeting in particular, felt that that process was not an appropriate one, that they wanted to have more commission involvement, commission discussion, about what direction we should be taking as we look toward these admittedly long-term changes that are going to take some time to develop. So, I think that the Chief Justice herself has been considering these issues as well. Specifically in light of some of the problems that we have experienced as an agency over the last few years and few months, including most recently some of the problems that we faced in terms of getting adequate numbers of public defenders to represent clients in the community.

So, with that, I think it's appropriate to start the discussion on what this process might look like, what the timelines might be, recognizing that it's going to take some time to develop and we're going to have to involve other people in it for it to be effective. But I think I'd leave it with that and perhaps ask the Chief Justice if she has any further comments to open this discussion. She is muted I think. I don't know if she's not available. There she goes.

Chief Justice Martha Walters:

Yes, thank you, Chair Ramfjord and commissioners. As Chair Ramfjord said, I was very happy to hear the discussion at the last meeting about long-term strategic planning, and I really wholeheartedly agree with the need for it, and it was wonderful to hear about it going forward. I also thought about what it would really take to bring the necessary change about, make it actually happen, make it come into real reality. And so I talked with Director Singer and Chair Ramfjord and as he indicated, I have asked the legislative and executive branches to join in a public defense summit. I really think that all three branches need to discuss and hopefully agree on strategies to stabilize Oregon's public defense system to make it stronger, to make it more effective.

I know that there have been many efforts to improve public defense over the years, but over the majority of the last 20 years, the Public

Defense Services Commission and the public defense community have toiled at change largely on their own and without a formalized, shared, three-branch commitment of urgency and collaboration. I think we're now at a point where there is a recognition, a broader recognition of the need. And that's why I've asked the other two branches to join the judicial branch to find lasting solutions.

We all know, and those who are here and listening know better than anyone, how long our public defense system has relied on the dedication of attorneys who represent more people than they should. This has been well documented and it's not in dispute. There's been an effort to address that problem but the high caseloads and the insufficient number of lawyers along with the pandemic seem to have combined to bring the entire public safety system to a breaking point in many parts of our state. And you know that we just can't let that happen. We cannot tolerate a system that asks more than these dedicated lawyers can give, and that leaves people, particularly those in custody, without lawyers. It's unconstitutional and it compromises our very democracy.

So, we know that fixing these problems will not happen without all three branches at the table. It just can't. We can't do it ourselves. We need reliable shared data and information, we need ideas, and we will need commitment. We will need, very clearly, the participation of PDSC and those who do the work on the ground. I can't tell you that I know now how the three branches will move forward or how the effort will be organized. I have talked to some of the leaders in the other two branches and I do know that they share my sense of urgency. So, my commitment to you is to keep you apprised. You know that this larger effort will lean on your experience and expertise. It can't be done without that. But we've got to move forward.

This morning, I was at a meeting in Multnomah where I had heard the word, I suppose I should have heard this before, she referred to it with the situation we're in as a "criportunity," crisis and opportunity together. We're in a time of criportunity and I thank you very much for being right there in the middle of it and I'm glad we had this chance to talk.

Chair Per Ramfjord:

Thank you, Chief Justice. I think it's worth bearing in mind that it may seem yet like another little bit of a change of direction in the way we're planning the strategic planning process. But I think what is foremost is a realization of how big a problem this is and how

difficult making some of these changes actually will be. And we've talked many times, for example, about the idea of a statewide public defender. Well, we're not going to get there unless we have the data that shows how much it's going to cost, how much money we might save, etc. Similarly, if we go down a different path, we need to have additional information, we need to really study this. And when the governor's office talked about having a transformation team some years ago, a couple years ago, they actually contemplated having a policy analyst and having an expert and a budget analyst to support the effort, because it was recognized that we need to actually dig in and develop data and numbers and budget information as we contemplate different changes.

So, I think longer term here, I really like the idea of a summit. I think that the sooner we can have that kind of a three-branch summit, the better, and that summit would involve planning on some of these issues, which would involve I think a series of meetings that would include listening to members of the community now, developing and obtaining information from others, like the National Association of Public Defenders or particular states that have done well in this area, and working based on that to develop solutions. But I've talked enough and I know that many of the members of this commission have passionate views on this, so I'd like to open it up for further discussion.

Executive Director Stephen Singer: One of the things maybe that would help advance that, I mean, obviously, if the commission wants to go directly into discussion, I do have a couple of thoughts that I do want to at some point convey to the commission, in terms of thinking about how this might all work and work together given where we are at, that would help things. Yes, Commissioner Christ. No, no. Please.

Commissioner Thomas Christ: Strategic planning as we've been using that term has been, at least for me, sort of a misnomer for consideration of a systemic change in how we deliver services. We have been, since I've been on this commission, we've been working with this hybrid model of a mix of public defenders, consortia, and private firms, originally paid on a per-case basis, then changed to an FTE model. And the one thing we know for sure is that the system is failing in its threshold responsibility, which is to make sure that every indigent that chooses has a lawyer. Down the road, we want a good lawyer, well compensated, and providing good services. But first, they need a lawyer and we are not doing that right now. I'm not sure to what

extent that is driven simply by the pandemic but I think there's at least a possibility that it's the system itself. And so I want to, in this strategic planning process, I don't want to – and I expressed this at the last meeting – I don't want to just sit here and talk about new goals like striving for excellence. I want to talk about changing how we provide lawyers recuse? And so I'm hopeful that that's the discussion that's being contemplated in the summit that the Chief Justice is proposing. And if that's what they're going to talk about, I'm all for it. I'm wondering sitting here though who's going to be involved in that summit. Is it us or do we stand by and watch some other people doing it?

Chair Per Ramfjord:

Commissioner Christ, I do want to say that I think, one, I think what you're describing is exactly what's contemplated, is really talking about broader systemic changes. I think part of the discussion that I had with the Chief and with Executive Director Singer was based on the recognition that that type of systemic change can't really occur unless we have the support and involvement of some of the other branches of government, unless we have the support and involvement of a broader range of stakeholders, unless we get engagement from that broader range of stakeholders. So, I think this process contemplates doing that but it also contemplates there being a real role for this commission in listening to that stakeholder input, and then coming up with and working with the executive branch and with the legislature to come up with a solution that actually will make the long-term systemic improvements that we all want to make. So, I definitely think that that is the goal.

And that is not to put aside the fact that we have some short-term issues that we have to deal with based on House Bill 5030. We have to get done with the Compliance, Audit, and Performance Group, we have to comply with the mandates of House Bill 5030 to make sure we get the additional funding that we need to ensure that we can continue to provide the services that we're providing now. I think there's been a little bit of conflating of those short-term things and the long-term things, and what we really decided is that if we are going to make those long-term systemic changes, we have to do it through this kind of broader, deeper, and fuller process, which is what we're planning right now..

Commissioner Thomas Christ:

Okay. I guess I understand all that, that we need legislative and gubernatorial approval to get any systemic changes. When you say we need to do that, I guess I don't understand whether we are

doing that with their involvement or we are going to stand down and wait for some newly convened group to invite our comments.

Chair Per Ramfjord:

I think the whole idea here as I envision it, and this is just my view, is that we want to engage them with the assistance of the Chief Justice, in a process that we are trying to lead with their input and involvement to help us get to that change. So, I think as part of the discussion today, and part of the discussion as we move forward this process, will actually revolve around how we want to structure it. I don't think that is completely decided at this point in time, but I think that that is something that's absolutely critical going forward. Commissioner Wax.

Commissioner Steven Wax:

Thank you. Chief, I agree wholeheartedly that we have to have buy-in and input from the legislature and the executive in order to effectuate both the short-term fixes, solutions to the immediate problems, and long-term systemic change. My concern is, however, the same concern that I had with the effort that had started to move forward with the Coraggio Group as the leaders of a strategic planning discussion. I think that expertise is needed, and the expertise that I perceive to be needed is expertise of people who have been studying and working in indigent defense systems in Oregon and around the country. And to the extent that we need to sit down with the Ways and Means chairs, the House and Senate leaders, with the Governor, my concern is about timing. That are we ready to do that, are we ready perhaps to start a conversation that says to them, "We need your input," and input in this instance has to translate into dollars, and I think that we all need to understand that part of the problem we have is that basic thing. Money talks, and we don't have enough money to, "Hey," the providers and up, we don't have enough money to hire enough service providers.

But as we look at this chart that we started with, and the law firms, consortia, and public defense firms, and then we look at the dollar amounts that are going to those service providers, I perceive that there is a significant issue there in terms of the current structure and the current dollars that are going out, and what appears to be tremendous disparity in the dollars that are going into the pockets of different types of service providers, and we need to be able to come to grips with that. If we're able to do that with expertise, with this body, and bringing in perhaps people from the national level who can talk to us about, "This works in Iowa. This works in Alabama. This doesn't work in Mississippi," so that we can be making rational decisions to have that conversation.

If the legislature and the governor are going to participate and provide us with some of their key staff people to be learning along with us, so that they're able to go back to the governor and the chairs of the various committees with firsthand knowledge as we're gathering and as we're presenting it, I think that's terrific. I think though that I share the same concern that Tom does, that for us to go forward in a process that's going to create another report that will go on a shelf next to the ABA, next to the Sixth Amendment, next to some of the hearings that were held three, four years ago when an effort was made to reform the system, we're just kicking the problem down the road. So, I love this idea but I think that it needs to go forward with the PDSC and other outside experts being the driving force in it. And if that's what's contemplated, let's go, and I will make whatever appropriate motion is needed, if any is needed, to get that going.

On the other hand, I don't think that we should be planning a one-time sit-down and we can't solve the problem. And in part, we can't solve it until we have the data that is so critically needed. And part of the pressure that I've been feeling to amend these contracts now is they have to include data gathering and we have to have the computer availability to actually use that data so we can show what the heck is happening in some of these counties. Now, when I look at \$200,000, \$300,000 going into somebody's...listed, is that money in their pockets or is that money that is being spent on training, on administration, etc., etc.? And until we know that, and until we know the actual numbers of lawyers and their caseloads, I don't think we can make those sorts of decisions. Sorry, out.

Chair Per Ramfjord:

Commissioner Hardin.

Commissioner Mark Hardin:

Thank you. I want to note a couple of things and then make a point. The ABA study, among other recommendations, pointed out that the dependency and delinquency side should represent a very significant portion, practically half, of the ultimate FTE governed by OPDS and this commission. Now, the legislature itself has also recognized the importance of focusing on the delinquency and dependency side by asking that there be a separation of the Juvenile Division from the Criminal Defense Division, and I'm grateful that they did that, I think that's highly appropriate.

So, the point I'm getting at is as I see it, having spent my career focusing on dependency, dependency is profoundly different than

criminal defense. Profoundly different – the process, the expertise, the legal knowledge, everything – and I think it's easy to conflate or even fold it into the thinking about criminal defense. And sometimes the approach is different, and the approach towards optimal representation may be different, so that I'm hoping that strategic planning process will very seriously look at those two areas and identify the differences as well as the commonalities. And it may be that the solution to the optimal representation isn't always the same.

So, there was mentioned a national organization to associate with the process with regard to the criminal defense, there are national associations that may be considered in connection with these other areas as well. And likewise, states that are consulted may be different. So, I'm hoping this will be, in part a joint process, but in part a parallel process. I've been on the commission not as long as some but longer than others, and I think in the past there has been often an unconscious tendency to fold the two together and subsume them really more from a criminal defense perspective, and all done with good intentions. So, in short, I hope there'll be a serious attempt to ensure that the delinquency and dependency representation will be very carefully thought out in the whole process.

Chair Per Ramfjord:

I just have a couple of comments based on both Commissioner Wax and Commissioner Hardin's comments. First of all, with respect to what Commissioner Wax said, I don't disagree that we need to actually develop the information than just have a summit and that's the end of it. The outcome, the problem that happened with House Bill 3145, frankly, was that we developed a plan and we didn't get the buy-in, we didn't have the data, and we didn't have the support to actually get the legislature onboard. Even though they were very supportive of the idea of fundamental reform, the fact of the matter is that we hadn't engaged them enough to actually make that work. And we don't want to repeat that error. We recognize that we need to have that broader level of support if we're going to move forward.

So, the process that we're contemplating, we have to contemplate, we have to map out going forward, is one that would get that, make sure that we're answering their questions, make sure that we're getting their feedback to answer their questions. And to get the support we need, we make the fundamental changes that we want to make. With respect to dependency, Commissioner Hardin, I don't

think there's any disagreement with your points. I think the fact of the matter is that this agency has done more to make reforms in the dependency area than it has in other areas with the PCRP project. And I think that that project has been deemed a success at the legislative level as well. And so I think that there is a commitment within the agency, there's a commitment within the state to make the improvements in those areas as well, and there's a recognition that there's some differences in those areas. So, I'm hopeful that we can guide the process in a manner that accomplishes both, or addresses I should say, both the concerns that Commissioner Wax raised and the concerns that you, Commissioner Hardin raised. So, I do want to let Executive Director Singer make the... Oh, Commissioner Solomon, yes.

Executive Director Stephen Singer: Commissioner Solomon did have a...

Chair Per Ramfjord: Yes, I see that.

Commissioner Paul Solomon: Thank you. Chair Ramfjord, Chief. So, I guess a few things come to mind for me. One is I appreciate the catalyst for bringing together these disparate groups, in part because I feel like we are at a moment in time where it's really unconscionable that we have people sitting in custody without representation. I appreciate Commissioner Wax's comments about the need for real data to inform systemic change and bringing experts to the table, but I also think that we need action now. And so even if it means developing some short-term solutions to address what is really a huge crisis in our system.

I also think that we want to not only hear the voices of the providers and experts, but I also think we want to hear the voices of people who are being represented. And I'm really interested in the second part of the consumer engagement study that we haven't seen yet, that will hopefully provide some illuminating insights from the individuals who are being served. And finally, I'll say that I very much agree with Commissioner Christ and Commissioner Wax around the idea that PDSC should be at the center of this process. I feel like in the past, we have been sidelined at times, things have happened without our input, vis-à-vis budget and other issues. So, I think it's critically important that as this process unfolds that we are very much involved and really at the center of it. Thank you.

Chair Per Ramfjord: Okay. I think, Director Singer, you had some comments that you wanted to make earlier.

Executive Director Stephen Singer: Yes. Thank you. Now is fine. Thank you, Chair Ramfjord, members of the commission, Chief Justice. I have been listening to the discussion and have obviously, as Chief Justice and the chair have noted, been part of other discussions that have been ongoing since the last commission meeting. And I hope I have a proposal that is sort of a three-part proposal that at least, if not in whole, at least in part addresses some of these issues and concerns, and at least gives a framework for the commission to work off of and think about as we go forward from where we are currently at. And the proposal is sort of two parts and then leading into the third part, which is the all three branches of government and the PDSC going forward from here.

First thing is is something that Chair Ramfjord recognized, which is that we do have the reality of HB 5030, and that HB 5030, the legislature and Legislative Fiscal Office has a number of specific deliverables that we need to present them with and that are tied to the \$100 million holdback in the SPA, and that we need to show some advancement in deliverables on in the upcoming May board, which is actually the beginning of June, but for ease let's just call it the May E Board. And so part one of my proposal, of our proposal, is as you all know the Coraggio Group has done a lot of work, foundational work through the report that they presented in January as well as the subsequent insight report in terms of our stakeholder engagement. And they are working on the addendum to that that includes what Commissioner Solomon referenced and Commissioner Thomas referenced, which is outreach to the client community.

So, part one of my proposal is that we allow the Coraggio Group to continue with, and also just to say there's a bit of this foundational material and these deliverables that we need to show in terms of internal agency modernization and restructure. So, those are things that are focused on internal to the agency. I think we can use the Coraggio Group, the work they've already done, and what remains to be done, and that they've already worked on and laid out the foundation for. And we can use that to produce the specific deliverables on the internal agency restructuring and modernization, and the high-level strategic planning that is basically above the level of the delivery system, which is sort of a mid-level strategic planning I would regard it. It's not down in the weeds of implementation and operation, but it is at sort of a mid-level.

So, I think we can use that process to produce those deliverables to the legislature and to LFO for the May E Board so that we are producing the basics that we need to in order to access the \$100 million holdback, and also engage in some of the very high-level strategic planning. And some members of the commission, there's a variety of interest in that level of an approach, and we can make sure that the commission members who are interested in that part are in that, and that the commissioners who are less interested and more interested in the mid-level discussion are focused on that. I do not see that anything that is going to come out of that process, either the internal agency modernization and restructuring to produce the deliverables that we need to in response to HB 5030, or the high-level strategic planning, I don't think that there is anything that is going...

One, there's going to be commission involvement in that. Two, anything that comes out of that is going to have to be presented to the full commission, and so the full commission would have to debate and ultimately approve whatever comes out of that. And if the commission is unhappy with what initially comes out of that, they can send us back to do more and come back. So, nothing's going to happen ultimately at either of those levels without commission approval. But I think doing that will allow commission involvement and also allow us to produce those deliverables. And as I was about to say, I don't think that there is anything that's going to come out of that that is either going to constrain or conflict with anything that, either the commission is going to do at this mid-level in terms of looking at delivery system and structure and the way the public defense services are delivered, nor do I think it is going to in any way constrain or conflict with what the Chief Justice has outlined in terms of engagement of all three branches of government in looking at strategic planning and delivery system. I just don't think that's going to happen, and because the commission ultimately has to approve anything and is going to be aware of these ongoing efforts at all three branches of government, I think that we will be fine doing that and it won't conflict.

Then what I would propose is at a second mid-level we put together, and I'm in the process of working on that, a technical assistance team comprised of national experts, both in public defense and in juvenile work, both delinquency, and care and dependency, all of the work we do that can be worked with the commission and advise the commission and provide technical expertise in developing recommendations...have a process for

developing recommendations and looking at different delivery systems, different models in all of the different areas in which we provide services. I think the advantage of also participating and engaging in this mid-level technical assistance project would be that would then put the commission with the assistance of the technical experts in position to have done a lot of the foundational work.

And I think both of these two things can then lead into the process that the Chief Justice has outlined and put the commission in the position of having the expertise, the technical information, the data and evidence we need, and the various models on the national level and regional level, be in a position and go through the pros and cons of various options, and be in a position of knowledge and expertise in order to be proactive about taking a leadership role in this engagement process that the Chief Justice has outlined with the stakeholders and all three branches of government. Who, I think we all understand, that if we are going to make the kind of significant changes that we want to make, we need to have the electees, basically, onboard and part of the process and engaged in that process.

So, I think proceeding on these two streams, sort of separately and independently, will then feed into the third part, which is the Chief Justice's part, and put the commission in a position where it has the information and knowledge, the expertise to answer questions and lead the all three branch government process, which is I think where we...the position that I think is where we need to get to. So, that's sort of the basic outlines of the proposal.

Chair Per Ramfjord:

Let me make a couple of comments on that. Obviously, I believe that we need to do the phase one work anyway, we obviously have to get to the point where we address the concerns raised in House Bill 5030. That is important, it has to be done, and we can't let our urgent desire to effectuate broader systemic change get in the way of meeting the priorities set by the legislature, what we have to get done.

I do think that as we go through figuring out what the longer-term process is going to look like, we have to be sensitive to certain concerns in the community at large and in the legislature. As I've said before, I think we have a little bit of a credibility gap with the legislature, I think we have a credibility gap with some of our providers. I think that we have to involve them at the outset in figuring out what your phase two involving the technical assistance

team is going to actually look like. We can't be in a position of leaving ourselves open to the accusation that we have somehow framed the issues in a way that drives towards a solution that we've already predetermined, as opposed to getting the broad-level involvement that we need to actually have a plan that is supported by all that need the support to effectuate the change.

Though I do think that that's important, I think that it would be worthwhile and I wholly support the idea of the agency coming up with a plan, but I think it would be worthwhile to look at the information that was generated in connection with the Transformation Advisory Committee that the governor's office were putting together before. I think it would be useful to look at the information that was generated by the provider community in the draft legislation for House Bill 2003. I think modeling the process that incorporates some of those same measures to ensure that we're getting the level of involvement from others early on is absolutely vital for the success of this effort. So, I support the idea of developing a plan, but I think it's important that it incorporate those elements. Yes, Commissioner Hardin.

Commissioner Mark Hardin:

So, I have a question. I'm wondering where in this process, if at all, comes issues involving OPDS staff organization, positions, job duties, and so forth. Is that something that will be addressed in this in stage one?

Executive Director Stephen Singer:

The short answer is yes. That is one of the reasons I'm proposing to move forward on the part one, the Coraggio Group, because there's already been a lot of foundational work done, and so the restructuring and modernization, which is basically the internal staff organization, and roles and responsibilities, would be handled in that, and that's one of the reasons that we are proposing proceeding with that because that is a necessary component and we need to do that. And since there's already been a lot of work done, it makes sense to proceed on that.

Commissioner Mark Hardin:

Okay. I assume also if there are some changes in models, models and types of, how I put it, in the organization representation and that could later perhaps have implications in terms of staff organization as well.

Executive Director Stephen Singer:

Yes. Absolutely. And I do want to, just quickly before Commissioner Thomas jumps in, I do want to address helpful comments from the chair, and I should have said this. All of the things that we are

looking at and all of the proposals in terms of technical assistance at the mid-level have all included, and I know Erin has...have all included the concept that we need to have full wholesome engagement with the provider community involved in that process. So, I should not have left that unsaid. But I know that's in my head because I have looked at the proposals and have been working on them, and they all...nobody, none of the national experts that we're looking at in terms of the system [Inaudible 01:10:08] process is it has not suggested that that process not include right from the beginning direct involvement in that process from the provider community.

Because you have to have that engagement, you have to have that buy-in and involvement if you are going to end up with something successful. Just as Chief Justice has outlined on the other level, you need to have engagement at the beginning so that you get ultimately buy-in at the end product from all three branches of government and the elected representatives. So, you need both of those things, and if you don't have either one of those things going into any proposal, you'll end up where we ended up with 3145 with it not being acceptable.

Commissioner Steven Wax:

Per, I agree fully with what you said, and I am not advocating in any way, and Steve, I agree fully with what you said. First priority has to be satisfying what the legislature told us to do in the bills. That's a given as far as I'm concerned and I don't think that anyone can disagree with that. They gave us an order, we'll comply with it. Okay. The next phase, please, Steve, help me understand, what is this high-level strategic planning that you're talking about when you're saying that mid-level is the talk about the type of delivery system. I don't understand then what is this high-level planning?

Executive Director Stephen Singer:

Sure. The high-level planning is, I think, what you may have seen... And I can certainly send to the commission examples of strategic planning and high-level strategic plans. I mean, I think it starts with the things that you talked about earlier in terms of mission, vision, values, goals, and that's the high-level strategic planning. We do need to produce something that gives us an overall framework, because if we don't have that overall high-level framework, that's necessary so that then when we proceed to the mid-level, that what we are doing at the mid-level ties into and addresses issues that are not completely fleshed out and filled in and can't be in a high-level strategic plan.

Commissioner Steven Wax: If the legislature has directed what you're calling a high-level strategic plan, again, we're going to have to do it so there's no point in debating it. If that is not something that they have directed, and at least my current understanding of the budget notes and the statutes from last time, are that's not part of what is required, it's not a deliverable. If it is a deliverable, I'm done. If it's not a deliverable, if there is not currently agreement among the members of the PDSC and the community that the goal and value of this body and of OPDS is to provide the highest-quality representation, in juvenile and in the criminal arena, in the most effective and efficient way, then we have a problem. If that is understood, it seems to me it is a waste of time and resources to spend four or five sessions sitting around and talking about that sort of thing. We get it, we're there. And if we don't, then we probably shouldn't be involved in this process. So, is it a deliverable that's required by the legislature, that what you're calling high level?

Executive Director Stephen Singer: The specific answer to your question is no. A strategic plan is not in the 5030 budget notes, it is not required. What I will say is that some of the other things that come out of the strategic plan, including the agency restructuring and modernization which is part of doing that strategic planning process, are deliverables. So, I do believe that while a high-level strategic plan is not specifically referenced in 5030 and is not a specific deliverable, I do think that doing that will produce some of the other deliverables that are part of the 5030 and will also help in tying what we do at the mid-level strategic planning, the delivery system type model, and tying those to an overall strategic plan, which I do think the legislature and LFO do want to see that what we're doing at the delivery model is tying and is tied to an overall strategic plan.

Commissioner Steven Wax: Sorry, I'm confused.

Executive Director Stephen Singer: Sure.

Commissioner Steven Wax: The changes within the agency that were directed by the legislature, I have understood from the meetings that I have attended since I joined the commission last April, are being effectuated. There's an audit, there's a CAP, and all of those things, at least as I have heard at these meetings, those are well underway without any high-level strategic plan there. And in all of our meetings, I think, the commission has been pleased to see the changes that are being made, the existence of CAP, the creation of the positions that are now filled by Ms. Berger and Ms. Bender, as juvenile and criminal

heads. All that is taking place. The Audit Division is there. So, what more is there for us to be discussing or considering in what you're calling the high-level strategic plan if all that is already being done?

Executive Director Stephen Singer: I agree all of that is being done and is being developed. I think the part that's missing, one, just because I feel obligated to, Ms. Berger is actually the deputy juvenile chief. Shannon Flowers is the criminal chief, so I just want to acknowledge...

Commissioner Steven Wax: Well, excuse me.

Executive Director Stephen Singer: No, no. No worries. I don't think anybody took any offense.

Commissioner Steven Wax: I've just worked with Laurie and Kayo and know them well. I apologize if I improperly promoted anybody.

Executive Director Stephen Singer: Don't worry, I don't think anybody's taken any offense. I do think that the part, that one of the pieces that is missing is there is a lot going on in terms of agency restructure. We have created the audit function, we do have an Audit Committee, we have the beginnings and the outline of a CAP Division that we plan to stand up completely – not completely but in its current form in September. We do have some other restructuring going on in terms of roles and responsibilities within the agency and shifting some things around.

Moving, for example. We are in the process and have moved all program management out of General Counsel, because that didn't make sense for it to be in General Counsel. Program management has been separated out from General Counsel, program management is now under Program Managers, and General Counsel is now limited and focused on traditional general counsel duties, in terms of advising the agency on internal matters dealing with public records and things like that, so we have done those things.

What is missing is tying an overarching, overall strategic plan that ties all of those disparate changes in those disparate units together so that they are all functioning together and towards a common strategic plan rather than simply being independent units that are siloed in doing their independent positions. And that's what a strategic plan will help us do, which is to tie all of these changes and, as Commissioner Hardin has remarked, these changes will be iterative and ongoing because, obviously, as there are changes

perhaps in the delivery system, in the contracts, and things like that, we may need to move things around. And the high-level strategic plan, I think, will tie those things together and allow us to be able to adapt in a continuous, iterative fashion that is going to be necessary over the course of the next year or two year or three years, given the other things that are going on in terms of changes to the system.

Jim Conlin, OPDS:

Chair Ramfjord, the Chief Justice has been trying to weigh in.

Chair Per Ramfjord:

Yes.

Chief Justice Martha Walters:

Well, I'm glad to speak at any point, I'm very glad to listen as well, but is this the time, Chair Ramfjord?

Male:

Go ahead, Chief.

Chief Justice Martha Walters:

All right. I really appreciated what the Commissioners have said and I want to pick out a few of the things that I think are really important for us to keep our eyes on. First of all, Commissioner Solomon said that separate and apart from whatever we do on planning, action is necessary now. And I want to tell you, and I know you know this, there is a feeling out in the world that we have a breakdown in our entire public safety system. It's larger than public defenders. It's the prosecutors, it's the sheriffs, it's the police officers. It's not working. And so there is this huge feeling that something must be done. We do not have control over this. The public is calling for something to be done. We're going to try to address what we can in the short term, the immediate, like how to help the public defenders who are struggling so hard with hiring right now. How to help with that, how to figure out whatever we can. I'm starting meeting with Multnomah on Monday. So, something does have to happen in the immediate term and we'll do the best that we can. If anybody has ideas on that, I do want to hear them because we've got this immediate crisis.

That, the fact of the immediate crisis, is generating a feeling in the executive branch and in the legislative branch that they need to fix it. We haven't, we can't obviously, we haven't had the resources, all that kind of thing. But there's this interest now on their part of making something happen. I convened, I called for the convening of a summit, not as a one-time summit, and that word maybe gives the idea that it's a one-time meeting, of a deliberative process so that we could, as a judicial branch, call everybody together and convene

it. It would happen without us if we weren't convening it. It's not something where we can say, "Hey, everybody. Wait. We're going to get your buy-in." No. There's a statewide interest in this and an urgency about it that I hope that we can lead and my effort is to lead that. It's calling for systemic change, it's not a one-time sit-down, it absolutely needs data, the idea of a technical assistance team to provide that data. The idea of the commission and the providers and those who we serve having the expertise is very important. We need that. That is where we're going to be able to lead is because we can provide that.

But we also don't have, as Chair Ramfjord said, we don't have the power, and I think Commissioner Wax said the same thing. We don't have the money, we don't have the staff, there are other parts of government that have that, and they will want to lead along with us. They're not waiting on us, they want to be part of leading this effort forward. And I think where we can be important in that is in providing the expertise, the experience, the long-time work on this, the people who are on the ground. It can't be done without that experience and expertise, and we'll be part of it.

So, I'm glad that we're working on the deliverables. I'm very hopeful that you can continue to help me as you see things we can do in the immediate term. If we can make some progress in the immediate term, if we can provide the deliverables, we'll have more effect on the larger systemic change, because we will have shown that we can do things, that we can be effective, that we do have expertise. And so I think it's really important that we work on the short term, and then we'll have more impact on the longer-term systemic change discussions.

Chair Per Ramfjord:

I do want to sort of tie in some of the comments you just made with some of the comments that Commissioner Wax was just making. I think when I consider this high-level strategic planning that Executive Director Singer's talking about, I really think it's more of governance issues. We talked about this before but we need to function very effectively as a commission together if we're going to get this kind of thing accomplished. There's a perception in the other branches of government that we are unable to set priorities and we are unable to execute on what we're doing. And we need to get in the position of being a very effective group in doing that if we're going to succeed on these issues.

So, while I hear what Executive Director Singer is saying about tying different things together or having an overall document that documents the plan, I think the real issues that we have been working on, that we should continue to work on are ensuring that we can function effectively together to support this kind of a change. So, that's how I view those issues in my own mind. I think they're not a huge time sink and they shouldn't detract from either the near term priorities of accomplishing the goals we need for House Bill 5030, for addressing the issues that the Chief said in terms of representation, and for developing a plan that does involve the other branches of government in a series of meetings along exactly the lines that the Chief was discussing, with the overall goal of effecting longer-term strategic change, or systemic change I should say.

But I do think that we had a retreat where we talked about our own ways of working together and where we recognized, or at least I thought we perceived, that there were areas in which we can improve. Some of those are hygienic, that we're going to set agendas for the year, that we're going to have more time in advance of meetings that discuss what we're going to put on the agendas, etc. They're not huge issues but we need to get ourselves functioning better as a board essentially or a commission. And so I do think that those are things we wanted to bear in mind in work going forward. Yes, Commissioner?

Commissioner Christine Thomas: Commissioner Harvey's been very patient.

Chair Per Ramfjord: Oh. I'm sorry.

Commissioner Alton Harvey Jr.: No, it's fine. Chair Ramfjord, Executive Singer, Chief Justice, I was just sitting here and my take is as the rookie commissioner on the board in the strategic planning and the levels, the high level and the mid-level, but I mean, where is it going to fall where a client calls and they can never speak to the attorney, they never get a chance to talk to the attorney? Or where is it going to fall when attorneys are so overworked and demoralized and just totally... I mean, where's the motivation going to come in the strategic planning to get people motivated to even want to work in this field? I don't know. I mean, I've seen it from that side. I've been one of those guys that tried to call and couldn't reach his attorney. And I have now colleagues and friends who are attorneys who talk about how, for lack of a better term, how they feel like they're just crapped on in their job. And not just by the people that they work for but by the

community, like Chief Justice said. The community is so, I mean, they don't trust anything about the system anymore. And so I would wonder, in that strategic planning, where are we going to get a way to get the community back on our side? Or motivate people with degrees in law to even want to work in this field? I know it sounds pretty simple but it's a huge problem.

Chair Per Ramfjord:

Commissioner Thomas:

Commissioner Christine Thomas:

I would like to support what Commissioner Harvey is saying in this piece, a little larger piece of the plan. I absolutely agree that we do have deliverables we have to meet. I also wanted to say earlier I agreed with having stakeholders early in that conversation, both that being the clients that we serve as well as the lawyers that we work with and the other professionals that we work with. Most people don't want to bake a cake if they have not been involved in planning in the said baking of the cake, right? So, not only is it having the involvement of folks and having the buy-in, but also folks have great insight from working on the ground and being a part of the process that we may not see because we've been out of it for a while.

And I have seen in the work that we've done on the behavioral health side that you get great ideas when you're sitting in a room and you don't have to operationalize them. But once it gets to the point of being operationalized, that reality of what the world looks like, it can be very different. And if you do not have that information, all the planning that you can make in the room will not make changes in the system. So, the importance of having folks in that conversation. That is also important in looking at where we go. Commissioner Wax, I agree with you. I think we all can agree that public defense that is done in a fiscally responsible manner is absolutely important and what we want in the overarching piece of it.

But the question is how. The question is all the other pieces of how are we going to incorporate the voices that we usually do not hear. The question is in public defense now looks different than what public defense looked like even a decade ago. Particularly when we're talking about the folks with behavioral health conditions, whether that be psychiatric concerns, intellectual and developmental disabilities, or neurocognitive conditions. How are we going to make sure that those voices and those services are being addressed within our overall plan? And if those pieces of the

puzzle that we don't think about when we're just thinking about nuts and bolts, we're going to miss those pieces when we're thinking about the nuts and bolts, so it needs to be both. There needs to be this piece around what we're going to do now. We also need to think about the logistics, and looking at what it looks like for other options. But we need to have an informed approach from a higher level, that we will miss those logistical pieces that we have to include if we do not have that as part of the conversation.

Chair Per Ramfjord:

I just want to say for both comments, both Commissioner Harvey and Commissioner Thomas, I think that the goal of both the short-term and the longer-term changes that we're contemplating are designed to address the kinds changes that you're talking about. One of the reasons, Commissioner Harvey, that we really want to effectuate some systemic change that we talk about is that we want to make this more attractive job for people to come in and take, and that leads to a higher level of quality in the service being provided, and that leads hopefully to a higher level of client satisfaction in the services being provided. That's really part of the goal.

And even with the CAP Program, the idea is to improve the performance and the training of the lawyers involved, give better training to people, they're more excited about the job, you yield better results. That's what we're after. And I think part of the other aspect of this is that if we think about systemic changes, we also have to include the involvement of other types of professionals in the delivery of services that we provide that could address some of the needs that you're talking about. So, I think these are all important considerations, and they are things that should be folded into whatever we're talking about in the longer term. Commissioner Christ and then...

Commissioner Thomas Christ:

Yeah, I just pulled up the 2016 to 2021 strategic plan, the one that just expired. It's available on the website. It has three pages of background and then there are two goals. I. Provide competent, client-centered representation at all stages of a proceeding. II. Maintain a sustainable, accountable, and integrated statewide public defense system. Who could disagree with those goals? And the strategies for implementing them. Strategy 1: Build legislative support for public defense. These are platitudes and generalities that no one would disagree with. I have been on lots of boards and commissions and this is typical of every strategic plan they've ever come up with. We don't need to discuss this. We don't need a bunch of meetings to talk about this. Just change the title to 2021

going forward, and we'll all adopt it. It is never going to change from that level of generality unless and until we make systemic changes in how we do business, which clearly I'm all in favor of talking about.

If the Chief Justice's proposal for a deliberative process, I'm all in, and I'm gung ho for doing that and let's start that process and talk about things. I do not want to spend our valuable time twiddling with words like this and coming up with another plan that can't be any more specific than providing competent client-centered representation at all stages of a proceeding, unless and until we decide how we're going to change the way we provide that representation. So, let's not waste time on this. We've got a lot on our plate in the near term. The deliverables that we have to do, the contracts that you've already told us we've got to rush out the door in a short period of time, let's focus on that, let's get going on this deliberative process, let's not spend a lot of our limited time on strategic planning, coming up with documents like this. That's a complete waste of time. That was the reason why I moved to table this thing last time and I don't want it to start up again. But let's get on with the stuff that we need to do. Like the Chief said, in the short run and in the long run, and move on.

Chair Per Ramfjord:

Commissioner Thomas.

Commissioner Christine Thomas:

I hear what you're saying. And I think that sometimes with strategic planning, that is the downfall of strategic planning, in general. Where do we want to go without thinking about how we want to get there. And there's multiple levels to that conversation. There are the nuts and bolts of what we need to do right now. There are also the logistics of how to get to those visions. And sometimes it's just talking about the vision and not talking about the logistics, what needs to be in place for us to get there. And that is both in the crises that we need to solve now but also with where we want to go in the future.

And that's what – you're right – that's where it ends a lot of times. A document is created, awareness has been raised. But generally, as we all know, just because you raise awareness to an issue does not mean it is magically solved. So, the question is how. I think that a conversation about what needs to happen now, informed by where we want to go, but also a conversation around the how of the larger issue is important, and keeping that in mind as well. We know that we want to get there. How will we get there? But I agree with you.

We don't want to stay in creating a document and not having a conversation about how we will get to that vision.

Executive Director Stephen Singer: I'm sorry, Commissioner Wax, please.

Commissioner Steven Wax: Chris, I think what I heard from the Chief and what I heard from Per is precisely the how.

Commissioner Christine Thomas: Yep.

Commissioner Steven Wax: And the how is we need to get the buy-in from the legislature, the executive, and the stakeholders. And that is, as I've been viewing it, not a high-level thing. Which I agree with Tom, it's what I've been trying to say, to have any more discussion about that to me is a waste of time. If we're going to have the mid-level, and I disagree with calling it the mid-level because I think it is the core of the planning that needs to take place, let's get going with that, let's get going with that and the how is, I think, as the Chief has said, get these other stakeholders and the people with the money together and let's start having those meetings. We don't need any more discussion.

It may be a given from Tom's and my perspective, when he reads client-centered representation, that includes all of the ancillary types of things that you were mentioning. The mental health – this type of mental health, that type of mental health, the addiction – all of the services that clients need. That's what is subsumed in and understood to be part of client-centered representation. So, the how, I think, and the specifics of the what, are what I'm saying let's get going. And Steve Singer, if your answer is, "The legislature has not told us that we have to do anything more on that level with Coraggio," stop, we're done. Let's focus on getting a meeting together with all of the people that the Chief and Per are talking about and let's bring in the expertise that is needed so that those discussions can be as informed as possible. I don't know, are there motions needed, Per? For...

[Crosstalk 01:39:38]

Chair Per Ramfjord: I think that what I sense from listening to everybody, and I'll be happy to be corrected if I misstate it with this, is that I think everyone here agrees that we would like the agency to come up with a proposal for how this type of engagement process could work. I think that the executive director should consult with the

Chief, should consult with the legislative leaders as appropriate and help them to develop this plan. And the plan should take account of the types of stakeholder engagement processes that have been proposed in the past but have not been accomplished. And that they should come back to us with an outline for how they envision this could potentially work. And also that involves some planning for how to actually get it started. And if there needs to be involvement by the commission, if there needs to be involvement by other people, that we can get the other people engaged and involved in that process. That is a longer-term planning for systemic change process that I think could get underway. They should have a plan. I think we already have given direction, so I would say that we want the agency to do that.

I would say that we've also said we obviously want the agency to accomplish what needs to be done to comply with House Bill 5030. We want regular and consistent updating on how we're doing on that. And if there's anything that the commission needs to do to ensure that we accomplish those goals. I also think that we obviously need to address the contracts and we're doing that. And then finally, if I mentioned governance issues or things like that, that is what I would call agency housekeeping or commission housekeeping.

So, I think it would be great if we have a better developed sort of not necessarily plan but calendar for how we're going to address those, when we're going to address our priorities, how we're going to set up the commission agenda meetings. To some extent, we could have at some point in time further discussion about the level of commission involvement in day-to-day business, commission communications with staff members, things like that. I think that's still something that would be good to get resolved. I don't think it's going to take a lot of time but I think it's something that we should get resolved. So, those are the buckets that I sort of see that we want to address. And I don't think we need a motion to that effect. But if people disagree with that, let me know. Otherwise, I think if the executive team has questions, let us know, but I think that's kind of where we are.

Commissioner Steven Wax: Here, here.

Executive Director Stephen Singer: I guess just from listening to all of the comments from the various commissioners, I think one of the things, I mean, I hear Commissioner Wax and I hear Commissioner Christ, the things that

you're saying, I do not think we need to delay anything [Inaudible 01:43:18] in order to do both things. In other words, I think that both things can and need to happen at the same time, given the timing that we're working on and what the Chief Justice has outlined. I do think that you do see from the commissioners that there are some disparate pieces here that do need to be brought together. There are the HB 5030 deliverables that we need to have a way to produce for LFO and for the legislature in a way that they find acceptable and that meets their needs. So, we do need to have a way to produce that.

We also need to address the issues that Commissioner Thomas and Commissioner Harvey have raised as well as what the chair has raised in terms of the governance issues. And I see the part one of the proposal as being the way to tie all of those things together, to produce the 5030 deliverables, to address the governance issues, and to have the overall planning that ties all of these things together. I do not think that, because I do not believe that anything that will come out of that will either constrain or restrict in any way the other things that the commission wants to do and the things that Commissioner Wax and Commissioner Christ have focused on, in terms of immediately addressing the overall service delivery model, the contracting scheme, and how we actually implement the deliverable services. I think that can happen at the same time and we can focus on those. But we do need a way to produce for LFO and the legislature something that addresses their concerns, and we do need to do that.

Chair Per Ramfjord: I don't disagree with that.

Executive Director Stephen Singer: So, I think we can do both of those things.

Chair Per Ramfjord: But I think that what you're hearing from the commission today is that we don't want to spend time developing a traditional strategic plan.

Executive Director Stephen Singer: That I heard.

Chair Per Ramfjord: I think we've done some planning today, actually, in terms of how we want to move forward. We want to have a plan for how we're going to address 5030. We want to have a plan for how we're going to develop the type of longer-term systemic change and process, stakeholder process that we discussed, and we want to incorporate in that plan how we can improve our setting of agendas and day-to-

day function. Those are the priorities I think we've set for today, or we've set for the year. So, I think we've done some planning on that regard. I think that if there are ways in which you believe that the Coraggio Group can continue to be involved and assist with those goals and ensure that they're met appropriately, I think that's all well and good. I don't think we're disagreeing with that. Is that fair to say?

Commissioner Thomas Christ: It's April and you owe something to the legislature in May and you're proceeding at a pace, as I understand, and I don't think you need any more direction from us on that, okay?

Executive Director Stephen Singer: Okay.

Commissioner Thomas Christ: The next thing is we've got contracts due July 1. And just this morning, we set a schedule for dealing with that, and it's going to take commission involvement but we've got that laid out. The third piece of the puzzle for me is the long-term systemic change discussion deliberative process taken. That's where we need you to come back and tell us how that's done. I assumed it was going to take a year, maybe longer, to survey other states, look at all the different systems, compare it to ours, do all that sort of thing. But if you could give us some guidance on how that is going to be done, and the people you want involved in that, per the Chief's discussion. I know she sent out an invitation to the governor and the legislature and I assume they will accept the invitation. It's a great idea and she's very persuasive. But that's the one thing that we need from you, hopefully at our next meeting, is how you propose to get that process underway and on we go. But the other two things, you're doing the one and we took care of the other this morning, and I really don't want to stop all of that and spend time on a strategic plan that I don't think anyone in this room would agree with the present one what could improve upon it.

Commissioner Steven Wax: And I would add to that that when you're talking about, "One doesn't preclude the other." I'm not sure what the one that you're talking about is, beyond continuing with the internal reforms, changes, modernization, and work on the deliverables. If that's the one you're talking about, great, I have no disagreement. But if you're talking about spending staff time and involving commission time in further meetings with the Coraggio Group to talk about strategic planning and wordsmithing and how to involve this for that, my view is we don't have the time for that, that should be the lowest priority. And I personally do not want to spend any more of

my time engaged in any discussions of that nature because we have far more important things to be dealing with. So, if you're contemplating and saying the two things can go together, spending staff and commission time in engagement with Coraggio to talk about the types of things that Tom has just read us exist already from 2016, I would disagree with and urge you not to do that. And if that's not what you're talking about and you're just talking about continuing with what you have been doing, and I think it is critical for everyone in this room and in the provider community and legislature and judiciary to understand, you have been doing a tremendous amount of work and have accomplished a tremendous amount of internal reorganization and modernization.

You, Steve, since you got here in December, and you, the entire OPDS community and staff, since the legislative, you have done so much. Everyone needs to understand that. That we're all talking about this but no one has been sitting around twiddling their thumbs. And to the extent that there are things that fly back and forth that I see on the Pond that suggest that, that is just factually inaccurate. And it is critical for all people listening to this meeting to understand that OPDS has been working as hard as it can, and as I have perceived it, in a meaningful and efficient way to accomplish what is a herculean task, in intolerable conditions, with inadequate resources that are not the fault of OPDS today.

There were problems for sure in the ways things were presented in the past, and that is changing. So, I think that that also needs to be out there for everyone to be hearing. And we owe such a debt of gratitude to the work you have done and to the work that the chair of this body did over last spring and over the summer, to step in and fill a very unfortunate void that existed in leadership that no longer exists. And I get annoyed sometimes when I read some of the things that go by on the Pond because they are just inaccurate. And I'm sorry that I've taken time to point that out, but I think that it is important for all people at OPDS to know that what you're doing is appreciated, at least by some people who have extensive experience doing indigent defense work.

Commissioner Thomas Christ: Here, here.

Executive Director Stephen Singer: I appreciate that and I do hope that, for example, the information that we have provided to all of the commission, some information that we provided in response to a request from Commissioner Thomas, and also some requests from Commissioner Christ in terms

of spreadsheets and data, reflects that we have never had that kind of information in this usable form previously. And so part of that has been all the work that, certainly not me, but the rest of the OPDS team has been doing, particularly the research and data and contracts team to produce that. All I see, I think in terms of the part one, all I see trying to produce out of that is the deliverables that LFO and the legislature want and are necessary with respect to the \$100 million SPA holdback, with the additional... The only thing I would add to what Commissioner Wax listed in terms of the things that should be focused on would be the governance issues raised by the chair, which again, I agree with the chair, should not and don't need to take a ton of time but are just some clean-up things that we need to do to get our house in order.

Chair Per Ramfjord: So, I think with that, I think we've addressed this issue sufficiently on strategic planning. So, I would suggest that we take a short break before we start in on the discussion of the contracts. Why don't we take 10 minutes?

Executive Director Stephen Singer: Thank you.

[No dialogue]

Chair Per Ramfjord: ...get started again. I don't know if it's just me but this room was really warm when we started and now, it's getting chilly.

Female: You want me to crank it up more?

Chair Per Ramfjord: Yeah. If you would, that'd be great.

Male: And you are live, sir.

Chair Per Ramfjord: All right, thank you. All right. Thank you, everyone. Welcome back to the meeting. The next item on the agenda is really, a discussion sort of of the nuts and bolts of the proposed 2022 contracts and changes therein.

Executive Director Stephen Singer: This is Stephen Singer, Executive Director of OPDS. I would like to kick the discussion off with going into what we have done and where we are at on the July 2022 contracts. As I indicated at the beginning, I think this will be helpful on a number of levels in terms of understanding the limitations that we have both in terms of time and complexity. I also think that understanding what needs to be done in terms of constructing contracts under the current system

will also help everyone gain an understanding of the flaws, the weaknesses and the problems with the current system because of the things that it requires us to go through. I think it will also inform everyone's thinking about delivery system and that sort of model.

Just to give everyone a sort of a basic overall roadmap, I'm going to talk about one, the overall policy objectives that management approached in looking at the July 2022 contracts and what changes we needed to make, the forecasting process and forecasting what our needs are. I will say as a preview, forecasting currently, that's probably a bit of a stretch. I would call it more in the projection realm than forecasting. And then finally, developing and applying some caseload standards and some standards to our forecasting needs. First of all, in terms of overall policy objectives. First, we need to any unique... I think it is evident from what is going on with this year's contracts and where we are at in terms of the current crisis, that part of that is a product of just inaccurate forecasting and inaccurate contracting. We have not contracted for the level of need that we needed and that obviously materialized during this year.

Part of that is what we are seeing, is in our current crisis. One of the things I want the commission to understand in particular is that when we talk about hourly rate contracts and particularly when we talk about the number of hourly rate contracts for serious cases, homicides, Jessica's Law's cases, Measure 11 cases. The higher the level of hourly rate contracts, what that illustrates and what that brings to light is defects in the contracting and in the forecast model. If you are forecasting accurately and you are contracting accurately, you should be reducing to a minimum, the number of hourly rate contracts. Anytime you see an hourly rate contract... I shouldn't say any time.

When you see significant numbers and significant expenditures in hourly rate contracts, that is reflecting inaccurate forecasting and inaccurate contracting. There will always be some due to conflicts, due to the level of number of conflicts, some inaccuracy in forecasting and overflow. That's to be expected. But the level that we are currently experiencing is simply not tolerable. It is not sustainable. We need to reduce that through better forecasting, and better forecasting by case types. Secondly, we need to update our standards, our caseload standards to reflect the actual workload. I think that's what we see from the ABA workload study. It needs to be broken out by various case types.

To put it bluntly, what was used this last year was basically the NAC standards, the National Advisory Council standards with some cushion built in, the NAC plus 15 standard. I'll address that. The other thing things we need to do was give the agency greater flexibility to deal with fluctuations in caseloads across jurisdictions, so we have across jurisdictions and creating a mechanism for prioritizing the most serious cases. Just to give you an idea of what that means in more concrete terms, the current contracts for example, under the NAC standards, all felonies are treated the same. 150 cases across felonies is they are all treated the same under the NAC standards. That's just, it's not realistic. It's not practical. It does not reflect what actually happens on the ground.

Anyone, I mean, it is obviously a Jessica's Law case versus a Class C felony like an unauthorized use of a motor vehicle. Those are not the same cases. Those do not require the same amount of time. That's what is reflected in the ABA workflow study. Under our current contracting model, they are all treated the same. That's ridiculous. That's absurd. That doesn't look like reality. We need to update those standards in order to have flexibility. Then the final piece of the puzzle is something we are still working on. We don't have enough to really give you because we're still working on building out the model, but is to develop or at least get the beginnings of a pay scale.

Under our current FTE model, all FTE, all full-time equivalents are treated the same. If you're in an urban jurisdiction and the full-time equivalent under the current model is 211,150, if 400 misdemeanors for example, under the NAC standards is a full-time equivalent and 15 homicide cases is a full-time equivalent, under our current model, those both are funded at 211,150. Well, I do not know any law firm, let alone in business but I certainly don't know any law firm that pays an incoming associate the same amount as the managing general partner. That doesn't make any sense to me. That doesn't reflect the real world. I don't understand how we would operate. But under our current contracts, that's what we do.

Misdemeanors which can be handled by clinics, law students who haven't even graduated and passed the bar handle misdemeanors and certainly first- and second-year attorneys just out of law school who handle 400 misdemeanors are treated the same as someone with 7, 10, 15 years' experience, which is what is needed to handle serious felony Jessica's Laws or Measure 11 or murder cases. They

are treated and funded the same. As I said, I don't know any law firm that operates that way. That doesn't make any sense to me. Commissioner Thomas, you have a question.

Commissioner Christine Thomas: I agree that they shouldn't be treated the same. I also though, just want to talk about misdemeanors particularly, when we're talking about folks with behavioral health concerns, intellectual and developmental disabilities and neurocognitive conditions and also substance use disorders. When you're talking about, at least from what I've heard, I'm not a lawyer, behavioral health, but what I have heard from folks and what we see nationally is that misdemeanor cases can take up a lot of time because of those issues. Particularly, if you're looking at diversion and deflection options, those can take a lot more time than the standard status quo as far as the operating procedure for that.

I just want to make sure that we're keeping that in the back of our minds when we're thinking about contracting and we're talking about misdemeanors and how important misdemeanors are. A lot of the times, when we talk about justice reinvestment in Oregon, we spend a lot of time talking about felonies and prison, and we should. What we do not talk about though is misdemeanors and the impact that those have on people's lives and how things can snowball and folks end up with greater penetration into the criminal justice system.

I want to make sure that when we are talking about felonies versus misdemeanors, you're right, they are not the same. But there is considerable skill that is helpful in those cases particularly and when working with clients who maybe can, dealing with considerable challenges particularly when you are working with other people in the system, that we need to keep in mind when we're thinking about how those cases are funded. I know a lot of the time, from what I'm hearing from folks, that those cases end up going to the folks who are just fresh out of law school. It can be very challenging because they do not have the experience of working with that client type nor with the experience of working within the larger system around diversion deflection options.

I just want to keep that in mind when we are talking about that, the nuance that just like all case types are not the same and we shouldn't treat them as the same, there are factors that as part of these case types, a lot if you look statistically, the folks with behavioral health conditions, we're seeing a lot of misdemeanor

cases. We need to keep that in mind when we're thinking about how we're funding these. And also, how we make sure that we are acknowledging the expertise and the special work that goes into those cases when we're thinking about contracting for them.

Executive Director Stephen Singer: I think that those comments are really well taken I think a couple of the key things that I think I'd like to emphasize from your comments is one, is looking at these cases, and I think a lot of this ties in with what Commissioner Wax was talking about in terms of funding and how we develop a system to address those cases, is we do have to look at it as this is where public defense and public safety meet each other because a good well-funded well-organized holistic public defender system that addresses those cases properly becomes a partner in the public safety system.

Because the role that public defense plays and the unique way in which we have a relationship with our clients allows us to help the system identify, especially at an early less serious level of case, identify what is bringing this person into the criminal justice system. Is it a mental health issue? Is it a substance addiction issue? Is it an education and employment issue? Is it a family issue? If you have properly resourced public defense professionals involved at those levels, then the public defense system becomes a partner in public safety by helping to identify what is the source that brings people into the system at an early less serious stage and therefore, contributes overall to public defense, to public safety by directing people to the right types of services that can help address those needs so that then they are not then coming back into the system at ever more serious levels which impacts the community.

I do think that one of the keys, when you look at that though, is not just the attorney and the experience level of the attorney that is there but the support services that are provided. Training, supervision and access to mental health professionals within for example, within a public defender office, access to substance addiction experts, housing and employment service experts who can connect people up with those services. It is those services, those additional add-ons so that it is not just used as an attorney issue but that you have these other professionals.

I do think that that is something that we need to look at and that connects up with the service delivery model and how we structure the service delivery model and whether that sort of thing can be done when you look at our map and you have all of these individual

law firms as opposed to what a public defender office, a holistic public defender office which has all of these support services that can be provided where you have training, where you have supervision. So, while you may have less experienced lawyers handling that in those cases, you have very experienced lawyers who are supervising and then they have access to those kinds of experts.

Chair Per Ramfjord: Yes, Commissioner Solomon had a comment.

Executive Director Stephen Singer: Yes

Commissioner Paul Solomon: A couple comments. One, regarding the misdemeanors. I think one of the solutions that needs to be considered is serious reforms to our misdemeanor laws to decrease the criminalization of a lot of really low-level crimes. But the comments that I wanted to make have more to do with the contracting model vis-a-vis the backlog of cases. Director Singer, I appreciate your comments and support the need to address the flawed model with the NAC standards. I also agree that we need to be weighing the attorney rates differently but I didn't hear you say anything about how you hope to address the COVID backlogs. Personally, I recognize that we have attorneys that have cases that have been hanging on the books for years and this is driving this huge backlog. I'm going to have a hard time supporting a new contract model that doesn't address those backlogs. Please help me understand how you hope to address that in this new contracting model.

Executive Director Stephen Singer: I'm going to try but whether or not it's wholly satisfactory, I don't know that we'll get all the way there but I think that is a discussion that once we get through where we are at on the contracts, I think Commissioner Solomon, you should bring that issue back up because that is an issue that confronts us that we need to work with. As I go through this, I'm sure you will listen closely but I think we will want to come back around to that toward the end.

Commissioner Paul Solomon: Okay.

Executive Director Stephen Singer: All right. Those are sort of the high level or high-level overall objectives. As you all know, we currently are operating under an FTE model. That is our current model, for better or for worse, that is something that we should look at addressing and changing. I think there's widespread agreement on that, both within the commission and the public defense community as well as in the rest of the

criminal justice system but it is the current model. The first step in terms of contracting given this current model is we need to forecast or make projections on our current needs. The way we look at our current needs is we have to look at our current needs. We can't just look at overall current needs in terms of FTE.

We have to break them down by case types because we have needs at different levels. In the adult, we currently qualify attorneys at four different levels — misdemeanor, lesser felonies, major felonies and murder. When I think about it, I think about it in terms of actually six or seven levels but it's just not practical at this point given where we are at to not address things at our current qualification levels. And then in the juvenile arena, we have two different types which are case types and qualifications which are juvenile delinquency which are, just so everyone is clear, juvenile delinquency is cases that would be in the adult criminal system but for the age of the accused.

And then we have care and dependency cases which are really complicated in Oregon because the public defense system, the same system handles both parent representation in care and dependency cases and child representation. I will tell you in all of the jurisdictions that I've practiced, and this is the only jurisdiction that combines those two in the same system. Usually, those two are separated. There are systems where they are combined but I haven't practiced in one where they're combined. It creates a lot of complexity especially in terms of conflicts. In most public defense systems, the parents are represented by the public defense system and children are handled separately.

The reason for that is the parents in care and dependency cases often also may have cases in the criminal system. So, they are the same client base. Whereas, the children are a different client base and it creates conflict issues which stretches our system. All right. We have to cover all of those different case types and then we have to do it in each jurisdiction. In other words, having statewide projections doesn't help you because you have to break it down by jurisdiction. Because obviously, lawyers in Multnomah can't physically handle cases out in on the eastern frontier in Malheur or Harmony or other counties. Now, forecasting for this year — that is a difficult process in any year.

That is a complicated difficult process to do across case types and across jurisdictions in any year. This year is magnified a hundredfold

because the problem is that the data that we have that is useful or good data is old. The data that we have that is recent, that is close in time is not very useful because it is affected by the pandemic. I can tell you, there are no models for forecasting coming out of a pandemic, there just aren't. Trying to base this on prior models or models that you would use in a normal forecasting system, they just don't exist. We had to break this down by case type, by jurisdiction in a much more granular fashion.

You will see that it creates... There is no one forecasting model that we were able to use to capture all of the different case types given what we were seeing in the data looking at it over the past five years. We had to come up with different methodologies for addressing different types of cases because the different types of cases in different jurisdictions were affected differently by the pandemic and just at a basic level. So, you have a concrete... So, I can give you because of the concreteness, right. Murder cases and misdemeanor cases are affected very differently by the pandemic. If there's a dead body, the fact that there's COVID or pandemic doesn't change the fact that those cases are investigated.

There's an arrest made. They are prosecuted, COVID or no COVID. On the other hand, misdemeanors, low-level misdemeanors are dramatically affected by COVID and the pandemic. There may be choices not to arrest and not to pursue and prosecute those cases. And then there are differences across jurisdictions how misdemeanor cases are handled and whether prosecutions are very different in Multnomah may be handled one way, okay, in Grant or Jackson County, they may be handled very differently based on how the court system. All of this is to say it is a really complicated process and we need to develop different methodologies.

What we have done in terms of forecasting, just to start at a basic level, for serious felony cases, Jessica's Law's cases, ballot Measure 11 cases, Class A felonies, what we did, and you're going to hear two different things. We were looking at two different data sets. There was publicly available OJD data and provider source data that we collected. One of the things you have in your spreadsheets that we send to you is basically provider data and we've got OJD data. However, one of the things to recognize is OJD has let us know that there is public OJD data and then there is more data behind it. The data behind it, OJD itself is not completely confident in that data.

So, they don't want that data being used as a primary. They have made that clear to us because they don't have confidence in their own data. Which is just to say all parts of the system are struggling with data. The other thing that I'm completely reminded by my Deputy Director Brian DeForest and my budget and finance person, Ralph Amador, is that we currently do not have, and this is something that we need to develop, is state agencies are not sharing data in a way that other jurisdictions do as a matter of routine. In other words, we don't have law enforcement, state police crime data. We don't have data from the mental health system. We don't have data from Oregon Youth Authority on juvenile data. We should all be sharing and working off of the same data. That is not how it has been operating in Oregon.

We need certainly to move to that system if we are going to get a public safety system that all works together, all parts are working together but we don't have that. So, we work with what we have. For the serious felonies, what we did was we used provider data because it was more accurate than the OJD data. We used a five-year, we went back five years and used an average of that data. The reason we did that is because what we saw in the data was that as you can imagine, charging decisions and prosecution decisions for serious felony cases were not affected by COVID significantly, right. There's a Jessica's Law case, and the fact that there's COVID or not, the pandemic notwithstanding, those are going to be processed.

Those are going to be pursued and prosecuted. Using a five-year data set allowed us to create a larger data set which hopefully provides us more accurate forecasting. What we saw in the data is a relatively consistent trend slowly upwards. It is increasing. It is increasing though at a relatively moderate level. So, we are projecting an increase in that area but not a dramatic increase, a relatively small increase. That's what we are forecasting. On the other hand, so in murder cases, okay, that, we had to use OJD data. One of the reasons we had to use OJD data as opposed to in the serious felony category where we use provider data is that if we only used provider data, we would have excluded the problem I talked about earlier with all of the hourly rate contracts because that is not captured.

All of those hourly rate contracts is not captured by our provider data from the provider contracts because that only reflects the contract information. So, we would be missing a whole host of homicide cases and not building capacity to handle those cases,

which is what we did last time which is what has led to the current problem of having so many of those cases being handled by hourly rate attorneys. So, we used OJD data. The other thing that was not reflected in this year's contracts that we are building into next year's contracts and our forecasting model to be more accurate is co-councils.

We currently require co-councils in first-degree murder cases and they are permissive otherwise in other homicide cases. That was not built into this year's model. Obviously, if you have co-councils, that doubles the number of attorneys you need there. To just simply ignore that in your forecast model obviously, is going to be a huge defect. So, we are adding that. Commissioner Wax.

Commissioner Steven Wax: Mr. Singer, help me please understand in terms of the inability to use provider data. All people who receive a contract to handle a murder case are receiving that contract through OPDS.

Executive Director Stephen Singer: Correct.

Commissioner Steven Wax: Why are you not able to just do a hand count of the number of contracts left in any given year or the number of contracts that are currently pending? My understanding of the homicide rate in Oregon is that while it is in some respects large, in the grand scheme of things, it is a relatively small finite number. So, you can know from a consortium or a public defender, how many homicides they had. They're reporting that. But you have to know within the agency how many contracts were left. Why was that not something that was seen to be easily countable and then compared with the numbers that are coming out of OJD?

Executive Director Stephen Singer: We do do that.

Commissioner Steven Wax: Okay.

Executive Director Stephen Singer: We do compare the two. The thing I wanted to make sure what was clear is that the hourly rate contracts are different.

Commissioner Steven Wax: Understood.

Executive Director Stephen Singer: There aren't the same reporting requirements but we do have the hourly rate contracts that we have entered into.

Commissioner Steven Wax: And you can count those.

Executive Director Stephen Singer: And we can count those.

Commissioner Steven Wax: Why was that not seen as something that should be done if you believe that the OJD data has reliability issues, so you use the provider data for the major felonies? Why could you not use the provider data from those people who have contracts that require reporting and then just do the hand count of whatever it is 20, 40, 60 contracts that are left for individual representations?

Executive Director Stephen Singer: Two things. One, is it's a moving target, so your data is going to be constantly moving. Two, the second thing is that the OJD data and the publicly available data on homicides. The other thing you have to look at is how far back you can look because our data with respect to hourly rate contracts versus regularly contracted data is different when you go back in time. The other thing is in terms of homicide cases and the percentage of those cases that end up being handled by the public defense system, it's nearly 100%. So, the OJD data is very accurate for the homicide cases.

Where it is not for other case types because as you can imagine, one of the problems with using OJD data for other case types is that for the courts, as you can imagine from the court system perspective, from a clerk's perspective and a clerk in Grant, Grants Pass or whatever, for a clerk there, whether a particular or lesser felony or even a major felony case, whether it's being handled by a retained counsel or a public defense counsel doesn't affect their court operations. As a consequence, that data tends to be not that accurate. Homicides are different in the sense that it's nearly 100%. The number of homicide cases that are handled by private retained counsel is so small that it's relatively de minimis. So, that data is quite accurate for us.

Eric Deitrick: Yeah, Executive Director Singer, Chair Ramfjord, Commissioner Wax, I can jump in for a second. I want the commission to have some clarity about what Mr. Singer is talking about regarding murder cases. We have two types of providers. We have attorneys under contract and then we have individual attorneys who as of now, are not under contract with the agency. One of the things we will be presenting with you before July 1st is we are going to start having those hourly attorneys sign an agreement with the agency to clarify their responsibilities on how they interact with the agency.

We don't actually have that right now. Part of the challenge on murder cases in particular, particularly as homicides have gone up and we rely more on our former death penalty attorneys to handle homicides who used to be under contract, they are no longer under contract. So, the agency kind of gets information from two different parts of the community. Our contracts team and our contracts analysts deal with about 95 to 96 percent of the system which are the attorneys who have direct contracts with OPDS. The other 4 to 5 percent or so of the caseload in the state bills the agency hourly and they don't go through the analysts.

They go through our accounts payable division because they are not getting credits under a contract for a case or receiving credit. They're billing hourly. That's, particularly with murder cases, a lot of our contract entities don't have attorney capacity to handle homicides. So, for those particular cases, part of why our DOJ data is more accurate is because we definitely rely on hourly providers rather than contract attorneys more for homicide cases.

Commissioner Steven Wax:

All right. So, I'm using the wrong phrase then if you're distinguishing between hourly attorneys and attorneys who are under contract to handle things. Good. Thank you. With respect to hourly attorneys, did I just hear that you are changing the system so that OPDS will be able to track what those lawyers are doing, how many cases they have and the hours they're putting in etc.? Is that in the process of being changed for the next biennium?

Executive Director Stephen Singer:

We will have contracts. The level of detail of data will be, like for example, we're not ready, we're not able to... We're ready to get like for example, hourly. We'll get hourly input but obviously, our ability to track that is going to be limited. But yes, the answer to your question is yes, going forward, it will be part of contracts rather than just do it on a case-by-case basis.

Commissioner Steven Wax:

Good. Thank you.

Executive Director Stephen Singer:

Sure. We ended up with murder cases for example, we are forecasting overall, a 21% increase which reflects the average increase in the murder rate over the past three years. We have also calculated in a 30% increase on top of that to account for co-council cases, which covers the mandatory ones in Murder 1 and the permissive ones in other types of murder cases. That handles the two most serious levels. Again, you're already seeing the complexity of this. Now, when it came to minor felonies and probation

violations, for our forecast, we are using provider data and we have decided to use 2021 data to project 2022 in to 2023.

The reason we have done that is that, is one, we needed to take out, we did the same thing with misdemeanors, we needed to take out the 2020 data set because it distorted because of COVID and its effect on minor felonies and its dramatic effect there by jurisdictions. It was going to distort the data. If we used a five-year data set, we believed we would end up with a heavily over-inflated number of lesser felonies. A lot of this is affected by the fact that there have been a lot of changes to the law taking lesser felonies and reducing them to misdemeanors where previously, they would have been lesser felonies.

If we took a five-year data set which would have been free of the recent changes, a lot of changes to the law that dropped a lot of lesser felonies down to misdemeanors, we would have way overestimated our needs in the lesser felony category. What we decided was most accurate was to use provider data and project forward off of the 2021 data which again, removes the COVID, the 2020 COVID effect and the legal changes. For misdemeanors, what we did for misdemeanors was we used a five-year average but we took out again 2020.

Because if we included 2020 data, which was dramatically affected, like if you looked at Multnomah County and from up here and it just goes down a cliff. I mean, if you've ever seen employment numbers over the past couple of years, obviously, if you look at the employment numbers, you would see in March and April of 2020 all of a sudden, it just falls off a cliff. That's what happens with misdemeanors. So, we took out the 2020 data because of the dramatic impact that COVID had, and then used the remaining four years of data to project out. It projects a significant increase in misdemeanor cases. We project that coming out of the pandemic, there's going to be a significant increase in misdemeanor cases.

When you combine the changes, the legal changes reducing a lot of lesser felonies to misdemeanors and then increased arrests and prosecutions because we're coming out of the pandemic, we're anticipating a significant increase in misdemeanor cases. Finally, for civil commitments, what we saw in the data and civil commitments was that over the past five years, it has been relatively constant and relatively consistent. COVID did not seem to have...the pandemic did not seem to have a significant impact on the case numbers if

you look at them from year to year over the past five years. So, we are using provider data over a five-year period because it gives us a much larger data set which gives us more confidence. We didn't see the COVID impacts for that.

And then for juvenile contracts, what I want to talk about is in our forecasting for juvenile contracts, one of the things to recognize is that almost all providers who provide juvenile services provide both juvenile delinquency and care and dependency. They tend to do both. The numbers there are driven heavily by care and dependency cases. The number of juvenile delinquency cases is relative... It forms a very small subset of our overall service provision. Care and dependency is the driver in juvenile cases. It's important to recognize that. In any event, for non-PCRP juvenile delinquency, we used OJD pretrial dashboard data from 2021. We are projecting a significant increase because we believe that that data set is heavily influenced by COVID.

For one, just if you look at schools. Schools closed versus schools open is going to dramatically affect and increase the number of contacts that youth have with adults, with teachers, principals, law enforcement community. So, we are projecting a 50% increase in delinquency violence in juvenile delinquency. We were projecting... Part of this is we looked at the first 3 months of 2022 which showed a 43% increase in juvenile delinquency filings over the first quarter compared with the first quarter of 2021, which again, I think is largely due to the reopening and the impact of COVID. We wanted to account for the fact that reopening is increasing and give us a cushion. So, we upped it from 43% to just 50% to account for continued increases as we go forward.

In non-PCRP dependency and TPR cases, we used OJD data from 2021. In looking back at the data, that was less affected by COVID but still is going to be affected. We are projecting a 5% increase in dependency filings for the next year including termination of parental rights cases over the last five years. We rely a lot on provider data and provider expectations, which I should acknowledge that when we're talking about provider data, a lot of that is also coming through our contracts team which works with the providers and the contracted providers. I want to just give credit to our contracts team which was involved and has been in the room on a day-to-day basis and really assisting us.

This is not just all research and data based but also, includes qualitative data from the provider community through the contracts team which is here. So, if you have specific questions, they are here to assist. But basically, provider expectations are that with reopening of schools, we're going to end up with increases in both delinquency and dependency filings over the 2021 data. That's where we're at. For PCRP delinquency and dependency cases, one of the good things about PCRP and one of the huge advantages of PCRP is our own data is much, much more reliable and usable and in a usable format because it comes in on a regular basis. It is regularly cleaned by our data and research team.

So, it is much more usable and ultimately, that's where we need to get on the adult criminal side as to where the PCRP data set is. But we used their data to forecast cases by case type. Applying similar assumptions, we are anticipating an increase in filings for those case types, the same 50% in delinquency and 5% for dependency and TPR cases. One of the things that we looked at when we did non-PCR and delinquency cases is using the PCR data was a way to also validate what we were projecting and what we were seeing in the provider data for the non-PCR jurisdiction. I think that also gives us an increased level of confidence.

As you can see, the models are different for different case types just because of how the pandemic and other factors are going to affect our forecasting, our needs in the different areas. That gives us a forecast of what our FTE needs are going to be and then we are applying that methodology by jurisdiction because we have to because obviously, we have to contract in each jurisdiction for what we forecast our FTE needs to be. That's what we did in terms of coming up with our forecasting methodology. One of the things you can see in terms of that's problematic about this system is it is extraordinarily complex. It is too complex because in the more complexity there is, the more you are taking on risk of error, right. Because the more complex the system, the more likely you are to have errors in the system. So, that just reflects weaknesses.
Commissioner Wax.

Commissioner Steven Wax:

Very helpful to understand your forecasting methodology. But the second step, I don't understand. That is, what formula are you using to determine the FTE? Are those still the NAC standards or are you using something else?

Executive Director Stephen Singer: So glad you asked because the next thing on my piece of paper is standards, caseload standards.

Commissioner Steven Wax: Thank you. Sorry.

Executive Director Stephen Singer: No. Excellent segue. Teed it up perfectly. That is exactly the next place to go to is once you get your forecast for what your caseloads are going to look like for the various case types, you now have to have standards so that you can determine what FTE you need in order to handle that case level.

Chair Per Ramfjord: Just before we get...

Executive Director Stephen Singer: Sure.

Chair Per Ramfjord: I am a little bit troubled by the level of difference that we're seeing by the level of increase that we're projecting in several different case types. I'm troubled by it because at least some of it seems to have been the result of failing to count co-counsel or not actually calculating what's appropriate. I think we are open to criticism from the legislature if we can't get this right. I appreciate the detailed explanation. It's very good to hear about it but I think that this is just an area where we need to renew, redouble our efforts to get as accurate as possible going forward because I don't want to be in the position of the legislature not trusting our projections. It's just more of a comment than anything else, but.

Executive Director Stephen Singer: I think it's an excellent comment and it's one of the reasons I wanted to go through in detail and will be going in detail with LFO during this process. I think we want to be very upfront and transparent about what we've done, how we went about it, what our methodology was so that they can comment and give feedback to us if they see weaknesses or errors. But I do think we all have to recognize, once again, I'm just going to return to the fact that there are no good models to model and forecast caseloads in public defense coming out of a pandemic. It is very difficult and challenging. It is one of the weaknesses in the current system that we have to do it at this type of granular level.

If you have a statewide system, then you have a much more consistent level of service delivery and so you're better able to deal with the fluctuations that occur. You have more flexibility and you're able to deal with that. I mean, one of the things we all have

to recognize is our current model is essentially a market-driven model, right. We are contracting with the market, with independent contractors. No one else in public safety does that. You don't have police departments, you don't have law enforcement sending RFPs out every year or every two years for people to propose how they would contract to provide law enforcement services in Multnomah or Washington County or Malheur or any of these other counties.

You don't have court systems that send out... Multnomah Circuit Court system doesn't send out an RFP every two years and ask for proposals to contract with, privately contract within the market for providing court services. That is one of the problems that we have, is that we are trying to, and we need everyone in the system to recognize this, is I think part of the chief justice's call for the — we need the other actors in the system, the legislature, the governor's office and the judiciary to recognize that you have this three-legged stool in public safety where you have the courts, law enforcement which includes district attorneys and police and then you have public defense.

You have two parts of the system, nobody would think to do prosecution or law enforcement by contracting with the market but yet we have this third leg of the stool that is market-driven. As we all know, the market-driven, you're going to end up with the business cycle and we're subject to those [Inaudible 03:02:54].

Commissioner Thomas Christ: I get that point, but the other people, they don't do our piece but they do go to the legislature and ask for money. I assume that they do a projection of their caseload. It should roughly correspond to ours. Following up on the chair's point, we don't want to go there and make a projection that isn't going to be taken seriously but can't you compare it to what everybody else does?

Executive Director Stephen Singer: Executive Director Stephen Singer: That was one of the...

Commissioner Thomas Christ: Aren't the prosecutors going to say, "Here's what we think these cases are going to be?" Isn't the judiciary doing the same thing, everybody else, and you can look at other people's numbers?

Executive Director Stephen Singer: That's the problem. That is the problem. That's one of the things I described at the beginning is right now, the way Oregon state government works is the prosecutors, sheriffs and law enforcement and the courts and mental health and OIA and the youth

authorities, they are not sharing their data. They're just not. It is not set up where we can... I can't call up the DAs or DOJ and say, "Give us all your projections for next year's crime rates."

Commissioner Thomas Christ: They can't keep it a secret. They have to go to the legislature and present it at some point. It's a public record.

Executive Director Stephen Singer: I agree with that but by the time they do that, it's too late for us in terms of our current forecast. In other words, when they go, they will undoubtedly come up with forecasts that they will present to the legislature in the Spring 2023 session for their budget for 23-25. We cannot, as the commissioners during the earlier discussion on strategic planning, we cannot wait until law enforcement and these other agencies come out with their public projections for the Spring session before we develop contracts for July 2022.

Commissioner Thomas Christ: Okay. So, when you next talk to LFO who seems to be all powerful in this field, why don't you tell him that you want the numbers from OJD and everybody else because it will be meaningful to us? Whomever cough up the numbers. We're all in this together.

Executive Director Stephen Singer: We can do that. I believe Mr. DeForest who has great experience in working in various agencies and with LFO can try and address that.

Deputy Director Brian DeForest: Mr. Chair, members of the commission, Commissioner Christ, I'm Brian DeForest, Deputy Director for OPDS. You are correct in that there are entities that do go in front of the legislature and share data. We as an agency have not always reached out for that data. For instance, communications with Criminal Justice Commission have not always been robust enough to get information. I can assure you that Ralph Amador is opening doors and communication lines with CJC. He's also talked with the office of economic analysis to factor in different types of demographic information to help us forecast in the future using such things as age demographics, in particular, age demographic of males between the age of 15 and 45 and using that...

Commissioner Thomas Christ: I'm beyond that.

Deputy Director Brian DeForest: Yeah. Well, thank goodness I am too. But utilizing that in influencing our forecasts in the future. I will make a note, local police and county do not go through the legislative process. We have no way of reaching into... I was at one point in time, a reserve deputy with a county here in Oregon. At no point in time do we have the influence

of what the sheriff wants to focus on for a particular year. That's their prerogative. There is some influence that we will not have that will simply be elusive to us. However, we can do a better job of reaching into CJC and asking for help. If you also know, with the office of economic analysis, Michael Kennedy who has been doing forecasts such as this for many, many years, we've engaged with him. He's doing what he can to help us.

These are difficult numbers to go with as well. By the time we get to some of those forecasts, you're talking about an arrest that happens in one year and a case that occurs in a different year. So, we have to now wrestle with what does that timing look like. There's more factors to this than what I thought coming into the job. Both Ralph and I are learning. We are also reaching out to Department of Human Services. This is where Ralph is very valuable to us because he's participated with DHS and OHA, utilizes his contacts in the divisions there as well to help influence the directions of the bill.

Commissioner Thomas Christ: Okay. Well, my learning curve is way steeper than yours. I'm sorry I bumped you off track. Come up with the projections and now how do you turn that into...

Chair Per Ramfjord: I didn't mean to open up a hornet's nest. The legislature understands the effects of the pandemic. I just wanted to reiterate the point that it is vitally important we do everything possible to ensure that our forecasting is as accurate as possible, it uses every source of data that we can touch because we, especially when we changed contract models, didn't get it right. Some of the issues that you talked about today illustrate ways in which we didn't get it right and we need to correct those things. That's all.

Commissioner Thomas Christ: Sorry. You also want to err on the upside because it's one thing to have more lawyers than we need. We've all noticed in recent weeks the consternation that arises everywhere when we have too few. So, if we overshoot, that's okay by me.

Executive Director Stephen Singer: We want to build a new cushion. Obviously, we have budgetary constraints but within those, we want to definitely build in a cushion. We wanted to build in some flexibilities and we will talk about that. But to get to what we did as far as standards. In terms of forecasting, we are working on improving it. We acknowledge that what we are currently have is what we currently have. It's not everything we would want. It's nowhere near ideal and we need to improve that. We are doing that with our... Because we have a

deputy director and a budget and finance director who have really good experience with lots of different agencies and therefore, have access to that so that we can hopefully improve this as we move forward.

As you all know, we used the NAC standards, National Advisory Council standards and added 15% for the old contracts. We are not going to use those again for a couple of reasons. One, is they are extremely old and out of date. They are from the early 70s. I know some of the people involved in creating those. They were not created, as Steve Hanlon described and I described in the ABA workload study, they were not come up with in any, what we would regard as a...

Chair Per Ramfjord: Rigorous.

Executive Director Stephen Singer: Yes. A rigorous methodology. Just so you all know, my dad was involved in creating the old NAC standard, which he thinks they're crap. Just so you know. He was on the NLADA board in the early 70s. So, we did not want to stick with those. We also understand that what was used last year has proved impractical and unworkable and has not worked well. The DAC standards have what I described before, that single undifferentiated category within felonies that just makes no sense at all, treating an unauthorized use of a motor vehicle case the same as a Jessica's Law's case.

Nobody thinks that makes any sense. The other thing is that we have the ABA workload study which is much more up to date. It's a much more rigorous model and it tells us what we what we needed to know, some things we need to know. We know that what we currently have in terms of attorney capacity is less than a third of what we need to meet the entire case level. Acknowledging all of those issues, we tried to improve upon that. We used national and regional standards from across the country, as far as New York and Massachusetts and all across the country.

We also used regional standards and weighted heavily neighboring jurisdictions such as Washington State and what we were able to get from those in terms of standards. And then we used the ABA workload study, we used those national and regional standards in neighboring jurisdictions to create a baseline and then adjusted them in order to create a relative case weighting within the ABA workload, right. We cannot obviously adopt the ABA workload

standards because if we did that, we'd be telling the entire state, "Okay, we're only going to cover a third of the cases."

Obviously, that's not practical or workable. But we can use the ABA workload study is to create a relative way between the case types using the hours. In terms of what we did for our standards is that we've got... Hold on a second. I'm just looking for the numbers. Using the national and regional standards and then using the ABA workload, we came up with a baseline of 300 misdemeanors for a full-time FTE as our baseline. And then working off of that using the ABA study, we categorized. This was not previously done. I don't know why. But in my experience consulting with other attorneys and our contracts analysts and their input from the provider community, we put Jessica's Laws cases and murder cases together. I think if you ask any actual practitioner, they would say I would take five or six murders over one Jessica's Laws case any day of the week. And so it did not make sense to treat them as a lower level of case because that's just not the reality. And we came up with 12 as our baseline caseload standard for murder and Jessica's Laws cases. Just by way of comparison, what we had last year under the NAC and NAC+15 standards was we projected as a caseload standard four.

Obviously, what we ended up with by using the four and contracting for the four is we ended up with all of these unrepresented homicide and J Law cases that we then needed to contract with at hourly rates, which is extremely expensive and inefficient for the system. And it creates all of these transaction costs in the sense that it takes time and creates a backlog and a lot of pressure that you see in the current system. So, we came up with 12 cases. Ballot number 11 cases. We came up with 45 cases as being a full FTE. Major felonies, which is class A and B, 138. You can write them down, but we'll send them to you, so you'll have them. So, we came up with 138 cases. Minor felonies, 165.

So, you can see there what we've done is instead of taking 150 across the board is we have broken it out so we have 12 for murder and Jessica's Law cases, so we're way under. 45 for Ballot Measure 11. 138, which is still under the 150, for serious felonies. But then minor felonies, we're going above the 150. We're at 165. Misdemeanors, again, at 300. And for probation violations, we calculated 825 for a full FTE. Again, based on the ABA workload study. So, that's what we came up with in terms of our standards to apply. So, in other words, now you've got our...what we project our

caseload to be, what our standard is for an FTE. So, now we can calculate from those two numbers what do we need in each jurisdiction for each case type. Commissioner Christ?

Commissioner Thomas Christ: How do you defend not just using the ABA standards? A reputable organization they examine this state in particular did a detailed study and came up with these numbers, and you're not using it if I hear correctly only because it's too expensive? I'm wondering, is that our call, or is that the legislature's?

Executive Director Stephen Singer: Okay. Yeah... One of the members of the data analyst team, Mr. Mr. Amador's shop came to me and said...came to me when he saw these standards, and he said, "Wait a minute. I run the numbers, and I've calculated this out for homicides..." And Ballot Measure 11 came for homicides. And he said, "If you use these standards under the ABA study in order to do these cases properly, an attorney would have to work 6,608 hours in a year, which is just not humanly possible." And I said... It was 6,600 and something. And I said, "I understand exactly what you're saying. But all what you're saying tells me is we are looking at contracting at least under current circumstances properly."

Because I said...I responded back to him, "I understand exactly what you're saying. What you have to recognize is all that tells me is the numbers are about right. Because the ABA workload study is based on a full time attorney over the course of a year working 2,208 hours." So, what I would expect if we are contracting to cover the entire caseload in the state is I would expect since we know from the ABA study, we have about a third of the attorneys...what I would expect is the number of hours to be triple, three times, what a full time attorney can work. That's simply reflecting... So, I'm like, "Great. Thank you. You've just given me a reality check that our numbers are actually accurate." If what you want to do is contract to handle the anticipated caseload that we are anticipating.

As I said at the beginning, we could simply directly apply the ABA workload study. But we'll then be telling the judiciary, prosecutive, and executive branch that we have decided that are only able to and only...because we can only competently and do...we can only cover one-third of the cases that are going to come into the system. If you think there's a lot of consternation, yelling and screaming, what have you about the current backlog, okay, obviously you can understand what's going to happen if instead of trying to contract for 100% we only handle a third of the cases. So, what we are trying

to do under this model is handle...is contract to handle all of the cases that we anticipate. Are there problems with that? Yes. Please.

Commissioner Thomas Christ: I think you're missing my point. I understand to apply the ABA standard that we'd need way more attorneys, which means legislature would have to give us a lot more money. But isn't our job to tell them what we need? And if they come back and say, "Hey, that's too expensive. Here's a third of that. Get by on it." Fine. That's the policy decision they make. But it sounds like here we're going to go the legislature and say, "We have decided on your behalf that we only want a third of the money that we think we really need." And then they give us the third of the money. Why would they give us what we ask for? Why don't you ask them for all you need?

Executive Director Stephen Singer: I think we can ask them for all we need. I don't know that we'll ask them... And I don't think even the ABA... And I think I've seen Steve Hamlin and Malea Brink do this presentation more times than I care to. They would tell you we are not proposing that you try and get to this goal in one step or in one year. This is a multi-year process. So, I do think you have to do that – do exactly what you said, which is tell the legislature, "This is what we actually need." And then expect you're not going to get everything you're going to need, but you're going to slowly work up to that. However, the current situation is we are in the middle of a buy in, so we are all stuck.

And I am stuck with, and Mr. Deforest and the rest of the agency as is the commission...we are stuck with the budget that we were given for '21-'23. So, we have to operate within that budget. We can go...and I think we anticipate going...into the '23 session asking for something very different than what we got in the '21-'23 budget. I don't think we could get the kind of significant change that you're contemplating and proposing through e-board [Phonetic 03:22:53] requests. I think that is a request for the '23 session for the next biennium in terms of relooking at our budget in light of the ABA study and saying, "Here's what we really need."

But I am not sure... And again, this is a policy decision which is really... That ball is in your all's court, and I'm happy to have that policy discussion. But whether or not that ball is advanced by saying at this point, "We're only going to cover a third of the cases, and we're going to tell you...and we're going to show you what happens when we only cover a third of the cases, and you only give us a third of the money." And going into the session in 2023 and saying, "See

what happens when you only give us a third of the money.” Or whether that ball is advanced by doing the best we can with what we’ve got and collecting the data, and then going to them. That’s a policy question.

Commissioner Thomas Christ: I’m sorry to belabor, no one wants you to do that. Okay?

Executive Director Stephen Singer: Okay.

Commissioner Thomas Christ: Here’s what I want...I think you should do even mid-session is you go there with two numbers and take the number and say, “Doing our job, this is the number of cases we’ve projected. And relying on this reputable report, this is how many lawyers you need.” And you give that to them. And they’ll say, “Whoa, that’s way too much money. We’d have to give you a bunch of money mid-session. We can’t do that.” And then you go, “Okay. All right. If you’re not going to give us that money then here’s the other budget that’s based on your numbers and calculated down.”

What I don’t want to be in the position of doing is to make that call for the policy makers and come up with the lower thing. And then what’s going to happen is if there’s some prices a year down the road, people are going to come back and say, “It’s on you. You didn’t ask for enough money. What were you doing disregarding this report? You commissioned a report from the ABA. It comes in with these numbers, and you ignore it. And you only ask for this amount of money.” I think that we should always be saying, “This is what we need based on expertise. If you’re not going to give it to us, if you’re going to be stingy, here’s the other budget.” And you make the policy makers make the call, and nobody can come back and second guess us and say, “Why don’t you have enough lawyers?” And we’ll say, “Because you didn’t give us...”

Executive Director Stephen Singer: I have no disagreement with that. I have no problem doing exactly that and saying, “Here’s the numbers under the ABA study, and here’s what we would need to do that. And here’s what we can do under the current budget.” We can certainly do that.

Chair Per Ramfjord: I think that’s a subject that would require a little broader commission discussion. I think there’s reasonable room for different of opinion on how to best accomplish the goals of the legislature. Whether it’s best to continue to cite the ABA study as where we think things should be but recognizing that the political reality at the

moment is that we're not going to get there in one step, as you said. But keeping that in front of everybody as the standard that we should be aspiring to in the state versus going in and just asking for it right away. I tend to think the approach that I outlined has more credibility in the state government right now, and I don't think that we're going to be blamed for disregard of the ABA study. We're always going to be citing that study as what we're working for, so I think that's important. I see that...

Eric Deitrick:

Yeah, Per Ramfjord, representatives of the commission. I just want to make clear the underpinnings of how we got to these numbers so that you can understand there was a methodology here. House Bill 2003 in 2021 required the agency to adopt caseload standards consistent with national and regional best practices. And we know from the ABA study, we have about the third of the resources we need. So, what we did was...because the statute says look at national, regional best practices. Regionally we looked to Washington. They have a caseload standard of 300 misdemeanors per year. And for states that have caseload standards, that's pretty good. Nationally, New York was a state that was involved in some right to council litigation with the ACLU. And as a result of their settlement, they also have adopted a caseload standard of 300 misdemeanors per year.

So, that's what that number is tethered to. Both the statute in those particular states. In terms of the ABA study, of course we know with the resources we have we can't fund those caseload numbers. But what we did was we looked at the proportionality of time that study said should be spent on each case by case type. And what we know from the ABA study, according to Oregon attorneys, is that a measure 11 case takes about seven times as much time as a misdemeanor case. And then a minor felony takes about 2.3 as much time as a misdemeanor case. And then a murder case takes 25 times as much time as a misdemeanor case. So, the standards begin with that baseline of 300, and then used those ratios to build out the caseloads for each case type underneath. So, Commissioner Christ, to your point, while we're not obviously implementing those standards, we haven't abandoned them. They're actually apart of the foundation upon which we developed the standards that will be built into the contracts.

Chair Per Ramfjord: Am I correct that the 300 misdemeanors is down from 400 misdemeanors, which was...?

Executive Director Stephen Singer: Down from actually 465.

Chair Per Ramfjord: 465, okay.

Commissioner Thomas Christ: I accept that there are adjustments to the numbers. I get that. I guess the larger point for me is if we were a fire department, and we concluded that we needed 50 firefighters to put out every fire in the community... But wow, that's too much to ask, so we go to the supervisors and say, "Give us ten." And so we only get ten. And then houses burn down because we don't have enough firefighters, people are going to come back and say, "Why didn't you have enough firefighters. You only asked... You needed 50, and you only asked for 10." So, all I'm suggesting to you is however you figure out what is the right number, ask for that. And then if you think that's unpalatable, especially midsession, say, "And this is what we'll ask for if you're not going to give us any more money." But the policy makers, they need to know that.

Executive Director Stephen Singer: They need to know.

Commissioner Thomas Christ: And they need to make the call. "Are we going to let houses burn? Yeah, okay. We're going to run that risk." But it shouldn't be you making the call about how many lawyers are really needed based on your understanding of what money they'll give us.

Chair Per Ramfjord: Commissioner Wax and then Commissioner Hardin.

Commissioner Steven Wax: Thank you. Couple of foundational questions, please. How many FTE does this standard call for based on the forecasts that you have made? And second piece of that is how many more or fewer attorneys does this call for than are currently working?

Executive Director Stephen Singer: The short answer to your question is I don't know yet because we haven't completed those calculations. We're in the process of doing that. I hope to have those during those next week. We just haven't gotten that far. This is how far we've gotten. We're doing those calculations now. But the...

[Crosstalk 03:30:41]

Commissioner Steven Wax: Do you have a ballpark that this is going to call for more attorneys than are currently working in the system?

Executive Director Stephen Singer: This is going to call for more attorneys than are currently working in the system but not by as many as...not by nearly as many. It is relatively close to what we know is available. Because, again, given our contracting time and given the need to have lawyers on the ground by July 1st, we need to try... And the fact that, again, whatever you don't contract for, you are then going to have to try and meet with hourly rate attorneys, which is worse than contractors.

Commissioner Steven Wax: That's the second foundational question I was going to ask.

Executive Director Stephen Singer: Sure.

Commissioner Steven Wax: But I heard Per and Tom offer perhaps two different approaches to telling the legislature, "This is what the ABA calls for, but this what is what we're asking for." And I'm probably more inclined at this moment to go with Per's view, that that should be there but in a secondary position. But please, the other foundational question is when you said murder and Jessica, you're using 12. And then you said well, the number was four, but that ended up requiring the use of hourlies. I don't get that. Is the number of hours that it takes to handle the number of murder cases that we have...? Sorry. Does the number of hours that it takes to handle a murder case allow an attorney to competently handle 4 or 12 murder cases per year?

Executive Director Stephen Singer: Based on the ABA study, which is the best and most recent we have, the number of hours it would take to competently handle murder and Jessica's Law cases, 12 would require that...would not allow them to do so... And it's hard to say competently or not competently, but it would not allow them to properly handle them. Because the ABA...recognize the ABA is an aspirational, "Here's what it would take to do it really right."

Commissioner Steven Wax: All right. All right. If it is more...if an attorney cannot competently handle 12 murder cases a year... And I'm not talking ABA aspirational. I mean if the ABA aspirational would say, "Well, you can handle three..." I'm not asking for three. But to go from 4 to 12, I don't understand that in terms of hourlies. Instead of saying, "Well, we're going to increase the number to 12," why not solicit more murder contracts? I mean I don't get it in terms of, "Well, we have an overload, so we're going to go to hourlies." Which are

inefficient, cost more, and are stupid. We shouldn't be doing that. But if the total number of cases that an attorney can competently...not ABA aspirational but competently handle is four, or five, or six, it seems to me that's the number that we should be using. And then we have to solicit for more contracts.

Executive Director Stephen Singer: Two answers to your question.

Commissioner Steven Wax: Yes, please.

Executive Director Stephen Singer: And I think they are two that you will not be surprised to hear. One is our budget, two is the availability of attorneys. The attorneys don't exist.

Commissioner Steven Wax: But we're spending more money anyway and we're spending money inefficiently by having to go to hourly people. So, I don't accept that we have to look at our budget because are misusing the budget then if we are not soliciting more murder contractors. Separate question – can we get more murder contractors?

Executive Director Stephen Singer: That's the second part of it.

Commissioner Steven Wax: But in terms of the first part, I don't find it satisfactory to say, "Our budget doesn't allow that," because we're spending the money. And the way you're putting it, we are misspending the money.

Executive Director Stephen Singer: Correct.

Commissioner Steven Wax: I shouldn't say we're misspending it. We are inefficiently spending the money. So...

Executive Director Stephen Singer: We are inefficiently spending the money. I agree with that.

Commissioner Steven Wax: Then I would not use that number 12. And if four... To go from 4 to 12 seems to me to be a mistake. Whether we are being aspirational or realistic, that seems to me to be a mistake. Now, I can't comment on the other numbers except to say this, and that is we have proven, sorry to use it that way, that the total budget and the total FTE in the state is inadequate because of the backlog. The backlog that exists is proof as I see it that we do not have adequate resources. And whether or not we go to an aspirational ABA number, it seems to me to be a mistake to be projecting in the contracting or an inadequate number of attorneys without at least saying something about ABA, okay, and this backlog. We must have

that. Now, you got the extra 12 plus million, or we got the extra 12 plus million in February. But we can't spend it because MDI hires some lawyers, and MDI loses some lawyers. So, there has not be an increase.

Executive Director Stephen Singer: Commissioner Wax, you are absolutely correct in terms of you are honing in on and putting your finger on the problem. This is the problem in terms of where you try and draw the line between providing counsel for everyone who needs counsel and providing high quality representation for... And there's a gap between those two things.

Commissioner Steven Wax: There is, but here is a potential solution that I hope we're going to get to when we get into the detail of the contracts. The numbers that you have in this material are confusing to me. When I see a contractor or a law firm having the number 200 or \$210,000 per FTE, to what extent is there money in the existing budget including the 100 million to hire a significant number of additional attorneys if we better utilize the money that has been appropriated? Now, very specific question. How much of that \$210,000...? And especially in looking at the law firms. They have an administrator. There are administrative costs. How much of the \$210,000 that appears to be showing as allocated to each of the members in the firm of going into the pocket of those attorneys?

And if it is significantly greater than the salary being paid in Lane County, in Marion County, or in Multnomah County to the public defenders, it seems to me this contract cycle needs to address that because there is a potential significant pool of money to be spent to increase salaries system wide. Yes, recognizing there will be a decrease in some salaries but to bring the overall picture of the salaries closer to an acceptable norm that will attract more lawyers in the areas that need lawyers and get us more lawyers so that this backlog can be addressed without having to say, "Oh, we need an extra 400 million dollars to get to the ABA standard." Can we do that? Is that not a potential solution in this contract cycle?

Executive Director Stephen Singer: I believe it is not a potential solution in this contract cycle for one reason, and the one reason is incomplete data. Because the data we would need...the two pieces of data that we need to gather and collect and that I think we should gather and collect for looking at the next contract – July 2023. What we currently lack is precision in the amounts of money that are given to the individual lawyers and therefore how much is going into contract administrators or other

people in the contract versus other lower level people in the consortia or different parts of the model. So, that's number one. The number two piece that I think is absolutely critical and vital that we look at and where there is I believe the likely largest pool of money is in the less than 1.0 FTE. That is where I believe the largest pool of additional money that could be better utilized...more efficiently utilized and spread throughout the system to both increase capacity and reduce caseloads to more acceptable levels that are getting us if not all the way closer to and on the road towards the ABA model.

And we currently do not have a good handle on what we are actually getting on our less than 10. FTE attorneys. And they exist in large numbers throughout the system spread out, and what we need to do is get a handle on what the workload is. And I think Commissioner Christ has even just taken a cursory look at that, and I think he's aware that there is a lot, but that's where the largest pool of more efficiently using the current money that we have to both get the additional capacity we need and get the caseloads closer to where they should be.

Chair Per Ramfjord:

Okay, so let me just say. We are ten minutes away from the tentative stop time. I believe that we have lost Commissioner Solomon as he's had to move on to another meeting. I know that I have another meeting that I have to attend in Portland at two o'clock. So, I'm willing to... Obviously we're going to go past the 12 o'clock time, but I would suggest that we take a five-minute break now and that we then re in order...or come back together with the idea of really trying to accelerate this discussion...

Chair Per Ramfjord:

Because I know that...I suspect... I know there are people who are signed up for public comment, and I really want to get to the public comment, too. I think that's very important. So, let's take a five-minute break, and then let's come back with the idea of trying to wrap this discussion up by no later than 12:45 or so.

Executive Director Stephen Singer: Certainly.

Chair Per Ramfjord:

...us get any input that providers may have. I know there's been some comments that have made by people on the screen. But I also know that there are people here who wanted to make some comments. I figure it would be important to address those. And

some of these...some of the comments that are on the screen have been addressed already. Maybe the best thing to do frankly is to start with live testimony from anybody who wants to make comments and then move into trying to answer some of the specific questions that have been raised. So, with that, are there individuals here who want to make some comments? I know people signed up that were called. Brook Reinhard signed up. Rebecca... And I don't have my glasses on.

Rebecca Schaleger: Schaleger. It's a hard last name.

Chair Per Ramfjord: I know. I forgot my glasses this morning, which has me really hampered today. And Carl Macpherson signed up. So, why don't we go... Rebecca, you want to start?

Rebecca Schaleger: Sure. I've been told that I need to come over here and stand behind Mr. Singer and whisper in his ear...

Rebecca Schaleger: In order to be heard.

Rebecca Schaleger: Thank you. My name is Rebecca Schaleger. I am an attorney in Clackamas County, and I am the administrator of Juvenile Advocates of Clackamas, which is a consortia that handles obviously juvenile cases. We do dependencies and delinquencies. As Mr. Singer indicated earlier, we represent both parents and youth in those. I have a couple of goals from my comments. I want to just state those ahead of time so you guys know where I'm going. I want the board and OPDS to reconsider trying to find funding if there's any funding to have PCRPs in all counties. I know that everyone is just like, "It's a done deal. You guys don't get it. We're real sorry. We know you should have it." But I just want...if there's any way to reconsider that, that's one goal. The other issue that I have that I want to address is why OPDS is refusing to pay an hourly rate to lawyers who are already contracted if they're willing to take on additional duties outside of their contract.

Specifically if I, for example, was willing to take on a murder case in Multnomah County, which is not my county...an adult murder case, OPDS at this point in time is not willing to provide me with any additional funds in order to do that. They would want me to do that just as part of my case, and that is because I already have a

contract. I think that they're missing lawyers that would be willing to do that.

Chair Per Ramfjord: And just stop there. Executive Director Singer, the point that was just made that I thought I was not sure was actually accurate is that if a contractor has a contract and they offer to take on additional hourly work in another county, can they be paid on an hourly basis for that?

Executive Director Stephen Singer: They can on a case by case basis. That is a contract provision that was in the last set of contracts. Since December, we have waived that provision and are allowing contractors to do that on a case by case basis because we obviously also want to make sure that we do not have folks taking on more cases than they can competently handle just in order to access more funds.

Rebecca Schaleger: It's not to access more funds. [Laughter]

Executive Director Stephen Singer: And that's why we have consistently been waiving it.

Eric Deitrick: Can I jump in for a second? This is Eric Deitrick. I want to explain part of the underpinnings here because this goes to a couple of things the commissioner is concerned about, which is gathering data and information. And to Commissioner Wax's conversation earlier about murder, part of the challenge for the agency is when we have two inputs to the agency – people working under contract and then people on an hourly rate basis. And they're engaging as one person or contract the entity for different ways. It's really challenging for us to monitor what their caseloads are because they're interfacing with two different disjointed parts of the agency. And part of the goal in building out a rational number of attorneys is that we better understand the need for attorneys in the state of Oregon. So, it's not like it's a purely financial decision.

In more part, it's about making sure when we interact with attorneys we do so in a way that we gather information about their workloads rationally.

Rebecca Schaleger: I just want to say that I have a personal experience around what we were just talking about where I was denied the ability to do that. And so that's why...

Executive Director Stephen Singer: When was that?

Rebecca Schaleger:

Very recently. And I am not here to throw my contracts analyst under the bench or anything. She has been fantastic, and she has tried to work really hard with us. And so I just want to preface all my comments with that – saying I’m not here because I have a beef with OPDS or anybody. I want to improve the system, and I think everybody in here does, too. And so that’s why I’m making these comments. And then I also want an inquiry done about how OPDS is adding additional requirements for us such as staff and things like that. But the amount of money that they’re analyzing as what we would pay people is not realistic. For example, they think that we can get staff, like legal assistants, at \$15 an hour. And my daughter is 19, has zero work experience, just started at Carl’s Junior, her first job ever, at \$16 an hour. So, I don’t know if anyone in here has staff at \$15 an hour, but if you do tell me their name, and I’ll poach them. Because I would love to have competent staff at \$15 an hour. So, the numbers that you guys are using are not great. The PCRCP issue for us is a real problem. We’re in Clackamas County.

We’re right next to Multnomah County. It’s a PCRCP county. The lawyers there have a case cap of 80. Our NAC numbers last year... And whoever came up with the numbers for juvenile clearly didn’t have a great understanding of juvenile. [Laughter] So, I’m hopeful that whoever is doing it this year has a better understanding. So, they just said, “Okay. Well, PCRCP has 80 cases, so we’ll say that’s a good caseload. And we’re going to add 15% on top of that because that’s what we’re doing.” Because NAC doesn’t have juvenile case numbers. “Okay, so you guys do 92 cases.” Well, that would be okay except they want us to do 92 new cases every year. And as Commissioner Hardin I think your name is mentioned, those cases are complex.

They go on... The average juvenile dependency case is two years long, and you’re working it the whole time. You’re not like, “Oh, I’m going to do a little bit of stuff and then not do...” You’re working it. And so you can end up... If I had 92 new cases a year, I’d have 3 or 400 cases by now easy. And that’s not manageable. So, they’re telling me, “You guys aren’t reaching your numbers.” But the numbers that they’ve set up are unmanageable. And so I have some concerns about that, and then I have lawyers who are saying, “Why wouldn’t I just go to Multnomah County where I get more money, I get case managers that are paid for by the state?” Right now we have to ask for an NRE for case managers. And I get a case cap. So,

this is a real problem, and we need to address it. Because I have lawyers threatening to quit. And they're good lawyers. They're the ones with 10, 15, 20 years' experience, and we're going to lose them because they get paid the exact same as the new guy I brought on last year who can't handle major felonies, who can't handle the Ballot Measure 11 cases.

Which by the way, I looked in the new contract. And while all this waiting is done for adult criminal, major felony, Jessica's Law, all that, under juvenile it just says "delinquency." We had a 10-year-old arrested two weeks ago for attempted murder in our county. 10 years old. And it came out as an assault two instead of an attempted murder, but it's a complex case. It's not just the same as the theft two that I might give the new guy. So, these are things that we need to consider. And finally I just want to say that the criminal cases are...adult criminals sitting in jail are real people. And I offered OPDS a lawyer who was willing to do one. He wanted 200 bucks an hour, and they said no. I understand why. That's a slippery slope if their cap is here. I understand why. I offered another lawyer in another county. She's on a contract already. She offered to do it. "No, we don't want to use her in Multnomah County because we need her in this other county." And then I offered myself at \$105 an hour, and I was told, "No, because you already have a contract." So, that's concerning to me.

Executive Director Stephen Singer: And I appreciate your comments. I think the issue about contracts are always something that's been evolving, so I think that there may be some further communications on that. I do want to assure you that the commission is acutely...and the agency is acutely aware of the problems created by having neighboring counties, PCRCP and non PCRCP... And we really want to fix that problem. That's not something that's lost on us. So, we're very, very aware of that.

Rebecca Schaleger: I believe that you do, but in the meantime I'm on the ground as to put it, trying to keep lawyers working for me and with me. And right now they do it because I'm friends with some of them, and we get along pretty well. And they trust me and like me. But I don't know how much they trust me and like me. I don't know if they trust me and like me 20 or \$30,000 a year worth, which is the difference that they would get if they drove 20 minutes into Multnomah County. And I did write all this down. And so I will submit it to the commission just as... Because I heard Commissioner Christ or somebody said, "Can you guys please write this stuff down?" And

the answer is yes. And that way you can look at it and think more about it. And I appreciate your time. Thank you very much.

Chair Per Ramfjord:

Thank you. All right. Brook Reinhard, do you want to step up?

Brook Reinhard:

Good afternoon Chief Justice, members of the commission, my name is Brook Reinhard. I run the public defender's office in Lane County. I've been a public defender for 12 years. I want to talk about three things. I know we have a very short amount of time, so I'll be brief. I want to talk about contracting, data, and hiring. On contracting, I'm very worried about the feedback timeline. I've been involved in contracts for some eight years now, both in Roseburg and then in Eugene. And traditionally we spend a long time waiting for OPDS to give us a contract and then a very short amount of time to respond once OPDS kindly gives us what their offer is. And there's no real time to then talk about concerns, and that gets codified in contracts that don't really reflect what's on the ground. So, I'm worried about the last minute sort of issue. And similarly, we have a meeting that's Friday, and the contracts came out Wednesday to look at.

That's not very much time to talk about it. So, I'm a little worried about that. I think Director Singer has been very responsive in what contractors are saying, so that's not a critique of him or the agency. Just I'm worried about the timeline, and I hope we have enough time to do this right. I would also... I'm a little concerned in the contract about the idea that you would penalize a provider who doesn't give you a report within ten days given that OPDS takes up to 60 days to pay contractors. That seems a little inconsistent. I push back on the definition of the cases. Four or five years ago, cases used to be included up to five incident dates or more. That matters because in some counties, Lane in particular, the prosecutor charges a single count, and that single count is the placeholder. But if you litigated it, it alludes to 10 or 15 charges.

So, being able to accurately reflect what the incident dates are from the discovery is a huge issue in tracking a case so that you can actually measure fairly the amount of work done. Also in the definition, the case, as Commissioner Solomon mentioned...the existing caseload is a real concern that I have because particularly counties that had a lot of COVID restrictions are the ones where we obviously have seen the most backlog. And I don't want to be unfairly penalized for having that backlog when we're just trying to do our jobs and then have to take cases 100 miles away. Taking

cases 100 miles away is Ludacris, by the way. Every single court handles things differently. Director Singer even mentioned being an expert in how one court handles things versus another. I am not competent to practice in Multnomah County or Marion County. I could become competent with some work, but that requires some additional expertise. So, we're talking about not actually using incident dates for cases and then taking that and whacking contractors by requiring them to take stuff from other counties. I have real concerns about that.

The 30-day timeline for hiring another attorney if one is missing, I don't actually object to the idea that OPDS shouldn't continue to give me money after 30 days. I got to pay for the support staff cost for that attorney and everything else. But I understand where you're trying to tighten down the requirement, but it's not realistic that I can actually have a new person in that person's seat within 30 days. It's very hard to hire people right now. I'm doing it. I'm trying to hire and be responsive for the legislative funding. I've hired five people. In the meantime, three attorneys have told me they're leaving. So, it's the same sort of concern, so I am very worried about that. Taking cases when contractors may leave. I don't disagree. I think that if somebody is leaving my office to go someone else's office then it's been the time honored tradition that public defenders get caseload relief by going to a different office because then they dump their cases on their colleagues. I don't think that's acceptable, and I actually am in favor of this conceptually. I think in practice how it plays out could be very problematic, so I urge you to be very careful about how you approach it. But I understand the concept, and I'm in favor of it conceptually, and I feel unwise saying that.

Brook Reinhard:

I would like to know when a case ends. If you look at the contract, it's very nebulous when a case ends, and that matters a great deal. Because when I'm determining conflict of interest, do I represent somebody for the entire three years of their probation or just the first six months? And does that mean I can't take other cases because of that? I frankly think the Bar needs to update their conflict rules for public defenders because they don't reflect the reality on the ground, and I'm perfectly capable of not talking to a colleague about a codefendant on a robbery case if I needed to. But if the Bar wanted to update those, that'd be fine.

[Laughter]

Chair Per Ramfjord: Mr. Reinhard?

Brook Reinhard: Yes?

Chair Per Ramfjord: Quickly, we did put a case closure provision in here.

Brook Reinhard: I think there's still some definitions that need worked out. But yes...

Brook Reinhard: Yeah, I'd love to talk with you about that. Okay, and then finally my other two points on data and hiring. First on data, I think I echo what Mr. Wax was talking about about a case management software and the need to implement it as soon as possible. At least that's what I heard you saying, Commissioner. I've been working with OPDS on case management issues for eight years now in various committees. I continue to be an optimist about it, but we need to implement it. I don't understand how the legislature can have good data from us when we're not able to be on one consistent case management software statewide. And regarding paid data for public defenders and consortia, I don't quite understand that. I've never failed to give OPDS my pay scale. If you want attorneys to continue to do the work, they need to give you their pay data.

I don't see why that's controversial in the slightest. Finally for hiring, as the chief justice may know, there's been some pay increases for legal aid attorneys, which is wonderful. Specifically for housing defense and other matters. That means that I am competing with not only DAs and OPDS appellate, whose starting salary is what my top level attorneys make now, but I'm also competing with legal aid, who just tried to hire an attorney recently for 35 hours a week more than they were making now what they're doing. So, those are the sort of things that I'm competing against, and so I'm a little worried about how we pay people fairly. I realize there's some realities on the ground. But when we're talking about pay numbers or case numbers where we're talking about 825 probation violations a year, private practice starts to look pretty good. So, I'm worried about all these numbers, and I appreciate what the commission is trying to do. Thank you very much.

Chair Per Ramfjord: Thank you. And again, I think the idea of providing comments specific to the contract in writing to the commission...

Brook Reinhard: I will do so.

Chair Per Ramfjord: So, if you could do that, and then we'll have them before the next meeting.

Brook Reinhard: Thank you. And I think Jessica Kampfe wanted to talk as well if you'd accept that.

[Crosstalk 04:10:05]

Chair Per Ramfjord: Okay. I know that Carl was on the list, and I feel compelled to have him go first. But then if there's time, we'll be happy to hear from you. So, Carl Macpherson.

Carl Macpherson: Thank you, Chair Ramfjord, members of the commission. I appreciate it. I'm sorry I could not be there in person today. I would echo many of the comments that Mr. Reinhard stated, but there were a couple points I wanted to make. One, in terms of the contracts. Secondly regarding House Bill 2003. Sorry, three points. And three, regarding recruitment and retention. In terms of the contracts, I just want to point out the disparities that are obvious in attachment 2B of the materials for today's commission meeting. One, the admirative overlay that some officers receive that others do not. Secondly, the disparity investigator revenue that public defenders offices receive.

We receive a third of what we actually pay our investigators. The effect of that is not only are we not fully compensated for investigation that our clients are ethically required to receive, but it doesn't allow us to increase salaries or pay our attorneys or other professional support staff what we should be paying them because we're using money from the overall source to make up for the money we're not receiving for investigation. So, I know we had this discussion in November. Commissioners Harvey and Thomas I don't believe...were not there at the time. But it is critically important to ensure that nonprofit public defenders are paid the actual cost of investigation. The third point about it is unfunded supervision and training. I'm raising it again because our office, which is the largest in the state... And we have 69 contract attorneys. We have 7.25 position of supervision and training that are unfunded.

The way the system continues is by having attorneys come in, and be trained, and supervised, and mentored very well, which our office provides. But it hurts our ability to recruit and retain when we

cannot pay what we should be paying because we have 7.25 positions providing that critical supervision, mentorship, and training that are unfunded. So, again, asking that that disparity be addressed in this contract cycle. I also want to raise the issue of the seven attorneys that we've lost just in 2022. Four left criminal defense all together. One of those attorneys told me and said that I could repeat that the reason why he left public defense was because the state of Oregon does not...is clearly not taking public defense and the crises seriously and is not stepping up to show that it matters and prioritizing helping our clients and helping the people that are providing the services.

The other three left for other public defense providers, and the important point on that is this – the nonprofit public defenders are the lowest paid within the system. You can go to OPDS appellate division and get a 20 to \$70,000 pay increase. You can go to the prosecutor's office in Multnomah County or Washington County DAs and receive a 20 to \$100,000 pay increase. You can go to legal aid, as Mr. Reinhard said, and get a pay increase. We cannot retain the people we're bringing in, the mission driven people we are bringing in, unless or until salaries are increased, which requires more revenue. And to Commissioner Thomas' statement about misdemeanor cases and the need for mental health services, I again want to reiterate the absolute dire need for case managers and social workers within public defender offices because attorneys are not trained, or equipped, or have the ability to provide the mental health services and behavior health services that the clientele in the state of Oregon and particularly in Multnomah County need.

There is an email that went out to our office yesterday in Washington County because we actually hire case managers and social workers. We don't have enough. We have four total between the two offices. But the email went out and said, "Our case manager saved the life of this client." And the exact quote was, "This client didn't need a trial attorney. They needed the case manager within our office." And I think it's a really, really important point. The system needs to shrink overall, and we need to bring less people in the criminal legal system, and we need to provide more behavioral health services. And I don't expect the PDSC to be able to accomplish that. That requires all the branches of government to do so. But if we're going to continue with business as usual then we need case managers and social workers, and we need the funding to be able to do so.

The last point I wanted to make was to not lose sight of House Bill 2003 that was enacted in June of 2021. That requires the policies to ensure compensation, resources, and caseloads are in accordance with national best practices that promote policies for public defense provider compensation and resources that are comparable to prosecution compensation and resources and ensures other aspects of oversight and also ensures that overhead costs are reflected within the contracts. Those are extremely important. I bring all these issues up, and I can raise them again in the future because I've done this work for 24 years in three different states, worked in five different public defender offices. And I personally have never seen such a dire, bleak situation as I have seen in the last five months. I don't blame anybody. I don't blame OPDS or PDSC. I know that the staff at OPDS is working very hard, and I'm confident in the direction that OPDS is going.

And I'm confident that this commission takes this matter very seriously. But I would be remiss if I did not say based on my experience level about how concerned I am about the state of public defense and the entire criminal legal system in the state of Oregon. And I think the last thing I want to say is just for MPD. We have 12 murder qualified attorneys in our office. We're only funded really for four to be working on them full time. So, we just need to expand that, and we can help there. That's one concrete solution. But when I hear the idea of 12 murder cases in an annual in one year, we have to remember that the people in the office have full caseloads right now. So, it's not as though those cases are going to go away on July 1st, and they can now take 12 more murder cases on top of the full caseload they already have. So, I know I'm being a little preachy, and I apologize. But I'm just so incredibly concerned. I want to be a resource. I want to help. I want to see that every client in the state of Oregon receives the representation that they deserve. So, thank you very much for your time, and I appreciate it.

Chair Per Ramfjord:

Great. All right, Ms. Kampfe.

Jessica Kampfe:

Thank you, Chairman, board members, the commission. My name is Jessica Kampfe. I'm the executive director at Multnomah Defenders. I appreciate having a moment of your time. What Commissioner Wax said earlier about MBI is in fact true. Looking at spending the emergency funds to hire up our office to be able to address some of the backlog. We hired two lawyers, and we're in the process of hiring three lawyers. And within the past two weeks, I received resignations from five lawyers, and one went out on six weeks of

leave. That leaves our office with 400 open felony cases to redistribute.

We're trying to address that problem by bringing misdemeanor lawyers into the felony unit. That leaves 300 open misdemeanor cases within our office that don't have a lawyer assigned to them. Before we can start talking about recruiting, we have to be talking about retention. So, we cannot keep doing this work if we don't retain the current lawyers that want to do the work. You're not going to retain these people unless we have reasonable caseload caps. And I will point out to the commission that all of that bleeding isn't happening in our PCR unit. Where they have a cap of 80 open cases. They have social workers.

They're getting paid more money into the system. So, we have a model that is working to stop the bleeding right in front of us. We have it in our office. And when I hear the numbers proposed in the new contract about bringing in 138 new minor felony cases, not accounting for the fact that somebody on July 1 probably has 105 open felony cases at that point in time... So, then they're going to be expected to do 238 felony cases that year. That is not going to improve retention. We need open caseload caps so that nobody can have more than 80 open misdemeanors at a time. Nobody can have more than 40 open felonies at a time. We need reasonable caseload caps, or we're going to keep losing people. Thank you for your time.

Chair Per Ramfjord:

Thank you. All right, we're at 12:27. As I said, we lose the room at 12:30. So, I do want to make sure that everybody knows that this discussion regarding the contract is not over. There's going to be opportunity to provide input to the agency, and there's going to be opportunity to have further discussion of these issues on the 21st. So, we encourage everybody who's interested in providing their input, and we will discuss these matters in more detail. I do want to echo Commissioner Christ's comment that if there are things that you really want to get before the commission, send us something in writing. Send it to the agency, and it will be distributed to us in advance of the next meeting, so we'll know about it. So, with that, although I think that... I'm sorry to terminate the discussion so quickly, but I think we've went through a lot of things today. And I would entertain a motion to adjourn.

Commissioner Thomas Christ:

[Inaudible 04:20:37].

Chair Per Ramfjord:

Second?

Commissioner Thomas Christ: No, I didn't move.

[Laughter]

Commissioner Thomas Christ: I'm sorry. I wanted to discuss more on the contract. There's some new features here that I think are important, and I wanted people...if they're going to comment...and they have a short period of time to do it. I wanted them to have the views of at least one commissioner, but I think it's shared by others. There's a provision in here about people who are 1.0 FTE not being allowed to take on other cases. I would like some discussion...I think we need some discussion about lowering that threshold substantially because what I have found in the recent data we've received is there are a great many people out there who are .92, .95 FTE. So, we are essentially paying them full time. And yet when I just did a random nonscientific survey of some of the people getting their Bar number and then going into e-court [Phonetic 04:21:49] and looking up by Bar number in the civil directory, I found out a lot of these .95 people are handling 20, 25 civil cases.

They actually have many more open than that. But those are civil cases just from 2021. Dissolution cases, and state cases, and even some personal injury cases. I don't understand how a lawyer who is supposedly working for us nearly full time have that sort of civil caseload. And I am very concerned that we are not able to track of that. And so I would like the agency to consider whether a 1.0... We only disqualify you from taking other cases if you have a 1.0 FTE contract. Maybe that should be lowered somehow to make sure that the people that are working substantially full time are actually working substantially full time. And that's one significant feature in your changes that I'd like some discussion on, and I'd like some comment from the provider community. And I'm sorry it took so long to get this out there, but it's a short turnaround. And I want feedback on it from everybody in consideration of the agency. Thank you. And now I'll move to adjourn.

Executive Director Stephen Singer: He got the last word in.

Chair Per Ramfjord: Okay. Is there a second?

Commissioner Steven Wax: Second.

Chair Per Ramfjord: All right. Any further discussion? All those in favor?

Commission: Aye.

Chair Per Ramfjord: Any opposed? The motion carries. Thank you, everybody, for a good meeting.

Attachment 3



Date: April 21, 2022

To: Stephen Singer, Executive Director, OPDS
Per Ramfjord, Chair, Public Defense Services Commission
Members, Public Defense Services Commission

From: Wendy Heckman, Human Resources Manager, OPDS

Subject: Proposed Motion to approve OPDS Employee leave provisions

Background:

Historically, the Public Defense Services Commission (PDSC) adopts compensation plan changes that have been set state-wide in the Executive Branch and the Oregon Judicial Department on a biennial basis (every two years). Per ORS 151.216(1)(e) state the Commission shall establish a compensation plan that is commensurate with other state agencies.

In addition to the compensation plan changes approved by the PDSC on December 16, 2022, there are new leave provisions that require Commission approval. There is no fiscal impact to the changes listed below.

Agency Recommendation:

OPDS recommends the PDSC approve the following leave provisions adopted by or in conformance with Executive Branch and Oregon Judicial Department outlined below. The following adjustments have been agreed upon through collective bargaining with AFSCME and will be reported to the Legislative Emergency Board in May prior to implementation.

- Pursuant to ORS 187.010 and 187.020, Juneteenth is recognized as a paid holiday.
- If the Governor issues a state of emergency declaration because of a natural disaster and where, because of this natural disaster, an employee's primary residence is deemed lost, found to be uninhabitable or is not accessible, the employee shall be eligible for up to eighty (80) hours of paid administrative leave prorated for part time employees.

Consistent with Executive Branch collective bargaining agreements.

- The agency may officially close its offices because of inclement weather, hazardous environmental conditions, or where its offices are inoperable. Inclement weather, hazardous environmental conditions include fire, flood, earthquake, or inclement conditions. An inoperable office is one where essential services are lost because of fire, mechanical failure, accident, or weather, active shooter or threat of violence, or other causes. Under these conditions employees shall receive up to 40 hours of miscellaneous paid leave per biennium.

Proposed Motion: Move to approve the proposed employee leave provisions.

Attachment 4



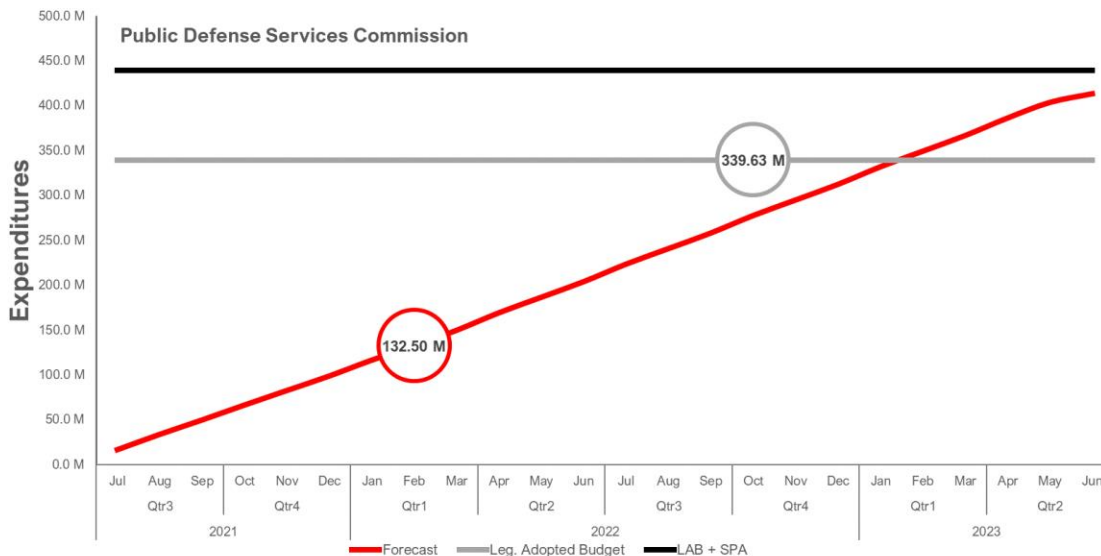
OFFICE OF PUBLIC DEFENSE SERVICES
Budget Report by Fund and Program

AY 2023

As of fiscal month ended February 28, 2022

Biennium percent elapsed: 33.33

	Adopted Budget	Total Expenditures	Total Projections	Total Forecast	Adopted Budget Variance
General Fund					
Administrative Services Division	12,296,098	4,015,148	7,620,660	11,635,808	(660,290)
Appellate Division	24,925,503	7,199,143	14,925,602	22,124,745	(2,800,758)
Compliance, Audit, & Perf. Division	4,656,250	881,823	3,884,046	4,765,870	109,620
Court Mandated Expenses	15,006,403	7,959,341	21,858,128	29,817,469	14,811,066
Executive Division	3,600,361	1,115,184	2,179,191	3,294,375	(305,986)
Juvenile Division	30,577,095	14,596,227	25,249,653	39,845,880	9,268,785
Non-Routine Expenses	43,663,533	18,917,540	42,069,115	60,986,655	17,323,122
Trial Criminal Division	186,458,931	74,663,547	151,193,728	225,857,275	39,398,344
Total General Fund	321,184,174	129,347,954	268,980,124	398,328,077	77,143,903
Other Funds					
Court Mandated Expenses	4,449,667	1,006,275	0	1,006,275	(3,443,392)
Juvenile Division	14,000,000	2,148,871	11,851,129	14,000,000	0
Total Other Funds	18,449,667	3,155,147	11,851,129	15,006,276	(3,443,391)
General Fund	321,184,174	129,347,954	268,980,124	398,328,077	77,143,903
Other Funds	18,449,667	3,155,147	11,851,129	15,006,276	(3,443,391)
Total Funds	339,633,841	132,503,100	280,831,253	413,334,353	73,700,512



Oregon Office of Public Defense Services



General Fund – Program Areas

February-22	LAB	Forecast	Variance	SPA	SPA Result
Trial Criminal Division	186,458,931	225,857,275	39,398,344	70,250,989	(30,852,645)
Non-Routine Expenses	43,663,533	60,986,655	17,323,122	14,554,511	2,768,611
Court Mandated Expenses	15,006,403	29,817,469	14,811,066	5,002,135	9,808,931
Juvenile Division	30,577,095	39,845,880	9,268,785	10,192,365	(923,580)
Total General Fund	275,705,962	356,507,280	80,801,318	100,000,000	(19,198,682)

**CSS continued to grow at a net rate of \$2.1 million per month, maintaining the average monthly payout of \$2.4 million and a new case rate of \$4.5 million per month. At present, there is approximately \$53M in unpaid authorizations or encumbrances outstanding. At current pace the budget is projected to exceed its authority by \$2.8 million after the application of SPA funds. However, there is a risk that must be acknowledged that with court systems returning more closely to pre-pandemic operations, invoices and corresponding monthly payments may begin to come in a higher rate which could significantly exacerbate the projected deficit in this area.*

General Fund – Program Administration Areas

February-22	LAB	Forecast	Variance	SPA	SPA Result
Executive Division	3,600,361	3,294,375	(305,986)		(305,986)
Compliance, Audit, & Perf. Division	4,656,251	4,765,870	109,619		109,619
Appellate Division	24,925,503	22,124,745	(2,800,758)		(2,800,758)
Administrative Services Division	12,296,098	11,635,808	(660,290)		(660,290)
Total General Fund	45,478,213	41,820,798	(3,657,415)	-	(3,657,415)

Legislative Investments – will show in March Financials

February 2022 Legislative Session HB 5202			
Appropriation	Division	Description	Amount
84000	Trial Criminal Division	Emergency Funding, GF Carry Forward	12,808,337
85000	Juvenile Division	PCRP Family Treatment Court Position	195,833
81000	Executive Division	Salary Pot	143,103
82000	Compliance, Audit, & Perf. Division	Salary Pot	248,409
83000	Appellate Division	Salary Pot, GF Carry Forward, Position	1,145,580
86000	Administrative Services Division	Salary Pot, GF Carry Forward, 2 Positions	1,333,777
87000	Special Program, Contracts, Dist	Civil Protective Proceeding and Position	380,436
	TOTAL		16,255,475

Attachment 5a



Oregon

Public Defense Services Commission

Office of Public Defense Services
198 Commercial St. SE, Suite 205
Salem, Oregon 97301-3489
Telephone: (503) 378-2478
Fax: (503) 378-4463
www.oregon.gov/opds

May 2, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairs:

Nature of the Request

During the 2021 session, the Oregon Legislature passed HB 5030, which established the Public Defense Services Commission (PDSC) budget for the 2021-2023 biennium. The purpose of this letter is to provide the agency's second financial update and first rebalance request for the 2021-2023 biennium.

Action Requested

The Public Defense Services Commission requests that the committee acknowledge receipt of this report and approve the rebalance actions requested in the report.

Legislation Affected

See report Attachment A.

Sincerely,

Stephen I. Singer
Executive Director

cc:

John Borden, Principal Legislative Analyst, LFO
Amanda Beitel, Legislative Fiscal Officer
George Naughton, Chief Financial Officer
Wendy Gibson, Policy and Budget Analyst, CFO

Public Defense Service Commission Financial Update and Rebalance Request to June 2022 Joint Emergency Board

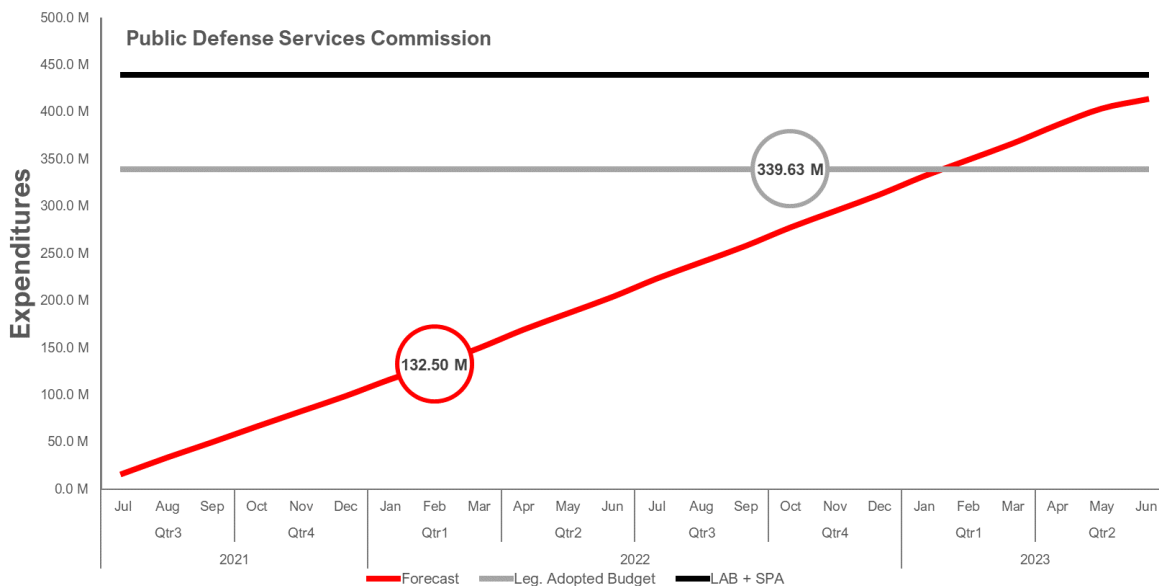
May 2, 2022

Executive Summary and Nature of Request:

The Public Defense Services Commission (“PDSC” or “the commission”) is submitting its second financial update and first rebalance report for the 2021-23 biennium to the June 2022 Joint Emergency Board. This report will include a request to rebalance funding in certain divisions. This rebalance action will ensure that as the PDSC formally requests monies from the special purpose appropriation (“SPA”) that was established in House Bill 5030 (2021), the PDSC does so with clarity to ensure the money goes to the appropriate division. The agency will be informing the committee of proposed rebalance actions that will need to be taken in order to position the agency to request inflationary rate increases and other forms of relief to contracted providers. This report demonstrates the monthly financials for the period ending on February 28, 2022. The agency requests that the Joint Emergency Board approve the rebalance adjustments listed at the end of this report.

Current State of 2021-23 LAB

The chart below shows the current state of the commission budget, for the period ending February 28, 2022. Without the additional investment represented by the \$100 million SPA, based on current spending the agency budget will reach its limit on or around January 2023.



	LAB	Expenditures	Projections	Forecast	Variance
General Fund	321,184,175	129,347,954	268,980,124	398,328,077	77,143,902
Other Funds	18,449,667	3,155,147	11,851,129	15,006,276	(3,443,391)
Total Funds	339,633,842	132,503,100	280,831,253	413,334,353	73,700,511

The following sections of this report will describe the current state and the various issues the agency faces. The tables below summarize the commission’s General Fund position. The first table which is by program area highlights the need for additional investment of approximately \$80.8 million. The second table shows the projected savings in non-SPA related program administrative areas. Overall, the issues presented show that the PDSC currently has a projected General Fund need of \$77.1 million, when considering all areas.

General Fund – Program Areas

February-22	LAB	Forecast	Variance
Trial Criminal Division	186,458,931	225,857,275	39,398,344
Non-Routine Expenses	43,663,533	60,986,655	17,323,122
Court Mandated Expenses	15,006,403	29,817,469	14,811,066
Juvenile Division	30,577,095	39,845,880	9,268,785
Total General Fund	275,705,962	356,507,280	80,801,318

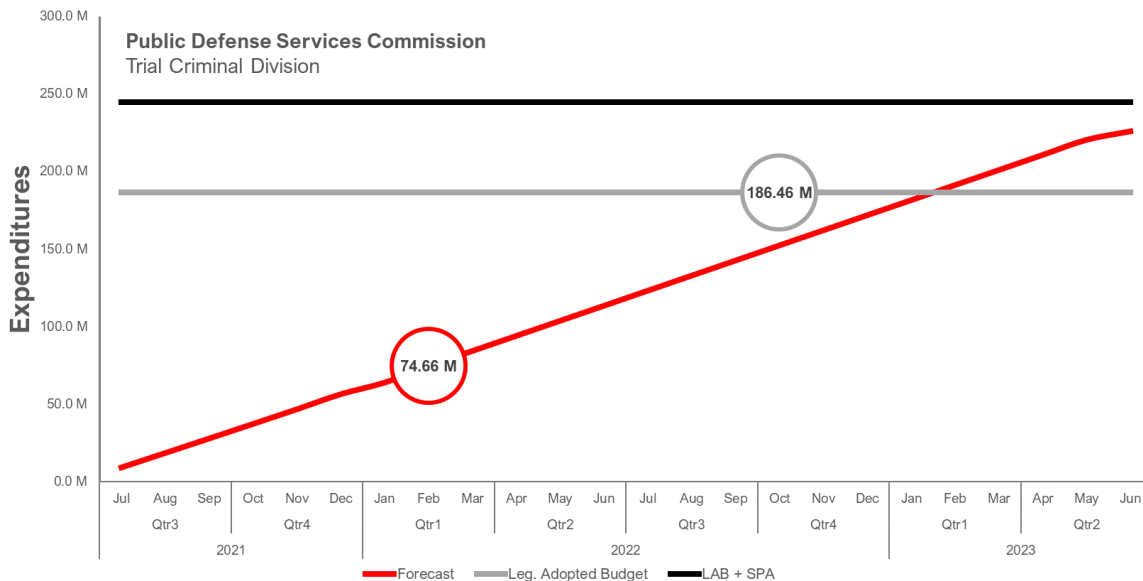
General Fund – Program Administration Areas

February-22	LAB	Forecast	Variance
Executive Division	3,600,361	3,294,375	(305,986)
Compliance, Audit, & Perf. Division	4,656,251	4,765,870	109,619
Appellate Division	24,925,503	22,124,745	(2,800,758)
Administrative Services Division	12,296,098	11,635,808	(660,290)
Total General Fund	45,478,213	41,820,798	(3,657,415)

Program Areas

The Program areas are the divisions that deliver the service for the commission. All of this funding goes directly out to the community partners, providers and vendors for services. These divisions are Trial Criminal, Case Support Services, Court Mandated Expenses and Juvenile. All of these programs are SPA related and will need the additional investment to continue to deliver services through the rest of the biennium.

Trial Criminal Division



General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	186,458,931	74,663,547	151,193,728	225,857,275	39,398,344
Total Funds	186,458,931	74,663,547	151,193,728	225,857,275	39,398,344

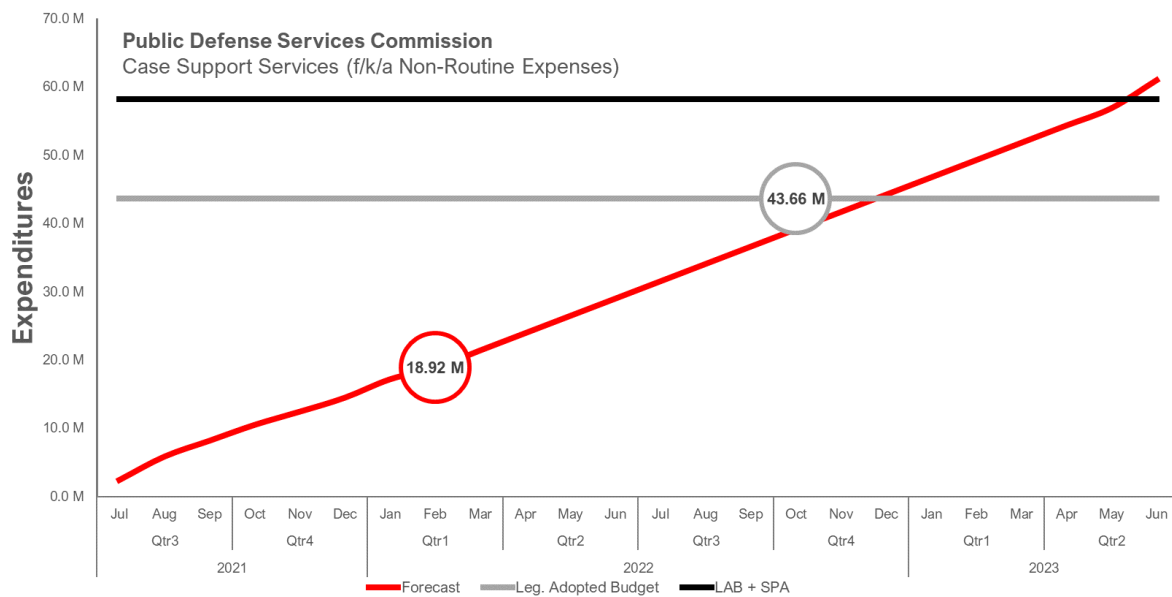
The Trial Criminal Division is a mandated caseload that provides funding to contracted service providers to include non-profit public defender offices, law firms, consortia of attorneys, and sole practitioners. The division is currently presenting a \$39.3 million shortfall; however, it is spending in accordance with the commission approved contracts and their amendments. The division has \$70,250,989 allocated in the SPA which should result in savings after the execution of the technical adjustments. The commission is currently rewriting its provider contracts which will result in higher costs in anticipation of the release of funds currently being held in the SPA. The anticipated increases are mainly inflationary and to cover forecasted caseload increases.

The agency is actively working to make improvements to the provider contracts that will be in effect from July 2022 through June 2023, based on input from the commission and the provider community. Not all issues raised will be addressed during this contract cycle, but planned improvements in non-policy related areas coupled with a forecasted increase in FTE should help with capacity issues. The agency's efforts to provide inflationary relief will be realized through improved compensation for wages for attorney providers and additional money to help providers meeting the increased reporting requirements that are being asked for by the commission. The Legislature is providing emergency funding in the 2022 Legislative session to allow the agency to work with providers in four areas (Multnomah, Washington, Marion and Lane counties) where there is immediate problem with representation due to capacity issues.

There are two technical adjustments that need to be made in an effort to align expenditures with budgeted resources. The first adjustment moves \$10,602,500 of professional services to Court

Mandated Expenses for noncontract hourly trial attorney charges. Hourly trial attorney charges were budgeted in the Trial Criminal Division however those expenditures are realized in the Court Mandated Expenses Division. Hourly attorneys are appointed by the courts due to capacity or conflict issues with our contracted providers. The second adjustment moves \$250,000 of professional services' dollars to Court Mandated Expenses to account for appellate attorney charges. Similar to the hourly trial attorney charges these attorneys are appointed by the courts due to capacity or conflict issues with PDSC appellate attorney staff and their expense is realized in the Court Mandated Expenses Division.

Case Support Services (Nonroutine Expenses) Division



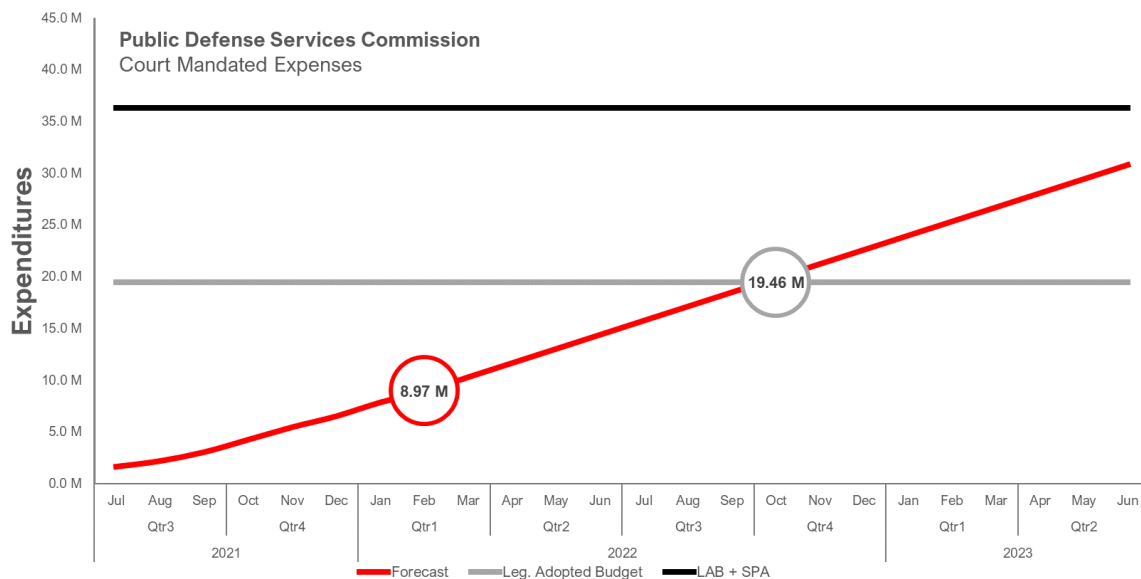
General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	43,663,533	18,917,540	42,069,115	60,986,655	17,323,122
Total Funds	43,663,533	18,917,540	42,069,115	60,986,655	17,323,122

Case Support Services Division's essential role is supporting adequate trial level representation as a mandated caseload which funds reasonable and necessary case-specific non-attorney services. This division is currently presenting a \$17.3 million shortfall. The division has \$14,544,511 allocated in the SPA which may provide some relief but will not solve the current shortfall. After the addition of SPA funding, this division is projected to overspend by \$2.8 million. This shortfall will continue to grow as new caseloads grow and continue to exist without resolution. There is one technical adjustment to move approximately \$7.7 million of professional services from the division to Court Mandated Expenses to properly account for court appointed psychiatric fees.

The division is approving authorization requests at levels that are twice the current clearing rate. Over the last three months, the division has issued authorizations at a rate of \$4.5 million per month while only paying out invoices at a rate of \$2.2 million per month. The agency currently has approximately \$52.7 million in unpaid authorizations or encumbrances which is expected to continue to grow substantially over the term of the biennium as courts continue to open. The agency’s current policy states that work on Non-Routine Expense (NRE) authorizations must start within two years of the authorization date of the NRE. The claim must be billed against the authorization within two years of the last date of service on the case. This policy is creating indeterminate encumbrances that are rapidly becoming unsustainable.

The division is continuing to review its policies and procedures; working to create better workflows, documentation, and processes; and developing a better understanding of the throughput associated with these elements. The delicacy of this issue must be considered as this is a mandated caseload and is a necessary element of support in the defense of indigent defendants to include criminal, juvenile delinquency, juvenile dependency, termination of parental rights and other practice areas such as civil commitment, post-conviction relief and others relevant cases.

Court Mandated Expenses Division



General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	15,006,403	7,959,341	21,858,128	29,817,469	14,811,066
Other Funds					
Services & Supplies	858,362	89	0	89	(858,273)
Special Payments	3,591,305	1,006,186	0	1,006,186	(2,585,119)
Total Funds	19,456,070	8,965,616	21,858,128	30,823,744	11,367,674

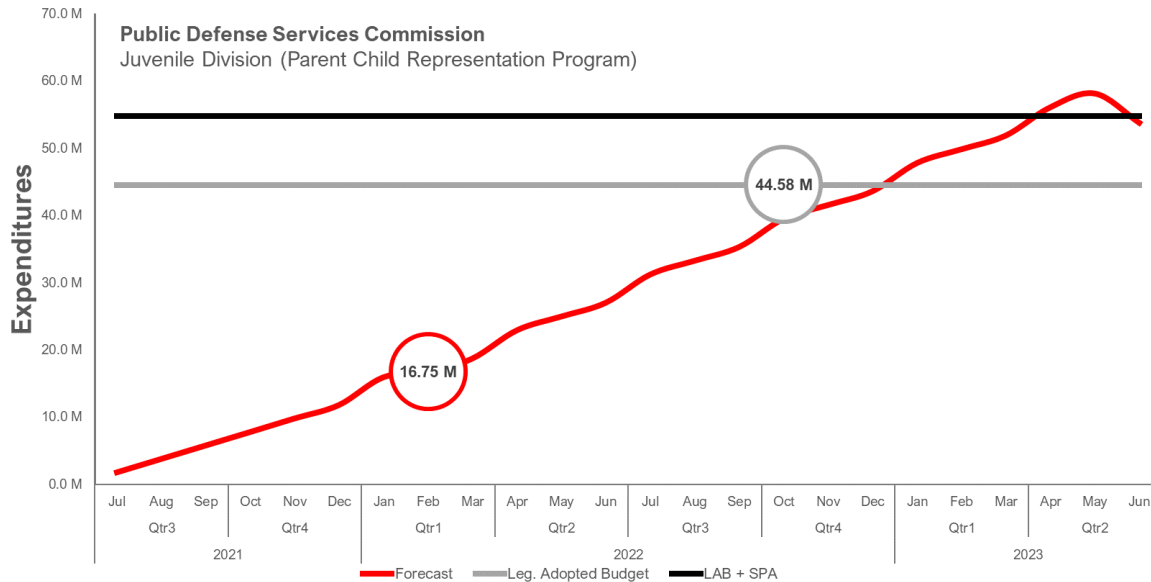
The Court Mandated Expenses Division is a mandated caseload that funds trial and appellate representation by attorneys who are not funded through a provider contract. Those attorneys are often referred to as noncontract or hourly attorneys. The division also funds routine case services that are associated with representation, such as discovery, mileage, travel, postage, copies, basic interpreter services or psychological evaluations, where ordered by a court. Typically, cases are assigned to the contracted providers in the jurisdiction unless there is a capacity issue or an ethical conflict, in which case the agency locates other counsel.

The division is currently presenting a \$14.8 million shortfall. The division has \$5,002,135 allocated in the SPA which may provide some relief but will not solve the current shortfall. Further relief will come from the technical adjustments from the Trial Criminal Division that moves \$10.6 million of professional service to Court Mandated Expenses to account for hourly trial attorney charges. The second adjustment moves \$250,000 of professional service to Court Mandated Expenses to account for hourly compensating the appellate panel as necessary for conflicts and due to the lack of capacity in the agency's Appellate Division. There is an additional technical adjustment from the Appellate Division, moving one million of professional service dollars to Court Mandated Expenses to pay for funding transcription and deposition services expenses. The final technical adjustment is a net zero move of approximately \$7.7 million of professional service from Case Support Services to Court Mandated Expenses to properly account for court appointed psychiatric fees. The anticipated relief from the SPA and the technical adjustment will resolve the current situation, but this shortfall will continue to grow as new caseloads increase and older cases remain unresolved.

There remains a certain level of difficulty with attempting to forecast this area, as conflicts are not immediately known, and capacity issues are still evolving. To further complicate things, the current agency policy for submitting invoices for this work allows providers sixty days to bill after completion of services, unless approved for interim billing that allows a provider to submit invoices monthly and no less than quarterly. The current method of forecasting continues to rely on historical payment of expenses; however, as the newly developed research section matures there will be a more focused effort to better track the number of cases that are being appointed to non-contracted attorneys and any deviations to the standard hourly rate. Current work by the agency to increase compensation and capacity at the contract provider level will hopefully reduce the use of hourly providers.

The division also accounts for other funds associated with the Application Contribution Program (ACP). The ACP revenue supports a special payment to the Oregon Judicial Department for program staff and a portion is to cover some of commission's court mandated expenses. Expected revenue is not materializing at the projected rate; and, at the current rate, the program's fund balance will run out as soon as May 2022. The agency has prioritized the special payment to OJD for staff and will transfer all funds except for the money that explicitly allocated to PDSC to offset the Court Mandated expenditures.

Juvenile Division



General Fund	LAB	Expenditures	Projections	Forecast	Variance
Services & Supplies	30,577,095	14,596,227	25,249,653	39,845,880	9,268,785
Other Funds					
Services & Supplies	14,000,000	2,148,871	11,851,129	14,000,000	0
Total Funds	44,577,095	16,745,098	37,100,782	53,845,881	9,268,786

The Juvenile Division is not a mandated caseload but does provide trial level representation to parents and children in cases of delinquency, dependency, and termination of parental rights in jurisdictions in which the Parent Child Representation Program (PCRP) has been implemented.. This division is currently spending as expected. The Juvenile Trial Division has \$10,192,365 in the SPA which the division plans to request. This will provide relief and allow the division to spend within its budgeted authority; however, as courts continue to open, children return to school, and normal activity returns, any increase over what is currently projected will create an urgent request for funding.

PCRP providers and Case Managers are a part of the agency efforts to improve the provider contracts. In order for the agency to maintain parity and equity among providers, any changes to contract providers in the Trial Criminal Division will need to be shared with Juvenile providers as well. These contract enhancements may call for a need to rebalance some of the SPA funding in the Trial Criminal Division to the Juvenile Division at a later date.

The Title IV-E funding in the division is represented as other funds and is also projected to spend out completely. There will continue to be an application of reimbursement of General Funds to cover expenses that are eligible and future reimbursements which are built into the forecasts of Court Mandated Expenses, Trial Criminal Division, Juvenile Trial Division, Juvenile Appellate Section and Case Support Services.

Program Administration Areas

Executive Division

General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	3,031,923	819,725	1,969,678	2,789,403	(242,520)
Services & Supplies	568,438	295,459	209,513	504,972	(63,466)
Total Funds	3,600,361	1,115,184	2,179,191	3,294,375	(305,986)

This Executive Division consists of the director, deputy director, executive assistants, general counsel, government relations, and policy analysts. The division is currently projected to remain within budgetary authority. Included in this forecast are several contracts to assist the agency with restructuring and the strategic planning efforts and legal representation, which were not originally anticipated when the budget was developed. The agency will take the necessary management actions to remain within budgetary authority.

Contracts	Purpose	Contract Amount
Coraggio Group (Corragio Group, LLC)	Modernization, Reorganization & Planning	296,990.00
Sue Wilson	Leadership Team Facilitation	5,000.00
Rochella Ann Thorpe	Executive Director Recruitment	25,000.00
Strategies 360	Media and Communications	120,000.00
Harrang Long Gary Rudnick PC	Legal Services	13,000.00
Judy Snyder	Legal Services	4,000.00
Department of Justice	SAAG - Workplace Solutions NW	100,000.00

The division expects to receive \$143,103 General Fund from the Special Purpose Appropriation to State Agencies for state employee compensation as a result of House Bill 5202 (2022).

Compliance, Audit and Performance Division (CAP)

General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	4,176,464	827,756	3,380,292	4,208,049	31,585
Services & Supplies	479,787	54,067	503,754	557,821	78,034
Total Funds	4,656,251	881,823	3,884,046	4,765,870	109,619

The CAP Division is showing a slight overage which is a forecasting issue. The division is currently experiencing a slight deficit in personal services due to the difficulty in hiring audit staff Savings are expected to emerge in future periods as result of those challenges. The division is currently in the recruitment process for the Criminal Trial deputy general counsel and Juvenile Trial deputy general counsel as funding becomes available. Included in this forecast are several contracts to assist the agency with restructuring and the strategic planning efforts an audit professional with whom it has contracted to perform audit services. These contracts were not anticipated when the budget was developed.

Contracts	Purpose	Contract Amount
Coraggio Group (Corragio Group, LLC)	Modernization, Reorganization & Planning	296,990.00
Latham Stack Auditing LLC	Agency Internal Auditing Services	252,000.00

There are a couple of invoices incorrectly coded in the expenditures, but they will be corrected, and the expenditures will be moved to the appropriate area.

The division expects to receive \$248,409 General Fund from the Special Purpose Appropriation to State Agencies for state employee compensation, as a result of HB 5202 (2022).

Appellate Division

General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	23,341,841	7,165,975	14,810,265	21,976,241	(1,365,600)
Services & Supplies	1,583,662	33,167	115,337	148,504	(1,435,158)
Total Funds	24,925,503	7,199,143	14,925,602	22,124,745	(2,800,758)

The Appellate Division is a mandated caseload and is currently experiencing projected vacancy savings due to the temporary assignment of one senior deputy defender in the division's Juvenile Appellate Section to act as the interim juvenile trial general counsel in CAP Division. There are also several senior deputy defender positions that are underfilled in the Criminal Appellate section and two in the Juvenile Appellate Section until incumbents are identified who meet the qualifications of a senior deputy defender.

There is one technical adjustment to be made which will transfer authority from the Appellate Division. The transfer is a movement of one million dollars of services and supplies to Court Mandated Expenses to defray the cost of transcription and deposition services in appellate matters.

The division expects to receive \$750,390 General Fund from the Special Purpose Appropriation to State Agencies for state employee compensation, as a result of HB 5202 (2022). The division also expects to receive \$135,221 General Fund in carry forward funds from 2019-21 and \$259,969 General Fund and one full time position in the Juvenile section to support increased caseload.

Administrative Services Division

General Fund	LAB	Expenditures	Projections	Forecast	Variance
Personal Services	7,910,418	2,608,831	5,664,785	8,273,616	363,198
Services & Supplies	4,385,680	1,399,804	1,955,875	3,355,679	(1,030,001)
Capital Outlay	0	6,513	0	6,513	6,513
Total Funds	12,296,098	4,015,148	7,620,660	11,635,808	(660,290)

The Administrative Services Division provides agency-wide administrative support and central services through the following sections: Administration, Budget, Accounting/Accounts Payable, Human Resources, Procurement, Facilities, and Information Services. The division is currently presenting a shortfall in personal services due to a position that was abolished in the budget build and the inheritance of reclassification that was approved in a previous biennium but was never completed processed on the budget side. The agency has an additional request of the Joint Emergency Board to request funding. Fortunately, the majority these issues should be resolved with the salary pot funds and the division will continue to mitigate them through management actions should the request be denied.

Included in this forecast are several contracts to assist the agency with operational issues in relation to labor relations services and to fulfill instruction given by the 2022 legislature to obtain an assessment of OPDS IT services. These contracts were not anticipated when the budget was developed.

Contracts	Purpose	Contract Amount
Craig Cowen	Support and Consultation - Labor Relations	30,000.00
Elyon Enterprise Strategies, Inc.	Assessment of OPDS IT Services	49,342.00

The division expects to receive \$475,739 General Fund from the Special Purpose Appropriation to State Agencies for state employee compensation, as a result of HB 5202 (2022). The division also expects to receive \$132,450 General Fund in carry forward funds from 2019-21 and \$743,588 General Fund and two limited duration positions in the Information Technology Services section to support the planning phase of the Financial and Case Management information technology project.

2022 Legislative Session

February 2022 Legislative Session HB 5202			
Appropriation	Division	Description	Amount
84000	Trial Criminal Division	Emergency Funding, GF Carry Forward	12,808,337
85000	Juvenile Division	PCR Family Treatment Court Position	195,833
81000	Executive Division	Salary Pot	143,103
82000	Compliance, Audit, & Perf. Division	Salary Pot	248,409
83000	Appellate Division	Salary Pot, GF Carry Forward, Position	1,145,580
86000	Administrative Services Division	Salary Pot, GF Carry Forward, 2 Positions	1,333,777
87000	Special Program, Contracts, Dist	Civil Protective Proceeding and Position	380,436
	TOTAL		16,255,475

The agency is expecting to have a General Fund and positions added to the LAB as a result of HB 5202 from the 2022 Legislative Session. Highlights are:

- \$12.8 million Emergency Funding to the Trial Criminal Division for indigent defense council in Multnomah, Washington, Marion and Lane counties to address current backlog of unrepresented clients.
- \$743,588 and two limited duration positions to Administrative Services Division for the planning phase of the Financial and Case Management information technology project.
- \$380,436 and one limited duration position to implement SB 578 (2021) and payment of counsel.
- \$259,969 and one full time position to the Juvenile Appellate Section to support caseload growth.
- \$198,833 and one full time position to the Juvenile Division to support Family Treatment courts and the Parent Child Representation Program.

Rebalance Actions

The agency requests the following net rebalance actions which result in a net zero effect to the General Fund budget as demonstrated on attachment A:

- Move \$10,602,500 from the Trial Criminal Division to the Court Mandated Expenses to account for the hourly attorneys that are not under contract and who are appointed due to conflict or capacity issues. This should have been done at budget build but was overlooked in the development of the current budget structure that was developed for the 2021-23 biennium.
- Move \$250,000 from the Trial Criminal Division to the Court Mandated Expenses to account for the hourly appellate attorneys that are not under contract and who are appointed due to conflict or capacity issues. This should have been done at budget build but was overlooked in the development of the current budget structure that was developed for the 2021-23 biennium.
- Move \$1,000,000 from the Appellate Division to the Court Mandated Expenses. This will match budget to where the actual expenditures are being realized. This was noted at a previous Joint Emergency Board but was not corrected in the 2021-23 budget build.
- Move \$7,706,454 from Non-Routine Expenses to Court Mandated Expenses for court ordered psychiatric fees. This is to match budget dollars to where the court ordered expenditures are being realized. Additional and unnecessary paperwork needs to be generated internally to balance expenditures to budget however this creates further opportunity for error and in the spirit of accounting best practices the agency would like to avoid doing.

Risks

PDSC is working diligently to continue to implement and meet the expectations outlined in HB 5030 and HB 2003. There are significant risks that are high on the agency's radar and need to be highlighted.

- Finance and Case Management system – This is imperative to the future success of the agency and the indigent population that it serves.
- Nonroutine Expenses/Case Support Services – The agency is working to review the current policies and procedures to better manage this process however until there is movement of cases the liability of approved expenditures will continue to grow so long as cases are assigned to counsel.
- Contract Providers – The contracted providers are rapidly reaching capacity if not currently at capacity. The increased workload will eventually take its toll on the system and attorneys may leave causing further strain on existing capacity.
- Hourly providers – When ethical conflicts and capacity become an issue with the contracted providers, hourly providers are looked at to handle the overflow. This creates problems with the average cost per case increasing and exhaustion of hourly-provider capacity.
- Rate increases – All providers are asking for rate increases which puts further strain on all levels. Contract providers want inflationary rate increases, parity with attorneys representing the state, and additional funds for administration and investigation. The risk of not acting will create stress on the system as attorneys may leave for opportunities elsewhere.
- Appellate Panel – Panel attorneys are also requesting inflationary increases to move close to parity with state employed attorneys. The Appellate Division, especially the Juvenile Appellate Section, depends greatly on maintaining the relationship with these attorneys.

Conclusion

PDSC looks forward to working with the Legislature to address the budget issues outlined in this report and any other outstanding issues to ensure that the Legislature has the information it needs to make decisions about this financial update and requests.

Public Defense Services
Commission
2021-2023 Financial Update/June 2022 Joint
Emergency Board
APPROPRIATION AND LIMITATION
ADJUSTMENTS
ATTACHMENT A

PROGRAM	PROPOSED LEGISLATION / SECTION	APPR #	FUND TYPE	ADJUSTMENTS	REQUEST FROM SPA	NET ADJUSTMENTS
Non- Routine Expenses	ch. 444, sec 1 (5)	84250	General	(7,706,454)		(7,706,454)
						-
Appellate Division	ch. 444, sec 1 (3)	83000	General	(1,000,000)		(1,000,000)
Trial Criminal Division	ch. 444, sec 1 (4)	84000	General	(10,602,500)		(10,602,500)
	ch. 444, sec 1 (3)	83000	General	(250,000)		(250,000)
						-
Court Mandate Expenses Division	ch. 444, sec 1 (6)	84500	General	7,706,454		7,706,454
	ch. 444, sec 1 (6)	84500	General	10,602,500		10,602,500
	ch. 444, sec 1 (6)	84500	General	1,000,000		1,000,000
	ch. 444, sec 1 (6)	84500	General	250,000		250,000
TOTALS				-	-	-

Attachment 5b



Oregon

Public Defense Services Commission

Office of Public Defense Services
198 Commercial St. SE, Suite 205
Salem, Oregon 97301-3489
Telephone: (503) 378-2478
Fax: (503) 378-4463
www.oregon.gov/opds

May 2, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairs:

Nature of the Request

In accordance with ORS 151.216(1)(e) the Public Defense Services Commission has adopted a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies. The Public Defense Services Commission submits this second report and requests that the committee acknowledge receipt of this report.

Agency Action

On April 21, 2022, the Public Defense Services Commission (PDSC) approved compensation adjustments consistent with the compensation adopted by Executive Branch and Oregon Judicial Department, outlined on the attached report.

Action Requested

The Public Defense Services Commission requests acknowledge receipt of this report.

Legislation Affected

No legislation is affected.

Sincerely,

Stephen I. Singer
Executive Director

cc:

John Borden, Principal Legislative Analyst, LFO

Amanda Beitel, Legislative Fiscal Officer

George Naughton, Chief Financial Officer

Wendy Gibson, Policy and Budget Analyst, CFO

DRAFT

Attachment 5c



May 2, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of Request

The 2021-23 Legislatively Adopted Budget, HB 5030, established the operating budget authority for the Public Defense Service Commission (PDSC). HB 5030 (2021) changed the way the PDSC was structured and how it delivers services. Among the newly created divisions, was Non-Recurring Expenses Division, which is tasked with receiving and providing authorization of reasonable and necessary public defense related costs. During the restructuring of PDSC one of the necessary positions that supports this division was errantly abolished. The purpose of this letter is to request limited duration position authority and funding for a Program Analyst 1 for the second fiscal year of the 2021-23 biennium.

Agency Action

PDSC has made the decision to operationally change the name of the Non-Routine Services Division to Case Support Services Division, since public defense cases have routine case related services that are provided by vendors, other than attorneys, that the agency is required to pay. These are called case supported services (CSS). These services are pre-approved by the agency, when attorneys need case supported services such as an expert, a doctor, investigator, or other evaluations, they must turn in a CSS request form prior to the service being performed.

The agency has a four-person team that processes intake and pre-approval of these requests. There are on average 150 of these requests that are sent into the agency each day. The CSS team is comprised of two Program Analyst 1's that complete the daily intake of each of the requests. They come in via email and must be hand entered into a database to move to the pre-approval portion of the process. The pre-approval consists of one Program Analyst 2 that does pre-approval. Pre-approval involves reviewing the request to determine if there is enough information to process for pre-approval; many times, follow-up with the attorney for more information is needed, or the request needs to go to the respective Juvenile or Adult Criminal chief at OPDS for the pre-approval. The Program Analyst 3 also process' requests for pre-

approval. This position also does outreach to attorneys for follow-up on questions, works with agency staff on policy and procedure, tracks rate changes and backs up intake and pre-approval when there is a need.

In the 2021 budget process a Program Analyst 1 was mistakenly removed from this team of four. Given the workload of intake there is a need to have two Program Analyst 1's completing the intake process at all times. Proper intake takes time is key to ensuring that the rest of system runs effectively. Currently process is completely manual that many times requires reaching out to the attorney that submitted the request for clarification. This is a time sensitive process for the attorneys that request the CSS and requested services can't begin until the agency has completed its process to pre-approve the work.

CSS is our most vulnerable division right now. Service requests continue to grow at a net rate of \$2.1 million per month, maintaining the average monthly payout of \$2.4 million and a new case rate of \$4.5 million per month. At present, there is approximately \$53M in unpaid authorizations or encumbrances outstanding. At current pace the budget is projected to exceed its authority by \$2.8 million after the application of SPA funds. However, there is a risk that must be acknowledged that with court systems returning more closely to pre-pandemic operations, invoices and corresponding monthly payments may begin to come in a higher rate.. The agency is currently self-funding this position as it is crucial to the success of the division. The agency plans to present a policy package requesting the permanent establishment of this position in the 2023-25 agency request budget.

Action Requested

The PDSC requests limited duration position authorization for one Program Analyst 1 and \$98,073 General Fund for remainder of the 2021-23 biennium.

Legislation Affected

Oregon Law 2021 Chapter 444, section 1 (8).

Sincerely,

Steven I. Singer
Executive Director

cc:

John Borden, Principal Legislative Analyst, LFO
Amanda Bietel, Legislative Fiscal Officer
George Naughton, Chief Financial Officer
Wendy Gibson, Policy and Budget Analyst, CFO

Attachment 5d



May 2, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of Request

The 2021-23 Legislatively Adopted Budget, HB 5030, established the operating budget authority for the Public Defense Service Commission (PDSC). HB 5030 (2021) changed the way the PDSC was structured and how it delivers services. Among the newly created divisions, was the Administrative Services Division, which is tasked with providing agency-wide administrative support for central services. During the restructuring of PDSC the reclassification of one of the key positions that supports the PDSC by providing facilities management to all of its three building locations and by supporting the agency in basic agency procurement was not completed. The purpose of this letter is to request the approval for the position reclassification of a Procurement Analyst 1 position to a Manager 2, and the General Fund support for the second fiscal year of the 2021-23 biennium.

Agency Action

In June of 2019, all business services classifications were reviewed by the Human Resources office for the first time in the history of the PDSC. This position was classified as a procurement analyst based on the duties assigned at the time of the review.

In July of 2020, the PDSC opened two new locations, for a total of three, and the Executive Director at that time requested a classification review for this position with consideration of changes due to the expansion of locations. The Human Resources office upon completing a classification review determined that the position was clearly that of a facilities manager based on the new level of responsibility and needed increase of decision making and spending authority. In accordance with PDSC policy the incumbent was authorized to be paid at that Manager 2 level since the duties associated with position were important and necessary for the success of the agency.

In August of 2020, the PDSC submitted another permanent finance plan, and this position was errantly not considered in that process. As this action was not taken in the agency's permanent

finance plans, it was not brought forward at any subsequent Joint Emergency Boards nor was it considered as a part of a policy option package for the 2021-23 biennial budget build, the agency feels that in complete fairness to the employee it needs to be addressed now. The agency has been self-funding the difference between the classification levels at this point and will continue throughout the rest of the biennium. The agency will submit a policy option package for the 2023-25 agency request budget should this not be approved.

Action Requested

The PDSC requests the position reclassification of a Procurement Analyst 1 position to a Manager 2, and the \$95,155 General Fund support for remainder of the 2021-23 biennium.

Legislation Affected

Oregon Law 2021 Chapter 444, section 1 (8).

Sincerely,

Steven I. Singer
Executive Director

cc:

John Borden, Principal Legislative Analyst, LFO
Amanda Bietel, Legislative Fiscal Officer
George Naughton, Chief Financial Officer
Wendy Gibson, Policy and Budget Analyst, CFO

Attachment 5e



Oregon

Public Defense Services Commission

Office of Public Defense Services
198 Commercial St. SE, Suite 205
Salem, Oregon 97301-3489
Telephone: (503) 378-2478
Fax: (503) 378-4463
www.oregon.gov/opds

May 2, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of Request

The 2021-23 Legislatively Adopted Budget, HB 5030, established the operating budget authority for the Public Defense Service Commission (PDSC). This included a change in the way the PDSC received base level technology services. The PDSC submitted a request for funding and the continuance of services through the end of the 2021-23 biennium to the January 2022 Joint Interim Committee on Ways and Means Public Safety Subcommittee.

The January 2022 Joint Interim Committee on Ways and Means Public Safety Subcommittee recommended that the Joint Interim Committee on Ways and Means defer the Public Defense Services Commission request to the May 2022 meeting of the Emergency Board with instruction that the Commission report back with a comprehensive information technology services plan and an assessment of the estimated costs, benefits, and risks of the alternative service-delivery methods, including both insourcing the agency's information technology function and outsourcing through external providers. With each alternative, the Commission shall describe how the security, privacy and confidentiality of data entered, processed, or stored within the Commission's information systems will be assured.

The purpose of this request is to provide a report on comprehensive information technology services plans and to continue the current level of services received from the Oregon Judicial Department Enterprise Technology Services Division (OJD ETSD) for the second fiscal year of the 2021-23 biennium.

Agency Action

The agency contracted with Elyon Strategies to provide three comprehensive information technology services plans. The plans are outlined in the PDSC IT Service Plan, Alternative Delivery Analysis (Appendix A).

Action Requested

The PDSC requests acceptance of this report and authorization to continue the use of OJD ETSD services through the existing contract for the remainder of the 2021-23 biennium. The PDSC further requests \$463,011 of General Fund for payment of services to OJD (\$413,011) and for the cost of the IT Report (\$50,000).

Legislation Affected

Oregon Law 2021 Chapter 444, section 1 (8).

Sincerely,

Steven I. Singer
Executive Director

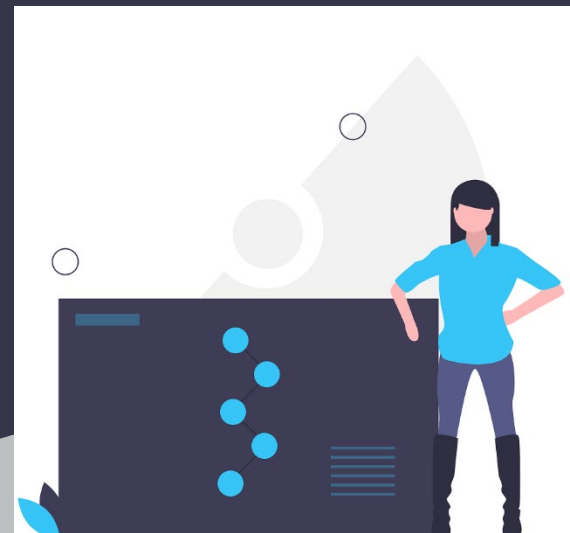
cc:

John Borden, Principal Legislative Analyst, LFO
Amanda Bietel, Legislative Fiscal Officer
George Naughton, Chief Financial Officer
Wendy Gibson, Policy and Budget Analyst, CFO

Appendix A

PDSC IT SERVICE PLAN

ALTERNATIVE DELIVERY ANALYSIS



Title	Alternative Delivery Analysis		
Document #:			
Version:	FINAL	DATE:	4/8/2022
Author(s):	WILLIAM ROETZHEIM		
Customer:	Oregon Office of Public Defender Services		
Contract:	OPDS-2022-02		
Project:	OPDS Outsource/Insource Alternative Analysis		
Deliverable ID:	1.3.1-1.3.4, PLUS 1.4.1-1.4.2		

VERSION HISTORY

Version	Author	Date	Changes
Draft	WHR	3/28/2022	Draft version
Final	WHR	4/8/2022	Final Version

Approvals


Role	Name	Signature	Date
Author	William Roetzheim		4/8/2022

Table of Contents

Contents

Table of Contents	3
1 Executive Summary	5
2 Analysis.....	6
2.1 Introduction.	6
2.2 Analysis Approach.	7
2.3 Information Technology Support Requirements.....	7
2.3.1 Status Quo Support.	8
2.3.2 New Capability Support.	11
2.4 Description of the Three Alternatives.	14
2.5 Transition Requirements for Each Alternative.....	14
2.6 Financial Analysis of Alternatives.....	15
2.7 Non-Financial Analysis of Alternatives.....	17
2.8 Recommendation.....	19
Appendix A. Acronyms	20
Appendix B: Interviews Conducted	22
Appendix C: Documents Reviewed.....	23
Appendix D: OJD Contract for IT Support	24
Appendix E: OJD IT Support to PDSC	25
Overview.....	25
Helpdesk.....	25
Desktop Team.	26
Server Team.....	26
PDSC Server Infrastructure.	27
Servers and Services Provided.....	27
Server Expertise Provided.	27
Information Security Office.	28
Networking/Telecommunications.....	28
Microsoft 365 & Mobile.	28
Web Team.....	29

Management.....	29
Summary.	30
Appendix F: OJD Confidentiality Agreement.....	31
OREGON JUDICIAL DEPARTMENT EMPLOYEE CONFIDENTIALITY AGREEMENT	31
Appendix G: PDSC IT support Incident Metrics	33
PDSC iSupport Incidents.	33
Quick Statistics.	33
Incident Detail.	33
ETSD DESKTOP.	33
ETSD HELPDESK.	35
Other Groups.....	36

1 Executive Summary

Information technology (IT) work is divided into status quo (“keep the lights on”) support to maintain organizational mission effectiveness, and new development support to enhance or extend mission effectiveness. All organizations need status quo support. The changing nature of the Public Defense Services Commission (PDSC) mission, and in particular moving from a fixed reimbursement model to a significantly more sophisticated and flexible reimbursement model, means that PDSC will require new IT development support to deploy financial and case management back-office capabilities.

While PDSC is small in terms of headcount (roughly 110 individuals), the organization is using a highly sophisticated, enterprise level set of tools and capabilities to support all aspects of their IT infrastructure. Moving to an insourced IT status quo support model would be difficult, expensive, and high risk. It would be difficult because of the requirement to hire and transition-in staff with the necessary specialized skills, as well as the challenges associated with building out a brand-new data center within PDSC with the necessary conditioned power, backup generation capability, air conditioning, wiring, and fire suppression. It would be expensive in terms of one-time costs because of the need to build-out new facilities (both the data center and office space), and because what are fundamentally part-time, on-demand highly specialized technical skills will need to be filled using full-time staff. And it would be high risk because the current delivery of IT status quo support is high quality, secure, reliable, and flexible; while the new IT status quo support would need to be built-up from scratch, so it would have the potential for all of the problems that would entail.

In terms of data security, moving to an insourced model will not reduce risk and could very easily increase risk. One advantage of the enterprise level tools used by OJD, and their approach to segmenting the network domains, is that the PDSC data is encrypted at rest and in-motion, and access is both monitored and controlled using sophisticated network intrusion detection tools. In addition, the OJD data center is in a secure military facility that is the Governor’s secondary command post. It’s difficult to see how the PDSC data could be better protected, but easy to see ways that it could be less protected following a transition to insourcing.

The optimal, and recommended, approach going forward is a hybrid one. With this approach, IT status quo support continues to be outsourced to OJD, while IT new development support, and in particular support associated with the new financial and case management system capabilities, is insourced to PDSC. Having this new development capability within PDSC will keep those individuals close to the subject matter experts (SMEs) that they will need to work with to do their job.

2 Analysis

2.1 Introduction.

The Public Defense Services Commission (PDSC) must design a comprehensive information technology services plan for the Oregon Legislature to be presented at the Joint Ways and Means Emergency Board in May 2022. This plan must provide an assessment of estimated costs, benefits, and risks of alternative service-delivery methods, including both insourcing the agency's information technology function and outsourcing through external providers. Each alternative must describe how the security, privacy and confidentiality of data entered, processed, or stored within the Commission's information systems will be assured. This report was commissioned to provide an unbiased assessment that will then be used as a basis for this plan.

In preparing our report we looked specifically at the required information technology staffing requirements, cost, benefits, risks, transition schedule, and security implications of three alternate approaches to providing information technology services:

- Fully outsourced to the Oregon Justice Department (OJD).
- Fully insourced to the Public Defense Services Commission (PDSC).
- A hybrid whereby some services are within PDSC, while others remain outsourced to OJD.

Our scope excluded estimating the effort and costs to perform major new Information Technology (IT) development on a project basis. In particular, the full project implementation costs associated with the contemplated new financial and case management system project is outside the scope of the current analysis.

In accordance with General Accounting Office (GAO) yellow book guidelines for management audits such as this one, our report represents our best professional judgement. We are independent, qualified with respect to the areas involved in the analysis, and we have performed sufficient due diligence to satisfy ourselves with respect to the facts of this analysis. Our independence means that our conclusions are based strictly on the facts as identified, without regard to factors such as individual desires or expectations. Further, our report contains recommendations only. The final decision as to the selected course of action must rest with the government.

There was a very limited time to complete the report, and this short, firm deadline represented a constraint on the level of analysis that was performed. We do not believe that with more time we would alter our recommendations in general, however we do believe that some of the details of the specific budget analysis could change somewhat if the project were executed over a longer time-frame (and budget). Our target for the cost portion of our analysis is +/- 25%, so differences between alternatives that are under this amount would be considered low confidence.

2.2 Analysis Approach.

As shown in Figure 1, we employ a three-step process to our alternative analysis:

1. Inventory existing products and services. This inventory defines the necessary types of support that are needed. The result of this work is documented in Section 2.3 below.
2. Use industry best practices and benchmark data to define the characteristics of each alternative to ensure organizational mission success. As part of this analysis, we also look at transition requirements for each alternative. The three alternatives are described in Section 2.4 and the transition requirements are defined in Section 2.5.
3. Compare the alternatives from both a quantitative (financial) perspective and a qualitative (e.g., security) perspective. Our quantitative comparison is contained in Section 2.6 and our qualitative comparison is contained in Section 2.7.

Our final recommendations are then found in Section 2.8

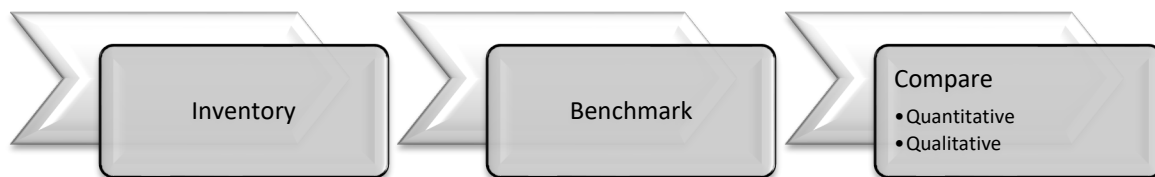


Figure 1: Analysis approach overview.

2.3 Information Technology Support Requirements.

IT support requirements are often divided into two categories of work. The first is status quo support, often called “keep the lights on” support. This is the level and type of support necessary for the organization to remain operational, fulfilling its mission. Support below this level will result in rapid loss of organizational mission capability, often showing up as a cascade of failures.

IT Status Quo support maintains an organization’s mission capability, while IT New Development support enhances mission capability.

The second is new development support. For most organizations, operational needs are evolving over time. When operational needs change, effort must be expended to allow the IT systems to support those evolving needs. While it is possible to slow or stop spending in this area, the result is a gradually increasing gap between the organization’s mission and its IT capabilities. This will limit organizational effectiveness

as the gap widens, and it will eventually become the limiting factor on what the organization is able to accomplish.

We'll cover each of these two areas in the Sections that follow.

2.3.1 Status Quo Support.

The PDSC IT support requirements are enterprise level in terms of sophistication, power, and complexity.

PDSC employs roughly 110 staff and contracts with roughly 715 contract attorneys [Styles, 2022]. IT support includes helpdesk, desktop, server, enterprise information security, networking, telecommunication, wireless, mobile, web, IT management, and software support (e.g., Microsoft 365). Status quo support requirements are summarized in Table 1, and described in more detail in Appendix E. It's significant to note that the PDSC IT environment is setup as an Enterprise scale environment, with Enterprise level tools in all areas. While this provides all the advantages of an Enterprise level environment (e.g., reliability, security, performance), it also means that the bar is quite high in terms of the skillsets required to support this environment. Basically, the PDSC tools and environment would not look any different if the organization had 10,000 staff, rather than just over 100. This also means that the level of expertise required to support the PDSC environment is the same whether the organization has 10,000 staff, or 100.

Table 1: PDSC IT status quo support requirements.

Support Area	Expertise and support provided	Tools used/supported
Helpdesk	Tier 1 help desk.	iSupport.
Desktop	Tiers 2 and 3 support. New user setup. Software installs. New hardware deployments. Equipment moves. Sit/stand desk installs. New printer/copier installs and setup. Windows image creation and management. Windows upgrades and patches. Directory mapping. Active Directory management. Acquisition support (advice).	MS Windows. Active Directory. MS Office. Adobe. Dell hardware. HP and Lexmark printers. Fujitsu scanners. Ricoh copiers. System Center Configuration Manager (SCCM). Windows Server Update Service. WinPE. DART. Remote Assist and Remote Desktop. Dell Command Update. Dell Command Configure. PDQ.
Server	Tier 2/3 support. Maintain 3 physical servers. Maintain 7 virtual servers. Onsite and offsite backups.	VMWare Commvault. DHCP & DNS.

Support Area	Expertise and support provided	Tools used/supported
	<p>Domain management. Certificate Authority management. Secure password management. Azure Application Proxy management. Intune (NDES) management. Nintex server management for SharePoint. Exchange Server and SMTP management. Network monitoring with SolarWinds. VMware architecture and administration. Advanced Server Administration. SAN administration. SharePoint on-prem and in the cloud – operations and development. Active Directory administration (including Domain Controllers, DNS, DFS, WINS, DHCP, Security, group policies, etc.) Tenant / Azure AD / O365 administration. SQL database administration. Westlaw support. Incident management system administration (e.g., iSupport.) OJD Case Management Extracts. Passthrough access to RSTARS. SPSS Statistics configuration.</p>	<p>Microsoft Key Management Services. ADBA Server. Thycotic. Windows Server Update Services. End Point Management Server (SCCM). Microsoft Advanced Threat Protection. Azure Application Proxy. Intune (NDES) Server. Microsoft BitLocker Administration. Monitoring (MBAM) and Network unlock servers. PDQ server. SharePoint. Exchange Server. SMTP. SolarWinds. Tenant. SQL Server. Westlaw. SAN Storage. RSTARS Nintex. Cloudmersive. Host Explorer. IBM SPSS Statistics. IBM SPSS Forecasting.</p>
EISO	<p>Tier 2/3 support. Incident response. Firewall configuration. Threat monitoring. Email threat analysis. DigiCert and VPN renewals and installations. Staff security training/education. Staff security assessments. Security log monitoring. Annual security penetration testing. Compliance and data loss protection (DLP). eDiscovery. Application Security Reviews. RSA Secure tokens (MFA). Security Policy management.</p>	<p>Microsoft's Advanced Threat Protection. Firewalls. DigiCert. VPN. QRadar. Microsoft Security Center. Microsoft Compliance Center. Proofpoint/Wombat. RSA Security Console.</p>
Networking/Telecom	<p>Tier 2/3 support. VoIP management. Wireless infrastructure management. Voice mail and call routing tree management. LS Network management.</p>	<p>Switches. Routers. Firewall. Wireless. VoIP servers. Network transport (2 locations).</p>

Support Area	Expertise and support provided	Tools used/supported
		Voicemail and routing. LS Network (internet). Centurylink/Lumen. Cisco.
MS 365 & Mobile	Tier 2/3 support. MS 365 administration. Exchange server administration. iPad and iPhone support. Azure security/role configuration. Mailbox management. Email quarantine response. Software training.	Microsoft 365. Visio. Exchange server. Azure. Multi-Factor Authentication.
Web & Integration	Tier 2/3 support. SharePoint management. Website management. Web development (24 hours per week). Jira management. Integration (secure data transfer).	SharePoint. Intranet. Survey Monkey. MailChimp. eFax. Doodle. PowerDVD. Time. Snagit. Jira. Web services.
ETSD Management	Management metrics and performance monitoring. Staff oversight. Problem escalation. Hardware inventory management. Software inventory management.	OJD Statistical Dashboards.
Facilities	Facility access control.	Computer room facility. Safety equipment. Physical access control. Backup/standby electrical power.

By way of setting a general benchmark for IT support expectations, the US General Services Administration (GSA) uses \$5,497¹ for IT status quo support per staff supported, so for the PDSC the GSA benchmark data would suggest a status quo IT support cost of \$604,670.

PDSC is currently receiving IT support from the Oregon Justice Department (OJD) on an outsourced basis. In addition to on-going routine IT environment support, OJD responded to 797 IT incidents/service requests during 2021. In reviewing those service requests, we find that 65 different OJD IT personnel have provided support to PDSC at some point or other during 2021. By way of example, a single security incident can involve dozens of IT staff working cooperatively to mitigate, analyze, and then resolve the threat. Further metrics regarding the specific IT incidents handled during 2021 may be found in Appendix G.

¹ <https://www.gsa.gov/policy-regulations/policy/real-property-policy/best-practices-and-tools/office-workplace-best-practices/cost-per-person-model>.

Overall, our estimate of the approximate skillset required to support OPSD status quo operations is shown in Table 2. In developing this list, we note the following facts with respect to IT support:

Effective IT status quo support requires a team of individuals, each with specialized skills and training, plus a back-up capability for each skill area.

- For complex enterprise systems, specialized tools mandate support by staff with specialized skills. As an analogy, when building a house, you don't hire "construction workers." Instead, you hire framers, roofers, plumbers, electricians, and so on.
- For each area, it is necessary to have both a primary and a backup/alternate person. Each of these functions must operate correctly, either during each workday or, in some cases, 7 days a week, 24 hours per day. The primary person will always have periods of unavailability, with examples including vacation, sickness, and simply transitioning to another job. During those gaps, there must be a knowledgeable backup or alternate person to meet the on-going needs.

Table 2: PDSC IT Support Requirements.

Capability	Requirement
Helpdesk	Primary: Full-Time ITS 1. Alternate/Backup: Part-Time ITS 1.
Desktop	Primary: Full-Time ITS 2. Alternate/Backup: Part-Time ITS 2.
Server	Primary: Part-Time ITS 4. Alternate/Backup: Part-Time ITS 3.
EISO	Primary: Part-Time ITS 4. Alternate/Backup: Part-Time ITS 4.
Networking/Telecom	Primary: Part-Time ITS 4. Alternate/Backup: Part-Time ITS 3.
MS 365 & Mobile	Primary: Part-Time ITS 4. Alternate/Backup: Part-Time ITS 3.
Web & Integration	Primary: Full-Time ITS 4. Alternate/Backup: Part-Time ITS 3.
Management	Primary: Full-Time CIO.
Facility Management	Primary: Part-Time ITS 3.
Facilities: Server room	Estimated at 400 square feet.
Facilities: IT staff office space, including an allowance for common areas.	Estimated at 196 square feet per employee. ²

2.3.2 New Capability Support.

Historically, PDSC largely operated as a funding pass-through entity, negotiating what were in effect fixed price contracts and then distributing funds in accordance with those

² Per JLL research at <https://www.us.jll.com/en/views/how-will-employee-workspace-needs-change-post-coronavirus>.

agreements. From an IT perspective, this organizational mission is simple to support and monitor, with minimal opportunities for waste, fraud, or abuse.

In January 2019, the 6AC completed their 238-page report, “The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services” [6AC, 2019]. Their research showed that Oregon attempts to fulfill its 14th Amendment obligation in trial courts primarily through an array of contracts led by the PDSC and administered by PDSC however they identified many areas of concern related to public defense. These concerns include:

- The State of Oregon has created a complex bureaucracy that collects a significant amount of public defense data yet does not provide sufficient oversight or financial accountability.
- The complex bureaucracy obscures an attorney compensation plan that is at root a fixed fee contract system which pits an appointed lawyer’s financial self-interest against the due process rights of their clients and is prohibited by national public defense standards.
- The State of Oregon should require that services be provided free of conflicts of interest, as is constitutionally required, by abolishing fixed fee contracting and other forms of compensation that produce financial disincentives for public defense lawyers to provide effective assistance of counsel.
- PDSC should have the appropriate resources to provide oversight of such a private attorney and state public defender employee system.

Partially because of this study, the organizational mission of PDSC/OPDS has changed significantly, with attorneys receiving reimbursement on more of an hourly basis. This significantly complicates the IT support requirements. Invoices must be validated, duplicate charges (typically accidental) flagged, metrics collected, and forecasts created. According to a PDSC internal document [PDSC, 2020]:

PDSC mission changes are driving the need for new development to support enhanced IT back-office capabilities.

PDSC/OPDS can no longer operate in the status quo and continuation of current business process will remain in non-compliance with national standards identified in the “Guidelines for Legal Defense Systems in the United States”. The OPDS disparate technical tools currently in place are unable to support dynamic data collection and integrations with Oregon courts and partner agencies. Manual data entry in multiple, non-integrated systems has the potential for inaccuracies, duplication, deletion, and loss of all information due to hardware and software failure. Without a robust and efficient financial and case management system, PDSC/OPDS lack a system necessary to collect accurate data that can: document whether quality services are provided to eligible individuals; monitor provider/attorney contracts and financial obligations; reflect where inefficiencies are in business processes; and show increases in workload / caseloads, staff attorney turnover, and complexity of cases.

A report by the American Bar Association and Moss Adams drew similar conclusions [ABA and Moss Adams, 2022, Pages 5-6]:

OPDS needs a centralized data system to capture basic, critical public defense information

There are significant data deficiencies (inconsistency and inaccuracies) in the OPDS Contract Database, and OPDS heavily relies on the Oregon Judicial System court statistics data for basic case information. The OPDS contracting system, which includes over 100 contractors that vary significantly in both size and organizational structure, imposes challenges to building and implementing a unified case management system and other data collection mechanisms. Nonetheless, OPDS should implement systems to reliably collect basic data from all contractors on qualifications, case assignments, caseloads and work completed in public defense cases.

- OPDS should be able to track which individual attorney is assigned to which cases to verify both qualifications and caseloads.
- OPDS should implement improved monitoring of work completed on public defense cases. This should include timekeeping on all public defense cases to permit improved fiscal and substantive oversight, including auditing and a regular attorney review process. Further, OPDS should have basic information on the private caseload, if any, for each attorney paid under its contracts to fully monitor caseloads.
- OPDS should also adopt standardized case opening and case closing forms (specific to case types) to routinely, centrally, and consistently capture important case data. These forms should be integrated into a case management system to allow for aggregation of the data collected.

PDSC is already working to procure, configure, and deploy a new Financial and Case Management System. While estimating the total budget required for that effort is outside the scope of the current Elyon engagement, the following IT staff (Table 3) will be needed to support the project, working closely with the PDSC subject matter experts. Note that because this work is new development rather than status quo work, there is no analogous requirement to have an alternate for each position. With new development, it is acceptable for a role to be unfilled for a short period of time during project execution while a person is sick or on vacation.

Table 3: New development IT support requirements.

Capability	Requirement
Project Management	Full-Time ITS 4

Capability	Requirement
Business Analyst-Test case development and execution.	Full-Time ITS 4
Data Analyst or Business Analyst-Data clean-up and conversion; data validation; database design; report and dashboard design.	Full-Time ITS 4

If the new development IT support personnel are outsourced to OJD, an additional ITS 4 position would be required to coordinate (liaison) between the OJD team and the SMEs at PDSC.

2.4 Description of the Three Alternatives.

In conducting our analysis, we were tasked to look at three alternatives:

1. Full outsourcing of IT functions from PDSC to OJD.
2. Full insourcing of IT functions within PDSC.
3. A hybrid approach, in which IT status quo functions are outsourced to OJD while IT new development functions are insourced to PDSC.

2.5 Transition Requirements for Each Alternative.

Transitioning IT support requires time and incurs one-time transition costs. Staff related transition time has two components: Time to Fill and Time to Train. Time to Fill is simply the time needed to find and hire qualified staff to fill a position once that position has been approved. The Office of Personnel Management tracks and reports on this data, and the number for government fiscal year 2018 was 98.3 days.³ We were not able to find current (2022) data, but anecdotally we believe that the job market is significantly tighter now, with recruiting more challenging than in 2018. To adjust for these characteristics, we've increased the Time to Fill by 25%.

Transitioning to fully insourced will require 180 to 200 days and incur significant costs for the data center build-out, procuring and configuring new office space, and transition-in of the new staff.

While there are costs associated with the hiring process itself, the largest cost element during transition involves training of new employees. Even when an employee has exactly the right technical skills for a given position, they will still need to learn organization specific configurations, policies, procedures, processes, tools, and so on. New employees can take 1-2 years before they are fully productive in a new job.⁴ But in our experience, a 60-day transition-in period for a new IT support organization is more

³ <https://www.govexec.com/management/2020/02/opm-announces-adjustments-annual-time-hire-metrics/163361/>.

⁴ <https://www.betterteam.com/training-new-employees>.

typical. During this transition period, the new employees work side-by-side with the previous employees. For our analysis, we assume a 60-day transition-in period.

In total, the transition time from the final decision to in-source PDSC IT, and approval of the necessary budgets and staff positions, until the actual shut-down of the outsourced support, is expected to be 180 to 200 calendar days from the completion of the budgetary authorizations and completion of the acquisitions for the necessary equipment and facility upgrades..

2.6 Financial Analysis of Alternatives.

In conducting our financial analysis, we focused on staffing and facility costs. We believe that costs for software, network access, computer equipment, phones, and so on will be roughly comparable across all three alternatives, so those constant costs will not have an impact on the selection of an optimum approach. Our financial analysis also makes the following assumptions:

- The cost to build out a data center, including power conditioning, power backup, air conditioning, cabling, security, and fire suppression is budgeted at \$1,000 per square foot.⁵
- The cost for additional office space is budgeted at \$30 per square foot per year⁶, plus a budget of \$4,200 per employee for office furniture and equipment.⁷
- For staffing part-time positions, we assume that OJD supports those positions using actual part-time, as needed support. In the case of insourcing to PDSC, we assume that all positions are full-time positions, as it is very difficult to staff highly skilled IT positions with part-time employees. Skilled IT staff are generally looking for and able to easily find full-time work.
- We assume \$21,464 per month in fully-loaded costs for the CIO position and used the costs from Table 4 for IT support cost calculations. Costs are fully loaded.
- As discussed above, we assume a 60-day transition in for situations where IT services transition from one organization to another.

Table 4: Monthly fully loaded staff costs, per FTE.

⁵ <https://www.profitableventure.com/long-cost-build-data-center/#:~:text=How%20Much%20Is%20A%20Data%20Center%20Worth%3F%20It,would%20then%20cost%20%241%20million%2C%20on%20that%20basis.>

⁶ <https://offices.net/report-oregon.htm>.

⁷ <https://davidcummmings.org/2011/03/07/costs-to-furnish-a-nice-startup-office/#:~:text=Open%20workspace%20with%20%E2%80%9CL%E2%80%9D%20shaped%20desk%2C%20cabinet%2C%20and,Desk%20accessories%20like%20keyboard%2C%20mouse%2C%20etc%20%E2%80%93%20%24150%2Fperson.>

Staff Position	Monthly Cost
ITS 1 fully loaded staff cost.	\$ 9,347.92
ITS 2 fully loaded staff cost.	\$ 11,546.58
ITS 3 fully loaded staff cost.	\$ 12,907.92
ITS 4 fully loaded staff cost.	\$ 15,076.58

In our experience, government agencies with less than several thousand employees are routinely able to reduce their IT spend by 50% to 75% by moving from an inhouse support model to a centralized support model using a consolidated data center. States like Washington have recognized this and instituted policies requiring all state agencies to move to either a state data center or to a cloud provider for IT support services. Frankly, the current alternative analysis is the first one that we have ever conducted that asked us to look at the alternate scenario, moving from a consolidated data center back to inhouse IT support. Our financial analysis, shown in Table 5, makes it clear why this request is rare. In addition to an over \$500K capital investment requirement to build-out the PDSC data center, PDSC costs for equivalent IT status quo support will more than double. From an economic perspective, moving to a fully insourced IT status quo support capability incurs a significant penalty for the taxpayers of Oregon.

Transitioning to fully insourced IT support will incur one-time costs of over a half-million dollars, and on-going monthly costs well over double the costs of either the fully outsourced or the hybrid options, with no appreciable corresponding benefit in terms of organizational mission effectiveness or data security.

Table 5: Financial analysis of the three alternatives.

	Fully Outsourced	Fully Insourced	Hybrid
One-Time Costs			
Data Center Fit-Out	NSP	\$400,000.00	NSP
Office Fit-Out	\$16,800.00	\$79,800.00	\$16,800.00
Transition-Costs	\$ -	\$68,835.20	\$ -
TOTAL	\$16,800.00	\$548,635.20	\$16,800.00
On-Going Costs (per Month)			
Monthly Inclusive IT Support	\$41,293.60	\$ -	\$34,417.60
Helpdesk	NSP	\$18,695.83	NSP
Desktop	NSP	\$23,093.17	NSP
Server	NSP	\$27,984.50	NSP
EISO	NSP	\$30,153.17	NSP
Networking/Telecom	NSP	\$27,984.50	NSP
MS 365 & Mobile	NSP	\$27,984.50	NSP
Web & Integration	NSP	\$27,984.50	NSP
Management	NSP	\$21,464.00	\$21,464.00
Facility Management	NSP	\$12,907.92	NSP
New Capability Support (F/CMS)	\$60,306.33	\$45,229.75	\$45,229.75

	Fully Outsourced	Fully Insourced	Hybrid
Facilities: Server room	NSP	\$1,000.00	NSP
Facilities: IT staff office space	\$1,960.00	\$9,310.00	\$1,960.00
TOTAL	\$103,559.93	\$273,791.83	\$103,071.35

On the other hand, support for IT new development (specifically the Financial and Case Management System project) could reasonably be provided either under an expansion of the OJD contract or through developing those IT capabilities within PDSC. In fact, a hybrid alternative, where status quo support is provided by OJD while new capability support is provided within PDSC, is cost neutral when compared to the full outsource option. Further, there are advantages to having the staff supporting this new development closely aligned with the appropriate subject matter experts, all of whom are within PDSC. So, there are non-financial advantages to expanding the capability of PDSC to support new development inhouse.

2.7 Non-Financial Analysis of Alternatives.

While financial considerations are an important factor, there are non-financial factors that may influence, or even determine, the necessary support approach. In our analysis we looked at nine non-financial factors, as identified in Table 6. For each area we assigned a score of Very Low to Very High based on the quality of services. Where the quality was not known, we assigned a score of Unknown. Each of these nine factors is discussed below:

Current OJD IT status quo support is exemplary across all dimensions of analysis. Bringing this support inhouse runs the risk of decreasing the quality of the support, with no corresponding likelihood of improving the quality. At best, quality will remain unchanged.

- Data security and integrity:** The OJD data center uses industry standard encryption of data at rest and in motion, isolates the PDSC domain to segment PDSC data, incorporates data access controls, monitors access, screens employees, and incorporates intrusion detection. In short, current OJD tools and processes are state-of-the-art, providing industry leading enterprise level data security and integrity.
- OCI Issues:** OJD limits access to PDSC data and systems, avoiding comingling of data outside of the PDSC domain. All OJD staff are background checked and required to sign a confidentiality agreement (Appendix F). In talking to PDSC data owners, no inherent OCI issues were identified. Approaches to data isolation and security are equivalent to those for any hosted data center, and they are appropriate for the sensitivity of the PDSC data. In short, we see no OCI issues associated with the OJD handling of PDSC data.
- Disaster Recover:** OJD performs regular backups, both on-site and offsite in a secure storage facility. Data in transit is protected using both encryption and physical security. The backup schedule is a standard Enterprise level rolling backup with both incremental and snapshot backups.

- **Continuity of Operations:** OJD facilities are a military facility that is also used as the secondary command post by the Governor in the event of an emergency. The facility is fully secure with protected access, plus it has full PGE backup generators enabling it to function in its role as an emergency command post.
- **Security Incident Handling:** We reviewed the OJD security incident handling response using the SolarWinds and Log4J zero-day events as examples. The response demonstrated threat awareness through interactions with peers both inside the state government and outside of government; rapid and appropriate immediate threat response mitigation measures; rapid assembly of the necessary resources to develop a threat elimination plan; and the rapid and effective implementation of that plan. In short, OJD response under fire for security incidents is a model for an effective enterprise level organization.
- **Security policy management:** Comprehensive security related policy documents are currently maintained by the OJD CISO. If this function is insourced back to PDSC, equivalent documents will need to be developed by PDSC staff.
- **Quality of support:** As documented in Appendix G, 98% of the 797 tickets from 2021 have been closed by OJD. In developing our report, we asked each person interviewed if they were aware of any indications of PDSC dissatisfaction with the quality of support provided by OJD, and none were found. In fact, quite the contrary was discovered. We also solicited wider input from PDSC and found a consistent satisfaction with OJD services. For example, Ernest Lannet said, “I have found the PDSCHelp email group very responsive, helpful, and professional. Very satisfied.”
- **Flexibility:** One potential challenge with outsourced IT services is that the outsourced vendor may follow the contract tightly, with no flexibility to handle the inevitable grey areas and unanticipated needs that go somewhat outside the bounds of the written document. What we found is that OJD views OSPD as “part of the family,” with a strong focus on supporting the organizations’ ability to effectively perform its mission even when this requires providing support that was not anticipated in the contract.
- **Interaction with SMEs for new development:** As we’ve discussed earlier, there is a significant difference between the worlds of status quo (keep the lights on) IT support versus IT support for deploying new capabilities. While the status quo support is very commodity like, with the subsequent advantages of economies of scale, new capability support is most effective when the IT personnel have immediate and direct access to the end-user subject matter experts. There is a significant amount of “learning by osmosis” in terms of business rules, workflows, and so on. So, while either approach will work, new development IT support does see a benefit from either the insource or the hybrid models.

Table 6: Non-Financial factors examined.

Characteristic	Fully Outsourced	Fully Insourced	Hybrid
Data security and integrity.	Very High	Unknown	Very High
OCI Issues.	None identified	None identified	None identified
Disaster Recover.	Very High	Unknown	Very High
Continuity of Operations.	Very High	Unknown	Very High
Security Incident Handling.	Very High	Unknown	Very High
Security policy management.	Very High	Unknown	Very High
Quality of support.	Very High	Unknown	Very High
Flexibility	Very High	Unknown	Very High
Interaction with SMEs for new development.	High	Very High	Very High

2.8 Recommendation.

We recommend that PDSC adopt a hybrid outsource/insource model, in which IT status quo support is provided by OJD while most new development, and in particular work associated with the new financial/case management system, is provided using inhouse resources. This model provides an optimal balance of efficiency, effectiveness, and proximity to the PDSC subject matter experts.

The hybrid model is cost effective, low risk, and provides the optimum approach to meeting IT requirements for both status quo and new development.

Appendix A. Acronyms

ABA: American Bar Association.
ADBA: Active Directory-Based Activation.
AP: Accounts Payable.
Azure AD: Azure Active Directory.
DART: Diagnostics and Recovery Toolset.
DFS: Distributed File System.
DHCP: Dynamic Host Configuration Protocol.
DNS: Domain Name System.
ETSD: Enterprise Technology Services Division.
F/CMS: Financial/Case Management System.
FTE: Full-Time Equivalent.
HP: Hewlett Packard.
IBM: International Business Machines.
IT: Information Technology.
ITS: Information Technology Specialist.
LS Networks: Internet provider.
MBAM: Microsoft BitLocker Administration and Management.
MFA: Multi-Factor Authentication.
NDES: Network Device Enrollment Service.
NSP: Not separately priced.
OCI: Organizational Conflict of Interest.
OJD: Oregon Judicial Department.
OPDS: Office of Public Defense Services.
OS: Operating System.
PDSC: Public Defense Services Commission.
PDQ: Pretty D*#&mn Quick.
RSTARS: Relational SStatewide Accounting and Reporting System
SAN: Storage Area Network.
SCCM: System Center Configuration Manager.
SMTP: Simple Mail Transport Protocol.

SPSS: Statistical Package for the Social Sciences.

SQL: Structured Query Language.

VoIP: Voice over Internet Protocol.

VPN: Virtual Private Network.

WinPE: Windows Preinstallation Environment.

WINS: Windows Internet Name Service.

WSUS: Windows Server Update Services.

Appendix B: Interviews Conducted

Table 7 shows the interviews conducted as part of this study.

Table 7: Interviews Conducted.

Date	Interview With	Organization	Topic/Description/Role
2/25/2022	Krystal Styles	PDSC	Analysis project lead.
2/25/2022	Jim Conlin	PDSC	PDSC CIO.
2/28/2022	Bryant Baehr	OJD-ETSD	OJD CIO.
2/28/2022	Ralph Amador	PDSC	PDSC budget analyst.
3/1/2022	Laura A. Al Omrani	PDSC	Historical Context.
3/1/2022	Brian DeForest	PDSC	PDSC Deputy Director.
3/2/2022	David McCall	OJD-ETSD	PDSC Liaison & Desktop Lead.
3/2/2022	Peter Diec	OJD-ETSD	OJD Infrastructure Manager.
3/4/2022	Brian Canfield	OJD-ETSD	OJD Applications Manager.
3/4/2022	Randy Swope	OJD-ETSD	OJD CISO.

Appendix C: Documents Reviewed

6AC, 2019: Sixth Amendment Center. *The Right to Counsel in Oregon*. January 2019.

ABA and Moss Adams, 2022: American Bar Association and Moss Adams, LLC. *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*. January 2022.

Borg et. Al., 2020: Borg, Lane; Fetsch, Julie; and Al Omrani, Laura. *OPDS F/CMS Project Statement*. June 16th, 2020.

DAS, 2022a: Oregon Department of Administrative Services. *HB 5030 Budget Report and Measure Summary*. February 2022.

DAS, 2022b: Oregon Department of Administrative Services. *Position Description, Information Technology Specialist 1*. March 2022.

DAS, 2022c: Oregon Department of Administrative Services. *Position Description, Information Technology Specialist 2*. March 2022.

DAS, 2022d: Oregon Department of Administrative Services. *Position Description, Information Technology Specialist 3*. March 2022.

DAS, 2022e: Oregon Department of Administrative Services. *Position Description, Information Technology Specialist 4*. March 2022.

DeForest, 2021: DeForest, Brian. *Letter to The Honorable Senator Elizabeth Steiner Hayward and The Honorable Representative Dan Rayfield*. December 6th, 2021.

Leymon, Undated: Leymon, Ann Shirley, Ph.D. *OPDS Data Quality Assessment and Recommendations*. Undated.

PDSC, 2020: PDSC. *OPDS Financial and Case Management System Project Business Case V1.0*. July 31, 2020.

Styles, 2020: Styles, Krystal. *OPDS Financial and Case Management System Project Business Case v2.0*, August 31st, 2020.

Styles, 2021: Styles, Krystal. *Requirement Traceability Matrix*. June 7th, 2021.

Styles, 2022a: Styles, Krystal. *OSPD Data Design Visio Diagram*. February 2022.

Styles, 2022b: Styles, Krystal. *Untitled informal working document in response to Elyon request*. February 2022.

Taylor, 2022: Taylor, P. *IT Funding Pkg 809 21-23 Biennium*. February 28th, 2022.

Appendix D: OJD Contract for IT Support

AMENDMENT NUMBER 3 TO
INTERAGENCY AGREEMENT
BETWEEN
OREGON JUDICIAL DEPARTMENT AND
PUBLIC DEFENSE SERVICES COMMISSION

The Oregon Judicial Department (“OJD”) and the Public Defense Services Commission (“PDSC”) agree to amend the Interagency Agreement, OJD Contract Number 170017 (“Agreement”). Except as expressly amended herein, the terms, conditions, and obligations of the Agreement shall remain valid and of full force and effect. However, if any provisions of this amendment (“Amendment”) conflict with the provisions of the Agreement, the provisions of this Amendment shall prevail. This Amendment becomes effective July 1, 2021. ^{is} ^{Retrospective to} *NJC*

Purpose: The purpose of this Amendment is to renew this Agreement for an additional two years, update the scope of information technology services that the Enterprise Technology Services Division of OJD (“ETSD”) will provide to the Office of Public Defense Services (“OPDS”) and update the monthly charge.

The Agreement is amended as follows:

- A. Section I. Purpose. Delete this Section I in its entirety and replace it with the following:

The purpose of this Agreement is for OJD to provide warehouse storage space and information technology services to PDSC.

- B. Section II. Term. Delete the second sentence of this Section II and replace it with the following:

This Agreement will remain in effect through June 30, 2023, unless terminated as set forth in this Agreement.

- C. Section III. Roles and Responsibilities. Subsection B. Information technology services. Delete this subsection in its entirety and replace it with the following:

B. Information technology services: Attachment A-Service Level Agreement (SLA) dated June 30, 2021, describes the information technology services OJD will provide to OPDS and the costs associated with those services. Attachment A is attached hereto and incorporated herein by this reference.

- D. ATTACHMENT A-Service Level Agreement. Delete Attachment A -Service Level Agreement and replace it with Attachment A -Service Level Agreement dated June 30, 2021.

Oregon Judicial Department

By: 
Nancy J. Cozine

State Court Administrator

Date: July 12, 2021

Approved as to Legal Form and Sufficiency:

Teresa Bradshaw, via email
OJD Office of General Counsel
TKB:gl/L2G21017

Public Defense Services Commission

By: 
Ed Jones

Interim Executive Director

Date: July 9, 2021

Date: June 23, 2021

ATTACHMENT A
SERVICE LEVEL AGREEMENT (SLA)
Between
OREGON JUDICIAL DEPARTMENT
AND
PUBLIC DEFENSE SERVICES COMMISSION
June 30, 2021

The Enterprise Technology Services Division (“ETSD”) of OJD will provide information technology management and limited technology infrastructure services for the Office of Public Defense Services (“OPDS”).

A. Responsibilities of ETSD

ETSD will provide:

1. On site direct management of OPDS IT operations until OPDS is able to hire an internal CIO.
2. Qualified ETSD personnel to perform the services described herein. Specifically, One Chief Information Officer (CIO) 100% FTE, one ITS 1 Help Desk Support, and one ITS 2 Desktop Support. All of these positions are the employees of OJD; subject to OJD Personnel Rules and Policies, eligible for OJD Benefits and under the administrative authority of the Director of ETSD. OJD will continue to provide the CIO function until such time as OPDS assumes that function through the hiring of an OPDS CIO. Once OPDS has employed a CIO and assumed the CIO duties, OJD will provide an ITS 4 (Lead) to coordinate the provision of service provided by OJD through this Agreement.
3. Desk equipment (computers, monitors, printers) for OJD personnel stationed at the OPDS location.
4. Network administration within an OPDS Active Directory Domain.
5. Internal and external network monitoring and maintenance.
6. Desktop support.
7. Helpdesk support.
8. Software recommendations and hardware standards for OPDS to follow.
9. Enterprise email management and support.
10. Hardware - Installation and maintenance of OPDS procured workstations and peripheral devices, including recommendations for replacement, upgrade, and substitution. Warranty resolution and recommended scheduled upgrades. Installation and maintenance of printers.
11. Staffing - ETSD will provide primary and backup system administrators skilled in active directory configuration and maintenance, account management, domain name system (DNS), Active Directory, group policy maintenance, desktop, laptop and mobile device management, Microsoft 365 tenant configuration, and maintenance, backup/recovery processes, and security administration.
12. Computer room facilities for servers and other required equipment, including any safety equipment needed.
13. Backup – ETSD systems administrators will setup and monitor backup processes for the OPDS Systems.
 - a. Daily incremental backups are being written to disk at both our primary and backup data centers and are retained for 60 days for quick recovery.
 - b. At the backup data center, these backups are also being written to tape which overwrites itself every 15-30 days to provide air-gapped disaster recovery.
 - c. At the primary data center, the backups are also being rolled up into monthly synthetic full backups which are written to tape and sent offsite to Iron Mountain for 2 years for long term recovery.

- d. In addition to the server backups, the databases are also being backed up independently on a daily basis using the Commvault SQL Agent to provide crash consistent recovery. These backups are included on the same disk and tape backups.
 - e. The tapes are protected with AES 256 encryption and strict chain-of-custody policies are being followed.
 - f. Restores are available on an emergency basis. OPDS would incur the cost of requesting backup media from the off-site storage vendor.
14. Security - ETSD will follow OJD security policies and procedures when working with the OPDS information technology system, data, and information. ETSD will: i) provide a suitable firewall-enabled access to the web server; ii) install and maintain domain name registration; iii) provide physical and logical security consistent with OJD Security Policies and Procedures and iv) provide IT security consultation.
 15. System Administration – ETSD will provide installation and setup of server operating systems, periodic maintenance of server system hardware and software, the installation and configuration of ETSD approved desktop software, and the installation and configuration of ETSD approved backup software.
 16. Software Support - ETSD will provide support for ETSD approved software.
 - a. Software support is limited to the integration, functionality, and maintenance of the software, not the use or customization for local purposes. Any maintenance will be performed during maintenance windows; however, during emergency maintenance, OPDS will be contacted immediately with the nature and extent of the maintenance.
 - b. Training may be provided on standard software, if time and resources are available.
 17. OJD Application Support and Access - ETSD will provide data extracts from OJD case management systems for use by OPDS as approved by the State Court Administrator (SCA). ETSD will provide passthrough access to the State of Oregon’s financial system (currently RSTARS). ETSD will provide application and web development services and access to SCA approved statistical dashboards created by OJD.
 18. Assistance to OPDS with ordering and deploying IT hardware and asset tracking by maintaining a database of all OPDS’ deployed hardware.
 19. Provide infrastructure that facilitates access to the internet and internal network communication transportation.
 20. Assistance to OPDS in monitoring and tracking software license compliance for the supported software by maintaining a database of all OPDS’ software.
 21. Other:
 - a. Remote access for OPDS staff will be provided in accordance with existing OJD policies and procedures for the authorization and installation of VPN access.
 - b. Provide and maintain a website for PDSC and OPDS.
 - c. Such other information technology services, the description and cost of which are documented in a fully executed amendment to this Agreement.

B. Responsibilities of OPDS

1. OPDS will provide workstations and other work-related space, as ETSD deems necessary, for ETSD personnel stationed at the OPDS location.
2. OPDS will provide the office and desk furniture for the ETSD people stationed at the OPDS location.
3. OPDS will locate the workstation of the CIO near the OPDS leadership and allow the CIO reasonable access to those in OPDS who are responsible for taking necessary actions as identified by the CIO.

4. OPDS will provide parking for ETSD personnel stationed at the OPDS location.
5. OPDS will be responsible for the purchase and upgrade of desktops, printers, peripherals and server hardware and software application and licensing based upon the recommendation of ETSD for OPDS personnel and systems.
6. OPDS will be responsible for the purchase of extended warranties and service agreements for all hardware and software used in direct support of OPDS.
7. OPDS is responsible for Access database architecture, configuration, and on-going support and maintenance.
8. OPDS will provide an OPDS CIO as soon as practicable to begin the process of building out an OPDS IT section as required by HB 5030.
9. OPDS will be responsible to pay third parties for maintenance performed on out-of-warranty equipment.
10. OPDS will be responsible for any cost incurred for property disposition.
11. OPDS will be responsible for the content on its website and Intranet site.
12. OPDS will provide a data analyst who maintains OPDS access databases, excel input screens/spreadsheets, and assists in the creation of requested reports.
13. OPDS shall develop and execute a plan to transition from a series of unstable Access Databases/Excel Spreadsheets to a more robust data management system capable of simultaneous multiuser access. This plan should include a transition strategy, data migration plan, and identification of a backup system. OJD will not be held responsible for system failures as both parties acknowledge that the current data platform is unstable and prone to disruption.

C. Standards

1. Access Rights - ETSD has exclusive administrative privileges on all OPDS information technology systems needed for providing the service.
2. Service Levels - Computing services and network availability is anticipated to be 24 hours a day, 7 days a week, with scheduled periods of downtime for backup and maintenance. ETSD will make a good faith effort to have the system available 365 days per year, with an uptime target of 99.5%.
3. Scheduled Service Windows – The typical service window will be from 6:00 am until 12:00 p.m. every 3rd Sunday within a calendar month. OPDS will be notified at least 7 days in advance of changes or upgrades that may affect OPDS systems.
4. Support Hours – The ETSD Help Desk is the central point of contact for information and problems regarding OPDS computing resources. Help Desk staff hours of availability are: Monday through Friday- 7:00a.m. until 5:00 pm (PT). Saturday, Sunday, & Holidays – Not Applicable.
Requests for exceptions to normal support must be made through the ETSD Help Desk a minimum of 48 hours (2 business days) in advance. ETSD on a case-by-case basis may honor late requests.
5. Support Response:
 - a. During normal business hours (listed above), the target is for ETSD to make an acknowledgement response to OPDS within 15 minutes from the time the ETSD Help Desk received the support request. Outside normal business hours, the target acknowledgement response time will be no greater than four (4) hours from the beginning of the next business day unless other arrangements have been made.
 - b. ETSD operates on severity level:
Emergency – Department wide, systems down (network outage, server outage, power outage to the building).

High – Individual user system down (computer hardware failure, OS corruption, excluding mouse and keyboard).

Medium – software and program corruption. Failing peripherals. Computer is operational but connecting equipment is not.

Low – Minor customer irritation. User can function but not complete processes in their job.

ETSD escalation response:

Severity	Call Back	Target Resolution	Status call
Emergency	15 minutes	4 hours	Every 1 hour
High	15 minutes	8 hours	Every 2 hours
Medium	15 minutes	2 business days	Every 4 hours
Low	15 minutes	5 business days	Upon closure

6. Disaster Situations - In the event of a complete disaster involving OPDS computing equipment, ETSD will make a reasonable effort to have a viable system available within 5 business days of the disaster.

D. Confidentiality

Both parties agree that each shall hold all Confidential Information of the other party in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information; shall not copy, reproduce, sell assign or otherwise give or disclose Confidential Information to third parties; shall not use Confidential information for any purposes whatsoever other than as contemplated by this Agreement or reasonably related thereto.

E. Payment

OPDS shall pay OJD \$41,293.60 per month for the regular services described in this Agreement plus any additional expenses as described herein. OJD will invoice OPDS monthly for amounts due for the immediately preceding month. Invoices will be paid by OPDS within 30 days of invoice date. When OJD is notified in writing that OPDS has assumed the CIO duties, OJD shall adjust the monthly billing rate to reflect the reduction in duties from a CIO to an ITS 4 (Lead). As a result of the change in duties, there will be a corresponding reduction in the per monthly cost.

TKB:gll/L2G21017

Appendix E: OJD IT Support to PDSC

Overview.

The OJD has provided contracted technical support to the PDSC for many years. The current contract is **Amnd. No. 3_OJD Contract No. 170017fully signed_071221**. The contract was renewed in July 2021, retroactively effective July 1, and will remain in effect until June 30, 2023. The contract stipulates a payment of \$41,293.60 per month, however it also stipulates this amount will be amended when PDSC hires a CIO. This has happened, and PDSC now pays the OJD \$34,417.60 per month.

The contract states *“The Enterprise Technology Services Division (“ETSD”) of OJD will provide information technology management and limited technology infrastructure services for the Office of Public Defense Services (“OPDS”).”* To fulfill this agreement, PDSC receives technical, infrastructure and project support from the following teams at ETSD:

1. Helpdesk.
2. Desktop.
3. Server.
4. Enterprise Information Security Office (EISO).
5. Networking/Telecommunications.
6. Microsoft 365 & Mobile.
7. Web Team.
8. ETSD Management, including CIO, Deputy CIO, Infrastructure and Applications managers, and PDSC Contract Lead.

Helpdesk.

The ETSD helpdesk provides Tier 1 support for PDSC and the OJD. When a PDSC staff member needs assistance, they can call the Helpdesk and speak with a technician directly, or can send an email to the Helpdesk, creating a ticket. When PDSC management has service requests, such as new user account creation, a copier installation, or office moves, these requests are submitted to the Helpdesk as a ticket, as well.

For issues, the Helpdesk functions as Tier 1 support and resolves issues directly or triages the problem and transfers it to Tier 2 support at Desktop, or to one of the Tier 3 specialty teams such as Server, Networking or Web development. Service requests follow this pattern, and are either fulfilled directly by the Helpdesk, or routed to the appropriate team.

ETSD manages tickets using the software *iSupport*. This software is based on the ITIL framework and manages *incidents*, larger scale *problems*, *assets*, *the configuration*

database, and change management procedures. All ETSD staff and management use the iSupport software and can view and interact with all functions.

Desktop Team.

The OJD Desktop team provides Tiers 2 and 3 support to PDSC and the OJD. The team works collaboratively, and each member monitors the PDSC queue and provides support as required based on expertise and availability.

Responsibilities of this team for PDSC include:

1. Tier 2 and 3 technical issues on Windows 10 operating systems, Microsoft Office software, Adobe software products, and other software titles.
2. Hardware troubleshooting and warranty resolution on Dell computers and monitors, Lexmark and HP printers, Fujitsu scanners, Ricoh copiers and other technical equipment.
3. Service requests including new user computer setups and software installs.
4. Service requests to deploy new and existing hardware for staff.
5. Service requests for technical equipment moves and setups, including individual sit/stand desks.
6. Service requests for new printer and copier installations and configurations.
7. Operating system (OS) management, including Windows image creation and maintenance, computer operating system and software upgrades.
8. Security and feature patching Windows OS and software.
9. Technical environmental management with Group Policy and Active Directory, including mapped drive and printer installations and management.
10. Recommendations for technical equipment purchases.

The primary software tools used by the desktop team include many Microsoft products such as System Center Configuration Manager (SCCM) for deploying, upgrading, and patching Windows 10 systems; Windows Server Update Service, for patching Windows 10 systems; Windows Preinstallation Environment (WinPE) and the Diagnostics and Recovery Toolset (DART) tools for troubleshooting and service, Remote Assist and Remote Desktop for remote work, etc. Dell tools are also heavily used, including the various Dell Command components such as Dell Command | Update, Dell Command | Configure, and others. Finally, a critical tool for the Desktop team is PDQ. PDQ includes Deployment and Inventory components, and allows remote installation of software, Windows and other updates, and remote monitoring of computer systems.

Server Team.

The Server team builds, maintains, and supports the PDSC server infrastructure. Approximately two years ago, the ETSD Server team created a new forest and domain for PDSC and set up a dedicated PDSC tenant and configured Azure. PDSC has a two-way trust with OJD and relies on quite a few services that reside on OJD equipment.

PDSC Server Infrastructure.

ETSD supports three physical servers for PDSC—two domain controllers and a general server. ETSD also hosts and licenses seven PDSC virtual servers on our VMware virtual infrastructure. Using virtual servers provides ease of management, fault tolerance, efficient backups and restores, flexibility and scalability, while also segmenting the systems so that only PDSC staff can access them. PDSC data backups run using ETSD's Commvault infrastructure from its primary data center in Salem at the Anderson Readiness Center. ETSD also maintains a second copy of PDSC's data, in case of a disaster, at the OneNeck data center in Bend.

Servers and Services Provided.

1. Domain Controllers to manage user authentication and Active Directory services.
2. DHCP & DNS Servers to dynamically assign and manage network addresses.
3. Microsoft Key Management Services and an Active Directory-Based Activation (ADBA) Server provide Microsoft license activation for workstations and servers for Windows and Office.
4. Certificate Authority servers – root and subordinate(s), provide secure trusts between resources.
5. iSupport ticket management server.
6. Secure password management with Thycotic.
7. Windows Server Update Services (WSUS) provide Window and Server updates to clients and servers.
8. End Point Management Server System Center Configuration Manager (SCCM) allows Desktop to image computers, provides updates for Office 365 (Microsoft Apps for Business) and is part of the Microsoft Advanced Threat Protection infrastructure.
9. Azure Application Proxy servers.
10. Intune Network Device Enrollment Service (NDES) Server for mobile device management.
11. Microsoft BitLocker Administration, Monitoring (MBAM) and Network unlock servers.
12. PDQ Servers (for managing desktops and servers)—licensing, server, administration for Deployment and Inventory services.
13. Nintex server provides SharePoint workflows and automated forms
14. Exchange Server, on premise, provides an Simple Mail Transport Protocol (SMTP) mail gateway for outbound device mail traffic.
15. Server and network monitoring with SolarWinds.

Server Expertise Provided.

- VMware architecture and administration.
- Advanced Server Administration.
- Storage Area Network (SAN) administration.
- Backup administration.

- Exchange administration.
- SharePoint on-prem and in the cloud – operations and development.
- Active Directory administration (including Domain Controllers, Domain Name System (DNS), Distributed File System (DFS), Windows Internet Name Service (WINS), Dynamic Host Configuration Protocol (DHCP), Security, group policies, etc.).
- Tenant / Azure Active Directory (AD) / O365 administration.
- Structured Query Language (SQL) database administration.
- Westlaw support.
- Incident management system administration (e.g., iSupport).

Information Security Office.

The OJD EISO team covers both governance and policy work, plus day-to-day security monitoring tasks. For PDSC they provide the following:

- Incident response: EISO directs incident response with a cross-team group of up to a dozen individuals for any given issue. Incidents may be detected by Microsoft's Advanced Threat Protection, by reports of phishing emails, or by firewall activity.
- Email analysis and blocking, and reports on suspicious email.
- Manage the annual DigiCert renewal, other certificates, and annual VPN certification.
- PDSC benefits from OJD EISO activity, for example blocking dangerous email addresses for PDSC when problem activity was only detected at the OJD.
- Provide security training, education, and assessment for PDSC staff.
- QRadar Security Intelligence software allows efficient and secure analysis of server and network logs.
- Annual third-party Security penetration testing.

Networking/Telecommunications.

The Network and Telecommunications group configures, monitors, updates, and provides Tier 2 and Tier 3 troubleshooting for all network components including OPSD switches, routers, the firewall, wireless infrastructure, and VoIP functions including the VoIP servers, call tree configuration and management, and phone system licensing. In addition, the team procures, maintains, and monitors the LS network connections between PDSC locations, and all internet connectivity. The OJD also provides the network transport for PDSC at two physical locations.

Microsoft 365 & Mobile.

The Microsoft 365 team's primary role for PDSC is to manage their Microsoft online presence and Exchange servers, and to support mobile devices including iPhones and iPads. Various Microsoft 365 components are managed, including the Exchange servers, PDSC tenant, user accounts, and Azure security configurations. Exchange

configuration includes building and maintaining online Azure groups, Multi-Factor Authentication (MFA), mailbox management and email quarantine response.

Web Team.

The Web team manages PDSC's SharePoint online, intranet, and handles break/fix issues. Additionally, the team allocates 24 hours of project work per week for PDSC specific functional requests and development.

The current projects are described in prioritized order below.

1. *Priority 1: Accounts Payable (AP) Intake.* Projected go-live date is January 1. Accounts Payable Intake is an online process allowing vendors (attorneys and law firms) to get paid for their work, like submitting an expense report. The vendor fills out a form, the form is audited, it goes into payment system and the payment is processed. This project uses the Nintex forms and workflow tool. AP Intake is PDSC's number one priority and the project that Web team is currently spending most of the 24 hours a week on. For PDSC, Kimber Sexton is the Web team's primary contact. Keith Koerner is working on the OJD side. They meet at least once but sometimes 2-3 times a week to discuss it.
2. *Priority 2: the Case Load* project went live at the beginning of 2021. Vendors (attorneys and law firms) can submit a form and a .csv file that is reviewed and then the data is added to a SQL database. The data can be viewed through PowerBI. PDSC has continued to work with the Web team adding features, but at a slower pace since it went live. The AP Intake project is currently using most of the Web teams 24 weekly hours, so they are primarily monitoring the Case Load system.
3. *Expense Report Pre-approval* process: before submitting an expense report, staff need pre-approval. This project has not started yet. This project is on hold until AP intake is finished.
4. *SharePoint Online Intranet* development: This project doesn't currently require active work by the OJD. After building PDSC's SharePoint online environment, PDSC is populating it with content. PDSC staff sometimes need help with the work or with building other pages. PDSC's goal is to have a nice front end from the home page.
5. *Six in One Form* project: this is a Nintex form and workflow for six appeals forms. Web team is combining the six forms into one, and this is a workflow that changes the form as data is entered, starting from a common form and ending with the necessary data. This project is mostly on hold until the AP Intake project is complete.

Management.

ETSD maintains a dedicated OJD-PDSC Contract Lead position. This role's responsibility is to manage the PDSC contract from the OJD side, ensuring all

contractual responsibilities are met, and PDSC receives the attention it needs in a timely manner. This individual works closely as a liaison between PDSC's CIO and the OJD teams. A critical part of the support ETSD provides is the capacity to adjust priorities quickly, if necessary, to accommodate immediate needs, and the dedicated PDSC Contract lead plays a significant role in making this possible.

ETSD's management structure, including their CIO, Deputy CIO, and Infrastructure and Applications managers, all provide oversight, insight, and guidance for PDSC both directly, and by managing the teams which support PDSC's technical needs.

Summary.

The OJD provides a wide range of technical services and support for PDSC. This support utilizes seven ETSD teams and provides a comprehensive pool of trained, talented professionals, technicians, and managers. A wide variety of Enterprise class software solutions are utilized. This support is provided to PDSC for a flat monthly fee of \$34,417.60.

Appendix F: OJD Confidentiality Agreement

OREGON JUDICIAL DEPARTMENT EMPLOYEE CONFIDENTIALITY AGREEMENT

By signing below, I am certifying my understanding and acknowledgment that my employment with OJD Enterprise Technology Services Division requires unconditional adherence to the following mandatory conditions of employment:

1. I understand that I must maintain the confidence of any document or file (paper or electronic) containing confidential information involving any employee, judge, division, court, or administration matter.
2. I understand that I must maintain the confidence of any verbal information which I may hear, or overhear, containing confidential information involving any employee, judge, division, court, or administration matter.
3. I understand that “employee” or “judge” includes any candidate or incumbent – present or past.
4. I understand that “confidential information” means and includes, but is not limited to, any matter related to:
 - a) personnel: e.g., personal information protected from disclosure by law, such as social security number; age; address; home phone; medical information; FMLA/OFLA and workers’ compensation information; other personnel related matters such as applicant candidacy; job performance or discipline; grievances or appeals; claims, litigation; collective bargaining.
 - b) payroll: e.g., salary; deductions; leave balances or usage patterns.
 - c) financial: e.g., credit card numbers; bank accounts; other identifying information.
 - d) internal management: e.g., draft, and non-public budget; legal; administrative and legislative materials and information.
 - e) policy and pending matters and discussions that are intended to be confidential.
 - f) IT passwords and accounts: e.g., personal passwords and special access accounts.

Page 1 of 2

- g) IT information: e.g., computer and network information that is sensitive.
- h) Electronic investigations that may be initiated by ETSD and/or another court/division. You are not even to acknowledge the existence of an investigation to those outside of your workgroup/lead worker/supervisor/manager/administrative authority.
- i) As a member of ETSD you may overhear conversations regarding court/division technical information, investigations that may be occurring at a local/statewide level, you may be asked to participate in the gathering of data for an investigation, and/or asked to gather data at the request of your lead worker, manager, or administrative authority. This is considered confidential.
- j) You may also be exposed to personal information as it relates to employees, judges and/or members of the public which could be concerning/disturbing in nature. You are to advise your lead worker, manager, and/or administrative authority should this occur. This is confidential.

Anything else which common sense would define to be confidential.

“If I have any doubt or question about whether something might be in violation of this agreement, I will ask my supervisor or administrative authority before taking any action. I understand each of the above statements and acknowledge that a violation of this agreement may be grounds for appropriate disciplinary action (as outlined in JDPR 9) and that such discipline could include my dismissal.”

Employee Signature

____/____/____
Date

Appendix G: PDSC IT support Incident Metrics

PDSC iSupport Incidents.

Incidents are emailed to OJD ETSD for review and resolution. All incidents are sent to the ETSD Helpdesk and then forwarded to other groups as necessary to find resolution. The below tables show the PDSC incident tickets sent in 2021. They are grouped by assignment (i.e., the group to handle the request); level 1 is the main category of the incident (i.e., identification of the area where assistance is needed); level 2 and 3 are subcategories (i.e., further detail of the incident (not always applicable)).

Quick Statistics.

- 98% of tickets from the past year have been closed. There were a total of 797 incidents submitted, and only 17 that have an outstanding status (i.e., suspended, open).
- 21% of tickets were closed by first tier support (Help Desk).
- 30% of tickets were closed by second tier support (Desktop).
- Tickets were worked by 65 individual support reps.

Incident Detail.

The information below reflects the 780 incidents that were opened and subsequently closed in 2021.

ETSD DESKTOP.

The largest group of incidents fall to the ETSD_Desktop group. This group provides the delivery and support of products, services, and information on current and future desktop hardware and software (e.g., monitors, scanners, printers, keyboards, mice, docks, external hard drives, USB keys, computers, laptops, variety of software packages, etc.). Responsibilities include documentation, training, consultation, analysis, configuration, procurement, installation, troubleshooting, and support for technology equipment, and responses to incident help tickets for equipment needs, malfunctions, replacements, and other technological issues.

Table 8: Desktop support incidents during 2021.

Category Level 1	Category Level 2	Category Level 3	Sub-Total	Grand Total
ACMS - Web Applications	ACMS, eFiling, Portal	Unspecified	1	1
Administration	Duplicate Ticket	Unspecified	1	1
Facility Management	Move	Unspecified	4	4

Category Level 1	Category Level 2	Category Level 3	Sub-Total	Grand Total
Hardware	All-In-One	Unspecified	3	94
	Copier	Unspecified	2	
	CPU	Desktop	12	
		Laptop	47	
		Server	1	
	Monitor	Unspecified	7	
	Other	Other	7	
Printer	Unspecified	10		
	Scanner	Scanner	4	
Odyssey	Application	Unspecified	2	2
Other	Unspecified	Unspecified	10	10
Security	EISO	Unspecified	1	2
	Threat	Malware	1	
Software	Desktop Applications	Adobe Acrobat Reader	1	80
		Adobe Professional	8	
		Google Chrome	1	
		Hyperion	1	
		Internet Explorer	1	
		iSeries Access for Windows	1	
	FTR	Unspecified	2	
	Microsoft	Access	2	
		Bit locker/MBAM	2	
		Edge	3	
Office Suite		1		
Other		1		
Outlook	6			
	Power BI	8		
	Project	1		
	Visio	4		
	Word	4		
Operating System	Windows 10	12		
Other	Unspecified	20		
WEB Applications	Other	1		
System Administration	Domain	Unspecified	2	6
	Microsoft 365	Power BI	2	
	Web	OJD SharePoint	1	
	Windows Server	Unspecified	1	
Telecommunications	VoIP	Unspecified	1	6
	VPN	Unspecified	4	
	Wireless	Unspecified	1	
User Administration	Create User	Unspecified	9	28

Category Level 1	Category Level 2	Category Level 3	Sub-Total	Grand Total
	Modify User	Unspecified	9	
	Remove User	Unspecified	10	
GRAND TOTAL				234

ETSD HELPDESK.

The second largest group of incidents falls to the ETSD_Helpdesk group. This group provides rapid response support to troubleshoot problems and provide information to customers. This team works with other teams in ETSD to route incident tickets when they cannot be resolved at the first or second tier levels and maintains a large database of procedures used to resolve many types of technical problems.

Table 9: Help Desk Incidents during 2021.

Category Level 1	Category Level 2	Category Level 3	Sub-Total	Grand Total
ACMS - Web Applications	ACMS	Other	3	6
	ACMS, eFiling, Portal	Unspecified	3	
Administration	Duplicate Ticket	Unspecified	2	8
	Resources - Personnel	Unspecified	1	
	This is not a problem	Unspecified	5	
Hardware	CPU	Laptop	7	11
	Monitor	Unspecified	2	
	Printer	Unspecified	1	
	Scanner	Scanner	1	
Odyssey	Public Access	OECl - External	7	9
		OECl - Internal	2	
Other	Unspecified	Unspecified	18	18
Security	RSA	Unspecified	1	1
Software	Desktop Applications	Adobe Acrobat Standard	1	44
	Law Reference	Westlaw	2	
	Microsoft	Access	1	
		Bit locker/MBAM	3	
		Edge	1	
		OneNote	1	
		Outlook	7	
		Teams	1	
		Word	2	
	Operating System	Windows 10	21	
	Other	Unspecified	3	
	WEB Applications	Other	1	
System Administration	Domain	Unspecified	1	8
	iSupport	Other	1	
	Microsoft 365	MFA	1	

Category Level 1	Category Level 2	Category Level 3	Sub-Total	Grand Total
	Security	Unspecified	4	
	Web	Internet	1	
Telecommunications	LAN	Unspecified	3	13
	Other	Unspecified	1	
	Secure File Transfer Protocol	Unspecified	1	
	Telephones	Phone Outage	1	
	VPN	Unspecified	7	
User Administration	Create User	Unspecified	14	44
	Modify User	Unspecified	23	
	Remove User	Unspecified	7	
			GRAND TOTAL	162

Other Groups.

Incidents are grouped by assignment; level 1 is the main category of the incident; level 2 and 3 are subcategories to further detail the incident (not always applicable). These groups support various functions: financial; electronic filing (efiling); online paid subscription; security; servers; telecommunications; Microsoft 365 products; mobile devices; and security training.

Table 10: Other incidents handled during 2021.

Group Name	Category Level 1	Category Level 2	Category Level 3	Total	Grand Total
BFSD_FIAS	E-mail Submitted	Unspecified	Unspecified	2	9
	Other	Unspecified	Unspecified	6	
	Software	Microsoft	Power BI	1	
BFSD_FIAS Total				9	
COA	Other	Unspecified	Unspecified	1	1
COA Total				1	
ETSD_ACMS_E-Filing	ACMS - Web Applications	ACMS, eFiling, Portal	Unspecified	1	10
		e-Filing	Other	1	
	User Administration	Modify User	Unspecified	3	
		Remove User	Unspecified	5	
ETSD_ACMS_E-Filing Total				10	
ETSD_Help_Desk_OJCINOnline	User Administration	Create User	Unspecified	4	17
		Modify User	Unspecified	10	

Group Name	Category Level 1	Category Level 2	Category Level 3	Total	Grand Total
		Remove User	Unspecified	3	
ETSD_Help_Desk_OJCIOnline Total				17	
ETSD_Management	User Administration	Create User	Unspecified	7	7
ETSD_Management Total				7	
ETSD_Microsoft 365	Administration	Duplicate Ticket	Unspecified	1	106
	Other	Unspecified	Unspecified	4	
	Software	Microsoft	Office Suite	1	
			OneNote	1	
			Outlook	13	
			Power BI	3	
			Visio	1	
		Other	Unspecified	2	
	System Administration	Domain	Unspecified	1	
		Microsoft 365	Exchange	34	
		MFA	6		
		Power BI	1		
User Administration	Create User	Unspecified	12		
	Modify User	Unspecified	16		
	Remove User	Unspecified	10		
ETSD_Microsoft 365 Total				106	
ETSD_Mobile	Hardware	Mobile Device	iPad	8	25
			iPhone	5	
			Other	1	
	System Administration	Microsoft 365	MFA	2	
	User Administration	Modify User	Unspecified	2	
	Remove User	Unspecified	6		
ETSD_Mobile Total				25	
ETSD_Odyssey_Support	Odyssey	File and serve	Unspecified	1	9
	User Administration	Modify User	Unspecified	3	
		Remove User	Unspecified	5	
ETSD_Odyssey_Support Total				9	
ETSD_Remote_Hearing_Support	Software	Webex	Unspecified	1	1
ETSD_Remote_Hearing_Support Total				1	
ETSD_Security	Other	Unspecified	Unspecified	1	24
	Security	EISO	Unspecified	2	

Group Name	Category Level 1	Category Level 2	Category Level 3	Total	Grand Total	
		RSA	Unspecified	1		
		Threat	Malware Phishing	2		
	Software	Other	Unspecified	2		
	System Administration		Microsoft 365	Exchange		1
				Other		1
		Palo Alto	Unspecified	2		
	Telecommunications	Security	Unspecified	4		
	Other	Unspecified	2			
ETSD_Security Total				24		
ETSD_Server	Hardware	CPU	Server	1	59	
	Other	Unspecified	Unspecified	5		
	Security	Threat	Malware	1		
	Software	Microsoft	Power BI	2		
	System Administration	Data Recovery	File/Folder Restoration	1		
		Domain	Unspecified	8		
		Microsoft 365	Other	2		
		Network	Other	2		
		SQL	Other	1		
		Windows Server	Unspecified	21		
	User Administration	Modify User	Unspecified	8		
Remove User		Unspecified	7			
ETSD_Server Total				61		
ETSD_SQL_Admin	System Administration	SQL	Other	3	4	
		Windows Server	Unspecified	1		
ETSD_SQL_Admin Total				5		
ETSD_Telecommunications	Administration	Duplicate Ticket	Unspecified	1	36	
	Software	Other	Unspecified	1		
	System Administration	Network	Other	1		
		Web	OJD SharePoint	1		
	Telecommunications	Other	Unspecified	1		
		Secure File Transfer Protocol	Unspecified	1		
	Telephones	Phone Support	1			

Group Name	Category Level 1	Category Level 2	Category Level 3	Total	Grand Total
		VoIP	Unspecified	4	
		VPN	Unspecified	3	
	User Administration	Create User	Unspecified	9	
		Modify User	Unspecified	5	
		Remove User	Unspecified	8	
ETSD_Telecommunications Total				38	
ETSD_Training	Software	Microsoft	Outlook	1	16
	User Administration	Create User	Unspecified	6	
		Modify User	Unspecified	3	
		Remove User	Unspecified	6	
ETSD_Training Total				16	
ETSDWeb	System Administration	Web	Internet	6	17
			OJD SharePoint	2	
			Other	1	
	User Administration	Modify User	Unspecified	3	
	Remove User	Unspecified	5		
ETSDWeb Total				18	
OJCIN_OnLine	ACMS - Web Applications	ACMS	Administration	1	5
	User Administration	Create User	Unspecified	2	
		Remove User	Unspecified	2	
OJCIN_OnLine Total				5	
OJD Law Library	User Administration	Remove User	Unspecified	5	5
OJD Law Library Total				5	
PDSC Techs	Other	Unspecified	Unspecified	2	26
	Software	Desktop Applications	Adobe Professional	1	
			Internet Explorer	1	
		Microsoft	Access	19	
			Word	1	
Telecommunications	VPN	Unspecified	1		
User Administration	Create User	Unspecified	1		
PDSC Techs Total				26	
SCMS Support	User Administration	Modify User	Unspecified	2	7

Group Name	Category Level 1	Category Level 2	Category Level 3	Total	Grand Total
		Remove User	Unspecified	5	
			SCMS Support Total	7	
				Grand Total	384

Attachment 5f



May 2, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of Request

The Public Defense Services Commission (PDSC) requests that a Compliance, Audit and Performance Administrator, 1 position, 0.50 FTE and a CAP Research Manager, 1 position, 0.50 FTE, be established to lead the Compliance, Audit and Performance (CAP) Division and support the data needs of the PDSC, respectively.

The 2021-23 Legislatively Adopted Budget, HB 5030, established the operating budget authority for the Public Defense Service Commission (PDSC). HB 5030 (2021) changed the way the PDSC was structured and how it delivers services. Among the newly created divisions, was Compliance, Audit and Performance also known as CAP.

The purpose of this request is to continue to build out the infrastructure and staffing for the new Compliance, Audit, and Performance (CAP). The CAP Division is charged with monitoring and evaluating trial level criminal and juvenile public defense providers across the state, first-tier providers, such as investigators, and case-support services. CAP's work is critical to ensuring accountability and transparency in the use of public dollars and the quality of services being provided to the many Oregonians caught in Oregon's criminal, dependency, and civil commitment systems throughout the state.

Agency Action

Staff positions contained in HB5030 allocated three new attorney positions and two research and data positions to build out the agency's monitoring and evaluation capacity for the newly created division. Those positions have been filled and conduct day-to-day operations of the division. However, the agency finds it is lacking the managerial capacity within CAP to lead and supervise this new staff. Line staff can establish standards, coordinate client representation in multiple judicial jurisdictions and manage data needs from multiple data sources. However, the limited staff needs additional support to strategically direct, coordinate, and oversee their

activities, or advocate for the effective use of research and analytics as guiding policies at the administrator level.

Specifically, there are no 1) CAP Division Administrator to ensure that CAP is meeting its strategic and legislatively set objectives, and 2) no Research Manager with the expertise necessary to lead the research and data team and carry out CAP's work. There is a risk that CAP will lack the staffing, management structure, and expertise needed to ensure accountability, transparency, and return on investment for all categories of public defense public funds, and to provide the necessary oversight of the quality and delivery of the services impacting many of Oregon's most vulnerable citizens.

A CAP Division Administrator (Trial Chief) is needed to coordinate the compliance and performance management activities of the CAP Division, manage CAP operations to ensure that the agency adopts consistent approaches to monitoring, auditing, and evaluating trial and juvenile provider activities, manage the monitoring and evaluation of provider activities that fall outside criminal and juvenile-specific practice areas (e.g., civil commitment, post-conviction relief, investigator, and entity compliance), and coordinate and manage the overlapping client- and justice-system stakeholder engagement necessary to move CAP's work forward.

A CAP Research Manager (Manager 3) is needed to develop a research and analytics agenda for the agency. The manager will supervise and guide the work of the research and data analysts and effectively advocate for the use of research and analytics agency-wide at the management level. The position will establish guidelines and discipline around data collection, storage, security and management of data used by the PDSC. Hiring a research manager will fill existing gaps on the management team and enhance the functioning of the research and data analysts. The new manager will be deeply involved in the development and implementation of a planned data and financial tracking system in the 2023-25 biennium.

The agency intends to submit a policy option package for these two positions with the 2023-25 agency request budget.

Action Requested

The PDSC requests authorization for two limited duration positions for one Trial Chief (salary range 40) 0.50 FTE and one Manager 3 (salary range 32) 0.50 FTE. The PDSC also requests \$509,366 General Fund (\$291,944 -Trial Chief and \$217,422 - Manager 3) for the remainder of the 2021-23 biennium.

Legislation Affected

Oregon Law 2021 Chapter 444, section 1 (2).

Sincerely,

Steven I. Singer

Executive Director

cc:

John Borden, Principal Legislative Analyst, LFO

Amanda Bietel, Legislative Fiscal Officer

George Naughton, Chief Financial Officer

Wendy Gibson, Policy and Budget Analyst, CFO

DRAFT

Attachment 5g



May 2, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairs:

Nature of the Request

During the 2021 session, the Oregon Legislature passed HB 5030, which established the Public Defense Services Commission (PDSC) budget for the 2021-2023 biennium. HB 5030 contained a provision that held back \$100 million of General Fund and placed it in a special purpose appropriation, appropriated to the Emergency Board for PDSC.

“The holdback was reflective of an inordinately high degree of uncertainty related to procurement cost. The release of the special purpose appropriation to the Commission is contingent up the Commission’s satisfactory progress, as determined by the Legislature and/or Legislative Emergency Board, in executing the Legislative direction in HB 5030 budget report, and as related to Legislative expectations regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency.”

The purpose of this letter is to request that the Joint Emergency Board release the funds held in the Special Purpose Appropriation (SPA) to the Commission.

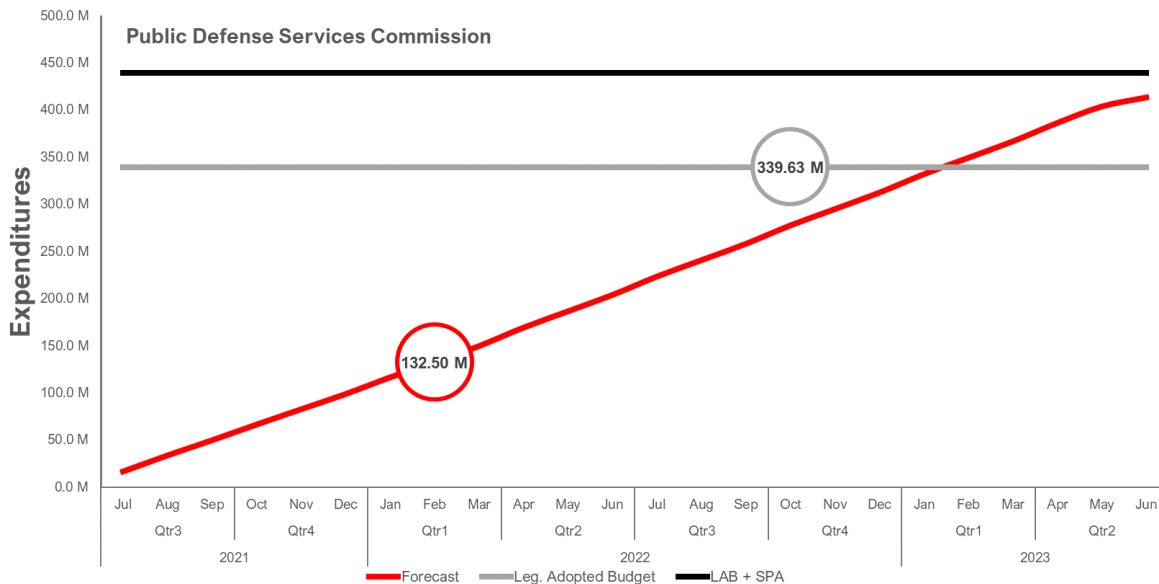
Agency Action

In evaluating the budget note, PDSC focused on three primary areas: restructuring and modernization, procurement, and human resource activities. The first area of focus is on Legislative expectations regarding the restructuring and modernization efforts, financial controls, quality management, performance metrics, and governance of the agency. The second area is to report on caseload and financial forecasts including procurement activities and the separation of adult criminal and juvenile trial-level contracts. The third area is to report on human resources activities.

Legislative Expectations. During the 2022 Legislative session, PDSC presented a comprehensive restructuring and modernization report that was prepared with the Coraggio consulting group. The consulting group worked closely with the Agency Executive Team to co-create and co-implement

multiple workstreams to support its modernization and transformation. Those workstreams include defining the organizational design and functions for a new Compliance, Audit, and Performance (CAP) Division, restructuring the Agency to incorporate CAP operations, identifying, and assessing the Agency’s key risks and high-risk processes, improving internal controls, examining key performance measures and indicators, and improving governance of the agency. Concurrent with and supporting those efforts, the Agency also implemented a robust stakeholder engagement process and began to develop an equity framework to support staff in managing these transitions.

The Agency has provided a more detailed report details as a concurrent submission to the Joint Emergency Board that highlight these efforts and accomplishments to-date. The report sets out progress on the development of the CAP Division and its program plan, modernization improvements to information technology, methods used for caseload forecasting for the 2022-23 contracts and a financial forecast. The below chart below shows where the agency stands for the period ending February 28, 2022.



Without the additional investment represented by the \$100 million SPA and based on current spending patterns the Agency budget could exhaust its budget authority by January 2023. Items of concern are in the Case Support Services Division where spending is projected to exceed the current budget inclusive of the SPA investment. Court Mandate Expenses is expected to continue to rise as the current crisis with contracted providers increases the need for hourly attorneys. The agency has also provided a more detailed financial update and rebalance request in a separate and concurrent report to this Joint Emergency Board.

Procurement Activities. The Agency is currently under an amendment to the 2021 provider contracts and is currently working to produce new contracts for the 2022-23 contract year. With

those new contracts, the PDSC endeavors to achieve the following goals: 1) more accurately project its actual caseload and resulting attorney FTE needs through June 2023; 2) move closer to aligning with recently published, Oregon-specific guidance on attorney workload standards; 3) promote the efficient allocation of attorney resources throughout the state; 4) accommodate the enhanced reporting requirements for its criminal and non-PCRJP juvenile contractors anticipated with the build out of the CAP Division in 2022; 5) separate adult criminal and juvenile trial level contracts; and 6) better align the contracts with the biennial budget process. The Agency is working diligently with stakeholder to achieve these goals. The changes associated with the changes in caseload standards, reimbursement methodologies, increased caseloads and administrative burdens associated with enhanced reporting will result in increased costs to the Trial Criminal Division of approximately \$11-\$13 million and to the Juvenile Division of approximately \$2 million.

Human Resources Activities. The Human Resources section has been working diligently to ensure that through an open-competitive recruitment process every vacancy is filled in a timely manner and that all new positions are hired when funding is available. The Agency only has one unbudgeted position, which is being addressed in concurrent request to this Joint Emergency Board. The collective bargaining process has been completed and is waiting only for final signature and for the final approval of the commission on non-economic issues, which again will be presented under another report to this Joint Emergency Board. All classification changes have been made and presented and the section is actively involved in the employee morale efforts that are currently under way to include and employee survey and bimonthly all staff meetings to ensure all employees are aware of the transformational changes that are occurring within the Agency. Finally, the section is developing a Workforce Development strategy to address employee development and workforce opportunities to include equity and inclusion, onboarding, training and continued education, succession planning, career enrichment, outreach, and talent acquisition.

Action Requested

The Public Defense Services Commission requests acknowledgement of receipt of this request and requests the recommendation of the Legislative Fiscal Office to the Joint Emergency Board to release of the entire amount of the special purpose appropriation, as provided in Oregon Laws 2021, Chapter 444, Section 3, which is inclusive of \$100 million of General Fund authority.

Legislation Affected

Oregon Law 2021 Chapter 444, section 1 (4). \$70,250,989
Oregon Law 2021 Chapter 444, section 1 (5). \$14,554,511
Oregon Law 2021 Chapter 444, section 1 (6). \$5,002,135
Oregon Law 2021 Chapter 444, section 1 (7). \$10,192,365

Oregon Law 2021 Chapter 444, section 3 (1)(a). (\$70,250,989)
Oregon Law 2021 Chapter 444, section 3 (1)(b). (\$14,554,511)
Oregon Law 2021 Chapter 444, section 3 (1)(c). (\$5,002,135)
Oregon Law 2021 Chapter 444, section 3 (1)(d). (\$10,192,365)

Sincerely,

Stephen I. Singer
Executive Director

cc:

John Borden, Principal Legislative Analyst, LFO
Amanda Beitel, Legislative Fiscal Officer
George Naughton, Chief Financial Officer
Wendy Gibson, Policy and Budget Analyst, CFO

Attachment 5h



Oregon

Public Defense Services Commission

Office of Public Defense Services
198 Commercial St. SE, Suite 205
Salem, Oregon 97301-3489
Telephone: (503) 378-2478
Fax: (503) 378-4463
www.oregon.gov/opds

May 2, 2022

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Dan Rayfield, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairs:

Nature of the Request

During the 2021 session, the Oregon Legislature passed HB 5030, which established the Public Defense Services Commission (PDSC) budget for the 2021-2023 biennium. HB 5030 contained four budget notes with reporting requirements throughout the biennium. The purpose of this letter is to report on the reporting requirements regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency.

The HB 5030 budget note reads:

The Public Defense Services Commission is directed to report to the Joint Committee on Ways and Means during the Legislative Session in 2022, and quarterly thereafter to the Legislative Emergency Board, on the Commission's restructuring and modernization efforts. The release of special purpose appropriation to the Commission is contingent upon the Commission's satisfactory progress, as determined by the Legislature and/or the Legislative Emergency Board, in executing the Legislative direction in HB 5030 budget report, and as related to Legislative expectations regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency. Reporting is to also include, but is not limited to, updated caseload and financial forecasts; procurement activities, including contract amendments and the alignment of contracting with the biennial budget process as well as the separation of adult criminal and juvenile trial-level contracts; and human resources activities, including the hiring of positions, staff turnover, unbudgeted position actions, compensation plan changes, and staff morale.

PDSC requests that the committee acknowledge receipt of the attached report.

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Agency Action

In evaluating the budget note, PDSC notices three primary areas of focus. The first area of focus is a status report on Legislative expectations regarding the restructuring and modernization efforts, financial controls, quality management, performance metrics and governance of the agency. The second area is to report on caseload and financial forecasts including procurement activities and the separation of adult criminal and juvenile trial-level contracts. The third area is to report on human resources activities.

During the 2022 Legislative session, PDSC presented a comprehensive restructuring and modernization report that was prepared with the Coraggio consulting group. The consulting group worked closely with the Agency Executive Team to co-create and co-implement multiple workstreams to support its modernization and transformation. Those workstreams include defining the organizational design and functions for a new Compliance, Audit, and Performance (CAP) Division, restructuring the Agency to incorporate CAP operations, identifying and assessing the Agency's key risks and high-risk processes, improving internal controls, examining key performance measures and indicators, and improving governance of the agency. Concurrent to and supporting those efforts, the Agency also implemented a robust stakeholder engagement process and began to develop an equity framework to support staff in managing these transitions. The enclosed report details the Agency's efforts and accomplishments to-date.

Action Requested

The Public Defense Services Commission requests acknowledge receipt of this report.

Legislation Affected

No legislation is affected.

Sincerely,

Stephen I. Singer
Executive Director

cc:

John Borden, Principal Legislative Analyst, LFO
Amanda Beitel, Legislative Fiscal Officer
George Naughton, Chief Financial Officer
Wendy Gibson, Policy and Budget Analyst, CFO

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Attachment 5i



Executive Summary

The purpose of this report is to provide progress the Public Defense Services Commission (PDSC) efforts towards meeting the requirements of the budget note in HB 5030 (2021). The report is broken down into the distinct parts: Legislative Expectations, Procurement Activities and Human Resource Activities.

Legislative Expectations concentrates on several areas. Restructuring describes the work, achievements and plans for the Compliance, Audit and Performance Division. Modernization describes the efforts associated with Information and technology. Financial Controls, Performance Metrics and Governance all describe activities that the agency has employed in those areas. Caseload Forecasting is intended to describe the methodology used to prepare the 2022-23 contracts. Financial forecast is intended to give a high-level report and refers to the separate Financial Update which is also being presented in a subsequent report.

Procurement activities is intended to provide an update to the committee on agency procurement activities, including contract amendments, the alignment of contracting with the biennial budget process, and the separation of adult criminal and juvenile trial-level contracts.

Human Resource activities is intended to report the human resources activities including Agency vacancies, status of new positions, recruitment practices, unbudgeted position actions, compensation plan changes, new leave provisions, classification changes, employee morale, and HR initiatives.

Legislative Expectations

The purpose of this section is highlight specific legislation expectations that were given to the agency to work on and report it progress to the legislature on an ongoing basis.

Restructuring

Compliance, Audit & Performance (CAP) Division Recruitment

One Trial Criminal Deputy General Counsel position was filled by an existing staff member who was serving as Deputy General Counsel under the agency's General Counsel. After competitive recruitment processes, the agency filled the two permanent, full-time General Counsel positions (Chief Criminal Trial Counsel and Chief Juvenile Trial Counsel) in February 2022, as well as one Deputy General Counsel position in the Juvenile Division in February 2022 and one Deputy General Counsel position in the Trial Criminal Division in April 2022. Additionally, the agency has filled the two Research Analyst and two Data Analyst positions.

Trial Criminal and Juvenile Sections

As noted in the agency's January 2022 Restructuring and Modernization Progress Report, the agency worked through the fall of 2021 to develop the organizational structure for Compliance, Audit and Performance (CAP) and to reorganize agency operations to better align with changed workload and to accommodate the new CAP division. As a result, responsibility for the following agency work has been moved from the General Counsel Division to the CAP division:

- Management of the review and approval of attorney qualifications to accept court appointments;
- Provision of legal support to the Case Support Services ((CSS) (formerly Non-Routine Expenses (NRE)) team and to the Contracts team; and
- Evaluation of and response to complaints regarding attorneys providing public defense services.

As the agency has filled the CAP General Counsel and Deputy General Counsel positions, those individuals have worked with the agency's General Counsel to understand existing systems and processes for managing attorney qualifications, complaints, and CSS requests, while simultaneously identifying areas for both immediate and long-term improvement. More recently, CAP has also provided significant legal and data support for the development of proposed contracts for the provision of public defense services from July 1, 2022, to June 30, 2023, as the agency works to implement separate contracts for trial-level representation in criminal and juvenile cases while the state emerges from the COVID-19 pandemic. CAP's work to date is set out in more detail below.

Attorney Qualifications

Currently, review and approval of attorney qualifications, although far from an ideal quality assurance tool, is the agency's best available method for ensuring the quality of public defense services. As such, upon assuming responsibility for this work, CAP attorneys worked with Office of Public Defense Services (OPDS) Information Technology Section to set up a dedicated

email address for receiving attorney qualification application forms, to which all CAP attorneys have access, to ensure that those submissions are timely delivered to CAP for review.

Historically, the agency provided a flat rate of compensation for all attorneys regardless of the level of qualification any attorney. Although the agency does not, and cannot, control the actual pay that individual attorneys receive because they are independent contractors, the agency does control the level of funds it provides to each contract entity out of which each attorney is compensated. Therefore, there is a relationship between the two even though it may not be a one-to-one relationship in all circumstances. However, the problem with the flat rate method of compensation is that it meant that entities were provided the same amount of money to compensate attorneys handling misdemeanors as attorneys handling major felony or homicide cases. A first- or second-year law graduate can handle a misdemeanor caseload while major felonies and murder cases require attorneys with substantial experience. Therefore, this flat rate system makes no sense. No law firms or other organizations compensate new or recent graduates the same as people with five, seven, or ten or more years of experience who are handling far more complex matters. In fact, the flat rate methodology acts as a disincentive for attorneys to become qualified to handle the most serious cases, to actually accept higher level cases leaving the most difficult cases, and those that involve clients who should be prioritized because they are in custody, and these cases are of most concern and importance to the courts, district attorneys, and the community. The agency is proposing to change the way it pays for services by exploring a differential or tiered reimbursement rate. By providing reimbursement based in the level of compensation the agency hopes to incentivize attorneys to seek higher qualifications and take on more serious cases.

The Request for Qualifications (RFQ) for the 2022-23 contracts proposes that attorney compensation would be tied to an attorney's level of qualification—that is, an attorney qualified to handle and willing to accept appointments in cases where an individual is charged with murder would be paid at a higher rate than an attorney who is only qualified for or only willing to accept appointments in misdemeanor cases. CAP is working to develop an improved application for attorney qualifications for use in the 2023 contracting process, to ensure consistency and efficiency in approving attorney qualifications.

Case Supported Services (CSS) Requests

CSS requests submitted to the agency are reviewed by the CSS team and, if they are routine and/or fit squarely within the agency's existing payment policies, are approved without CAP involvement. However, the CSS team refers to CAP any CSS requests that are not clearly allowable under the agency's existing payment policies, request an atypical number of hours for the type of service requested, or are over a certain dollar amount. CAP reviews those CSS requests, consulting with the agency's Budget & Finance Section as needed and determines whether and to what extent the request is for services that are "necessary and reasonable" for investigating, preparing, and presenting a case in court. CAP meets regularly with the CSS team to ensure efficient processes focused on consistency, efficiency, and approval of only fees and expenses authorized by ORS 135.055 and related statutes.

CAP has identified areas of CSS requests where policy development and revision are needed due to increased number of requests and/or increased costs. CAP will work with the Budget & Finance Section on these areas.

Contracts Team Support

CAP attorneys also provide legal support to the Contracts team, responding to questions regarding whether court-appointed counsel is authorized in particular circumstances as they arise and how cases should be accounted for in reporting from attorney providers. Preliminary information has revealed that many clients awaiting appointment of lawyers have had several court-appointed attorneys. In response, CAP attorneys have worked with the agency's Contracts Team to ensure that attorneys follow the Rules of Professional Conduct when seeking to withdraw from client representation. CAP attorneys have also engaged with the judiciary regarding limitations on the right to counsel in an effort to mitigate the current shortage of qualified public defense attorneys. More outreach to judges and public defense providers is necessary in this area. CAP attorneys will continue to work with the Contracts Team to identify and address ongoing issues as they arise.

Attorney Complaints

CAP attorneys have been evaluating and responding to complaints made to the agency regarding PDSC-funded attorneys. OPDS review of attorney complaints is not meant to duplicate or supplant referrals to the Oregon State Bar (and complaints to OPDS regarding PDSC-funded attorneys may be forwarded to the Bar). Nonetheless, reviewing and responding to attorney complaints provides an opportunity to address concerns about individual provider performance and support improved practice, as needed. Moreover, CAP attorneys may act as mediators to try to support the continuation of an attorney-client relationship, if possible. In addition, fielding complaints about public defense attorneys will assist CAP in identifying issues related to practice statewide and in individual jurisdictions.

Stakeholder & System Partner Engagement

CAP attorneys are involved in various workgroups and other stakeholder meetings to coordinate and collaborate with system partners at the state and local levels. This involvement allows CAP attorneys to be aware of issues and problems in the public safety arena that could affect agency operations. Engagement with other system partners allows CAP attorneys to develop relationships that will encourage collaborative problem solving in response to emerging issues.

Stakeholder engagement allows CAP attorneys to establish good working relationships with public defense providers that will facilitate increased and efficient cooperation in handling cases and identifying practice and systemic issues. Because the CAP attorneys understand that relationships between the agency and public defense providers (who are independent contractors) have been strained recently, it is the CAP attorneys' collective belief that it is essential that PDSC-funded attorneys view the CAP Division as a resource for support and practice improvement and not merely as a source of corrective or punitive oversight. Accountability

needs to occur both within the agency and over PDSC-funded attorneys, and CAP attorneys must be visible within the community to achieve the desired improvement in the provision of public defense services. To that end, CAP attorneys have assisted the agency in facilitating oral and written feedback from providers regarding the 2022-23 contracting process and proposed terms, which has, in turn, been provided to the PDSC.

Data & Research Section

The Data & Research Section was established to support the efforts of CAP. Moving the agency to a data and research-driven agency is a pivotal function of the CAP Division.

The Data & Research Section has provided support for the process of developing the 2022-23 contract terms, framework, and RFQ, working collaboratively with both the Trial Criminal and Juvenile Divisions of CAP, as well as the agency's Executive Director, General Counsel, and Contracts Team. The Data and Research Team has utilized data from both public defense providers and the Oregon Judicial Department to assist the agency in estimating caseload needs across the state and planning for improved efforts to collect data from public defense providers. This work has assisted CAP in understanding the limitations of the agency's ability to forecast caseload needs and the challenges and constraints of the current information available to the agency.

To improve agency functioning and support ongoing efforts to improve Oregon's public defense system, the agency must have a robust Data & Research Section that can interact and data-share with the Data & Research sections of other public safety agencies. To achieve efficiencies and facilitate collaborative problem solving, there cannot be "silo-ing" of data and research among public safety community members.

The agency needs to adequately prepare and account for emerging trends that can affect the need for PDSC-funded attorneys or can impact the workload of the current providers. To enhance the quality of PDSC-funded attorneys, CAP intends to review and evaluate the workloads for providers and make recommendations for how to address concerns about issues in Oregon's public defense system raised by, among other things, [ABA study, 6th Amendment Center report, etc.]

Development of the CAP Program Plan

Informed, in part, by knowledge of common research practices that have proven successful in the provision of services in the public health arena, CAP intends to utilize a monitoring, evaluation, and learning framework to identify and collect the evidence needed to support:

- Agency, contract entity, and individual provider accountability;
- Agency, contract entity, and individual provider performance measurement;
- Continuous quality improvement of agency, contract entity, and individual provider service delivery;
- Identification of agency, contract entity, and individual provider best practices; and
- Communication of findings to internal and external stakeholders.

CAP will create logic models for program and contracting functions, mapping out relationships between resources, actions, and activities and their intended outcomes and impact within the

public defense system generally and within specific practice areas, (*i.e.*, criminal, juvenile delinquency, juvenile dependency, etc.) and identifying assumptions and risks of implementation and service delivery. CAP will determine the conditions necessary for improved program development, contracting, and service delivery.

Once logic models are created, CAP will formulate high-level, guiding questions based on the models to help frame the analytic activities pertaining to program implementation assessment, compliance monitoring, and performance evaluation. Questions may focus on programmatic and contract implementation, outcomes, cost-effectiveness, and/or fit and relevance.

CAP will identify progress and performance indicators by using the evaluation questions as a guide. These indicators, through regular monitoring, will allow understanding of progress toward program and contract goals as well as risks to implementation identified in developing the logic models.

Once CAP has determined indicators, it will identify the best methods, tools, and/or data sources to collect the necessary and relevant data for each indicator, establishing parameters for how each tool and source can be used ethically to monitor the indicators so indicators are not misrepresented. Examples of possible tools and/or data sources include, but are not limited to, program and contract reporting; invoice and payment documentation; administrative data; surveys; needs assessments; court observations; and interviews and focus groups. For each data collection method or tool that either doesn't currently exist or requires modification, CAP will develop a standardized method and/or tool that will allow for consistent collection of data across the entire targeted population.

Ultimately, CAP will implement monitoring activities, utilizing an iterative process to determine the frequency of monitoring for each indicator, the collection of data needed to monitor indicators, and the necessary reporting structure to monitor those indicators.

Modernization

Information Technology modernization efforts

The current IT modernization effort begins with the migration of the Attorney database, NRE/CSS, Appellate Division Criminal and Juvenile Appellate Section databases from an Access back end to a more stable and future proofed SQL database. These efforts will become immediately apparent to all end users in the speed at which the data is accessed. SQL is built with a multi-user design that will allow many users to access the same data at the same time. Reporting tools will now be able to run on the live database at speed without creating any significant impact to end user experience.

Another major improvement is the security and stability. This will allow PDSC to configure access to each database to only those users who have been approved for access and to limit how they can interact or modify the data. Additionally, users should no longer experience database

crashes on a regular basis and if an issue does arise, the IT section has upgraded the backup methods to offer a more robust solution and faster response.

Lastly, quality-of-life improvements have been made to the Attorneys database to better capture and report on data. Users can now correctly identify the role and firm type for each contract the attorney has which will help immensely with reportability. Accidental modification has been a problem in the past and is minimized by requiring the user to click an “Edit” button and acknowledge the changed to be made. Search functions have been greatly sped up and simplified into a single search field.

It is important to mention that the 2022 Legislature did make the investment of \$743,588 and two limited duration positions to Administrative Services Division for the planning phase of the Financial and Case Management information technology project. The hope is that these positions will be filled by the end of April 2022.

Financial Controls

One of the key areas of concern has been the financial controls of the agency. The agency has taken steps to begin implementing basic financial controls in accordance with Oregon Accounting Manual. Some of the key issues concern the compliance checking of invoices that are submitted to the agency and the process in which invoices are submitted to the agency. Although some of these changes are not popular with the vendor community it remains important for the agency to maintain its role as responsible stewards of public funds and meet the legislative expectations of accountability.

The agency has hired two experience financial analysts who have help change the way it models and reports expenditure and financial forecasting to take advantage of the resources it currently has available. This will allow managers to become more familiar and gain a better understanding of the resources they need to manage their budgets. Finally, the agency will continue to gain efficiencies as new processes normalize; however technological limitations will continue to be a concern.

Performance Metrics

To support the restructuring efforts that agency is conducting a process to identify and establish key metrics (constitutional, statutory, and operational) and measures to drive effective organizational results. This workstream was started in February 2022 and will continue forward in conjunction with and in alignment with Agency modernization, strategic planning and restructuring efforts.

The agency has started using a multi-step framework that will help guide us through the performance metrics development process. The steps include:

1. Review best practices for performance management and metrics
2. Inventory existing Agency performance metrics

3. Conduct work sessions to:
 - a. Create common and aligned language for performance management and metrics
 - b. Define ownership and performance management decision making and controls
 - c. Define the key performance metrics and measures
 - d. Develop a key performance management dashboard
 - e. Develop training on ongoing performance management

Governance of the Agency

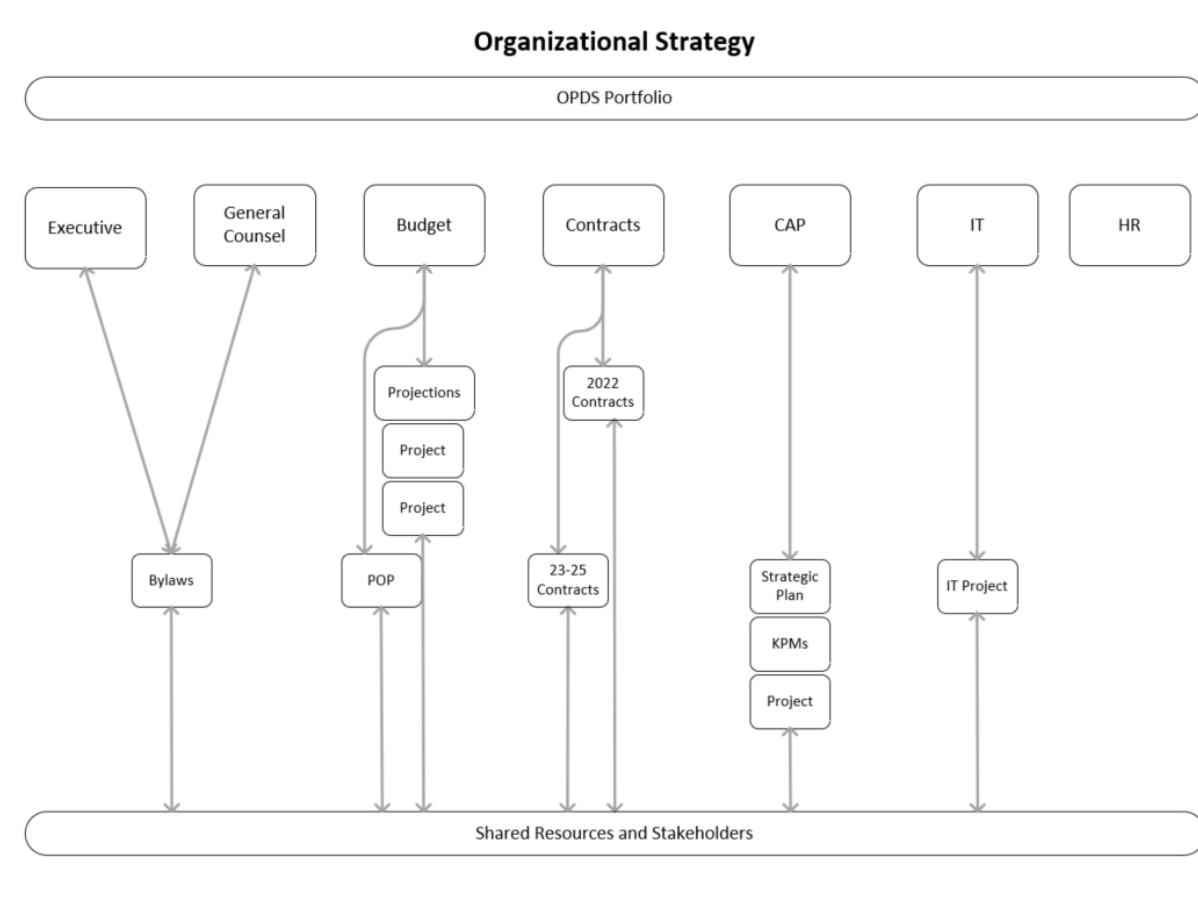
Like many agencies in the State of Oregon, the Public Defense Services Commission (PDSC) has many different programs, policies, and business priorities to manage. PDSC has many critical milestones which are associated with legislative mandates, programs, and operational policies. The Project Management Body of Knowledge (PMBOK®) utilizes three organization project management approaches; *Projects, Programs, and Portfolios* to provide oversight such as scope, change, planning, management, monitoring, and execution. Over the last several years PDSC's resources have been overwhelmed and continue to face a large volume of work that has been difficult to manage and meet legislative requirements. To implement proper project management methodologies PDSC has determined that a portfolio framework would best meet the needs of the current operational structure. Portfolios are a collection of projects, programs, subsidiary portfolios, and operations which are managed as a group to achieve strategic objectives¹.

Over the last month the agency has broken out an overarching body of work encompassed within the portfolio. Although this is an initial breakdown of high-level bodies of work, the agency continues to work towards implementing a formal project management process to ensure the portfolio management methodologies can be applied and effectively monitored. In addition to providing proper management of operations, the portfolio framework will also provide the agency with an additional layer of oversight and adherence to policy, legislative mandates, and operational practices. These benefits are believed to bring PDSC to a place where work, programs, and short-term projects will have the highest rate of success.

Current management of these processes have begun to set awareness and understanding of need, direction, and governance. To date the agency has established several project management tools all stored within a portfolio matrix. These tools manage timelines, decisions, risks, and issues, as well as inform the governing body who is responsible for each task and to what degree. In addition to these tools the executive committee is provided with weekly portfolio status updates where progress of each body of work in the portfolio stands as well as any other key decisions or risks that need to be addressed. In addition to these tools the executive committee is provided with weekly portfolio status updates where progress of each body of work in the portfolio stands as well as any other key decisions or risks that need to be addressed. Those with the most knowledge and experience with project management methodologies are and continue to work with those on the executive committee with less familiarity and ability in project management to

¹ Project Management Institute. 2017. A guide to the project management body of knowledge (PMBOK guide)/ Project Management Institute. Sixth Edition.

build project management capabilities within the executive team and the agency. The agency finds it essential that supporting the agency with proper project management awareness will allow the agency to expand upon and grow this knowledge exponentially.



Caseload Forecast

The following is intended to summarize the methodologies used and policy changes made in creating the 2022-2023 contracts.

I. Adult Criminal Contracts

a. Forecasting Methodologies

We used the following methodologies for forecasting 2022-23 caseloads for the following case types:

- i. Murder: We used the 2021 OJD pretrial dashboard data as baseline and forecast an increased murder rate of 21%, which reflects the average percentage increase in the murder rate over the last three years. We used the OJD pretrial dashboard data to

account for assignments to hourly attorneys, who would not be reflected in our provider data set.

Consistent with current agency policy, we accounted for co-counsel in all first-degree murder cases and the discretionary appointment of co-counsel (at a rate of 30% statewide) in second-degree murder cases. For unknown reasons this was never previously done which resulted in a substantial undercount of the forecast need of attorney capacity to handle expected murder cases. This resulted in the overuse of hourly pay attorneys which are the least efficient and least cost-effective method of providing counsel for these cases, and which has resulted in a substantial deficit in the Agency's Court Mandated Expenses Division.

- ii. Jessica's Law, Ballot Measure 11, and Major (A/B) Felonies: We used an average of the last 5-years of provider data to project the 2022-23 caseload in serious felony cases. Charging decisions in serious felony cases have remained fairly consistent notwithstanding the COVID-19 pandemic, and this allows the agency to draw on a larger data set in projecting for 2022-23. Using this methodology, we forecast a 12% increase in Jessica's Law cases, a 5% increase in Ballot Measure 11 cases, and a 12% increase in Major (A/B) Felony cases.
- iii. Minor (C/D/U) Felonies/PVs: We used 2021 provider data to project the 2022-23 caseload. This is the most current dataset available, and reflects recent changes to the law and, by omitting 2020 data, accounts for the impact of COVID-19. We believed that the number of minor felony cases would be overinflated if we had used a five-year average. Accordingly, we projected that minor felony caseloads would remain flat.
- iv. Misdemeanors: We used an average of four years of provider data (2021, 2019, 2018, and 2017) to project the 2022-23 caseload. Charging decisions in misdemeanor cases were significantly affected by COVID-19. This projects approximately a 25% increase in the misdemeanor cases for 2022-23.
- v. Civil Commitments: We used an average of five years of provider data to project the civil commitment caseload for 2022-23. Civil commitments were relatively consistent from year to year, and COVID-19 did not have an appreciable impact on those case numbers. Using this methodology, we projected approximately a 2% increase from the 2021 caseloads.

b. Standards:

For all adult criminal case types, we used the workload analysis in the American Bar Association's (ABA) report, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, to assign relative weights for probation violation, misdemeanor, minor felony, major felony, Ballot Major 11, and murder and Jessica's Law Cases, using as a baseline the assumption that 300 misdemeanor cases are equivalent to 1.0 FTE. Using that approach with a slight

modification for the murder/Jessica's Law standard, we established the following standards for those case types:

- Murder/Jessica's Law: 6 cases/1.0 FTE
- Ballot Measure 11 cases: 45 cases/1.0 FTE
- Major (A/B) Felonies: 138 cases/1.0 FTE
- Minor (C/D/U) Felonies: 165/1.0 FTE
- Misdemeanors: 300/1.0 FTE
- Probation Violations: 825/1.0 FTE

Using the relative weights assigned by the ABA report, the number of murders/Jessica's Law cases per 1.0 FTE would be 12. Because of the severity of these case types if the agency under contracts for these cases it has an extremely significant effect on the ability to handle these cases in accordance with the rules of professional conduct and national and regional standard. In reviewing the 2021 data for this case type were able to identify that only two thirds of the attorney capacity needed was captured in the contract. Because the prior standard for these cases was four the agency increased the standard to six (or by one third) to both address the ABA workload report and bring almost all these cases within the contract system rather than the hourly system.

The standard for civil commitments, which were not addressed in the ABA report, remain the same as last year, which is 230 cases per 1.0 FTE.

II. Juvenile Contracts

a. Forecasting Methodologies:

- i. Non-PCRJP Juvenile Delinquency: We used OJD pretrial dashboard data from 2021 and projected a 50% increase in delinquency filings. This reflects an increase of 43% in juvenile delinquency filings in the first quarter of 2022 compared to the first quarter of 2021, which we attribute to the lessening impact of COVID-19, and changes in the law that preclude the use of older data sets. We projected a slightly larger increase than 43% to account for the fact that our data does not include formal accountability agreements.
- ii. Non-PCRJP dependency/TPR: We used OJD pretrial dashboard data from 2021 and projected a 5% increase in dependency filings. This reflects the relatively stable or declining numbers of dependency and termination of parental rights cases over the last five years and the challenge in accurately forecast the timing of TPR petitions, which are not tied to external events. We determined that provider expectations that reopening schools would give rise to more dependency filings were not reflected in the 2021 data.

We used PCRCP data to estimate that we would need approximately 2.2 attorneys for each petition filed, which assumes that approximately 70% of cases involve a single child and approximately 30% of cases involve two or more children. It also assumes two TPR petitions for one child.

- iii. PCRCP Delinquency and Dependency/TPR: We used PCRCP data to forecast the number of cases for each case type but applied the same (above) assumptions regarding the forecasted increases in filings for those case types (50% for delinquency and 5% for dependency and TPR cases).

b. Standards

- i. Non-PCRCP Delinquency: We used the workload analysis in the ABA report to identify the following standards for non-PCRCP delinquency caseloads, again using a baseline that 300 juvenile misdemeanors constitute 1.0 FTE:
 - Murder: 6/1.0 FTE – because all delinquency homicide cases result in a prosecution request for a waiver to adult court, and agency policy is to provide for a co-counsel for all delinquency cases where there is a waiver request, the standard of 6:1.0 FTE for these cases actually results in a substantially lower workload per attorney as all of these cases will have a co-counsel.
 - All other delinquency cases: 132/1.0 FTE
- ii. Non-PCRCP Dependency: We left the standards for non-PCRCP dependency cases unchanged from last year, which is 69 new cases per 1.0 FTE.
- iii. PCRCP: The standard for PCRCP is no more than 80 delinquency or dependency cases per 1.0 FTE. That standard remains unchanged.

III. *Statewide Contracts*

Accurate forecasting with the statewide contracts is particularly challenging because of the small numbers involved in these specialty caseloads. With the exception of the PSRB contract, we kept the expectations in the 2021 contracts in place for 2022:

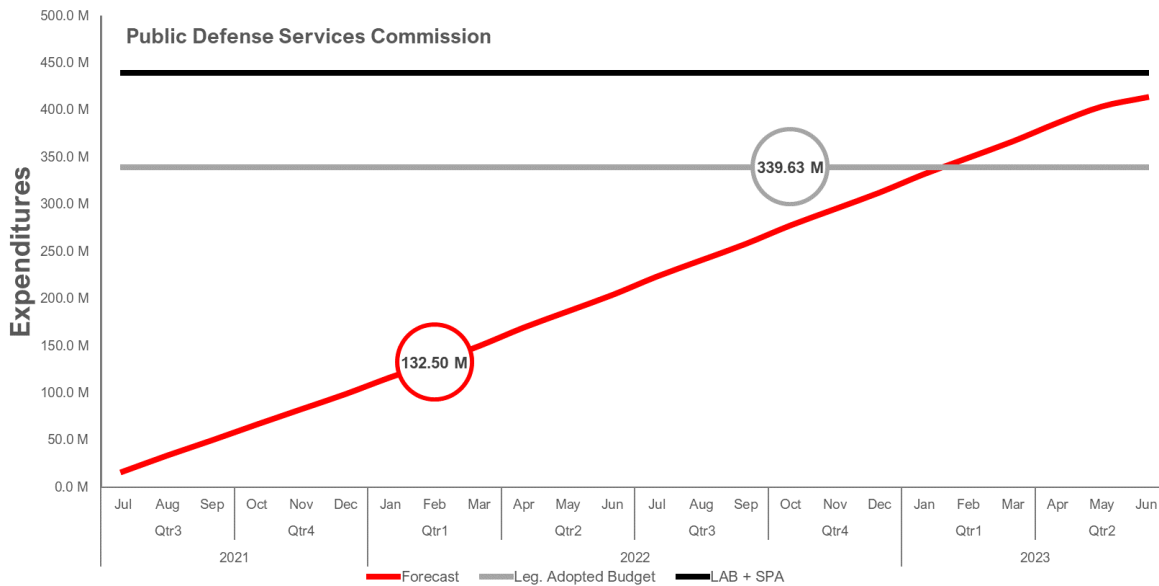
- a. Post-conviction Relief and Habeas—Trial Level:
 - i. Forecasting: We used the first quarter of 2022 provider-reported data to project caseloads for 2022, which indicates in a slight drop in cases from 420 to 408 for 2022.
 - ii. Expectation: 45 cases per 1.0 FTE (no change from 2021).
- b. Post-conviction Relief Appeals:

- i. Forecasting: We used the first quarter of 2022 provider-reported data to project caseloads for 2022. This anticipates a significant decrease from 278 cases in 2021 to 160 for 2022.
 - ii. Expectation: 50 cases per 1.0 FTE (no change from 2021).
 - c. Civil Commitment Appeals:
 - i. Forecasting: 120 appeals annually (no change from 2021).
 - ii. Expectation: 60 cases per 1.0 FTE (no change from 2021).
 - d. Juvenile Dependency and Delinquency Appeals:
 - i. Forecasting: We used 2021 provider-reported data to project caseloads for 2022 at 90. This provider reported no cases for February 2022, so the first quarter of data did not seem like a reliable basis for projecting an annual caseload. Further, this contractor takes overflow and conflict cases from OPDS's Juvenile Appellate Section.
 - ii. Expectation: 32 cases per 1.0 FTE (no change from 2021).
 - e. Psychiatric Security Review Board (PSRB)
 - i. We did not forecast a caseload for this contract, but instead made the decision to treat this contract similar to a specialty court (based solely on FTE) because a significant amount of the legal work was not captured in any projections, which had only captured the work done in annual PSRB hearings but could not account for client-requested six-month review hearings, administrative hearings, and the particularly high needs of clients.

Financial Forecast

Current State of 2021-23 LAB

The chart below shows the current state of the commission budget, for the period ending February 28, 2022. Without the additional investment represented by the \$100 million SPA, based on current spending the agency budget will reach its limit on or around January 2023. Items of concern are in the Case Support Services Division where spending is projected to exceed the current budget inclusive of the SPA investment. Court Mandate Expenses is expected to continue to rise as the current crisis with contracted providers increases the need for hourly contracts.



	LAB	Expenditures	Projections	Forecast	Variance
General Fund	321,184,175	129,347,954	268,980,124	398,328,077	77,143,902
Other Funds	18,449,667	3,155,147	11,851,129	15,006,276	(3,443,391)
Total Funds	339,633,842	132,503,100	280,831,253	413,334,353	73,700,511

The tables below summarize the commission’s General Fund position. The first table which is by program area highlights the need for additional investment of approximately \$80.8 million.

General Fund – Program Areas

February-22	LAB	Forecast	Variance
Trial Criminal Division	186,458,931	225,857,275	39,398,344
Non-Routine Expenses	43,663,533	60,986,655	17,323,122
Court Mandated Expenses	15,006,403	29,817,469	14,811,066
Juvenile Division	30,577,095	39,845,880	9,268,785
Total General Fund	275,705,962	356,507,280	80,801,318

The second table shows the projected savings in non-SPA related program administrative areas. Overall, the issues presented show that the PDSC currently has a projected General Fund need of \$77.1 million, when considering all areas.

General Fund – Program Administration Areas

February-22	LAB	Forecast	Variance
Executive Division	3,600,361	3,294,375	(305,986)
Compliance, Audit, & Perf. Division	4,656,251	4,765,870	109,619
Appellate Division	24,925,503	22,124,745	(2,800,758)
Administrative Services Division	12,296,098	11,635,808	(660,290)
Total General Fund	45,478,213	41,820,798	(3,657,415)

Additional budget information can be seen in two other documents being submitted to the Joint Emergency Board: The Agency Financial Update and the SPA request.

Procurement Activities

The purpose of this report is to update the committee on agency procurement activities, including contract amendments, the alignment of contracting with the biennial budget process, and the separation of adult criminal and juvenile trial-level contracts.

Caseload projections and changes to July 2022 to June 2023 contracts

The PDSC contracts for the provision of public defense services for eligible individuals in criminal, juvenile dependency, juvenile delinquency, civil commitment, and post-conviction relief cases at the trial level; civil commitment, juvenile delinquency, juvenile dependency, and post-conviction relief appeals; and proceedings before the Psychiatric Security Review Board.

PDSC also manages the Parent Child Representation Program in Benton, Clatsop, Columbia, Coos, Douglas, Lincoln, Linn, Multnomah, Polk, and Yamhill Counties. The program provides trial-level legal services for juvenile dependency and delinquency cases and is premised on, among other things, a workload model, rather than quantifying FTE according to the number of assigned cases an individual attorney receives annually, as is generally the case with the PDSC's other contracts

In building its July 2022 contracts, the PDSC endeavored to achieve four goals: 1) to more accurately project its actual caseload and resulting attorney FTE needs through June 2023, 2) to move closer to aligning with recently published, Oregon-specific guidance on attorney workload standards, 3) to promote the efficient allocation of attorney resources throughout the state, and 4) to accommodate the enhanced reporting requirements for its criminal and non-PCRCP juvenile contractors anticipated with the build out of its Compliance, Audit and Performance (CAP) Division in 2022.

Caseload projections

In December 2021, the PDSC extended the 2021 contracts for an additional six-months, through June 30, 2022. The extensions continued the then-existing contracting model, and there were no additional forecasting, increases, or other changes to the contract in place for each entity at the time of the extension.

To prepare for the upcoming contract cycle, the agency analyzed the Oregon Judicial Department (OJD) pretrial dashboard data from 2017 to the first quarter of 2022; monthly caseload reports provided by providers in 2020 and 2021; and data collected through its PCRCP program to assess overall trends in state charging and petition filing practices; the impact of the COVID-19 pandemic, and recent statutory changes on specific case types. Because state charging and petition filing practices varied significantly across case types, in part due to discretionary decisions the state made in response to the COVID-19 pandemic, the agency employed case-type specific methodologies to project anticipated caseloads for June 2022 to June 2023.

In contrast to past practice, the agency also attempted to account for its existing policy requiring appointment of co-counsel in first-degree murder and allowing discretionary second-degree murder

cases in projecting those adult and juvenile delinquency caseloads. The intent in accounting for co-counsel in murder cases is to ensure that a greater proportion of that caseload is included in the agency's contracting decisions, which the agency anticipates will result in less need to rely on the appointment of hourly attorneys, which are in short supply and more costly.

Changes to caseload standards

Starting in January 2020, the PDSC has contracted for adult criminal and non-PCRJP juvenile trial level public services by looking to caseload standards for full-time defense attorneys developed by the National Advisory Commission (NAC) in 1973. Those standards were intended to establish maximum caseload standards for full-time attorneys handling criminal, juvenile, and mental health cases with average complexity and with adequate support staff. However, the NAC standards are universally viewed as outdated and inadequate to address the demands on modern defense attorneys, stemming from, among other things, electronic discovery, the need to engage with medical, psychological, forensic, and other experts, and the mental health and other specialized needs of clients.

To cover projected caseloads, the January 1, 2021 to December 31, 2021, contracts required an attorney working 1.0 FTE to carry a maximum caseload of 15% *above* the maximum caseloads established by NAC.

In January 2022, the American Bar Association (ABA) published its report, *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards*, which calculated the amount of time that full-time public defenders should spend, on average, on specific case types to meet minimum standards of representation, which does not include time spent on administration, travel time, and supervision. There are currently insufficient funds available for the PDSC to adopt the ABA's full workload recommendations.

In the interim, to bring the agency's contracting model into closer alignment with current national and regional best practices, the agency used the ABA's workload analysis to assign relative weights for adult criminal and non-PCRJP juvenile delinquency cases.

The agency did not alter its existing caseload standards for civil commitment cases or juvenile dependency cases, and the existing expectations applicable to its statewide contracts for post-conviction relief, post-conviction relief appeals, juvenile appeals, and PSRB cases because those case types were either not addressed in the ABA's workload study or because the agency could not meaningfully alter those standards and expectations within its existing budget.

The following tables summarize the changes to the standards for the July 2022 contracts:

Adult Criminal Caseload Standards

Old Case Types	Old Standard	New Case Types	New Standard
<i>Murder</i>	4.6	Murder/Jessica’s Law	6
<i>Felony (all types)</i>	172.5	Ballot Measure 11	45
		Major (A/B) Felonies	138
		Minor (C) Felonies	165
<i>Misdemeanors</i>	460	Misdemeanors	300
<i>Probation Violations</i>	460	Probation Violations	825

Juvenile Caseload Standards

Changes to Non-PCRCP Delinquency Standards

Delinquency Case Type	Old Standard	New Standard
Non-PCRCP Murder	4.6	6
All Other non-PCRCP Delinquency Cases	230	132

No Changes to PCRCP and Non-PCRCP Dependency Standards

Contract/Case Type	Standard
PCRCP (per 1.0 FTE)	80 delinquency or dependency open cases
Non-PCRCP Dependency (per 1.0 FTE)	69 cases

More efficient allocation of attorney resources

In its 2021 contracts, PDSC paid between \$190,000 and \$211,150 to entities per attorney FTE regardless of the composition of the caseloads undertaken by those attorneys. For example, at least in some cases, attorneys handling entirely misdemeanor caseloads were receiving the same or even more OPDS funding than attorneys handling major felony and murder caseloads. In addition, a number of jurisdictions are currently in acute crisis in that there are insufficient public defense attorneys available to handle existing caseloads, particularly attorneys qualified to handle serious case types like major felonies and murder cases. Although the root causes for the deficit of public defense attorneys are multifaceted, those problems were exacerbated by some public defense attorneys moving from one contractor to another in the same jurisdiction and leaving their caseloads behind, which required redistributing those cases to already overloaded attorneys or incurring the inefficiencies inherent in recruiting, hiring, and onboarding new counsel for those cases.

In the 2022 contracts, the PDSC is seeking to address those interconnected issues in several ways. First, the PDSC is seeking to both incentivize lawyers to seek qualification for more serious case types and to retain lawyers who are qualified to take more serious case types by adopting a stepped

reimbursement scheme tied to the lawyer’s highest-level of qualification. Second, the PDSC is modifying its contract terms to 1) require contractors to prioritize taking cases for which it has qualified attorneys, 2) requiring contractors to accept conflict and overflow appointments from adjacent jurisdictions, 3) and imposing limitations on when a public defense attorney may leave their caseload behind when the attorney moves between contractors but continues to do public defense work funded by the PDSC.

Enhanced reporting requirements for contractors

To accommodate the enhanced reporting obligations on contractors anticipated with the build out of the CAP Division, the 2022 contract general terms require contractors to submit caseload reports for adult criminal and non-PCRCP juvenile within 10 days of the end of each month and timely comply with OPDS requests for other information and data in the form required by OPDS, including reports regarding a contractor’s work outside the contract, and impose escalating penalties for late reporting.

Contract Amendments

The COVID-19 pandemic created a backlog of cases in many jurisdictions, creating a need to amend contracts and move resources around the state to cover the additional caseload. As a result, the adjudication of cases has been slow to return to normal and Major Felonies rise in key jurisdictions.

Contract term for this report was originally January 2021 – December 2021, with the turn-over of key staff in the agency it was necessary to extend contracts for an additional 6 months. In December of 2021 the term of the contracts in place was extended to June 30, 2022.

The following Public Defense contracts were added or amended during the January 2021 - June 2022 contract term.

New Contracts

County	Entity	FTE	Value
Klamath	Justin Wright	1.0	\$123,170
	Janea Bly	1.0	\$123,170
Umatilla	Pendleton Law, LLC	.90	\$132,098

Amendments

County	Entity	1/1/21 FTE	1/1/21 Value	Amendment FTE	Amendment Value	Reason for reduction/increase
Benton	Largent Law, LLC – (PCRCP)	.80	\$203,276	1.00	\$330,762	Increased to cover conflict cases in neighboring counties

Clatsop	Clatsop County Defender Association	5.9	\$1,320,532	5.70	\$1,298,150	Unable to fill vacancy
Coos	Southwestern Oregon Public Defender Services, Inc.	7.5	\$1,425,000	6.5	\$1,298,334	Unable to fill vacancy
	Southwestern Oregon Public Defender Services, Inc. (PCRCP)	1.5	\$735,780	1.0	\$654,028	Attorney departure, decrease in caseload
	Coos County Juvenile Consortium (PCRCP)	5.2	\$2,507,960	4.6	\$2,434,628	Attorney departures, decrease in caseload
	Coos County Juvenile Consortium (PCRCP)	4.6	\$2,434,628	3.6		Attorney departures, decrease in caseload
Deschutes	Kollie Law Group	6	\$1,200,000	5	\$1,100,000	Juvenile attorney left, removed juvenile caseload and FTE from contract
	Kollie Law Group	5	\$1,100,000	4.85	\$1,087,500	FTE reduced to account for retained caseload
	Kollie Law Group	4.85	\$1,087,500	3.88	\$1,055,167	Unable to fill vacancy
Douglas	Umpqua Valley Public Defender	8.7	\$1,803,000	8.4	\$1,765,000	Increased capacity to meet caseload
	Umpqua Valley Public Defender	8.4	1,765,000	8.7	\$1,779,250	Moved FTE capacity from PCRCP contract to Adult Criminal contract
	Umpqua Valley Public Defender	8.7	\$2,680,750	9.7	\$2,744,082	Moved FTE capacity from PCRCP contract to Adult Criminal contract
	Umpqua Valley Public Defender (PCRCP)	4.3	\$1,545,935	3.3	\$1,470,607	Moved FTE capacity from PCRCP contract to Adult Criminal contract
Jackson	Jackson Juvenile Consortium	6.7	\$1,457,905	7.66	\$2,255,786	Increased capacity to meet caseload

Klamath	Jeffrey D. Hedlund, PC	.80	\$253,380	1.3	\$279,774	Increase capacity to meet caseload
Lane	Lane County Defense Consortium	6.50	\$1,362,400	7.26	\$1,514,400	Increased capacity to meet increase caseload
	Lane County Defense Consortium	7.26	\$1,514,400	7.86	\$1,574,400	Increased capacity to meet increase caseload
Lincoln	Lincoln Juvenile Defenders (PCRCP)	4.0	\$1,949,305	4.0	\$2,451,063	Amended to add administration for Benton County
Linn	Linn Defenders	14	\$2,920,000	12.85	\$2,747,503	Reduction in FTE unable to fill vacancies
	Linn Defenders	12.85	\$2,747,503	12.11	\$2,722,837	Reduction in FTE unable to fill vacancies
Malheur	David R. Carlson	1.85	\$390,628	.95	\$248,105	Unable to fill vacancy
	Douglas J. Rock	1.50	\$316,725	.75	\$197,960	Unable to fill vacancy
	Renee Dennison	2.00	\$495,800	1.00	\$273,319	Unable to fill vacancy
Malheur/Baker	Eagle Cap Defenders	5.15	\$1,008,110	8.15	\$1,294,525	Amended to include FTE from other entities, to cover the caseload in Malheur
	Eagle Cap Defenders	1.0	\$923,650	1.4	\$1,008,110	Amended to add capacity to cover caseload.
Multnomah	Justice Alliance of Columbia County	1.65	\$313,500	2.15	\$361,000	Increase to cover conflict cases in Multnomah county
Polk	Polk County Conflict Consortium; (PCRCP)	2.5	\$1,045,193	2.75	\$1,066,193	Increased capacity to meet caseload
Statewide	O'Conner Weber	4	\$885,880	4.80	\$1,054,800	Amended for increase caseload

Umatilla	Intermountain Public Defender	10	\$2,087,500	9	\$2,024,168	Reduced FTE unable to fill vacancy
Yamhill	Yamhill Juvenile Group (PCRP)	4.0	\$2,787,180	3.5	2,740,728	Decreased capacity to meet caseload

New Emergency Funding

During the 2022 short session the agency was given \$12.8 million in additional funding to address a backlog of unrepresented clients in 4 counties, Lane, Marion, Multnomah and Washington. Below is the current list of additional capacity added with this funding.

County	Entity	Amendment FTE	Amendment Value
Lane	Public Defense Services of Lane County	2.0	\$121,740
Marion	Public Defense of Marion County	2.0	\$136,387
Multnomah	Metropolitan Defense, Inc.	2.0	\$107,796
	PDC	1.0	\$52,788

Alignment of contracting with biennial budget process

The Public Defense Services Commission (PDSC) extended Public Defense contracts, whose terms were set to expire December 31, 2021, through June 30, 2022. This was a six-month extension of the current terms and conditions of the contracts agreed to beginning January 1, 2021. The extensions represent the contracting model in place at the time of extension, there were no increases or changes to the contract in place for each entity at the time of extension.

July 1, 2022, the agency anticipates having new contracts in place for 1 year, June 30, 2023. Below is the 2022 contracting plan:

- Contract terms and conditions are currently being reviewed and amended by General Counsel.
- General Counsel, analyst's, data and budget teams and others are working together to review and develop better aligned caseload metrics for Oregon charging practices. PDSC will review and adopt.
- General Counsel, analyst's, data and budget teams and others are working together to develop an estimate of the total number of FTE needed county by county.
- Budget will assess the financial impact of these metrics, as they are developed.
- An RFQ will be released in late April, the RFQ will require all entities to send in attorney qualifications and other pertinent information to allow analysts to verify the level of attorney qualification against the need in each jurisdiction.
- New juvenile contracts will be established in the non-PCRP jurisdictions.
- Contracts will be offered to entities that respond to the RFQ based on the documented need that results from the work completed by the data team with review of the compliance audit and performance team.

- All Contracts will be presented at the June PDSC meeting for approval.

Separation of adult criminal and juvenile trial level contracts

Contracts that have covered both Adult Criminal and Juvenile caseloads in the past will have separate contracts beginning July 1, 2022. Data team's projections of caseload and FTE needs will be used for separating the two work streams of juvenile and adult criminal in all non-PRCP jurisdictions.

An RFQ will be issued in late April; from the respondents and data teams projections, analysts will produce separate juvenile and adult criminal contracts reflecting the types of caseloads each entity can handle and the FTE funding needed to cover them.

Human Resource Activities

In response to the budget notes for HB 5030, below is the report of Human Resources activities including Agency vacancies, status of new positions, recruitment practices, unbudgeted position actions, compensation plan changes, new leave provisions, classification changes, employee morale, and HR initiatives.

Agency Vacancies

Below is a chart showing position vacancies within the agency through April 11, 2022, by Division, showing how many positions have been filled, current vacancies, vacancies created by turnover, and the reason for the separation since July 1, 2021.

Division	Filled positions	Current Vacancies	Turnover
Appellate Division	2	2	1 voluntary demotion 1 section transfer 2 promotions 1 end temporary assignment
Executive Division	3	2	1 state agency transfer 1 temporary retiree
Compliance, Audit and Performance Division	8	2	2 state agency transfers 1 resignation
Administrative Services Division	14	2	1 termination 2 retirements 2 resignations – move out of state, personal reasons 1 state agency transfer 1 end temporary assignment 1 trial service removal

*Recruiting processes to fill new positions began August of 2021. One of the vacancies will not be filled until July of 2022 when funding for the position becomes available (Deputy General Counsel).

New Positions

The agency was provided new positions in HB 5030. Of the positions received, four remain vacant:

Classification	Disposition	Reason not filled
Deputy General Counsel (Trial Criminal)	Not Filled	Funding available in July 2022
Deputy General Counsel (Trial Juvenile) (2)	1 Filled	Recruitment in progress
Internal Auditor (2)	Not Filled	Multiple failed recruitments

Recruitment Practices

The OPDS personnel policy and collective bargaining agreements require an open-competitive recruitment process. However, there is a provision in the personnel policies that allows the Executive Director to forgo any recruitment processes to direct appointment management service positions. All the positions filled since July 1, 2021, were filled by open-competitive processes, except for two management positions.

- One position was appointed at the discretion of the Interim Executive Director. This appointment was made because the candidate had been working on contract in the same capacity.

- One position was appointed as the discretion of the new Executive Director. This appointment was made because the applicant had applied for a higher-level position but was an ideal candidate for a lower-level position for which there was a vacancy.

Unbudgeted position actions

There has only been one unbudgeted position action to fill a vacancy, through open-competitive recruitment, for a position that was abolished in the 2021-23 budget cycle in the Administrative Services Division, Case Support Services Unit. This action was approved by the Deputy Director. The agency is working with the Legislative Fiscal Office to add this position back as a fulltime position.

There has been overlap in one instance when a new employee was hired to replace an outgoing employee. An Interim Executive Director was appointed by the Commission in June of 2021 as a nation-wide competitive recruitment was conducted by the Commission, with assistance from a contracted recruiter. The new Executive Director was appointed on December 1, 2021, and the Interim Executive Director stayed onboard until December 31, 2021, to ensure a smooth transition of leadership.

Compensation Plan Changes

As agreed in collective bargaining, approved by the Public Defense Services Commission on December 16, 2021, and reported to the legislature on January 14, 2022. The following compensation changes were implemented beginning February 1, 2022.

Employees represented by AFSCME, as well as those in management service, will receive the following adjustments to compensation for the 2021-2023 biennium.

- 2.5 percent cost of living increase on February 1, 2022
- 3.1 percent cost of living increase on December 1, 2022
- One-time lump sum payment, equivalent of two-months cost of living, for December 2021 and January 2022, of 2.5%, provided to all employees, for consistent distribution to remain consistent with the rest of state government.
- Pandemic Recognition Pay: One-time lump sum payment of \$1550.00 to all employees required to work in OPDS offices from March 16, 2020, through June 30, 2021.
- Technical adjustments to attorney classifications in conformance with the adjustments made by Department of Justice to maintain parity with these classifications, effective February 1, 2022. The technical adjustments will be made first, then the cost-of-living increase will be applied.

Deputy Defender PERS Salary Range:

OLD	7886	8282	8688	9102	9532	9993	10477
NEW	7886	8282	8694	9129	9585	10041	10524

Senior Deputy Defender PERS Salary Range:

OLD	10362	10881	11420	11979	12573	13192	13846	14532	15252
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NEW	10523	11028	11557	12112	12694	13303	13941	14611	15312
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- One step adjustment to the Paralegal salary range, by dropping step 1 and adding a new top step, for parity with Executive Branch. The classification will remain at a nine-step salary range.
- Technical adjustment to the Program Analyst 4 salary range to match the Research Analyst 4 salary range. Both classifications are Range 30, but the steps are not aligned.

New Leave Provisions

As agreed in collective bargaining, approved by the Public Defense Services Commission on April 21, 2022, and reported to the Legislative Emergency Board in May 2022. The following leave provisions were made consistent with Executive Branch and Oregon Judicial Department.

Employees represented by AFSCME, as well as those in management service, will receive the following.

- Pursuant to ORS 187.010 and 187.020, Juneteenth is recognized as a paid holiday.
- If the Governor issues a state of emergency declaration because of a natural disaster and where, because of this natural disaster, an employee’s primary residence is deemed lost, found to be uninhabitable or is not accessible, the employee shall be eligible for up to eighty (80) hours of paid administrative leave prorated for part time employees.
- The agency may officially close its offices because of inclement weather, hazardous environmental conditions, or where its offices are inoperable. Inclement weather, hazardous environmental conditions include fire, flood, earthquake, or inclement conditions. An inoperable office is one where essential service are lost because of fire, mechanical failure, accident, or weather, active shooter or threat of violence, or other causes. Under these conditions employees shall receive up to 40 hours of miscellaneous paid leave per biennium.

Classification Changes

New classifications were adopted by the Public Defense Services Commission into the Agency’s compensation and classification plan based on the new positions granted to the agency in HB 5030.

The following classifications were adopted by the Public Defense Services Commission on July 13, 2021.

- Fiscal Analyst 1-3
- Chief Information Officer
- Information Technology Specialist 1-4

Employee Morale

In partnership with the Coraggio Group, an employee survey has been conducted to evaluate employee morale. Topics identified in the survey were discussed at an all staff meeting and breakout groups were created to discuss the issues and provide a feedback forum for discussion. Management is committed to addressing employee morale and creating opportunities for improved communication.

An impact to employee morale is the significant organizational change within the agency; new leadership, shift in the organizational team structure, implementation of new programs and technology, adoption of new business models, internal processes changes, policy development, and overall growth. The agency is faced with adaptive and transformational change that impacts every employee. The agency continues to work diligently to improve its ability to address the capacity of individual employee's ability to adapt to the significant personnel and transformational changes occurring within the agency. The agency recognizes that this is an area in which the agency needs to continue to improve. The agency continues to monitor this dynamic situation to determine whether outside professional assistance would be beneficial and necessary.

As identified above there is need to have assistance with Organizational Change to make the transition successful. Change management does not stop once the transition has been successfully executed. The Human Resources section is developing a Workforce Development Strategy to address employee development and workforce opportunities including equity and inclusion, onboarding, training and continued education, succession planning, career enrichment, outreach, and talent acquisition. This strategy will include continuous assessment of employee morale and outcomes of change, measuring data, training, new methodologies, and business practices conforming with state government, and readjusting goals as necessary. This initiative may be brought forward in the form of a policy option package in the 2023-2025 legislative session.

Attachment 6a



To: Per Ramfjord, Chair, PDSC
Members, PDSC
Re: OPDS Proposed Changes to Public Defense Contract General Terms
Date: April 18, 2022

OPDS submitted draft public defense contracts to the PDSC prior to its meeting on April 8, 2022. Similar to the 2021 public defense contracts, the proposed contracts continue to be FTE contracts predicated upon caseload standards. There are, however, three primary differences between the 2021 contracts and the current proposed contracts.

First, there have been changes made to the financial model. Instead of uniform FTE rates for all contract attorneys, the agency is proposing a tiered reimbursement model. Contract entities will receive a higher level of funding if they have attorney's qualified to handle more complex and serious cases, and those attorneys elect to be assigned those cases.

Second, there have been changes made to the caseload standards that govern these contracts.

Third, there have been changes made to the general terms of the contract. Some of those proposed changes were discussed at the April 8 PDSC meeting. Since then, the agency solicited feedback on that draft contract language. Additionally, the agency had a formal meeting on Thursday April 14 in which many of these issues were discussed. That meeting included a wide cross section of members of the public defense community including, board members of OCDLA, ODCA and representatives from AFSCME. Also, many other public defense providers including executive directors of nonprofits and other contract administrators participated in person and virtually.

After receiving feedback from the provider community, OPDS is recommending the following changes to the proposed '22-'23 public defense contracts:

Assignment of Cases

Feedback: The agency heard concern about attorneys being compelled to provide legal services in case types they do not wish to be assigned. Some observed that an attorney could be qualified to handle major felony cases per the PDSC's Qualification Standards, but not be competent to handle more complex major felony cases. There was additional and specific concern about compelling experienced supervising attorneys in public defender offices to take on serious cases when they already have additional, and possibly conflicting, obligations.

Response: The agency is proposing that section 3.5.1 be amended. The first paragraph of section 3.5.1 would be deleted and instead read:

All attorneys under contract shall accept court appointments to all case types for which they are (1) competent pursuant to the Oregon Rules of Professional Conduct and (2) qualified pursuant to the PDSC's Qualification Standards, if a contractor elects a contract type based upon that attorney's qualifications. This rule does not apply to attorneys who provides ongoing and consistent monitoring and oversight to at least three other attorneys within the same office pursuant to a plan approved by OPDS. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

Cases Outside Jurisdiction

Feedback: The agency heard concern about attorneys being compelled to travel to multiple jurisdictions to provide public defense services. There was confusion about when this contract term could be activated. There was concern about whether the different courts would work with the attorneys schedules to mitigate against competing court scheduling conflicts. And there was concern that an attorney qualified to handle major felony cases per the standards of the PDSC may not be competent to handle all major felony cases.

Response: The agency is proposing section 3.5.1(a) be amended to the following:

a) Contractor shall accept appointments to cases in adjacent jurisdictions, upon notice from OPDS. OPDS shall work collaboratively with Contractor to select an attorney who is best suited to receive the appointment to a case in an adjacent jurisdiction. OPDS shall work with OJD to mitigate against attorney scheduling conflicts. These appointments will count toward the Contractor's overall contracted caseload and will receive additional case weight. In addition, Contractor shall be reimbursed by OPDS for routine mileage and parking expenses, pursuant to the PDSC's Payment Policy.

Attorney Withdrawal When Leaving a Contract Entity

Feedback: The agency heard feedback both in support of and critical of this proposal. There is an

Oregon Office of Public Defense Services
1175 Court Street NE, Salem, Oregon 97301

understanding that attorneys serve clients and have duties of loyalty to those clients. And there was an appreciation for the system disruption that occurs when attorneys leave a contractor but continue to do public defense work, particularly when an attorney is shifting from one contractor to another within the same jurisdiction. There was feedback to limit the rule to attorneys staying in one jurisdiction. There was additional feedback to eliminate the adjacent jurisdiction rule and require attorneys to presumptively take all of their cases with them to a new contractor, but allow the two contractors to work collaboratively to determine which cases an attorney should keep during the transition.

Response: The agency is proposing section 7.1.5.2 be amended to the following:

7.1.5.2 Prohibition on Withdrawal

When a public defense attorney leaves a Contractor, they shall comply with rule 1.16 of the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission.

- a) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in the same jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.
- b) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and OPDS to ensure the due administration of justice and protect the rights of their existing clients.

Vacancies

Feedback: The proposed contract language requires contractors to fill FTE attorney vacancies within 30 days. The agency heard feedback that filling attorney vacancies is challenging with the existing market. Contractors want to ensure they are not penalized for market conditions outside of their control. There was an understanding that the agency should not fund an entity for an attorney position that the contractor is not utilizing. But there was concern that the agency could permanently strip the funding for the FTE position from the contractor for reasons beyond their control.

Response: The agency is proposing to change the timeline for filling all vacancies in section 7.4.1 to 60 days, rather than 30 days. Section 7.4.1(b) should be amended to the following:

Contractor shall retain an FTE attorney within 60 days of any vacancy, or OPDS may temporarily remove funds associated with the vacancy from the contract until the vacancy is filled. The 60 days may be extended with written agreement by OPDS. Contractor shall fill the vacancy as soon as practicable with an attorney who possesses equal or greater qualifications as defined in the PDSC Qualification Standards unless OPDS otherwise agrees in writing. Contractor shall immediately notify OPDS of a vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.

Attachment 6b

From: Amanda Thibeault <amanda@aatlegal.com>

Sent: Friday, April 15, 2022 12:40 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Feedback on OPDS proposed contract changes

Please see attached.

I did not address this in my letter but my proposed alternatives are:

1. Do not require/prefer 1 FTE contracts. You will lose providers that way because not everyone wants to do that. To increase providers who will provide indigent defense, you should encourage anything from .5-1 FTE contracts so that more people were willing to provide coverage. There are highly qualified state attorneys who also want to pursue other areas of work that are just as valuable as state defense, like, federal indigent defense. By forcing attorneys to choose between that type of work, you are going to force attorneys to choose which work is more functional, and inevitably, systems like the federal system (where attorneys and contractors are regularly paid on time) will receive the preference, resulting in less state attorneys than you have now.

2. Do not include provisions requiring persons represent outside of home counties. Although that appears to be done in an attempt to make sure counties in dire need get additional coverage, that will then just create a continuous cycle where there then won't be enough coverage across the entire state. The solution to needing coverage due to a shortage of attorneys is to make public defense more attractive, not to make it harder for the current attorneys who already practice to do their job (which will just result in you losing attorneys). For example: **Pushing harder for student loan forgiveness for full time contractors who do not qualify.**

Thank you,

Amanda

AMANDA ALVAREZ THIBEAULT | ATTORNEY AT LAW
ALVAREZ THIBEAULT, LLC

April 14, 2022

RE: *OPDS and Proposed Contract Provisions*

To whom it may concern:

My name is Amanda Alvarez Thibeault and I am currently a 1 FTE defense provider with the Oregon Defense Attorneys Consortium (“ODAC”) in Washington County.

My consortia is a member of ODCA and fully supports ODCA’s position on this matter. As a member of ODCA, I fully support their position as well.

I have been a defense provider with ODAC since September of 2018. Prior to my involvement with ODAC, I worked at Metropolitan Public Defender from 2010 (first as a law clerk, then as a Certified Law Student, then as an attorney) to 2015 and again from 2017-2018. I was also asked to serve as a mentee on the Federal panel in 2019, which provided me a learning opportunity and ability to assist with federal public defense. Suffice to say I have spent the last decade devoting my time, talents, and energy to indigent defense. Next to my daughter and my husband, I consider this work my highest priority.

With that background, I am writing to address two proposed contract restrictions that OPDS intends to place on its providers: 1. The requirement that we take cases within 100 miles of us and 2. That the ideal contract model for OPDS is comprised only of those willing to take a 1 FTE contract.

With regards to the 100-mile requirement, if that requirement is placed in my contract, I do not think I can renew my contract with ODAC and will likely have to find new work. I am the major breadwinner for my family (my husband is a Legal Secretary at MPD and makes under \$18/hour). The biggest benefit to my life as a contractor with ODAC is that I am in control of where I am and when. Given that I practice in one county, I have mastered those various unwritten local rules and eccentricities that each county has. Even though Washington County is one of the most notoriously challenging jurisdictions to practice in, I find great joy in being a provider here, largely because I have devoted my time and talents to tackling the systemwide issues that make Washington County famously difficult, and because I take pride in helping the clients that need it the most. Because I only have cases here, I am able to do that work and still ensure I can be present for my daughter, Celeste,

If required to be available to clients within a 100-mile radius, any semblance of work life balance will be shot. These are exactly the kind of things that make practice in a high-volume field untenable for working mothers and exactly the kind of issues that forced me out of the public defender office earlier. I look around my consortium and note that I am **the only mother of school aged children in my consortium.** This is precisely because being a public defender is a challenging field for women and especially for mothers of young children. In light of the investigation into OPDS disparate treatment of women, the idea that OPDS would add a provision to contracts that would make practice even harder for women and working mothers like myself, instead of aiming to create contracts that retain long term talent, is honestly mind-boggling.

There will always be young attorneys available to be hired for lower-level cases. The biggest issue for OPDS is creating a supportive enough environment so that experienced attorneys are able to maintain their practice, instead of burning out after a couple of years. Adding a requirement that we now become masters of jurisdictions within 100 miles does precisely the opposite. If added to my contract, I do not know that I can renew.

AMANDA ALVAREZ THIBEAULT | ATTORNEY AT LAW
ALVAREZ THIBEAULT, LLC

The express preference that all OPDS contractors move toward a 1 FTE model feels similarly overreaching. Prior to the FTE model, I took cases from the CJA Panel. Since OPDS has converted to the 1 FTE model, I have stopped doing that at the rate I did previously. I cannot take any more cases at the federal level given OPDS' restrictions.

My hope was to drop down to a .8 or a .9 this contract cycle so that I could increase the rate I did federal cases. This was because I wanted an opportunity to develop a new skill set in order to benefit myself as a defense attorney and because, like the state system, the federal system also needs quality indigent defense providers. The fact that OPDS' "ideal model" would forbid me from doing **other indigent work** feels similarly hurtful.

Why would OPDS want to create a model that decreases the intellectual stimulation and fulfillment from our work? Why would OPDS want to prevent high-quality indigent defense attorneys from providing assistance at the federal level? Why, given the state-wide shortage of defense attorneys, would OPDS want to narrow the pool that it selects from?

The reality is that this crisis is a long time coming. Myself and my colleagues have been doing the same work that our prosecutor adversaries do for less money, no benefits, and no student loan forgiveness. OPDS should be doing everything it can do to highlight these issues to the legislature and to make our lives better, so that we can stay and maintain our workload as we all work through this crisis together.

Instead, these two provisions make life even harder for defense providers and provide even less incentive to continue our current contracts. This crisis is precisely the moment that could transform Oregon Public Defense. We should be seeking pay parity and student loan forgiveness for contract defenders, not adding restrictions that make our lives harder.

Over the past few years, myself and my colleagues have risked our personal safety as we continued to advocate in court throughout the pandemic while others were allowed to work remotely and avoid continued and repeated contact with a high risk population. We bore dangerously high caseloads and continue to agree to take cases off the "No Attorney List," on top of that.

When I was in court last week and heard Judge Proctor intend to seek contempt sanctions against OPDS, the first thing I did was to reach out to my contract provider and ask to take a case off the list, knowing that her plan would do nothing to solve the crisis. I did so believing that when the time came, OPDS would have my back and would use this crisis as an opportunity to seek transformative change to our public defense system and support its current contractors, **who make up over 50% of public defense providers in this state.**

Reading OPDS' proposed contract terms just a few days after I volunteered to take a Jessica's Law case from the "No Attorney" list felt like a slap in the face, especially after two years of risking my health and my child's health through various COVID exposures that occurred in the Washington County Courthouse, while my appellate brethren in arms at OPDS were able to work remotely without having to risk their health or their families' health. I really believed this would be the time that OPDS would see contractors as allies, not an impediment.

I honestly was speechless, after weeks of doing everything I could to take as many cases off the list as I could, to read the contract provisions OPDS wants me to agree to.

AMANDA ALVAREZ THIBEAULT | ATTORNEY AT LAW
ALVAREZ THIBEAULT, LLC

In summation, this is the opportunity for OPDS to lift up the voices of its contractors, not to make our lives more difficult. The time for public defenders to be uplifted in Oregon is now. Making our lives harder will only force more of us out of this work, making life worse for all of us and doing nothing but exacerbating the current crisis.

Please do not hesitate to contact me with any comments or concerns. I truly hope you all take the opportunity to listen to us, especially ODCA who represent those providers who have their own practice and make up over **half** of public defense providers in Oregon. We do this work for the love of it and the fact that we now have to fight to even be able to do that is incredibly disheartening.

Sincerely,

Amanda Alvarez Thibeault

From: keith goody <wkeithgoody@gmail.com>
Sent: Thursday, April 14, 2022 9:33 PM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Subject: Hourly rate

[You don't often get email from wkeithgoody@gmail.com. Learn why this is important at <http://aka.ms/LearnAboutSenderIdentification>.]

I do not intend to take any more cases unless payment is equivalent to Federal CJA rates. \$159 an hour.

Keith Goody

Sent from my iPad

From: Adrian A <interpreteeraa@hotmail.com>

Sent: Thursday, April 14, 2022 10:18 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: 7.4.3 of Contracts Re: Contract and RFQ Discussion

Hello, I was in attendance at the hybrid 2022 Contracts meeting today with the OPDS team and the public defense attorney community. Could you please help me understand the purpose and reasoning behind the proposed language for section 7.4.3 in the contracts regarding Interpreters? My concern is that it is problematic in its attempt to ensure equal language access for non-English-speaking clients.

First, however, I would like to express my appreciation and gratitude for your fine support staff without whom we could not perform the work we do.

As it currently reads:

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(8)(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.

What is the purpose of referencing a law office's staff as "certified" or "qualified" under ORSs here? Secondly, are there jurisdictions in Oregon where law offices are providing the interpreters for the actual court hearings? That is the work performed by OJD/Court Language Access Services.

7.4.3 took language from the *OPDS Payment Policy*, which continues in effect since at least 2/18/2014, provides guidance for a law office in need of interpretation services, and works to ensure that non-English-speaking clients have equal language access. It states:

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).

7.4.3 needs revising to strengthen equal language access for non-English-speakers.

I look forward to hearing from you, about the purpose of 7.4.3 in your new contract. I assume that one reason for it is so that some law offices use bilingual staff for attorney-client interviews. Doing that doesn't ensure equal language access like working with certified court interpreters does. (If you're wondering about the difference between Certified and Qualified in the ORSs, it has to do mostly with Court Certification Exams. There are no Certification Exams for many languages. Without the exam available, those highly skilled interpreters are considered qualified.) And if a law office has staff

“qualified” to interpret Spanish, Russian, Vietnamese, Mandarin, or Arabic, they should be able to pass the available certification exam.

I have a revised draft of 7.4.3 for your consideration and input:

7.4.3 Interpreter Services

For out-of-court attorney/client communications, Contractor should use interpreters, staff included, who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. If no certified interpreter is available, counsel should use a **qualified** interpreter, **staff included, as defined by ORS 45.275(8) (b) (c).** [Since in-court interpretation is not within the purview of Contractor, but rather that of the statewide Oregon Judicial Department’s Court Language Access Services, there is no need to make it a term of this contract.]

Draft amendment attached.

Thank you,

Adrian Arias
State Certified Court Interpreter
503-522-3136

To review the entire 3.5.3 section on Interpreter Services of the *OPDS Payment Policy* see pages 13 & 14 here:

<https://www.oregon.gov/opds/provider/PoliciesProcedures/PaymentPolicyEffective09-01-19.pdf>

“Qualified interpreter” means a person who is readily able to communicate with the non-English-speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English-speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. “Qualified interpreter” does not include any person who is unable to interpret the dialect, slang or specialized vocabulary used by the party, victim or witness. -ORS 45.275(8)(c)

https://oregon.public.law/statutes/ors_45.275

An Amendment to Align 7.4.3 of Contracts with 3.5.3 of OPDS Payment Policy to Ensure Equal Language Access to Non-English-Speaking Clients

By Court Interpreter Adrian Arias, April 14

DRAFT

Current OPDS Payment Policy at 3.5.3 states:

“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).”

1 Relating to new contracts; using Contractor’s staff as interpreters; amending 7.4.3 of Contracts.

2 On page 17 of the Criminal and Juvenile Contracts, and page 20 of the PCRCP Contract,
3 amend 7.4.3 from,

4

5 **7.4.3 Interpreters**

6 **For out-of-court attorney/client communications, Contractor may use staff who are**
7 **either qualified, as defined by ORS 45.275(8)(c), or who are certified by the Office of**
8 **the State Court Administrator (OSCA), under ORS 45.291. For in-court interpretation,**
9 **Contractor shall ensure that all interpreters who are staff employees or who**
10 **subcontract with Contractor comply with all certification requirements established by**
11 **OSCA and the Code of Professional Responsibility for Interpreters in Oregon.**

12

13 to,

14

15 **7.4.3 Interpreter Services**

16 **For out-of-court attorney/client communications, Contractor should use interpreters, staff**
17 **included, who are certified by the Office of the State Court Administrator (OSCA), under ORS**
18 **45.291. If no certified interpreter is available, counsel should use a qualified interpreter, staff**
19 **included, as defined by ORS 45.275(8) ~~(b)~~ (c).** [Since in-court interpretation is not within the
20 purview of Contractor, but rather that of the statewide Oregon Judicial Department’s Court
21 Language Access Services, there is no need to make it a term of this contract.]

From: Craig Russell <craig@russelllawgrp.com>
Sent: Saturday, April 16, 2022 8:55 AM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Cc: Megan A. Doak <Megan.A.Doak@opds.state.or.us>; Daniel E. Stephens <bmd@danstephensattorney.com>; Daniel Hill <Daniel.J.Hill@ojd.state.or.us>
Subject: Stakeholder Input on OPDS July 2022 Contracts

Good morning,

I'm writing with my position regarding the proposed changes to the July 2022 OPDS contracts. I have been a member of the Blue Mountain Defender consortium in Umatilla/Morrow County since December 2020. I am one of only a few attorneys qualified to handle the most serious cases in my jurisdiction, such as murder, homicide, Jessica's Law, Measure 11, and everything below. I also maintain a heavy juvenile docket. For what it's worth, I am a very experienced trial attorney having won the last *15 jury trials* I've handled in a row. I have not lost a jury trial since 2016. One month ago, in my most recent trial, my client was acquitted of Attempted Murder. The trial before that, my client was acquitted of measure 11 Assault II. The last Jessica's Law case I handled was settled with a plea to a single count of *Harassment and bench probation*. Last week, I successfully dismissed homicide charges for another client after filing multiple pre-trial motions. I will add that I *requested* to join the Neg Hom case with only 1 month before trial because I believed I could greatly assist the appointed attorney and benefit the client.

If all of these proposed changes are required in the new contract, I will not continue with OPDS.

(1) Requirement to Travel 100+ miles

I will not continue accepting court appointments if I'm now required to accept appointments 100+ miles from Umatilla County. Umatilla and Morrow County are flooded with cases and I anticipate that'll get worse as Intermountain Public Defender continues to decline. Taking out-of-county cases will only force me to take less cases, not more. Many of the surrounding counties require in person appearances. For example, if I am required to travel to Baker County for a 15 minute status hearing, I will need to block out almost an entire day.

(2) File Inspection/Disclosure

I will not allow inspection or disclosure of my non-appointed files. In my fee agreement with my private clients, I guarantee that I will not allow inspection of their file, or even disclosure of their identity, without a lawful warrant. I am not willing to disregard this promise and agreement.

(3) Compensation Inequity

The proposed contracts do not address an increase in pay. Currently, Umatilla County is the highest volume county for criminal and juvenile work in Eastern Oregon, yet we are classified as "rural" and paid substantially less than surrounding counties. Illogically, other *truly rural* counties are classified as "urban," such as Malheur, Harney, Wheeler, and Lake County - all of which have a considerably lower volume of cases and population. Wallowa County processes a substantially lower number of criminal and juvenile cases and is compensated identically to Umatilla County. Especially in light of the increased pressures we face with the local PD office's decline, a pay increase is absolutely necessary. Inflation justifies a pay increase alone.

(4) Administrative incentives to Dan Stephens

The current contract allows for a financial incentive to the consortium administrator. I cannot emphasize how important this term is to the functioning of the organization. Both Dan Stephens and his assistant, Kelly, have run BMD for years and are critical to its day to day operations. Without the financial incentive for this great responsibility, Dan will be unable to afford the staff necessary to carry out these duties. Bluntly put, I am not willing to continue participation in the consortium if Dan Stephens is unable to continue as the administrator due to a funding cut in his office.

I anticipate if I leave the consortium my private work will only benefit. I'll have abundantly more time for those cases and I already have a considerable number of private clients retain me after they become dissatisfied with their public defender. Given the current state of the local PD office, I anticipate this will substantially increase. I have continued in BMD because I truly believe in helping court appointed clients and feel passionately about my practice. But I cannot accommodate the new proposals.

If these terms are non-negotiable by OPDS, I completely understand. I only ask for enough notice from OPDS so that I can promptly begin the withdrawal process from my current criminal and juvenile caseload, which is substantial. If these terms become negotiable in the future, I will be happy to discuss taking on court appointed cases again. I have CC'd Dan Stephens and Judge Dan Hill, presiding judge for Umatilla County, for their attention.

Thank you for your consideration.

Craig W. Russell
Attorney at Law

Russell Law Group, LLC
230 S. Main St.
Pendleton, Oregon 97801
541.777.8032

From: Curt Borg <lane.borg@northcoastpublicdefender.org>

Sent: Friday, April 15, 2022 2:32 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Potential Issues with new contract and contracting constraints

I think most of the changes make sense and even though folks will want to poke holes in the case weighing, it actually makes sense and the adjustments to caseloads are a step in the right direction. The two issues I want to discuss are

1. The 100 mile rule. This will constitute a significant culture change in that most judges, esp PJs have come to treat their, yes their, PDs as chattel property and have expectations that they own the PDs time. Under this rule that will change, people with large caseloads, certainly larger than private bar that rarely have more than 12-14 open cases pending, will have multiple jurisdictions to navigate. Jurisdictions have a surprisingly large amount of procedural variation and some systems suck more time of the provider. To help navigate this, it would be helpful if you could direct that some triggering has to happen before someone is randomly assigned to a different county, it would be helpful to clump providers to counties (right now I can do Tillamook which has been few but I think helpful to them, if I was also doing Columbia, Washington and Multnomah all within 100 mile of Astoria it would be very hard) So maybe identify which counties someone is expected to cover primarily so as to limit how thin we get spread. Also, the PJs at least need to be in agreement about managing this (there is or used to be a rule about how intercounty time/schedule conflicts are resolved and it uses the Chief Justice). There should be a preference to use local folks for in custody because the reality is the daily contact will be strained. Having said that the biggest challenge I have had in doing out of custody cases in other counties is that I have no infrastructure to support me for things like where to meet the client, so I have had client meetings in my car which is horrible on serious BM 11 cases. When I did private practice, the clients had the resources to come to Portland in most cases to my office. That is not realistic with poor clients. I don't know if this can be addressed but having access to infrastructure and support would really improve representation for clients.
2. This is more of a comment than anything that can be changed. It was very disappointing to read the operating constraints because this feels like a giving in to the bad old days of just do it for the money we offer. That is to say when we even purport to say to the state that we will cover every case the DA's file no matter what for the funds authorized we are at least tacitly selling out. I understand the need to recognize the budget and appropriations voted on but we should always push back on the notion that we will then accept all future cases. NO other state agency does that, not even the State Hospital. Frankly, I am disappointed that there has not been more discussion of triaging the cases pending, why do we act like an attorney for a shoplifting case is just as important as for a custody felony. I know I am just ranting. I do think this articulation is problematic in that it appears that OPDS is now taking the position that their job is to whip the providers into submission to take whatever they are offered.
3. Okay one more thing, I think we should get rid of the requirement to sign that we are independent contractors because we clearly do not pass muster of several of the state and federal test. You should expect that once this contract is signed a challenge could be filled like Dolan v King Co that goes after the idea of being independent contractor status.

Lane Borg

North Coast Public Defender

From: Nicole Pritchard <npritchard@swopds.org>

Sent: Friday, April 15, 2022 5:28 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Feedback for PDSC consideration

Greetings,

This proposed contract is unworkable for many reasons. It is simply not true that “we have to cover all of the cases.” Covering all the cases is a physical impossibility and would be unethical. Defenders should be putting pressure on DA’s Offices to stop charging a volume of cases that exceeds the number of defense attorneys that can represent those individuals effectively. Our offices should be able to make determinations about what number of cases we can ethically take. OPDS is not able to reasonably make those determinations for us.

Twelve murder cases a year is far too many. The emotional and psychological toll that these serious cases take on attorneys working them is enormous. This number is way too high and should be reduced by at least half.

Expecting attorneys to travel 100 miles to cover cases is inefficient and will result in even more burn out and frustration. Public defense offices operating “under capacity” are still overloaded with work. In Coos County, where I practice, the court speeds along cases to such an extent that we must dedicate significantly more time to each case in shorter time periods than attorneys in larger jurisdictions. While it may appear to OPDS that we are under capacity, our felony attorneys are overworked and constantly at risk of burn out.

We cannot do the impossible. Unreasonable changes are going to deter new lawyers from becoming public defenders. These proposed changes are going to make the public defense crisis worse.

Sincerely,

Nicole M. Pritchard
Assistant Public Defender
Southwestern Oregon Public Defender Services, Inc.
465 Elrod Ave. Ste. 201
Coos Bay, OR 97420
541-267-2472

From: Mark Lang <mark@mclanglaw.com>

Sent: Saturday, April 16, 2022 6:27 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Feedback

Greetings,

There were a few issues with the proposed contract terms that may be problematic. The request that attorneys travel within a 100 mile radius is going to be extremely difficult if the courts in the different counties are not cooperative and/or the client is in custody.

In order for that to work, the system will need to fully embrace WebEx. The jails will have to allow video visits and the courts cannot require personal appearance on every little hearing. It is my understanding Multnomah is requiring that now and if you want this to work with a 100 mile radius, they cannot require that. It will need to be expected to have video and there should not be an expectation to file motions for appearance by video. Personal appearance should only be required on a trial and some sentencings in my opinion.

Clatsop and Columbia have done a great job in allowing the video for most hearings. I really think Multnomah should model them. Their system with WebEx is not good. I have done video sentencings and probation violations in Clatsop and Columbia. As I stated, I don't think jury trials should be by video. All juvenile cases have been by video and I think it has been a success and I think most clients like it better.

The other option with the 100 mile radius is to see if you could specifically contract with people to do that. I know the AG has an AAG that is a rover that goes to different counties. You may have less resistance with a River contractor position.

I really think some attorneys are really concerned about having to coordinate with an unfamiliar county. As I stated above, if the court isn't flexible, then it really will put people off. I totally understand moving people to where they are needed and we have made that work ok with The PCR contract in St Helen's and Astoria. But it is only working because both counties have been good about WebEx. There are also a lot of similarities so it doesn't feel alien.

Also, you need to understand that by us going to different cities we may need to have a business license in that city to actually do the work there? I think OPDS should find that out if we need a business license in that city before you send us there. If we need a city license then that adds additional costs and adds more complications.

It is difficult to travel that distance because each county does things a little different and use different forms, or their docketing is difficult to navigate. To expect every attorney to do that may push attorneys to quit. Not everyone wants to go to Portland to do cases. Basically taking the country mouse to the big city. You are asking a lot here.

Also I think 100 miles is pretty far. I would shorten that distance. You are not accounting for traffic conditions with that 100 miles. You are basically saying someone has to burn a full day to do a case that distance. If it's a 1/2 or hour hearing that's a huge waste of time and costs. Also, will that attorney have access to office space to work on the case there and places to meet clients?

You will need to push the Chief Justice to force the county circuit courts to cooperate and help us make it work if you want us to cover additional counties.

Also, it takes such a long time to get paid for mileage by OPDS that it is maddening. It has been over 2 months for me personally. I still have outstanding payments owed to me. So to make it work you will need to streamline reimbursement procedures and time.

Another issue I see is that the contract is requiring more insurances, such as workers comp and identity breaches. I understand that and it is appropriate. I think a lot of attorneys don't technically hire staff and treat the people that are assisting them as contractors. Having them as contractors is probably not appropriate, but they do it to minimize costs. I have found to adequately fund those costs it pushes the attorney to supplement their practice with private work.

It may be good to offer technical assistance to the attorneys to understand how to set up the offices with the insurances required and what is needed to make sure the attorney is following what is needed.

If OPDS wants more oversight please understand that puts more costs on the attorneys and I don't think the expectations to have those things required are reflective in the contracts. I really don't think OPDS knows how much it costs to have the licensing and insurances. I know that there is not more money available, but I think it needs to be said.

Also, understand that with the contracts that are over 1 million, we are subject to the Oregon corporate tax and that is almost 4 thousand dollars. It is tied to revenue, not profit. That is a fee that is paid by the administrator of the contract, you add that with the accounting fees you are looking at 6 thousand dollars.

I have heard a few people say they can't do contracts with the state because they don't have health insurance available. I have also seen a couple attorneys have health issues or accidents and they have no disability insurance because of costs. I am wondering if there could be a way for OPDS to set up an insurance coverage pool that makes having affordable health insurance, disability coverage available to the people contracting.

I also have some concerns over the wind down procedures where you are requiring people to maintain the cases after they leave. Sounds nice in theory but it really won't work and I think it puts clients at risk. Once people decide to leave it is best to let that happen and move on. Human nature tells us they won't put their best effort in. They will be focusing on what ever the new job is.

Thank you for allowing us to share our thoughts.

Mark

Mark J. Lang

Mark J. Lang, Attorney At Law, PC

2005 St. Helens St.

St. Helens, Oregon 97051

www.mlanglaw.com

From: Paul Aubry <paul@aubrylaw.com>

Sent: Saturday, April 16, 2022 8:06 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Jurisdiction Change

Hello. I am writing to voice my strong opposition to this change (taking cases within 100 miles of a contracted county). We already cover a 100 mile radius in 2 counties and the PJ in one is pivoting to in-

person court. That alone will be difficult to manage (3 hours total drive time between existing counties).

If OPDS requires us to cover additional counties in the other directions it will be unmanageable and lead to more burnout. We already struggle to contract with good lawyers and this change may lead to an even further shrinking of the pool of lawyers to do this work.

Thank you

--

Paul Aubry, Attorney at Law, LLC
PO Box 1054
St. Helens, OR 97051
(503) 329-4539 Fax 1-503-296-2142 (must dial 1)

From: Grant Burton <grantb@hillsborolawgroup.com>

Sent: Saturday, April 16, 2022 2:22 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: HLG's Concerns Re: Proposed Changes to Contract Terms

Dear OPDS:

Hillsboro Law Group PC ("HLG") is very concerned regarding several proposed changes to contract terms. These concerns included the following:

1. Proposed Attorney FTE Amount:

- a. Page 2 of the "Proposed Changes to 2022-2023 Attorney Provider Contracts" includes a matrix suggesting that indigent defense providers in Washington County are presently paid \$211,150 per FTE. While this is accurate for some contractors, HLG is inexplicably being paid a lower rate of \$200,000 per FTE. This occurring even though we are being appointed on higher level A and B felonies, while other several other contractors being paid more per FTE are not handling these cases. From our perspective, HLG should be reimbursed for the unfair discrepancy in the current 1.5 year contract cycle: $4.5 \text{ FTEs} \times \$11,150 \times 1.5 \text{ years} = \$75,262.50$. This discrepancy must be corrected in any future contract HLG enters into.
- b. In principal, HLG agrees that attorneys handling higher level felony cases should be paid more. We are concerned how this will be implemented in practice. If FTE values do not increase to account for very high inflation, I anticipate that HLG and other providers will not be able to continue to provide public defense services for the duration of the next 12 month contract period.

2. Case Types (Section 3.5.1 in Criminal Contracts): While our contract includes A and B non-BM11 cases, it has never included BM11 cases. None of our attorneys are willing or able to handle these cases at present, regardless of any certifications OPDS has on file. If we try to compel our attorneys to handle BM11 cases, they will likely resign.

3. Jurisdiction (Section 3.5.1(a)): None of our attorneys are willing to appear outside of Washington County at their current compensation levels. Our greatest challenge as a public defense provider is attorney retention and recruiting. Forcing our attorneys to spend significant time and effort traveling to other venues within 100 miles for no additional pay is a recipe for implosion.

Thank you for your consideration.

GRANT R. BURTON | PRESIDENT

HILLSBORO LAW GROUP PC

Tel 1.503.648.0707 | Fax 503.693.1353

5289 NE Elam Young Pkwy, Ste 110, Hillsboro, OR 97124

hillsborolawgroup.com

From: Kris Kaino <kris.kaino@gmail.com>

Sent: Sunday, April 17, 2022 11:26 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: 2022 Contract Proposed changes

I am the administrator of a consortium of 6 attorneys in Clatsop County. I have been in that role for about 15+ years. My concerns with the changes are as follows:

1. There is no contract provisions dealing with Covid-19 issues, which has affected indigent defense work in Clatsop county more than any other event in the past 25 years. Clatsop county may be the only county where DA's are NOT back in their offices full time as of todays date! Most are still working from home. We have just now begun to do jury trials. While our case appointments are significantly down since Covid, the number of cases my attorneys have open (100+ for everyone) are at an all time high. We simply are finding it very difficult to resolve cases with a DA's office that is not back in the office full time. This issue needs to be taken into consideration, particularly with the second issue below.
2. This contract is requiring attorneys to travel 100 miles to do cases in other counties. If we are required to go to Washington county (just under 100 miles from Astoria), I will lose at least one attorney and possibly two. Furthermore, driving to Washington county is 2 hours each direction (more in the summer), which basically consumes the entire day. With the open case load my attorneys have (even though appointments are lower) they do NOT have the time to take an entire day to handle a case in Washington county, which likely will require multiple trips i.e. jail visits, court appearances etc.
3. We need at least 90 days to fill a vacant position. Not possible to do in 30 days.
4. While I understand director Singer's constraints in the email that we have to cover all of the cases and OPDS will likely get no additional money to add attorneys. However, in reading the Oregon Project and the case standards outlined in that study (which just about everyone has quoted), those case load standards are SUBSTANTIALLY lower than what is outlined in the new contract proposal. One simple, yet significant issue arises - per the Oregon Project, it would seem attorneys would run into ethical problems taking that many cases. I do not have an answer to this dilemma, other than what the legislature has indicated they will not do - more money for additional attorneys.
5. Lastly, others have suggested putting together kind of a "squad" of attorneys willing to travel statewide to take these overflow cases. Pay them more per hour (suggested 125.00 hour) to travel around the state and do these cases.

From: Nancy Leone <born2talk@gmail.com>
Sent: Sunday, April 17, 2022 9:23 PM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Subject: Certified interpreters

Good Morning !

I am writing to you all regarding the use of interpreters in any case where an interpreter is needed.

In my opinion I feel that a certified interpreter should be used in every case that requires the use of an interpreter.

Those of us that are certified have the experience, some of us MANY YEARS of experience ! After going through all the classes, orientation, countless hours of studying, seminars, paying the required money and passing the exam to become certified shows a true interest in being an interpreter. The terminology that legal cases require takes years of practice to learn and we keep learning.

Having a member of an attorney's staff acting as the interpreter in a case, no matter how serious it is just does not do justice to the attorney or their client, the court, let alone a witness in a case. Being familiar with court helps one do their job better.

Being bilingual doesn't mean you can be a great/good interpreter. If I were in need of an interpreter in the judicial system I for sure would want a certified interpreter over a qualified or registered one. The years of being a certified interpreter plays a big part in any case. My many years of continued education has given me the opportunity to keep being a certified interpreter !

I look forward to taking continued education classes and keeping up with new words that are constantly coming out in the Spanish language. I watch television in Spanish so I know what Spanish speakers are talking about. I have many dictionaries and quite a few in my telephone so I can stay on top of the latest vocabulary. I feel that taking a secretary (for example) away from answering the phone is not helping nor keeping up with current legal scenarios.

Each case is different I know but the more we know about a case the better and more smoothly a case will be for all involved. Ethics are so important. Being impartial is so important. A certified interpreter knows everything is confidential and knows not to give their opinion on how a case is going. These are a few things that are just learned by training.

We have rules to abide by and must never forget those rules. It is our duty to report to the court if rules are broken.

I feel the lack of training that a non certified interpreter has is crucial to any case. I am surprised that OPDS would consider using a non-certified person to be an interpreter. Please don't change the rules after all this time my colleagues and I have worked so hard to do our very best that we can. I can not tell you how often I am asked if I am certified. I also can't believe that some interpreters that are actually working and being paid by you are actually hired to interpret. Many many years ago I swore I would do my best and I am sure my fellow interpreters are happily doing the same.

Thank you for your time. I truly appreciate the fact you have been there for me for so long.

Sincerely,

Nancy M. Leone

(Certified Spanish interpreter for the state of Oregon)

From: Jason Steen <jason@dickisonsteen.com>

Sent: Monday, April 18, 2022 6:56 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: 2022 Contract

I am a Murder Qualified 31 year stakeholder in public defense (most of those years in my home state of Oregon).

The "100 mile clause" is a non-starter for me. In terms of time and cost, it makes no sense. The credibility and working relationship I have built with Multnomah County, where I practice, are hard earned and valuable. I choose to have no such relationship in WACO for good reason. Setting aside the complete lack of any ethics on the part of the government in that county, why would I waste a day travelling and paying for gasoline (that's right, I dont drive a stinking Prius or Tesla) when I am tending to an already huge caseload in my own county? I lose money. I lose time and most of all, I degrade my representation of clients in my home county.

The ideas already posed by the present OPDS regime are troubling and do not seem to be grounded in any reality or understanding of what our jobs require. It's puzzling and perhaps it's just desperate "spit-balling."

From: Nathan Law <nathan@cornerstone-lawgroup.com>
Sent: Monday, April 18, 2022 7:45 AM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Cc: Kelly McHugh <kelly@cornerstone-lawgroup.com>
Subject: Input from Karpstein & Verhulst PC (dba Cornerstone Law Group)

Good morning,

I'm writing in response to Mr. Strehlow's invitation to provide input on the new proposed 2022-23 Contract terms.

1. Contract Terms:

- a. **Section 3.5.1** – Accepting “all case types” for which a contractor is qualified. The contract entered into by OPDS and the provider should govern this. We believe the new term should not change the contract types for which a provider contracts for. If a highly qualified attorney leaves our firm, and can only be replaced by a brand new attorney, our firm would not be able to handle the cases that are left. This is something we plan for and cross-train attorneys on, and we need to be able plan for these kind of contingencies.
 - i. We believe this should not change the contract types for which a provider contracts for. For instance, if an experienced attorney contracts for a misdemeanor caseload, even though they could theoretically handle Measure 11 or Jessica's Law cases,
- b. **Section 3.5.1(a)** - The “100 mile rule” will severely impact individual attorneys in terms of time. There will be massive efficiency lost, because it will result in attorneys spending an entire day for a single hearing or jail visit. Based on the current case rotation in Washington County, private firms and individual providers are more likely to be assigned to these out-of-county cases than MPD.
- c. **Section 3.5.1(c)** – We need to understand “paid work” in this context. Does this mean any paid work under the OPDS contract (hourly work)? Or does paid work refer to any other paid employment? See also commentary on 4.2, below.
- d. **Section 3.5.1(d)** – Pro Bono – If the intent of the contract is to monitor an attorney's overall time and caseloads, thereby avoiding overextending attorneys, then this section seems incongruous with 3.5.1(c), above.
- e. **Section 4.2** – Work outside contract – How is this calculated in terms of hours in a week, or caseloads? Our attorneys are typically at .9 or .8 to allow them to pursue other retained work, and the retained caseloads fluctuate. We ensure they do not conflict with contract case – we believe that all cases require the same ethical duties by an individual attorney. We would disagree with a requirement that no attorney can engage in any other paid work in general. But does this mean, for example, even a 1.0 FTE should be able to deliver pizzas or draft wills on the weekend if they choose to do so? We disagree.
- f. **Section 7.1.2.2** – Our office is unable to devote time to sitting in on whole arraignment dockets – so hopefully this is not a change in that regard. We have always attended Shelter hearings and Arraignments for newly appointed or current clients that we have notice of such hearings. We will continue to do this.
- g. **Section 7.2.2(b)** – Again, we need clarification. Does this mean, for example, even a 1.0 FTE should be able to deliver pizzas or draft wills on the weekend if they choose to do so? Can an attorney do pro bono work and be a 1.0 FTE? When we see contract terms

like this, we feel distrusted because it seems like a an unneeded restriction above and beyond our ethical duties as attorneys. On the other hand, we wholeheartedly agree with the first sentence of this section: *“Has a current workload, including other paid work 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.”* This is what we feel the standard should be.

- h. **Section 10** – Our understanding is that we are awaiting completion of the case weight portion of the standard contract.
- 2. Caseload Standards:
 - a. The new proposed standards from the OPDS April 14th letter appear to align with the ABA Oregon Project Study. We are unsure whether completion Section 10 of the contract will clarify this further.
- 3. FTE and Reimbursement Rate
 - a. Since the rates for FTE are what OPDS is currently able to provide based on the legislative constraints, we do not have current comments.

We look forward to working with everyone at OPDS. The way we see the current environment is that adjustments to the next annual OPDS contract will not solve the short-term problems of the need for more attorneys or the underfunded defense bar. Ultimately, given the current restrictions by the legislature, the only short-term solution to the under-funded defense shortage would be to force attorneys to take on higher caseloads once again. The long-term problem will only be fixed by legislative funding. It’s a painful and slow process felt by all. In the meantime, our firm will continue to do our part in serving the underrepresented and the indigent in Washington County.

Sincerely,

Nathan G. Law, Esq.
Shareholder, Cornerstone Law Group
1328 SW Baseline St., STE 104
Hillsboro, OR 97123
503-648-7383



From: Jack Morris <atty.jackmorris@gmail.com>

Sent: Monday, April 18, 2022 8:49 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Contract terms feedback

1. Contract payment rates

The contract payment rate should be the same for each contractor barring exceptional circumstances. The differential rates were proposed and were supposedly based on urban versus non-urban rates. Looking at the list of contractors and their FTE rate there appears to have been very little adherence to that methodology. While the urban contractors do seem to have the higher rate for the most part there are also contractors in areas that can only be classified as rural who are at the highest rate as well. This makes no sense and in my mind cannot be justified. My law firm is based in Hood River which has probably the highest housing cost in the entire state and we have been placed at the middle rate. All contractors should be moved to the middle rate and leave it at that.

Several years ago Barnes Ellis, the former chair of the commission proposed a differential rate as well with higher payment going to the urban contractors. After lots of discussion and debate chair Ellis who had a very open mind and was willing to listen concluded that the differential rate was in fact a bad idea and reversed his position. The commission should do so as well. If there is to be a differential rate the higher rate should in fact go to the rural providers. Most attorneys want to work in the urban areas and it is much more difficult for rural providers to get applicants. It makes absolutely no sense to make it even harder for rural providers to get applicants than it already is.

2. Section 3.5.1

I strongly believe that a dedicated indigent defense lawyer should be willing to take all kinds of cases. However having said that I also recognize that there may be occasions when an exception to that rule should be made. The requirements being proposed that all attorneys under the contract accept "appointments to all criminal cases for which they are qualified" is unreasonable and contains no exceptions whatsoever. The first murder case that I handled as lead counsel was the killing of a toddler by a person who was mentally ill. At that time my ex-wife and I had just had our first son and our son was almost exactly the same age as the toddler that had been killed. I accepted the case and handled it and quite frankly probably should not have. For any rule or requirement there is the possibility of an unforeseen exception that should apply.

(a) The Proposed requirement that contractors be required to accept appointments in other jurisdictions and may not refuse those appointments is absolutely unreasonable. Very few if any of us signed up for a requirement that we travel to different parts of the state to do our job. My office in the past has done that on a voluntary basis and when we're able we will still do so as we have recently however being forced to do this is offensive. Aside from the inherent problems associated with traveling long distances it also bears mentioning that having to practice in an unfamiliar jurisdiction puts the attorney at a disadvantage because they don't know local rules, they don't know the court, they don't know the prosecutors and consequently the client is at a disadvantage. We assume that the purpose of this proposed language is to deal with the problem of unrepresented clients that the state is currently having. Like so many of the problems that OPDS has now this was a self-inflicted wound that was brought about by the refusal of a OPDS to compensate people for stepping up to the plate and agreeing to take out of jurisdiction cases. While this may seem like a short term solution to the problem the simple fact is this proposal will serve to alienate many more of the attorneys currently doing indigent defense and long-term will leave to more attorneys leaving the practice and contributing to the problem instead of helping to solve it.

(b) The prohibition against compensating attorneys monetarily on an hourly rate or a per case rate if they are part of a contract is ill-advised at best. In fact it is the very heart of the problem.

(c). The proposed language which prohibits what appears to be attorneys as well as staff from engaging in other paid work rather than other paid legal work is remarkable in the extent of its' reach. One has to wonder what happened to the concern about our independent contractor status. If I have an attorney who wants to spend some time on the weekends working behind the bar at a winery doing wine tastings or if I have a staff person who is having a hard time making ends meet and wants to supplement his or her income doing something that doesn't interfere from their primary job I'm hard-pressed to understand how OPDS is entitled to impose this prohibition. OPDS may force us into being de facto state workers but this goes even beyond that. Are legitimate state workers prohibited from free use of their own time as they see fit ? The answer to my knowledge is no.

Sec 7.1.5.2

The prohibition contained in this section which prohibits a defense lawyer from moving to withdraw from cases when they leave their employment is completely unreasonable. It has the potential, particularly with respect to juvenile cases of requiring that an attorney continue representation of those cases which could stretch into months or even years. It also has the potential to prohibit an attorney from accepting other employment because of the continuing obligations.

7.4.1 (b)

The requirement that contractors fill vacancies for attorneys within 30 days with attorneys who possess equal or greater qualifications is not only impossible but makes one wonder if the drafters of the proposed language have any connection with the day to day realities faced by contractors. Even in good times the hiring process cannot be done in 30 days except possibly by large urban entities who may have an applicant pool. For the rest of us it can easily take 6 months or more regardless of the efforts we make.

Aside from the time limit, when we lose an experienced attorney we virtually never are able to hire another attorney with as much experience. Attorneys get experience in rural areas and then go to the urban location where oftentimes they want to be from the beginning

When I became the head of my office in the early 90's we would run an ad for an attorney position and get between 50 to 100 responses. Today we have had positions posted which drew 0 responses. The idealism of young people in the 60's, 70's and 80's subsidized indigent defense for decades. That is no longer the case. The state needs to accept the reality that obtaining good attorneys is now controlled by markets factors. You have to pay for what you get.

The language provides that if a position is not filled within 30 days "OPDS may remove those funds..."

What funds are being referred to ? The attorney's salary of the FTE rate which is intended to cover staff and overhead costs ? If I as a contractor can't replace an attorney do I also lose funding for a staff person and overhead ?

Finally does OPDS really want to force contractors to hire an attorney they otherwise wouldn't otherwise hire because they are under intense time pressure to preserve their funding .

The sections mentioned above are in reality only a portion of the problem inherent in the proposed contract. The tone of the contract, is a reflection of the gravely deteriorated relationship between the Commission and OPDS and the contractors and rank and file attorneys. OPDS and the Commission under the guidance of Chair Ellis and many of the other commissioners was a supportive, hard working

and talented body that did the best they could with what they had. That is no longer seems to be the case. The current players seem to have minimal institutional memory and spend much of their time debating issues that one might think were put to rest years ago. When a decision is made often it is counterproductive. The last 3-4 years have not been good to the defense function in Oregon, the attorneys who perform it or the defendants who are constitutionally entitled to its services. One can only hope for better days as unlikely as they may seem now

Sent from my phone with limited opportunity to correct

Jack Morris
Defense Administrator
7th Judicial District

From: Aaron Martin <aaron@abdmartin.com>

Sent: Thursday, April 14, 2022 10:38 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: OPDS July 2022 contracts

I am writing to address section 3.5.1 (a) of the contract terms for criminal case types, also referred to as the 100 mile provision.

This term would add significant work hours above what would be typical for the same case type, thereby increasing stress for the provider and decreasing the quality of work for clients both in and out of their home county.

Additional work:

1. Travel: travel to meet clients who lack transportation to review media discovery, travel to perform jail visits, travel to make appearances. Travel time alone for a handful of out of county cases could remove 5-10 useful working hours from a provider's week. Some counties have continued using remote court hearings and others have returned to in person. Most of the conflict cases needing coverage are in counties that do not accommodate remote appearances any longer and can be hostile to requests to accommodate provider's schedules or request remote appearances.

2. Client services: finding investigators who work in a given county; doing the work of navigating mental health and addiction services; learning what is necessary to adequately advise clients of jail and court procedure; learning court quirks to accomplish legal work; obtaining temporary space to meet with clients. All of these things take a long time, increasing with efficiency with the volume of cases, but will remain inefficient and time consuming if the provider is only performing conflict and overflow work in the outer county.

3. Relationship building: speaking with other attorneys to find which investigators and service providers to use; learning how to navigate DA office procedures, policies, negotiations.

Requiring that attorneys take out of county cases will create a high risk of worse than necessary outcomes for clients. There will be extended delays in obtaining client services, poorer communication and trust with clients, uninformed negotiations, and poor advice due to lack of familiarity with the county system as a whole.

I live in the county in which I work, I have retained work, and I have other options. The impact to my life, my family, and my clients if I have to do the work required to attempt to appropriately serve conflict or overflow cases in other counties is considerable. It is not worth it to me, even with significant extra weighting to those cases, for me to take them. As I have other options, I will not sign a contract with this term in it. I became an attorney specifically to do indigent defense work, but it seems like OPDS is more than willing to attempt to exploit my compassion until I burn out or ruin other aspects of my life.

It may be that the underlying assumption in proposing this term is that providers have no other option and will have to sign on or face financial ruin. This is probably true for a sizeable portion of consortium attorneys, but for others it is not. If this term is required, some will leave and those remaining will have that much less faith in OPDS and that much less willingness to continue in this line of work.

Specific alternatives were requested while asking that we keep OPDS financial constraints in mind. I will not keep those constraints in mind. OPDS wants a 100 foot fence, but the state is only willing to pay for 75 feet. I don't have to pretend with you that this can work. OPDS can either admit there is not sufficient funding to cover cases or worsen the problem by requiring terms like the 100 mile provision.

Conflict work is difficult, requires significant additional work, and takes significant additional time for travel. Pay more for it. There are plenty of attorneys willing to do the work if the compensation is sufficient.

Best,

Aaron Martin
ABD Martin Law, LLC
P.O. Box 1533 (mailing)
272 South 1st Street
Saint Helens, OR 97051
Phone: (503) 558-7833

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Cc: Kathleen Correll <kmc@kmcCorrellattny.com>
Subject: Contract feedback

Dear OPDS,

I am not renewing my murder contract under the current payment proposal, and I won't be taking any more state murder cases when my current ones are done.

It is simply no longer feasible to work for such BS wages anymore. And, that is what this payment proposal is. I can literally make about \$50 more per hour doing non-murder federal CJA work, so why would I take a state murder case where I get paid so poorly in comparison?

The main advantage to being a state contractor used to be that OPDS made it easier to get paid, and paid attorneys more quickly than the feds. But, neither of those are the case anymore either.

So, I am done being an OPDS murder contractor. I don't need the combination of high stress and low wages that this contract offers me. Especially when OPDS won't even pay me quickly anymore.

The ONLY way the legislature will pay defense counsel the equivalent of prosecutors is if attorneys refuse to work for the BS wages being offered here, especially when the appointed cases are serious felonies.

Asking the Legislature politely to fairly pay defense counsel the equivalent of prosecutors has not worked in the past, and likely won't in the future. To force the Legislature to do the right thing, attorneys need to refuse to work for such absurdly low wages. By my refusal to work under this ridiculous contract proposal, I hope to contribute to that equal payment goal for Oregon's indigent defense counsel.

Good luck.

Kathleen M. Correll, Attorney
Correll & Associates
Gilbert Building
333 SW Taylor St, Ste. 300
Portland, OR 97204
Tel: 503.284.0763
Mobile: 503.539.4716

From: AOL <attycondron@aol.com>

Sent: Monday, April 18, 2022 11:58 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Proposed contract changes, contracts update 4-15-22

Good Morning

I am certain that the Commission and Director Singer will be receiving a great deal of comment on all proposed changes. Therefore I will limit my comments to the proposal to require contractors to accept appointments within a 100 mile radius of their home jurisdiction.

1: I know that there will be attorneys who leave their current positions and contracts rather than be required to take out of county cases under that proposed change. For my contract, I know we would lose one attorney immediately. Possibly more.

2: The Commission and OPDS have no control over collateral entities under that proposed change. Specifically, no one has the authority to require neighboring Circuit Courts to accommodate the scheduling and logistics needs of the out of county attorneys, and correspondingly no one has the authority to require neighboring jails to similarly accommodate the scheduling and logistics needs of out of county attorneys. Therefore, I believe that those out of county cases would consume an outsized amount of time for the attorneys to effectively handle.

Thank-you for considering my comments,

William J. Condrón
Co-Manager, 22nd Circuit Defenders, LLC
Covering Crook and Jefferson Counties

From: hollyapreslarattorney@gmail.com <hollyapreslarattorney@gmail.com>
Sent: Monday, April 18, 2022 12:23 PM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Subject: Public Defense Provider Feedback and Comment

Good Morning:

My name is Holly Preslar, I am an attorney in Grants Pass (Josephine County), and have been in practice 30 years. I am the board president and contract administrator for Josephine County Defense Lawyers, Inc., a nonprofit consortium of at present 11 lawyers who have maintained a public defense contract in Oregon for at least 36 years. I have been the board president and contract administrator for approximately the past 24 years. Our group has a contract to take juvenile (dependency and delinquency), civil commitments, and adult criminal case types. We have a paid full time administrative assistant in her own office separate from any of our offices, and she is responsible for the assignment of cases and drafting of all required reports to OPDS. We have employed this full time stand alone administrative assistant position for over 36 years as well.

My apologies in advance for the informality of sending this in an email, and not in letter format, but given that we are under a very short time frame to respond to the proposed contract changes just sent out on Friday April 15th in the late afternoon, and that I have a board of directors to communicate with, which I have now done over the weekend, this will have to suffice.

As to proposed contract terms, our board has concerns with the following:

We do not agree with the requirement that we would have to take cases out of our jurisdiction (county). 8 of our 11 lawyers own their law offices here locally. None of us own office space elsewhere. Are we to work in our cars when we are in these other jurisdictions? We are not experts in these other communities, and there certainly are lots of things an attorney needs to know when they are in those other jurisdictions (local rules, nuances, etc). Additionally, we already have lawyers in our group who cover various case types (juvenile dependency, delinquency, adult criminal) and it creates at times various issues with the local docket. Being forced to take out of county cases would only increase that, and in speaking with our local judges, they are not in favor of us having to work in other jurisdictions, which will only further add to the scheduling issues. Some of our lawyers have specifically mentioned that they are considering quitting our group if they are compelled to take out of county cases. We simply cannot afford to lose any of these lawyers, as it is incredibly difficult to find lawyers to replace them. Additionally, one of the counties we would be forced to appear in (Douglas) requires travel over 3 mountain passes, which during the fall to spring can mean difficulty due to snow. Some of our lawyers are not comfortable with this type of travel, including the inability to drive once it is dark. As a possible solution, like in the past, OPDS has contracted with lawyers around the state who were conflict lawyers that traveled. Why wouldn't OPDS do that again? Look for and recruit/contract specifically with lawyers who want to travel and work in other jurisdictions. Pay them accordingly. Also, what about getting the courts to agree for lawyers from out of county to be permitted to appear remotely for nearly all routine court appearances?

I would also note that part of the reason these other jurisdictions are having issues with needing conflict attorneys is because clients are being permitted by the court to fire their court appointed lawyers 4 and 5 times. This is quite problematic, and a significant drain on the system. A recent memo circulated by OPDS and written by general counsel discusses the issues related to withdrawal due to client dissatisfaction. The local public defender office supervisor and myself met with our presiding judge to

discuss these issues, including that when a client is represented by Lawyer A with the public defender, that instead of allowing the entire office to be removed when the client is unhappy with Lawyer A, it should simply be reassigned within the office to another attorney (Lawyer B). This solution seems to be working quite well since our meeting. Perhaps this needs to also be written into the contracts.

Other contract terms we are questioning is the moving the deadline to submit reports up from the 20th of the month to the 10th of the month. In Josephine County, we only start taking the bulk of our criminal case appointments at the end of the month. This means our administrative assistant gets hammered with a high volume of cases up to the last day of the month. She is working hard during this time trying to get these clients assigned to a lawyer, communicating with the court as to which attorneys were assigned, communicating with the DA's office as well as to the same, etc. She doesn't have as much time then at the first of the month to be getting her database up to date, as we continue to take all case types throughout the month as well. The last two administrative assistants we had both worked for our group for 10 years. They, too, struggled to get the report for OPDS done and ready to go out by the 20th. To now move that deadline up by 10 days will be likely impossible to meet.

We would also suggest that attorneys who move within Oregon who were members of a contract group be required to finish any cases they are assigned, not just attorneys staying within the same jurisdiction or an adjacent jurisdiction. A lawyer who was assigned a case leaving to go to another contractor has been paid and assigned those cases. The minute they give notice they are leaving to move elsewhere to another contractor, then the local entity can no longer assign them cases, and are looking at now having to reassign a high volume of that attorney's caseload. But they were paid! So why not require them to finish those cases no matter what? Why should the burden be on the local provider/consortium to have to absorb all of those cases for nothing?

CASELOAD STANDARDS:

We also would like to see OPDS move to open caseload not simply counting "assigned" cases, like in a PCRCP contract. Our attorneys had a significant volume of work when we started this new contract on January 1st, 2020, yet we received no credit for those case types. Those of us who do juvenile dependency work have had cases for years that we attend staffings monthly, we go to mental health meetings for our clients, school meetings (IEP, suspension, etc.), we prepare for citizen review board hearings, permanency hearings, review hearings, the list goes on and on. To suddenly "pretend" we do not have those cases seems not only unfair, but unconscionable. We are doing the work, but not getting the credit that we have these caseloads. We believe you need to count actual cases that attorneys have at all times when looking at the caseload standards.

Additionally, we believe the proposed standards are significantly too high and are unreasonable. Based upon the ABA Study and the 6th Amendment Center reports, the standards proposed are beyond what any reasonable standard should be. Our group also has serious concerns about the fact that we were told with these presentations and within these reports that to exceed these standards amounts to the unethical practice of law. We are curious why OPDS/PDSC doesn't take an approach similar to BRAC when the expected volume of cases exceed the funds provided by the legislature, so OPDS developed a formula and advised the courts that attorneys would only be assigned certain cases and not other case types, as we did not have the funds to pay for representation on all case types within the budget. To ask attorneys to place themselves in a position of taking on more cases than both of these reports say we should take is quite concerning to our group.

FTE and reimbursement rates:

Our group is very concerned about the sudden information that OPDS intends to propose payment be made based upon criminal qualification standards. Many of us in our group do juvenile dependency work including termination of parental rights. These cases require a significant amount of time and energy, and yet it appears will not be paid under this proposal anywhere near an attorney who agrees to take on a murder case. Why? We would propose instead you use a system based on years of experience, paying more senior/experienced attorneys more than younger/less experienced attorneys. The same essentially as those in private practice would expect (associate paid less than a senior partner). We are also concerned to have learned that in the past contract cycle, the local public defender received more money per 1.0 FTE than our consortium attorneys (\$211,500 vs. \$200,000). This was supposedly based upon an urban/rural type of model, but we are in the same community as the PD, yet they were paid more per attorney. We are not at all in agreement with the idea that there is more value in representing someone for Murder than there is representing a parent on a termination of parental rights case.

We also are unclear what the differential rates mean, and why there are 2 separate categories (10% to 15%)?

I wish I had more time to spend on feedback, and I am incredibly concerned that we have been given so little time on some of these issues to respond, but I certainly understand the need to move things forward quickly given we are in mid-April and the next cycle starts on July 1. However, I will tell the commission members that our lawyers are feeling underappreciated, they are confused by all of these changes coming out at the last minute, they are quite dissatisfied with what we are hearing, and I am very worried I will lose several of my lawyers as a result of some of these proposals. And if that occurs, we are unsure how we will be able to carry out the work we have been committed to doing for many decades.

Thank you for your time and your work for public defense.

Very truly yours,

HOLLY A. PRESLAR
ATTORNEY AT LAW
620 SW 4TH STREET
GRANTS PASS, OR 97526
(541)474-6200
hollyapreslarattorney@gmail.com

From: John B Lamborn <jblamborn@gmail.com>

Sent: Monday, April 18, 2022 7:03 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Contract Feedback

Dear Stephen:

I'm John Lamborn. I live and practice in Harney County. I'm the primary PDSC contractor for Harney county with overflow work contractually in Grant and extra-contractually in Malheur county. My OSB number is 951389. I've been practicing law in Oregon since 1995. I also hold California Bar number 151314, having been admitted there in 1990 (I'm "inactive" in California). Thus, I'll have 32 years total experience in the practice of law come this November - 27 of which are in Oregon.

If you take an accurately scaled map and and stick the pointed end of a compass in my office location, you would have to draw a circle 70 miles in diameter to cover the next nearest law office, being Strawberry Mountain Law in Canyon City. Driving to that location, which immediately neighbors the Grant County Circuit Court and the Grant county jail, requires traversing two mountain passes, each higher than 5,000 feet. To make that trip safely early Friday morning for a 9:00 am appearance required 4 wheel drive because of the snow and ice on Highway 395. There is no "Metro" out here. Safety concerns dictate that the trip to Grant county should take 80 minutes. There are **no other** law offices in Harney county.

Then, extend the compass arc to cover a diameter in excess of 100 miles to get to the next nearest law office in Vale and the Malheur County Circuit Court. Traveling to Malheur county includes a time shift since Malheur county's clocks are set on Mountain time. Every other Oregon court is on Pacific time. Thus, a trip East to Malheur county has to account for three hours planning instead of two.

My office provides full time employment for three other employees. I employ one Associate Attorney, Timothy Beaubien. I employ two full time support personnel. My office is directly across the street from the Harney County Circuit Court and the Harney county jail. I own my very antique office building, but very cheap rent is paid. I have invested in valuable infrastructure to keep the office up to date, including the installation of fiber-optic internet, VOIP telephones, computer networking, handicap accessibility, environmental control, etc. I provide medical insurance and a retirement plan for my employees. I literally have to compete with the US government and the Oregon Judicial Department to attract qualified employees. Those dollars all come out of my contracts with you before I can pay myself anything.

Harney county has a population of 7,495 people. Grant county's population is 7,233 people. Oregon, overall (at least in 2013), has a "lawyer density" of 31.24 lawyers per 10,000 residents. See, www.lawyersofdistinction.com/lawyers-by-capita-per-state

The 24th Judicial District (Grant/Harney) **has 4 lawyers to service the needs of 14,600 people.** Thus, this rural area is statistically underserved.

Harney and Grant counties are not, and cannot, be compared to jurisdictions on the West side of Oregon. The "one size fits all" FTE contract model you propose, especially one that pays rural lawyers *less* than "urban" lawyers is a hard slap in the face to those of us practicing in this environment. How am I to attract West side lawyers to practice here if PDSC is making an institutional decision to pay those candidates less money than they'd expect in fabulous, yet statistically overwhelmed, Multnomah county, 270 miles away? My Associate, Mr Beaubien, is a Harney county native and a graduate of Notre Dame law school. His predecessor, Riccola Voigt, was born and raised in Grant County, and is a DDA there now. **Lawyers not from here must be enticed to come here.**

27 years in, and my office does it all, effectively. Major and minor felonies, dependency matters representing parents and children, termination of parental rights, juvenile delinquency, commitments - we do them all. Do new cases overwhelmingly flood in every day as happens in, say, Washington County? No. But, of course, our office is open every day to meet with clients and respond to their needs, be available to the courts when they call for no-notice hearings, process discovery, and otherwise fulfill the terms of our legal obligations to PDSC. Case counts may rise and fall with the tide where you are in the Valley, but applying the fear of case flooding as happens in the Valley to the Grant/Harney situation might well leave your defense ship aground out here in the high desert.

Applying your "FTE" model to us flies in the face of the 6th Amendment study your predecessor Mr Borg sponsored. The contracting model my office and that of now-judge Rob Raschio were specifically identified as a legally adequate model. Speak to your Analyst Amy Jackson about this. Our "outputs" model did not rely on case counting precisely because everyone's crystal ball regarding anticipatory case counts was uncomfortably foggy. We worked hard to show PDSC that you get your money's worth out of our product and it worked well for everyone.

Simultaneously, we have otherwise serve this underserved community, always with an eye towards our primary responsibility to PDSC. I am an arbitrator on the Grant/Harney and Malheur county arbitration list. I am Justice of the Peace *pro tem* in Harney county. We take misdemeanor cases from the Grant County Justice Court, at a reduced fee rate. I provide services to Harney County Senior Citizens at a reduced fee rate through a federal grant out of the federal Older Americans Act administered by the Harney County Senior and Community Services Center. I do a very small number of DomRel cases (frequently co-petitioner cases) where settlement is the mutual goal and turn all original WW III DomRel cases. We do some estate planning.

But, really, all of that is none of your business because my office has always put PDSC first above any of those other matters. And with 27+ years in, I think I know how to effectively manage my office's time.

To your contract, I say the following. Legally, contracts between PDSC and us "Contractors" are contracts of adhesion and the product of unequal bargaining power. See, *Trinity v. Apex Directional Drilling LLC*, 363 Or 257, 434 P.3d 20 (Or. 2018) If I am hired by anyone else, I can tell them what my price is and that price is subject to negotiation. Anyone else can go out on the open market and seek legal services from whomever they like and challenge me to match a competitor's price. Us "Contractors" have no such option with you. If we want to provide services to indigent clients we are required to contract with you and accept the rates and terms you demand.

For example, General Term 1.4.5 defines Attorney Full Time Equivalent (FTE) as a "unit of measurement equivalent to an individual attorney's public defense client representation based on the caseload standards *adopted by the PDSC*." Caseload standards are then supposed to be set out in section 10 of the contract. Of the seven case categories set out in section 10.1.1, *no standards are identified*. "Case Weighting" is then set out in section 10.2, yet *no case weight is identified*. The proposed contract is vague and so we will wait and see what you actually propose to us.

Moving on to section 3.5, "Contractor Workload," sub (c) says "No one funded as a 1.0 FTE may engage in any other paid work, unless OPDS otherwise agrees in writing." Thus, if Wanda Widow comes to the only law office within 70 or 100 miles of where she lives to seek assistance with a Small Estate Affidavit, I now am required to ask PDSC for *permission* to take her case? What will be your criteria for either granting or denying such permission? What timeframe do you promise to respond to such requests? Will you have a department staffed to cover these requests from your Contractors? And then we see sub (d) that says a Contractor can do all the *pro bono* work the Contractor wants to do? Is your emphasis in revising this Contract the fear that my *time* as your FTE might go somewhere else, or is it

solely a financial concern? What's the purpose of drawing a line between other retained work and *pro bono* work if time spent is the big concern? Is any of this subject to negotiation prior to obtaining my signature? Do you think section 7.2.2 answers these questions?

Section 3.6.2 "Production of Records and Access to Facilities." Steven, you or your agents are always welcome to come out to Harney County and inspect my office. I really wish you would. For years I've invited anyone and everyone from PDSC to come see how things work here, but no one takes up the invitation. In any event, what percentage of my employee's FTE time is assigned to responding to your requests for information?

Section 4.3 now seems to impose a timekeeping obligation on us Contractors. It wasn't that long ago that PDSC did an experiment regarding timekeeping that was quickly abandoned. What timekeeping program will we be required to use? Will that be an expense the Contractor bears? Would not my time records answer all your questions about what we do every day?

Section 7.1.2.1 is an interesting thing. If a person calls me and says they are subject to an investigation and they can't afford thousands of dollars to retain me (which presumably I can't take because of my FTE status until I'm appointed and *then* it's covered ??) before a case is filed this section says: ... Contractor *shall* commence representation of a client prior to appointment by the court ... *upon written request from OPDS.*" How does that happen? How does OPDS determine the four factors enumerated in this section? Is there a form the Contractor is supposed to fill out? Does the client contact you? Do we facilitate that? Does OPDS send me a written request to take the case?

And, then, we come to section 7.3.2 where you declare Contractors to be "Independent."

If Contractors are "Independent" and section 3.5,(c) says "No one funded as a 1.0 FTE may engage in any other paid work, unless PDSC otherwise agrees in writing" how does OPDS square that with ORS 670.600(3)(c) which says a person is an independent contractor if "The person provides contracted services for two or more different persons within a 12-month period ..." The exclusive work OPDS demands of a 1.0 FTE in this contract would legally result in the "Contractor" actually being a PDSC "Employee" and I'm pretty sure you don't want that result.

If you're really looking for feedback on this contract, then I welcome your comments in return. You can call my cell at 541 589 1567 if you wish. I don't want my office to be paid less than we are now because of (a) some arbitrary rural/urban line drawing or (b) get involved in a time intensive case-counting exercise that never worked out here before or (c) because PDSC didn't historically contract with enough lawyers to Constitutionally defend indigent people in other places.

Thanks for your attention.

JBL

--

John B. Lamborn
Attorney at Law
191 West A Street
Burns, OR 97720
541 573 2066

From: tim@fellingreid.com <tim@fellingreid.com>

Sent: Monday, April 18, 2022 9:28 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Linn County Contract Comments

After careful consideration, and consultation with our providers, and with their unanimous agreement, Linn Defenders respectfully declines the agency's proposed contract. The proposed contract appears to us to be an employee/employer contract with conditions, as independent contractors, we are not willing to accept. That along with the requirement that we "shall" take cases within the 100-mile distance dictated this decision. Should the new proposed contract terms change substantially we are, of course, open to revisiting the issue.

If the proposed contract terms are not changed, Linn Defenders Inc., will of course engage in discussions with OPDS to establish the best wind down process to protect our client's interests and rights.

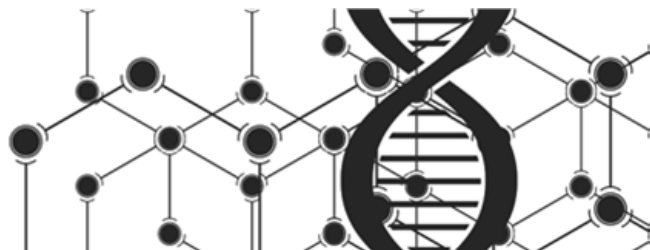
Best Regards,

Tim

TIMOTHY J. FELLING

**FELLING & REID, LLC
221 3RD AVENUE SW
ALBANY, OREGON 97321**

PH: (541)-926-1554 FAX: (541)-967-8721



From: Zara Lukens <zlukens@lanepds.org>

Sent: Monday, April 18, 2022 9:28 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Input on proposed contract terms

Executive Director Singer,

Thank you for taking the time to consider feedback on the proposed contract terms. I understand the pressure OPDS is under to cover all criminal cases in the state within the current budgetary constraints.

The proposed caseload standards are problematic, especially the standards for Measure 11s, Murders, and probation violations. The new caseload standards would represent a significant increase in cases from the number I handled over the past year in Lane County. Lane County is somewhat unusual because we have two municipal courts, so we may not compare directly to other counties. I can confidently say, however, that I had too many cases over the past year to meet my ethical obligations to my clients. I felt overwhelmed over the last year and started to wonder how much longer I can do this work.

I love public defense work and would like to be in my current job for a long time. But I don't think the work is sustainable at my current caseload, and it will absolutely not be sustainable at the caseloads in the proposed new contract. Over the last few years I have lost a number of colleagues to other fields of law because of the crushing caseload at our office. We are having trouble retaining attorneys due to the combination of low pay and too many cases. If the proposed caseload standards are implemented, I am confident that we will lose even more attorneys, which will further jeopardize my office's ability to handle the cases in this county in a way that meets our ethical obligations.

In addition to the caseload standards, the possibility that attorneys in my office might have to travel 100 miles away to take overflow cases in other counties is highly problematic. A few years ago, I was assigned one case in Linn County due to a conflict with the consortium there. A misdemeanor DUII turned into a massive time-sink for me that jeopardized my ability to work on my other cases. I traveled to Linn County (an hour away) multiple times and was left feeling like I should have said I didn't feel comfortable taking that case. If I had to regularly travel to neighboring counties for cases, I know it would compromise my other cases and leave me feeling even more burned out than I already do.

I realize that the state wants OPDS to make sure all criminal cases are covered for no additional money; but you aren't magicians who can create something out of nothing. We all have an ethical obligation not to take on more cases than we can competently handle. The proposed new caseloads are not ethical. I cannot handle that number of cases in a way that would make me feel good. At some point, many of us will make the decision to leave public defense work if we are forced to churn through cases in a way that fails to uphold our clients' constitutional rights.

Thank you,

--

Zara Lukens

She/her

Staff Attorney

Public Defender Services of Lane County

From: Kati Dunn <kd.elkhorn@gmail.com>

Sent: Monday, April 18, 2022 9:38 AM

Subject: Fwd: OPDS Contract Concern

Dear OPDS and PDSC,

I am in agreement with my colleagues, Public Defenders of Oregon. I endorse the letter they are sending separately regarding our concerns with the new contract.

I practiced in Portland for nearly 20 years at Metropolitan Public Defender before coming out to Eastern Oregon. I have also appeared in Clackamas County during my time at MPD.

I have noticed a lot of differences between urban and rural practice that bears mentioning.

I write to highlight concerns specific to Eastern Oregon, because our issues are different in our extremely rural, isolated, and far-flung region.

100 mile rule- My organization has offices in Grant County (Canyon City), Baker County (Baker City), and Malheur County (Vale). I also administer the consortium in Baker County. In Baker, we have three consortium attorneys who are very experienced, provide excellent service, and would be nearly impossible to replace.

The 100 mile rule will cause a great number of problems.

From Baker, Grant County courthouse is 81.5 miles - on winding, forested roads that is about a 90 minute drive each way.

Pendleton Courthouse for Umatilla County is 95.8 miles from Baker. The Hermiston Courthouse, for Umatilla County, however, is further than 100 miles from Baker Courthouse

Malheur County Courthouse is 87.3 miles from Baker Courthouse. That amounts to about a 90 minute drive.

Just a reminder, that a 90 minute round trip is three hours out of an attorney's day.

If the attorney has a half-day matter or a trial, there will be hotel, mileage, and meal expenses. Additionally the attorney will lose a good chunk of their time to this.

The attorneys under my supervision are happy to take out of county cases, as do I. I have taken several from Megan Doak's lists. The consortium attorneys have not been able to take as many out of county cases, but do on occasion.

Observation on conflicts - I have noticed that the Courts out here in general are quick to relieve defense counsel from difficult clients. In my previous practice in Multnomah County, it was very difficult for a client to convince a judge to remove a court-appointed attorney.

Caseload/workload numbers:

In rural counties, please consider that much of our casework requires us to "visit" with people when we need to get things done. Remember, these are our future jurors. The pace out here is slow, and people take their time. Most contacts with probation officers, juvenile department workers, potential third party release resources, and witnesses, will require at least a 20 minute conversation before we can get to business. We cannot be "city slickers" any more than we already are.

Please also consider that the judicial practices in Eastern Oregon are particularly formal, requiring written motions with declarations for routine matters that would not require a writing west of the cascades. For example, Judge Brauer in Umatilla county reset a trial where I had driven to Pendleton, booked a hotel, and rearranged my schedule. The reason he reset the trial was that the jury instructions that we and the State submitted were not "fully formed." Once, a judge denied a transport Order to

move a client from the Umatilla County Jail to the Hermiston Courthouse because we failed to use the precise form that the Court requires. This client was to be transported to an all-day settlement conference that ultimately cleared a two week murder trial from the Court's calendar. Judicial decisions such as these are patently obstructive of the hard work of defense counsel.

Experts and investigators are hard to come by out here. If a client needs a psychological evaluation, to persuade and organize the physical appearance of a psychologist is very difficult. Other services are incredibly hard to obtain: IT specialists; cleaning staff: dry cleaning service is not available in Grant County. We have to travel at least 90 minutes to get clothing dry-cleaned. Professional attire is not available here: we must travel for that as well.

For us to have an all-staff meeting requires considerable travel. Please do not make the mistake that leadership and a team ethic can occur purely by remote means. If we do not feel as part of a team, we lose the experience and wisdom of our colleagues, to a great extent, and then our attorneys are more likely to leave. It's borne out by research that people are unlikely to seek other employment if they are strongly bonded to their colleagues and like their boss. I have to do a lot of driving to hold the organization together, and I have to require folks to drive so that we can meet in person and discuss important things.

FTE Reimbursement: note that the above same considerations create a lot of additional expense to run our offices.

Additionally, to help with recruiting which is incredibly difficult, I need to bring on law students as interns, which currently don't count as attorneys for FTE. I'm paying them hourly like support staff.

30 days to fill a vacancy

It is absolutely unrealistic to believe that I can fill an attorney vacancy here within 30 days. It takes everything I have, posting photos on social media, finding apartments myself for potential hires (we have a housing shortage out here); and many times the apartment won't be ready in time for the new hire. I'll go out myself and take photos of the rental and relay the details and the photos to a potential hire. Sometimes waiting for an apartment to become available delays a start date.

Because of the scarcity of attorneys, and specifically attorneys who want to be public defenders and practice "out in the middle of nowhere", where there is no dating scene to speak of, I need to start them as students. I need to bring them on early so they catch the fever that is winning at trials as a public defender; and the closeness and collegiality that our office provides. They need to know of our existence out here. Oftentimes this involves waiting for them to obtain their licenses to practice law - sometimes 3-4 months.

The expense associated with a relocation to Eastern Oregon is considerable. Not only would a new hire have to move out here, they will have to buy snow tires and cold-weather clothing. Attorneys would not like to move out into "the middle of nowhere" to take a public defender job if it is going to cost them \$2000 up front investment. I need to reimburse their moving expenses.

7.1.5.2 Limitations on withdrawal

I appreciate the thinking behind this - it is incredibly disruptive to the client and to the court system to have clients reassigned to new attorneys every time a lawyer takes a new job. I would advocate to remove the qualifier "adjacent" to that rule. I will almost never lose an attorney to a neighboring county in Eastern Oregon. Unless they move out of state, it is almost always the valley that lures them away.

I would urge the Commission to explore ways to enlist the assistance of the Court and prosecutors' offices to assist with this shortage of public defenders by changing their practices; a few suggestions are

No B or non-person A misdemeanors (besides DUIs); no non-person C felonies should be issued until we can provide more defense attorneys; after all, defense is an expense of prosecution;

Any non-priority out-of-custody case can be continued/ postponed until after the legislature is able to fund the number of attorneys needed.

Courts could adjust their practices to accomodate attorneys' schedules; they could cease obstructive and inefficient practices.

Thank you for your time. I am certainly available for any questions there may be.

--

Kathleen Dunn

President, Strawberry Mountain Law

Executive Director, Elkhorn Public Defender

kd.elkhorn@gmail.com

206 S. Humbolt St

Canyon City OR 97820

541-575-5750

From: Robert Harris <RHarris@harrislawsite.com>
Sent: Monday, April 18, 2022 10:27 AM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Cc: Robert Harris <RHarris@harrislawsite.com>
Subject: Feedback

The overarching themes of these contracts should be

How do we make these positions more attractive, and reduce the amount of admin time. The crisis is not enough willing providers. This is caused by lack of support and funding and also by frankly the perception from providers that it's OUR FAULT. That we are in this crisis. For instance, the 6th amendment project concluded that fee per case caused us to act unethically. It completely ignored the fact that it was the State that forced us into taking more cases by freezing pay per case. Taking more cases (which was encouraged by OPDS) was the only way to keep our heads above water.

Most of the notes that were taken at our meeting covered the issues I believe are most important to providers.

I greatly object to the lack of pay increases. We've been hearing for 2.5 years now that we just need to abide by all of the OPDS directions on this reform process and then we can get raises. So far, that hasn't happened and it appears it isn't happening again. This, again, makes these jobs less attractive and places blame, by inference, on providers.

Being told that the one parameter we have is to cover all the cases with the budget we have is the same thing that has gotten us to the situation we find ourselves. And, if we do what is suggested and get all cases covered with the current budget, we are not going to have any increase because the problem will be seen as "fixed"

These contracts should pay what we need to get by over the next year. That means 10% increases minimum. I agree with the tiered payments. But without a 10% increase, you're likely to find some providers going backwards as well.

I guess this is what a pending crisis looks like. No easy answers. But I fear kicking the can down the road on the compensation issue is the worst thing to do. Because it means the inequity will continue.

Robert J. Harris

Harris Velázquez Gibbens *

Attorneys at Law

rharris@harrislawsite.com

www.harrislawsite.com

Phone 503-648-4777

Fax 503-648-0989

From: Dawn Andrews <dandrews@mpdlaw.com>

Sent: Monday, April 18, 2022 10:33 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Cc: Carl Macpherson <cmacpherson@mpdlaw.com>

Subject: Feedback on OPDS PCRCP Contracts

After reviewing the materials provided and having worked under the last PCRCP contract for Multnomah Co., I offer the following input:

Caseload Standards:

80 open cases per 1 FTE should be reduced to no more than 65. This is especially true with the added contract language that contractors “shall” accept conflict and overflow appointments no more than a 2 county distance from their office, found in section 3.6. The 80 open case standard came from the Washington model, Washington has since lowered its caseload standard from 80 after reviewing its data. Oregon’s PCRCP practitioners handle mixed caseloads with parent and child clients (Washington model only handled parents). Quality client directed representation of children and teens takes more time and requires additional training and expertise. Additionally, the obligation to the PCRCP principles and goals found in section 5 of the contract and the obligation to the standards found in section 7 require a considerable amount of work time to achieve and maintain. To accommodate the addition workload and drive time, while providing enough flexibility to meet the client communication time lines found in section , a FTE should have a standard average of 65 open cases. That way lawyers can effectively fulfill their performance obligations during reasonable work weeks.

Case Counting Standards:

10.1(c) Under certain circumstances, when representing multiple children, the additional child should receive 1.0 additional case count. 1.0 should be applied for additional children placed in separate homes. The work load is essentially double to effectively represent a separate child client in a separate home from the other child that the attorney represents. The attorney has to develop relationships with separate care givers, schools and service providers. The attorney has to monitor separate records and travel to separate locations to meet with the separate child clients.

10.2(a) Delinquency cases alleging conduct that would amount to murder if the youth were an adult should be granted 2 additional case counts –for a total of 3-to accommodate co-counsel’s work load if the co-counsel is in the same PCRCP law firm. It appears that OPDS anticipates co-counsel on juvenile murder cases. (see section 10.3 / page 22 CONTRACT TERMS FOR JUVENILE CASE TYPES)

10.2(c) Regarding seeking case count credit in extraordinary circumstances, the attorney should be able to make the request as soon as the attorney identifies the extraordinary circumstance. It is not clear why the attorney would need to wait the 30 days after appointment to make the request, if the circumstance is apparent earlier in the representation.

Though not addressed specifically in this feedback, it goes without saying that PCRCP front line advocates need compensation equivalent to their counter parts in the DA’s office and the Attorney General’s Office with equivalent experience. Additionally, front line law firms need regular cost of living adjustments, just like counterparts at the OPDS, DA’s office and Attorney General’s office. Oregon’s and

the United States' promise of qualified, professional public defenders requires this investment in the attorneys that do this work.

If you have any questions regarding my feedback, please let me know.

Sincerely,

D. Andrews

Dawn Andrews

She/Her

Chief Attorney

Multnomah Co. Parent|Child Advocacy

Metropolitan Public Defenders

503.273.8216

From: Albino Vela <albinovela@gmail.com>

Sent: Monday, April 18, 2022 10:35 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: comments on the proposed contract

I have issues with section 3.5.1 (a). the requirement to be forced to work outside the county you originally contracted to work with. I have made accommodations to my practice investing time and resources to make enough to justify keeping doors open in my current location. I choose not to work in particular Counties for financial and professional reasons. I consider this a poison pill and would choose to reconsider keeping practice open.

--

Albino Vela

Attorney at Law

1537 N. Pacific Hwy.

Woodburn, OR 97071

phone: 503-981-9276

fax: 503-902-0378

From: Jeffrey Ellis <jeffreywinellis@gmail.com>

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Capital Resource Contract comments

I am writing to recommend that the capital resource counsel (CRC) contracts be extended until at least the end of 2022 when they can be revisited. I am also suggesting a revision to my contract. I suggest making it a full-time position for the remainder of 2022 where in addition to providing direct representation, I will provide all manner of assistance for all individuals who are challenging their convictions and/or sentences in post-conviction (in the circuit court or on appeal). I would be willing to perform the work for a set salary and waive my right to request payment for hours worked over the contract amount. At the end of the year, the contract terms could be ended, extended on a month-by-month basis, or extended for a set amount of time (for example, 6 months).

Let me explain. Historically, CRC was a full-time salaried position that did not involve any direct representation. That ended early in my first contract when I was asked and agreed to also do some direct representation. Several years ago, before SB 1013 and Bartol/Rogers, I recommended splitting the CRC spot into two half-time positions. That was due to a large number of cases both pending trial and in post-conviction proceedings making it difficult to impossible to provide adequate assistance to all cases. In my opinion, the adjustment was a good one.

However, in light of 1013 and Bartol/Rogers, the population has shifted dramatically, Now, there are 21 cases in PCR or in related proceedings. In addition, now that the Oregon Supreme Court has ruled in Bartol/Rogers, most of those cases will be litigated over the next several months, both in the trial and appellate courts. Because I am the person most familiar with the issues in these cases, I would like to provide assistance to all cases that have contested litigation. That means providing briefing assistance and, for cases in the appellate courts, amicus support. Although I am currently lead counsel in several cases as well, I do not want to face the conflict of having to take on new cases, if my own cases resolve early. Instead, my goal is to help achieve the best outcome possible for all pending capital PCR cases, most of which have overlapping issues. Likewise, I am also interested in providing support for any petitions for commutation that may need to be filed later this year and before the Governor leaves office.

While I fully expect that my proposal will be more than full time, I am more interested in the ability to devote myself to the work, than to be paid for my extra time.

SB 1013 provided a unique opportunity to clear Oregon's death row. While we have now obtained concessions in many cases, important disputes remain regarding the most serious penalties available under Oregon law. Those disputes are all being litigated in post-conviction. Frankly, if there ever was a time for full-time CRC to work on PCR cases, it is now. If that happens, we can hopefully close this chapter in the Oregon death penalty history,

Thank you,

Jeff Ellis

Attorney at Law

Oregon Capital Resource Counsel

From: Hansen, David <Dave@zoticuslaw.com>

Sent: Monday, April 18, 2022 10:54 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Proposed Contract Feedback

Here are my comments:

Jurisdiction – "Contractors shall accept conflict and overflow appointments from jurisdictions within 100 miles of the counties specified in their contract."

This is problematic if you want attorneys to perform their duties and follow their ethical obligations to represent clients. For example, it will simply be impossible to visit a client in detention within a reasonable time if I have to drive 90 minutes each way to Lane County (which is within 100 miles). It is also problematic in that it creates docketing nightmares. I have taken three cases out-of-county cases in Polk and these have presented numerous logistical and docketing issues with the court. To add more counties will compound this to no end.

Possible Solutions (within the context of PCRCP):

1. Limit the number of out-of-county cases each attorney is required to take (e.g., no more than 2-3).
2. Do not require attorneys to take out-of-county cases if they have a full caseload.
3. Provide an extra case count for each out-of-county case.
4. Limit the counties to those immediately adjacent, not 100 miles.

Proposed Changes to the PCRCP Contract – we need to add a provision that deals with specialty courts. What case counts should they receive?

Possible Solutions (within the context of PCRCP):

1. Assign a flat case count between 10-20 for specialty court appointments.
2. Assign a case count for each appointment with a minimum of 5-10 case counts.

David G. Hansen

Attorney at Law
Zoticus Law, PC
435 NE Evans Street, Suite E • McMinnville, OR 97128
Phone/Text: 503.583.8843
Fax: 503.563.0132
Email: Dave@ZoticusLaw.com
Web: ZoticusLaw.com

From: Lisa Greif <lisa@tworiverslegal.com>

Sent: Monday, April 18, 2022 10:59 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Cc: 'Don Scales' <donscales05@msn.com>; Michael Kellington <kellingtonlaw@gmail.com>; Larry Parker <lplaw@charter.net>; Jen Zammetti <zammetti.law@gmail.com>; Rachel Pavlich <rachel@tworiverslegal.com>

Subject: Proposed OPDS Contracts

To Whom It May Concern:

I am a member of the Los Abogados Consortium in Jackson County. We handle adult criminal and civil commitment cases. I was an attorney at Southern Oregon Public Defender, Inc. from 1998-2008. Then I was a Jackson County Circuit Court Judge from 2009-2020. I have been part of the legal system here for 24 years.

I am qualified to handle all types of adult criminal cases, including murder and Jessica's Law, and am qualified to handle juvenile delinquency cases, including waivers to adult court. Plus, of course, civil commitments. In the past I also carried a juvenile dependency and termination of parental rights caseload.

The first thing that is troubling is the short time frame we were given to provide feedback on the proposed OPDS contract terms. We received the email on Thursday night after hours seeking feedback and were given until today at noon to comment. Considering this weekend being both the Passover and Easter holidays, this simply was not acceptable.

I currently have 3 murder cases, 2 Jessica's Law cases, 4 Measure 11 cases, and numerous other felony and misdemeanor cases. To expect me to handle 12 Murder/Jessica's Law cases per year is not possible. I regularly turn away retained clients because my OPDS cases simply require too much of my time. I believe that adopting the new case numbers would be a recipe for malpractice. I wonder if OPDS is willing to pay for extra PLF coverage for its contract attorneys because I certainly feel we are going to need it.

As far as the FTE payment amount goes, I think it is unfair to punish attorneys who practice in rural areas. I am in a more urban county, but we are surrounded by rural counties and communities. It is hard enough to attract quality attorneys to Jackson County, let alone Lake or Curry counties. To pay attorneys in rural counties less just will make it more difficult to bring and keep attorneys in those areas. It does make sense to me to compensate attorneys based on their highest level of case-type qualifications. When I was at SOPD, the felony level attorneys made more than the misdemeanor attorneys. I don't have an issue with that part of the proposal.

My law partner was at SOPD before she came to work with me this January. She brought roughly 150 existing cases with her. This created a nightmare for my staff as they had to input all the client information into my system and re-scan or copy all the discovery into our electronic storage site. It took weeks to finish. I don't think I would ever agree to bring an attorney on board with me again under these circumstances. I don't think it should be a mandatory provision. I think it should remain up to the attorney and new contractor to decide.

Regarding the penalty for late reports, penalizing contractors by withholding their monthly payments seems extreme and unfair. I hear stories all the time from experts, investigators, and attorneys who have submitted bills for payment to OPDS that take unreasonable amounts of time to pay. You don't see any of them asking for some type of financial penalty.

The 100-mile rule is just not feasible. There are so many nuances with practicing regularly in one county. You get to know the judges, the prosecutors, the court staff, law enforcement, the probation officers, and other defense attorneys. You establish a group of local experts and investigators to assist you on your cases. The 100-mile rule from Jackson County would include Klamath, Douglas, Josephine, Coos, and Curry Counties. All these counties involve traveling over mountain passes, which can be treacherous during winter storms. Factoring in travel time would make meeting existing caseload standards difficult. To add in additional cases per the proposed new standards would make working as an OPDS contractor impossible. It also would be difficult to not have your office in other counties. Where would you meet with out of custody clients? My clients have a hard enough time making it to my office as many don't have vehicles or driver's licenses and our public transportation system in Jackson County is lacking. I can't imagine them huffing it to Medford from Klamath Falls or Gold Beach. I also believe I would have to purchase additional computer equipment to essentially operate a remote office.

I have always been passionate about indigent defense. I provide quality representation to my clients and I work very hard to make sure they are treated fairly and with respect. My job is difficult enough as it is with the types and numbers of cases I have. To add the new standards to my OPDS caseload is going to cause good attorneys like myself to walk away. If OPDS thinks they are in a crisis now with the lack of qualified attorneys, I can't imagine how bad it will be if a number of us don't sign the new contracts.

Thank you for your consideration.

Lisa Greif

From: Rebecca Schaleger <rebecca@gladstonelawyers.com>

Sent: Monday, April 18, 2022 11:02 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: feedback on non PCRП juvenile Clackamas County

FEEDBACK FROM ONE OF MY JACL LAWYERS IS BELOW:

Rebecca,

These were my thoughts as I read through the contract. I don't know that any one of these items are make or break it things, but things to think about.

Paragraph 1.5 Financial Verification Required for Court Appointment.

Why is this paragraph needed? It conflicts with Paragraph 1.4.3 which defines who is a client. 1.4.3 is much simpler and does not cause us to rely on something that someone else can change on a whim. Whether or not the court or the State wants to verify their financial income should not be on us. If we are appointed, then we do our job. I really do not like the ambiguity that I am appointed subject to verification at a later time maybe and after we have spent time on the case they can decide after the fact that I should not have been appointed so they will take it back and pretend like it did not count. If we are appointed by the Court, we should be able to rely on that and get paid.

How does this fit with 7.1.2.1 - pre-appointment representation?

How come we don't get Paragraph 1.4.7 of the PCRП contract "Open Caseload" means the total number of cases in which an attorney providing legal services under this contract is actively representing a client at any given time.

3.6.2 Production of Records and Access to Facilities.

This is unreasonable. I must make records available to OPDS or agent at all reasonable times and promptly respond to requests for information in connection with fiscal or performance audits. ODHS has had a history of requesting information from us without giving us sufficient time to produce the information and without compensating us for the extra work they have required. If I am going to have to provide information, I would rather track it as I go. Going back into files to pull data after the fact is very difficult and time consuming.

4.3 Client Records.

I am not ok with PDSC asking my clients about me and asking my client to sign something so they can look at my files. If my client goes to PDSC asking them for information, that is one thing, but for PDSC to solicit our clients would be wrong.

This is requiring us to keep time records for our clients. I tried using their codes and "Data Defender." I know they think it is self-explanatory, but it is not. I will need significant education on what to code things if that is what will be required.

7.3.2 Independent Status of Contractor.

If we are 1.0 FTE and are taking no other cases, and PDSC is overseeing my work and requiring all of these things, I don't think I can certify that I am not an employee under the laws of the State of Oregon

7.3.8 mentions OJCIN - Does that even exist anymore?

7.6.1 Caseload Reports

Can we ask OPDS to tell us at the beginning of the contract what information is required and what format they want and that it not be changed mid contract.

7,6.2 Case Activity data

I don't know what this is.

7.6.3 Other Reports

OPDS should tell us at the outset of our contract what Data they are going to want reported on so that we can compile it as we go. Going back through our cases to compile data as they want, when they want is too time consuming and they do not compensate us for gathering the data. If I know about it ahead of time, I can include it, but they change their mind way too often and we pay the price for it.

SPECIFIC TERMS - THIS IS ONLY A 1 YEAR CONTRACT.

I am really tired of doing this every year.

SPECIFIC TERMS #6. If OPDS does not like how we are distributing the funds, I believe it is because they think we are doing it based on a fixed-fee per case model. They think we are doing this by case count model – we are not. We are counting cases to determine each attorney's percentage of total cases and allocating funds based on the percentage of work they are doing, with an equal allocation goal, but with the understanding that we cannot be totally equal 100% of the time. We are not allocating funds per case count. We are allocating on a percentage of work model.

PCR contract says: 3.6.2 Open Caseload Standard. To comply with performance standards, generally an attorney should limit full-time representation to no more than 80 open cases at any given time.

This infers that is we have more than 80 open cases at a time (give or take a few) we are not performing within the performance standards and could find ourselves in trouble.

Our contract requires us to maintain the same standard of representation (PCR Contract 7.1.1) yet they want us to carry a higher caseload? How can that be justified.

Those were some of my rambling thoughts as I read through the contract.

Thanks.

Roxanne Scott

From: Karen Stenard <karenmstenard@gmail.com>

Sent: Monday, April 18, 2022 11:10 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Feedback on new terms

I have two concerns about the new case load standards for juvenile cases.

1. Dependency— I believe the contract model of only counting “new” pre-adjudicated cases vastly misrepresents our caseloads. Our obligation to all dependency clients extends far past adjudication, typically for at least a year and often for many years. Counting how many cases are open is essential to measuring workloads.

2. Delinquency— while the reduction to 132 cases is helpful, I believe it is still too high. In Lane County almost all misdemeanors and minor property/drug felonies are either not filed on or resolved through Formal Accountability Agreements or other programs where counsel is rarely sought or appointed. The cases that are being filed are only those that are complex and more serious (often sex crimes) which require experienced lawyers significant time to adequately prepare. Having an average of 10 such cases a month will lead to inadequate representation.

Thank you

Karen M. Stenard
Attorney at Law
541 343 9909

From: Lisa Romano <lromano@lanepds.org>

Sent: Monday, April 18, 2022 11:25 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Feedback on Proposed Contract

Dear Mr. Singer and OPDS,

I am writing to comment on the new contract proposal between OPDS and public defenders.

I have been a public defender at the Public Defender Services of Lane County for over two years now. I have practiced in several different areas and worked at other jobs in a different jurisdiction. I enjoy my job but it is challenging. The most challenging aspects are the high caseloads and the emotional stress. In fact, I had been considering employment outside of criminal law. I will be actively pursuing other employment if the current changes are implemented.

Turning to the terms of the proposed contract, I disagree with section 3.5.1(A), the 100 mile rule. I purposely chose a job in my community as I walk to work and I need to be close to my medically complex child. I am familiar with the local practices of the court here and the different stakeholders. This would not be the case if I took cases up to 100 miles away. Also, there wouldn't be sufficient time to have both increased caseloads and to travel long distances.

The proposed caseload standards in section 10 are alarming. The recent ABA study shows that the public defender system is in crisis due to high caseloads. As a result, lawyers are choosing to stop practicing in this area. Yet, the proposed standards do not provide any sort of assistance. In fact, they place extra burdens on us. I believe it would be unethical to effectively practice with the suggested caseloads. A large percentage of my clients have mental health issues. Not only am I dealing with criminal issues, I need to navigate fitness issues and supports for clients. This involves a large amount of time.

Section 7.4(1)(b) is also unrealistic. 30 days to fill vacancies is too short. It takes time to find, hire and negotiate with qualified lawyers. Implementing this short timeline will result in even fewer lawyers, higher caseloads and more lawyers refusing to do public defense work.

Further, these provisions will also have a disproportionately negative result on women, caregivers, people of color, and single parents.

If I wasn't so busy with my current cases and obligations, I would spend more time to write a more detailed email. Alas, I do not have the luxury of extra time now, let alone with increased caseloads.

Please reconsider the proposed contract provisions. I support the comments and suggestions made in Brook Reinhard's letter.

Sincerely,

Lisa Romano
Public Defender Services of Lane County
180 East 11th Avenue
Eugene, OR 97401
T: 541.484.2611, x.131

lromano@lanepds.org

From: Stacey Lowe <slowe@swopds.org>

Sent: Monday, April 18, 2022 11:35 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Provider input

I have worked at Southwestern Oregon Public Defenders since February 14, 2005. This was my first job out of law school and I am a dedicated public defender. I became Director here at SWOPDS in January of 2020 and it has been an incredible challenge. I value our clients and am proud that we provide high quality defense. A recent poll conducted by OPDS indicated that Coos and Curry clients are happy with our work. I have serious concerns that the proposed changes to contracting release on Friday will significantly change what I love about this work and the rate of happiness of our clients. I was disappointed in the minimal amount of time we all had to engage in the public comment period which is why this email is not as well written or polished as I would have liked.

3.5.1(a) 100 mile rule

This rule appears to be overbroad and needs clarification. Regarding conflict appointments, if a defendant is on their second or third attorney in a county, the Court should be denying the withdrawal, not subjecting counsel from a neighboring county to a case that no lawyer within the county is willing to take. If the contemplated case appointment is based on a case overload, a contractor should discuss whether it can take the case in good faith with their OPDS analyst, but a contractor should not be *required* to take cases from the neighboring jurisdiction, particularly without factoring in the existing workload for that contractor, and whether it would violate their ethical limits for cases. Other factors that should be discussed when negotiating whether contractors should take neighboring county appointments: 1) Whether the Court in the neighboring jurisdiction will allow remote appearances on all matters other than a jury trial, 2) Whether the defendant is in custody and the visitation policies of the local jail, if so, 3) Whether the neighboring Court is willing to be flexible with contractor's existing case commitments in their home jurisdiction, 4) the round trip time required to drive from the neighboring county office to the courthouse in the jurisdiction. The provider must be able to decide when and for how many cases and for how long we can take out of county cases, or we should not be doing it at all. Only the attorney and the firm providing the service can determine whether that representation meets performance standards. This clause should be removed or modified as described.

7.6.1 Penalty for late reportingThe penalty for late reporting should only kick in if a provider is as a matter of routine or at least frequently late. An occasional mistake should not be penalized. In addition 10% is way too high it should start out much lower and increase if noncompliance continues.

Another issue I have is with the proposed 30 day window to hire a new attorney. That is just not workable. Here in Coos, we are asking people to relocate, they have to give notice at their prior place of employment, find housing and then physically move. In addition, when hiring law students, we often have to wait for them to graduate then pass the bar on top of the relocation. We have been looking to hire and actively advertising for months due to attorneys leaving and have had very few applicants, only two currently are scheduled for interviews in May. This limit should be removed and either extended to 120 days or for the period of time the office is actively working on hiring.

Also very important are the proposed caseload standards. They are simply too high OPDS should instead be using the numbers provided by Public Defenders of Oregon.

Items left out of the proposed changes which need to be included are full funding for investigation, administration and training as well as COLA's which providers have not received for 2 years while system partners have received yearly COLAs.

OPDS appears to be asking providers to do more while not even fairly compensating us for what we are already doing. The proposed changes will not improve public defense in Oregon but will most certainly force even more providers out of this work thereby exacerbating the crisis. When other parts of this system are paid at much higher rates and receive yearly COLA's and were paid Covid bonuses it really is a slap in the face to all of the attorneys on the ground in court, in the jails, meeting with clients and carrying the burdens of being on the front lines for OPDS not to fight for us and help to right these inequalities.

Stacey K. Lowe

Director
Southwestern Oregon Public Defender Services
Pronouns: she, her and hers
465 Elrod Ave. Ste. 201
Coos Bay, OR 97420
Office: 541-267-2472
Cell: 541-808-5389
Fax: 541-267-6853

From: Annette Smith <asmith@lanepds.org>
Sent: Monday, April 18, 2022 11:43 AM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Subject: Comment on Public Defense Contracts

To whom it may concern:

My boss, Brook Reinhard, has laid out very compelling critiques of the current proposed contracts. I endorse his comments.

I write briefly to add that if your goal is to break the system so badly that a bunch of public defenders quit, so the State is forced to adopt a State office system, this contract looks up to the task. I am already hearing of contractors planning to quit if this goes into place. It would be a lot more honest and a lot more understandable to come out and say that is your goal, and work to make that happen in a way that mitigates instead of aggravates the suffering of our communities.

I practice almost exclusively in dependency court. The relationships we form in our cases are much longer than most criminal cases. My "short" cases tend to be 6-9 months, my average cases tend to be 12-18 months, and a good amount of my cases last for years. Requiring attorneys to take cases 100 miles away and then expecting them to meet the standards of representation for parents or children for the long haul is unrealistic. PCRP should be firmly in place in any county that the 100 mile rule would apply, or you'll just get a bunch of underserved families with lawyers leading their clients slowly through the slaughter that is the family policing system.

Thank you,

Annette Smith

From: Jonathan Heritage <jheritage@lanepds.org>
Sent: Monday, April 18, 2022 11:47 AM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Subject: OPDS proposed changes to 2022-2023 Attorney Provider Contracts

Good Morning,

I write today because I am concerned about the proposed changes to contracting this contracting cycle. I have been a public defense attorney for 4.5 years now and started nearly 8 years ago working in a PD office as a law student clerk. I have been fortunate in as far as I have have stable places of employment in the form of established and primary public defense firms, first at UVPD in Roseburg and now at Lane PDS in Eugene. I am a first generation (in my family) lawyer and without the stability of those PD firms, I do not know whether I would have been able to navigate the process of settling my life and growing a family, learning the profession, and still being able to provide good work for the offices I worked for.

I have reviewed many of the changes proposed for new contracts, but there are a specific few things that concern me greatly. First, the case loads expected for an FTE model are too high. While that may go without saying, considering the line of work we are in, there are several items in particular which seem to me to threaten the stability upon which the offices I was a part of depend. The Probation Violations are more than double what I think a lawyer would be actually capable of barely managing (and I do a lot of PV work so I have good insight into it). The number of M11 and Homicide/JLaw are also substantially more than a person could actual eek thru handling. Every increased time burden saps the ability of a PDs office to train other attorneys, cover for other attorneys, collaborate with other attorneys and many other efficiencies would fall by the wayside, having a snowball effect of increased work. Ultimately, higher caseloads will destroy the advantages that I would not be able to do my job without (much worse off would be a brand new initiate to our profession).

In sum, this first concern is that I think burdening the attorney's who presently work this job with these caseloads will chase attorney's away, discourage any new attorney's from replacing them, sap the remaining attorney's of anytime to train new hires to be even capable of coming up to these standards, and ultimately destroy the institutional stability that we must now preserve more than ever in the face of the increasing stress that our profession has come under.

I believe that the case loads in the following ranges, while still too high to be providing the service I want to be able to provide, will at least allow me to continue to provide something close to a minimal standard without immediately pushing me out of the profession for the stress of knowing I will be unable to meet any of the expectations of OPDS, the Courts, and my Clients:

300 PVs or Contempts
240 Misdemeanors
(the Felony numbers proposed do not seem too far off, but are still too high)
27 M11
4 Homicide or 6 JLaw cases

The second most concerning detail in the proposed changes is the portion of the contracts that tie funding to meeting OPDS mandated conditions. As it stands, the major providers in the various counties are the reason public defense limps along, and given the proposed FTE guidelines, the impossibility of those looming expectations threatens to choke off the resources to maintain the function that allows those providers to shoulder the already unsustainable caseload burden. The ability to revise the number of FTE attorneys funded based on a set FTE expectation, is just a term of the contract that I believe can be left out for now. While I understand some accountability may be necessary eventually, the solution isn't to strangle out the parts that are working to get rid of the parts that don't. I've worked in this

profession long enough to know that any further erosion of the working offices resources or any higher burdens upon their responsibilities, while perhaps targeted at the peripheral parts of the system (individual attorney providers), will simply collapse the barely holding structure of Oregon's public defender offices. Efficiency is not the problem when we as a State have less than a third the attorneys we need.

I want to also specifically address the dizzying proposal of how much more work would be involved in my practice if I have to learn a whole new set of rules for a whole new county jurisdiction in which I may be required to conduct a portion of my practice if the 100 mile rule were to be implemented. I cannot even grasp how I would do anything but collapse under the compounded amount of work that would create.

In summary, my colleagues (other public defense attorneys and professionals) and I are underpaid and over worked. The contracts of prior year were unfair to address those realities, but at least they limited the damage. The crisis of public defense is worsening, but at least under the older contracts, the system was merely slow marching to a breaking point. I don't know what spurred the proposed changes, but I suspect they are proposed to appease legislative entities which have constituents to answer to politically. Those politics are landing too hard on the those of us people on the front lines doing the work, and raising the expectations on us is ironically counter-productive. Those at the helm of addressing the crisis (legislators and the courts) need to be told the truth about what a heavier burden will end up doing.

I like helping people and I like helping my clients. But I hate doing an inadequate, bare-minimum job for more hours in a day than are reasonable to ask me to sacrifice because I have too much on my plate. I have too few, and a thinning number of colleagues to help shoulder the burden because of poor pay and high stress. These proposals threaten to worsen the problem and I fear would likely represent the last blow to topple an extremely important pillar of the public defense system.

Oregon doesn't need less public defenders and the ability for individuals to justify doing this public defense job becomes out of reach for so many attorneys if the PD offices at the center and foundation of addressing the challenge public defense are put under any more strain.

Thank you for your time, and I know your work is hard. I hope you trust me when I point out how hard my colleagues and I work, too, and how close to a breaking point or a burnout point the current system is, without OPDS leveraging anything more from the contracting process.

I wish you all the best,
Jonathan Heritage
Attorney with Public Defender Services of Lane County

From: Louis Grossman <louis@louisglaw.com>

Sent: Monday, April 18, 2022 11:52 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Contracts comments

Hello I have more questions than comments. I have been wondering how OPDS has been counting caseloads during the current contract period. We were given the 300 point system but were not told if this is the system that the state has been using or not and not given many details as to how it actually works. Now with the new contract it looks like the 300 point system is back just slightly modified. Questions I have about this system include:

1. If 300 points equals one FTE, how do you determine the points for each case? Say you have a misdemeanor only caseload, is it 300 misdemeanors opened and closed during one calendar year? Is it 300 misdemeanors opened during the year but it doesn't matter when they close? Is it an average of 300 misdemeanors open throughout the year? Does a case that stays open for multiple months count more than a case that is only open a few weeks? Does the length of time a case is open matter?
2. What about a multi count case with multiple incident dates? Will we get any extra credit for that under the point system?
3. What if we have a mixed dependency and criminal caseload? How many points does an open dependency count as? Assuming we're using the 300 points per year system and 69 open dep cases is worth one FTE then it comes out to 4.35 points per case. Is this how they are counted? Does it matter how long the dep cases stay open?
4. What happens if we are significantly over or under for the contract period (and how do you even determine that)? The last contract just says if it is 15% over or under then contact your contract administrator. What does that mean? Are any contractors more than 15% over or under and what types of arrangements are being made? Is there any chance we will have to pay back contract money if we are under or can get additional payment if we are over?

My comment would be that these are all questions that need to clearly answered so that contractors know what we are actually agreeing to. Thank you.

Louis J. Grossman
Attorney at Law
107C East 2nd Street
The Dalles, OR 97058
(541)397-0473 phone

From: Carl Macpherson <cmacpherson@mpdlaw.com>

Sent: Monday, April 18, 2022 11:57 AM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Proposed contract comments

Good morning,

I want to acknowledge the budgetary constraints that OPDS has at this time. I am confident that OPDS is working diligently to improve our system and advocate for more resources. Still, my main concerns with the proposed contracts are the following:

1. The need to fund training and supervision at offices that provide these critical services. Both are essential to ensuring the highest quality representation for our clients, and are necessary for recruitment and retention.
2. The need to fully fund investigation at public defender offices. Our office currently receives \$30,800 per investigator. We have 19 investigators on staff. Our actual cost is \$93,581. This results in a shortfall of \$1,192,839, which increases the salary disparity at all levels of our office with other system providers.
3. The need for COLA and inflationary increases. Our contracts have been flat for years. The disparity in pay between Multnomah and Washington County DA's is the worst I have found in the US. Regarding salary, we are also behind the consortia attorneys, the OPDS appellate division, DOJ, and other providers. This is not only unjust, but it greatly hinders our ability to recruit and retain.
4. The proposed caseloads are too high, and they do not account for current open caseloads entering into the new contract cycle. I understand that the current budget would not allow OPDS to follow the ABA report; however, the projected caseloads are excessive, especially when you take into account open caseloads, difficulty in filling open positions, and the lack of funding for supervision and training. Our contract has 69 attorneys. We have 7.25 FTE providing supervision and training that are essentially unfunded. Our office cannot absorb the cases for the 7.25 FTE that are critically necessary to our mission of providing the best representation possible for our clients, but are unfunded and seemingly not valued.
5. The need for an open workload standard as required by HB 2003 (2021).
6. As a member of Public Defenders of Oregon (PDO), I agree with the further clarification of these issues, and others, contained in our letter dated April 18, 2022.

Thank you for your time and consideration. It is greatly appreciated that OPDS and Mr. Singer are prioritizing transparency, discussion, and feedback. I am hopeful we will continue to make progress going forward.

Carl Macpherson
Executive Director
Metropolitan Public Defender
630 S.W. Fifth Avenue
Portland, OR 97204
(503) 273-1300
www.mpdlaw.com

From: Todd McCann <tcmpc@comcast.net>

Sent: Monday, April 18, 2022 12:00 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Contract Response

To: Public Defense Services Commission

Stephen Singer, CEO, OPDS

From: Todd C. McCann, Administrator

Marion Juvenile Advocacy Consortium

Re: Proposed 2022-2023 Contract

I find it distressing that OPDS, a State agency, gives their contractors six hours and 23 minutes of work day to respond to such an important topic. We received our email at 2:37pm on Friday, April 15 with the deadline to respond being noon on Monday, April 18. In his email on Friday, April 15 at 9:50pm, Mr. Singer indicated this will not be the only opportunity for engagement, however, no other times are indicated or scheduled prior to the release of the new contracts on April 22.

As stated, we think more time would have been appropriate to respond to matters of such great importance. However, I will try to provide feedback as requested:

2. Feedback should be as specific as possible, addressing:

(A) what is problematic, and

(B) specifically, why.

3. Please propose specific alternative solutions

I feel I would be remis to not point out at that at no time during PDSC meetings, nor provider calls, has there been a reason provided for these changes in contracts other than “we have to cover the cases” and “the budget is the budget and the cases are the cases”.

Proposed Changes to 2022-2023 Attorney Provider Contract

I would like to point out in the Juvenile Caseload Standards that contractors should be treated the same regardless of the county’s PCRCP status. If not, the message for the need for future PCRCP counties will be diluted and lost to the legislature. We should have the same standards as if we were a PCRCP county of no more than 80 delinquency or dependency open cases.

Proposed Attorney FTE Amount – We would no longer be under the Urban Flat Rate of \$211,150 and we should receive the Urban 15% differential of \$234,100. Three of the five adjacent counties -Yamhill, Polk and Linn - are PCRCP counties with a compensation rate of \$240,000 per year. Even with the differential, we would still be paid 2.5% less for doing the same work with a greater caseload.

Specifically, this affects the hiring of attorneys and the difficulty in retention of attorneys when these higher paying counties are next door. Once again, it goes to applying the same standards and sending a consistent message to the Legislature regarding representation. Why is another attorney who practices in a county less than a half mile from my office worth \$28,850 more a year than me?

SOLUTION – See above paragraphs

CONTRACT TERMS:

This list is not exhaustive but “the contractors are expected to prioritize the most serious” problems.

1. 3.5.1(a) – accepting appointments in jurisdictions within a 100 mile radius.

This is a problem because effective representation will suffer. Multi-county work consumes more time and resources. There is the time in driving to the adjoining counties, having to work with a different court and policies of that county as well as conflicts with court appearances in the counties in which you are required to appear. Each county has its own calendar and its own policies which frequently conflict with other counties and attorneys have little, if any, say in calendaring. Coordinating trying to meet with clients in locations outside of your practicing county will also be a logistical hardship. We will need more lawyers to do the same work with less cases being covered, of which we are already in a deficit per the ABA study.

Also, within our consortium, this becomes almost an impossibility due to constraints of child care, i.e., if an attorney has an appearance at 8:00am in Marion County, dropping a child off at daycare is not a problem. If that same lawyer has to drive an hour to be at a county over an hour away at 8:00am, daycare is not available to them. Also, the inverse is true – if a hearing in a different county is over at 5pm, with the distance and traffic, daycares may be closed by the time they get back into town. This is an undue and unreasonable hardship.

This also creates the problem of non PCRCP attorneys appearing in PCRCP counties in which, after examination of their contact, their standards of representation are different. Our attorneys are not a part of the same program. PCRCP attorneys are being compensated at a vastly greater level for the same work we do, but we will have to put in more time and effort working on the same type of case due to the travel requirement without equal compensation.

SOLUTION: Have attorneys work only in the counties in which they currently work with special weighing for out of county appearances, should they choose to take them.

2. 7.1.3.1 – In custody initial contact

In the county in which we practice, this term and condition can be met on a significant basis due to the close proximity of the persons in custody and pre-existing relationships with local detention centers. Out of county, none of that exists so with an appointment out of county and the current calendars under which we operate, as stated previously, it would be nearly impossible to meet this requirement.

SOLUTION: Do not include this clause, except for in county appointments and do not require out of county appointments.

3. 7.1.5.2 – Prohibition on Withdrawal

Our members are expected to complete their representation prior to separating from the Consortium, however, circumstances do arise when that is not possible. We have handled such circumstances successfully for over 27 years and should continue to do so without OPDS involvement.

SOLUTION: We continue to be allowed to handle re-assignment within in our Consortium. Permission from OPDS be obtained only if the matter cannot be maintained within the Consortium.

4. 7.2.2(b) – Case Assignment and Workload

We are not aware in any other situation where a private contractor “shall fairly account for time spent on non-contract work”. As we are independent contractors, how does that fall under the purview of the PDSC?

SOLUTION: Delete the clause.

5. 7.4.1 (b)(c)(d) – Number of Persons Providing Services.

It is unreasonable to have the expectation that one would be able to find an attorney that possess equal or greater qualifications within 30 days of vacancy. Why would an employee of another contractor leave that contractor to come to us for the same rate of pay? For the past 5 years, it has been necessary to hire attorneys and train them to have equal qualifications which are, in fact, limited by your qualifications due to time constraints. Under OPDS standards, it takes attorneys approximately a year and a half to become qualified to handle major felony delinquencies.

Further, we have been able to cover when our attorneys are on leave or unavailable effectively for 27 years and can continue to do so without OPDS involvement.

Lastly, with regard to our staff, we are able to internally cover any staffing issues that may arise which do not affect client representation or any elements of the contract. Again, we have dealt with these circumstances effectively for the past 27 years without OPDS involvement so there is no need for involvement now.

SOLUTION: Remove these clauses from the contract

7.6.1 - Caseload Reports

We cannot think of any apparent reason the reports need to be submitted 10 days sooner than are required now. This clause does not take into account the time it takes administrators to collect and organize the data from the various consortium attorneys. Additionally, attorneys go on vacation, have trials, etc. which need to be taken into account the time it takes to get this data to the State.

SOLUTION: No change to the existing contract clause.

In conclusion, we think the changes as proposed by the State will exacerbate an already tenuous situation. You are asking us to respond without all of the information required - we don't know what the new FTE amount will be, nor what our new payment will be. We do know, however, the restrictions are counter-intuitive. They set unrealistic expectations on the abilities of the attorneys, i.e., next day appointment requirement, PCRCP counties next door and compel inefficiencies by requiring long distance travel. This contract also creates undue hardships on the contractors by requiring out of county work, i.e., child care issues, conflicting county calendars, etc., The contract will reduce the number of attorneys available as well as the number of attorneys who would want to do indigent defense.

Oregon does need to come up with a better system – there is no doubt of that. However, these contracts will further fracture an already failing system.

From: Lee Wachocki <lwachocki@multnomahdefenders.org>

Sent: Monday, April 18, 2022 12:01 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Stakeholder Input from MDI Union President

Greetings Commissioners and Director Singer,

My name is Lee Wachocki and I am an attorney at Multnomah Defenders, Inc. (MDI), where I also serve as Union President. The last time I addressed the Commission, I reported on the high case numbers that contributed to a mass exodus of MDI attorneys during the pandemic. I regret to inform you that MDI lost 5 attorneys within the last month, and we are so inundated that we've temporarily stopped accepting most new cases. I am troubled by some of the contract proposals currently under discussion, and I am concerned about MDI's future under our next contract.

Tying the value of attorney FTE to case seriousness is going to harm offices like MDI, where we are responsible for a large number of misdemeanors. Under the terms of our Union's collective bargaining agreement, attorneys are paid based on experience – not case seriousness. Our experienced attorneys carry the institutional knowledge that makes the public defender's office an indispensable learning environment for the next generation of defense attorneys. Experienced attorneys deserve compensation for the training and mentorship they contribute on top of (and regardless of the composition of) their individual caseloads. An FTE model that allocates less money for experienced attorneys is a step in the wrong direction.

We are not interested in signing a contract that maintains the financial status quo rather than bringing us closer to pay parity. We can't afford to keep the attorneys we have, and we can't afford to attract experienced replacements. We are not interested in signing a contract that establishes or continues unethical caseload standards. Crushing caseloads continue to drive attorneys out of our office and, often, out of public defense altogether.

I encourage you to reconsider these problematic contracting proposals as MDI continues to lose attorneys and struggle to find replacements.

Thank you for your time.

-Lee Wachocki

From: Caitlin Plummer <cplummer@lanepds.org>

Sent: Monday, April 18, 2022 12:01 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Contract Feedback

Dear Mr. Singer -

I am a staff attorney at Public Defender Services of Lane County. I am writing to provide feedback about the proposed contracts. I had hoped to provide more structured and comprehensive comments, but frankly my caseload--including a trial that concluded Friday and a full probation violation docket this morning--leaves me with limited time to provide this feedback.

Thus, please accept my more general comments. The bottom line is that the current situation is not sustainable in the long term--not for me, and not for my colleagues. My caseload leaves me unable to provide the level of representation my clients are entitled to and deserve. I regularly work evenings and weekends just to stay afloat. In doing so, I sacrifice significant time with my young children on a regular basis--and I'm still falling woefully short. This is demoralizing. And it is the kind of thing that will eventually drive many of us from the profession, including me. This job as it is currently structured is not consistent with a healthy work-life balance, especially if you have children and a partner who also works full-time. As time goes on, the personal sacrifice becomes too much for many of us. Particularly because we are not compensated at levels that account for the hours we truly work and the sacrifices we make. I love this work, but without meaningful change at some point, I won't be able to justify staying in the profession.

This contract seems to take a situation that is already unsustainable and makes it even worse. If my caseload increases beyond its current level, I am quite confident I will not be providing effective representation to any of my clients. Even under the best of times, this is difficult work. It's simply unfair and unreasonable to ask us to do more than we are already doing. We are already drowning. We need a lifeboat--not more cases. And though we as attorneys suffer, our clients suffer more.

I understand OPDS's sentiment that it has to cover all of the cases. But if the only way to do this is by providing systemically inadequate representation, burning out attorneys who really want to do this work, and further straining an already broken system, that sentiment needs to be rejected. Otherwise, the clients and the attorneys representing them--who are already sacrificing too much as a result of someone else's choice to provide inadequate funding for a constitutional requirement--will suffer even further.

I do truly understand the difficult position that OPDS is in. But the premise that OPDS has no choice but to cover all the cases needs to be re-examined. In the end, that premise will drive even more of us from the profession, and result in representation that is even less adequate than what is being provided now.

I suppose my fundamental suggestion is that OPDS only commit to covering the cases that can reasonably and ethically be covered. The ABA report provides the data that the agency needs to figure out what that number is. Anything short of this entrenches constitutionally ineffective representation.

Sincerely,

Caitlin Plummer

--

Caitlin Plummer

Public Defender Services of Lane County

From: Dan Martin <dmartin@karpinskilaw.com>

Sent: Monday, April 18, 2022 12:10 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Feedback Questions

- When will the Specific Terms be defined? These are salient facts that any party to a contract negotiation should have sooner than later.
- How do (if at all) the “scaled FTE payment amounts” play into Multnomah PCRPs contracts?

Dan Martin

Office Manager - Alan W. Karpinski, P.C.

Attorneys at Law

Administration – Portland Juvenile Defenders, Inc.

621 SW Alder Street, Suite 621

Portland, Oregon 97205

(503) 721-0140/fax (503) 220-1913

www.karpinskilaw.com

From: Gary K. Kiyuna <gary@stunzfonda.com>

Sent: Monday, April 18, 2022 12:26 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>; Amy J. Jackson <Amy.J.Jackson@opds.state.or.us>; Billy Strehlow <Billy.J.Strehlow@opds.state.or.us>; Carolann Tracy <Carolann@stunzfonda.com>

Subject: Proposed Changes to 2022-2023 Attorney Provider Contracts

I am Gary K. Kiyuna 820752. I have been a defense and juvenile dependency trial lawyer in Malheur and Baker County primarily for 39 years. I was a partner in Stunz,fonda,kiyuna and Horton and am currently a shareholder in our current firm Five Rivers Law. Our law office was started in 1947. Our office is in Nyssa, Oregon population 3,200 souls next to the Snake River which keeps us from being invaded by hoards of Idahoans. We have 5 lawyers four of which are contracted to criminal defense, juvenile dependency and delinquency cases for those who qualify for court appointed counsel. We are in the Mountain Standard Time zone. Our OPDS contract extension expires June 30, 2022.

Our contract baseline is \$211,150 per FTE due to "jurisdiction-specific needs". It is extremely difficult to maintain and recruit criminal defense and/or dependency lawyers to our area. Working in concert with OPDS Amy Jackson and temporarily with Billy Strehlow we have been able to add 3 experienced trial lawyers to our firm over the past 1.5 years. Amy and Billy recognized that the existing "current flat rate" was not workable in our county and actually in other eastern bloc counties. We are dedicated to our fellow county citizens and to their legal needs and rights. I would say half of our county is Hispanic ethnically or by surname. About 65% or more of Nyssa falls into this demographic. One of our lawyers speaks Spanish, another is .25% Hispanic, another part middle eastern descent and I am of Asian decent.

The ABA standard for dependency cases is 80 current cases. Our Malheur County 9.5 or so contract lawyers in 5 law firms carry currently 110-120 DEPENDENCY CASES per firm. We know that PCRCP lawyers get about \$242,000 per FTE in Multnomah County and though the PCRCP system was adopted in Oregon in 2014 only 10 counties have PCRCP. NO CENTRAL OR EASTERN OREGON COUNTIES HAVE PCRCP. Yet we have 50 % more juvenile cases and get \$32,000 fewer dollars per FTE. When I inquired about the PCRCP option for our county I was informed that it was not being rolled out in our county at this time. YOU NEED TO KNOW THAT SUCH A STATEMENT IS WHISTLING IN THE DARK. AND WE KNOW IT. I have worked on the Casey Foundation/Juvenile Court Improvement Project effort to get PCRCP analyzed and adopted. We hold the line and provide a floor upon which due process rests in our county. And we know it. We are not afraid of work and we are capable and experienced. We are sage brush lawyers. We don't quit and we are loyal to our clients who are primarily residents of our county. But we are realistic and have families. If we have to move we will do so.

Now that being said. I realize the thought and effort that has been put forth to produce the current 3 page proposal for amendments to our existing OPDS contracts. And I realize the preparation and steps over the past few years to get to this point. Like commissioning the ABA study that came out with Moss adams in January. And I appreciate it.

For those of us in Malheur County, Harney/Grant and Lakeview (and others that I have not yet spoken with), based upon the existing "jurisdictional-specific needs" of our client/residents, and the Jessica's law case-type qualifications for our contract lawyers the equivalent FTE of \$242,00 or so amount that Multnomah FTE lawyers are receiving is a generally fair amount for an FTE IN OUR COUNTY. A 15% differential from our baseline of \$211,150 is \$242,822.50. There are no "programmatic" arguments between PCRCP and our contract cases to justify a \$32,000 difference in FTE. DUE PROCESS OCCURS BETWEEN THE CLIENT, HIS OR HER LAWYER AND THE COURT WITHIN WHICH WE OBTAIN A JUST RESULT. A programmatic appendage is administrative and not a substantive or procedural matter in

Court. Our actual numbers of FTEs in our counties is so small that in actual dollar numbers given the State of Oregon's FTE TOTAL the fiscal impact is not even uncomfortable. EQUAL PAY FOR EQUAL WORK is not a bad concept. Giving the citizens of Oregon equal treatment and equal access to justice is not a goal. It is a mandate based on the foundations of our great country.

GARY K. KIYUNA, AAL

Officer of the Court

From: Rebecca Schaleger <rebecca@gladstonelawyers.com>
Sent: Monday, April 18, 2022 12:36 PM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Cc: Megan A. Doak <Megan.A.Doak@opds.state.or.us>
Subject: Feedback re non PCRP juvenile contracts, Clackamas County

Mr. Singer, PDSC board, and others within OPDS,

Thank you for the opportunity to provide feedback. The schedule and time allowed did not provide enough opportunity for me to thoroughly peruse the draft contract. I also received a summary of proposed changes from my analyst, however, I have yet to see an actual proposed contract with all of the terms in it, so my comments should be tempered with acknowledgment that this process has been rushed and I am commenting on a contract that has yet to be actually presented to me. Additionally, I have been instructed that it is not "helpful" to mention more pay and fewer cases, despite all of the studies you have commissioned saying that is exactly what we need, and the ABA study specifically suggesting that we are committing malpractice. I will not ever, ever, stop asking for what we are worth. We need more pay and fewer cases. Congratulations, by the way, on OPDS being sure to fund your own staff and attorneys with raises and benefits and then telling the rest of us you are broke and we will have to just suck it up. Don't think we do not see this.

On the things we are allowed to comment, here are the things that caught my attention:

1. Caseload standards

In the summary of proposed changes, I see that the following:

It is the expectation of OPDS that PCRP counties have no more than 80 OPEN cases at all times

It is the expectation that non PCRP counties take on an additional 69 NEW CASES each year. This is more than one new case a week, on top of the cases we already have. Many of us already have more than 80 open cases. This is setting us up to commit malpractice. I do not accept these as appropriate case counts for juvenile cases, and ask that someone who has actually practiced in his area look at this and recognize this can set us up to carry hundreds of cases at one time. For example, one of my associates currently has 83 open cases, a mix of delinquency and dependency that she carried in from 2021. Let's say she has 8 open delinquencies. She resolves the delinquencies in 2022, but only some of the dependencies close out. Let's be generous and say all of the delinquencies close and 1/3 of the dependencies close this year. That means She still has 72.25 cases open from last year. If she does ONLY dependencies in 2022, and she does the amount that OPDS expects her to do, she now has 141 open cases. And again, to be VERY GENEROUS, let's say that a quarter of those new cases are either dismissed or won at a jurisdictional trial, she STILL has 139 open cases. That is absolutely unworkable.

My lawyers have been handling cases in many different counties during the last 6 months, and what we have observed in non PCRP counties is that when OPDS requires these types of numbers, the representation suffers. My lawyers have reported to me that some lawyers representing kids have clearly not discussed things with their clients on open cases and are just going with the DHS flow, and that when they come there and actually do what they are supposed to do, they are looked at as being "difficult." I had an ICWA case in another county that had been open for more than a year with NO SERVICES to the father because he was in prison. NO SERVICES. DHS actually WROTE

that in their report. “No services have been offered to Dad because he is in prison.” Holy Schmoly!

I reached out to him, we discussed that just because he is in prison does not mean that he doesn't get services, and I asked for DHS to put money on his books to facilitate the video visits with the kids that Mom was providing to him when they had some extra money. I reminded them this is ICWA and quoted some case law and mentioned no reasonable efforts and guess what? DHS moved to dismiss the case within 2 weeks. Apparently no one had called out DHS on this and it was a case that was just hanging on even though Mom had the kids home for a YEAR. I do NOT fault the lawyers, I fault OPDS for expecting us to handle these insane caseloads.

FURTHERMORE – the 69 new cases only pertains to dependency cases. In addition to the new dependency petitions we are expected to take on, OPDS has outlined that they expect us to take on delinquencies, as well. It is unclear to me just how MANY delinquencies we are expected to take on in addition to our dependency schedule. Because these are unhelpfully separated into a full time load for dependencies and a full time load for delinquencies, if a lawyer handles both matters, it is unclear to me what a full load for a year is for that person. All of the lawyers in JACL handle both delinquency and dependency matters.

To elaborate on the delinquency caseload - These are classified into “murder” and ALL OTHER CASES. I cannot believe you actually think that ALL OTHER CASES is an appropriate way to weight all of the delinquency cases we handle. So a theft 3 is the same as a Sex I? Come on. You go to great lengths to classify the adult cases from major felonies and minor felonies and misdemeanors, but not any of the juvenile cases? I argue that adequately representing youth in these matters is MORE important than representing adults. They are locking kids up just like adults, for YEARS in OYA. As I mentioned, we have a TEN YEAR OLD that came in on attempted murder charges (he was eventually actually charged with assault II.) Please make appropriate changes to this as outlined in the adult weightings.

2. Proposed attorney FTE amount

This indicates that you plan to pay a higher amount to lawyers qualified to handle more difficult cases, yet it seems this is to only apply to those who handle adult criminal, and not juvenile. I assure you, handling a juvenile Assault II, for example, is just as complex, if not more so, than handling the misdemeanors I assign to my newer lawyers. Please confirm that this pay differential will apply across the board. In order to do this I believe you will HAVE to qualify the more complex juvenile matters.

3. Penalty for late reports (Section 7.6.4 in Criminal and non-PCR Contract; Section 7.6.5 in PCR Contract)

These reports were added as a requirement without any additional compensation for the people who have to do it. I have been told repeatedly to just “hire someone” to complete the reports when I am struggling to get them in time due to also having to manage my own caseload of juvenile matters and all of the other administrative duties. That is easy to say from an agency that gets legislative money to provide COLA and benefits to their staff. I do not. Why should I have to pay for this data entry requirement that OPDS has just decided to add onto my responsibilities? You are unthinking when you do things like this. This is why people do not think we are a “team,” and why you have difficulty retaining lawyers to do this work.

I do not believe you can punish all of the lawyers who are being paid by the administrator for providing late reports. In addition, there may be compelling reasons the reports are late. Finally, the reports that ask for data on juvenile cases are so unhelpful I feel that for the last year OPDS has been asking for data that is completely unusable, because whoever set up the reports clearly did not have juvenile in mind. Despite repeated attempts to get the people handling these data CSV reports to acknowledge the differences between juvenile cases and adult criminal matters, I was rebuffed repeatedly until I got to the point where I knew no one REALLY cared about accurately capturing the data. So unless you change how juvenile is reported to accurately reflect the complexities of a dependency v an adult criminal, I will continue to believe you don't care about the data, that juvenile is an after thought to OPDS, and that you are trying to punish us for something that was created in a vacuum without any input from the people who are reporting the data and you really Do. Not. Care.

4. "Overflow" acceptance requirement (Section 3.5.1(a))

Forcing us to accept "overflow" cases from counties within 100 miles means in Clackamas County, this contract will REQUIRE us to take cases from the following counties, all within 100 miles:

Benton

Columbia

Hood River

Linn

Marion

Multnomah

Polk

Tillamook

Wasco

Washington

Yamhill

During COVID, we were appearing remotely for our county and were allowed to appear remotely for the counties where we were volunteering to take overflow cases. As things progress, I do not expect this will continue. Our own court has reverted to being back to in person for many hearings. Our court EXPECTS us to be available 5 days a week. We have worked with our court to set up a docket that does not have us overlapping, and this has been a process that has taken several years to perfect, and has had input from the AG, the court and court staff, and the defense. Our court has been incredibly generous during these difficult times, but they have not anticipated it being forever.

If we are travelling to other counties we are unavailable for OUR COURT. The court we have promised to handle. It got so bad during the last few months that I had to assign one lawyer from our group to be a "floater" so she could handle all of these out of county cases and I had to STOP giving her cases in Clackamas County because there were SO MANY conflicts. This is unfair to the lawyers who expect to work in Clackamas and not all over the darned state, unfair to our clients. If I have to drive around, I am there to go see my Clackamas County clients. This will burden us with

drive time that is going to significantly impact our ability to handle cases within our own county and our ability to provide adequate representation to our existing clients. Also, that takes some nerve to tell us that we have to take cases from Multnomah county, PCRP county, because they have reached their “case cap” when we are required to handle so many more cases for less money. That is really just appalling that you would think that is even something that is fair or appropriate on any level.

5. Section 3.1 subcontractors

I want to ensure this does not apply to associates within a law firm that is part of a consortia. I have 3 employees who work for ME and technically are not part of JACL, however, my firm has 3.2 FTE for JACL. I assign cases to my employees. They are not “subcontractors” but in the past OPDS has seemed confused by this and suggested that instead of working for me they work OPDS and do a contract of their own. They do not want to work independently with their OWN OPDS contract. They want me to pay them a salary.

6. Section 3.5(c) No one funded as a 1.0 FTE may engage in any other paid work, unless OPDS otherwise agrees in writing.

How is this not making us your employees? Independent contractors are not prohibited from doing other work. I would like PERS and benefits, please.

7. Section 3.6 reviewing my records

You may review my records if you come to my office and look at them, but requiring me to compile said records in a way that you all can view is burdensome and additional work for which I am not paid. What does this mean? What does a “reasonable time” mean? Why do you need to look at my client files, which are confidential? Wouldn't my clients have to sign a waiver for someone outside of my law firm to have access to their confidential material? You are not their attorney and this seems like a violation of my ethical duties. This provision conflicts with section 4.3.

8. Section 5.7 I have to assist non attorney vendors in billing

Are you serious? The non attorney vendors are having a difficult time doing their billing because of the non intuitive and difficult system you implemented, and your lack of getting invoices handled in a timely manner. Why is this now a problem that the attorneys have to handle?

9. Section 7.3 Duties of the Administrator

mentions the many duties of an administrator but I must have missed the part in the contract where the administrator is counted as 1.0 FTE for their workload and not required to take on active cases so as to allow them the time to manage all of the duties outlined in that very long paragraph.

10. Where has OPDS factored in the increase in wages for our required staff? The current market does not support \$15 an hour for any type of staff, anywhere. No one works for that in a law office.

Rebecca Schaleger

160 Portland Avenue

Gladstone, Oregon 97027

503-882-2592

rebecca@gladstonelawyers.com

From: Rick Inokuchi <rinokuchi7@gmail.com>

Sent: Monday, April 18, 2022 12:45 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Concerns/Questions

Concerns with the Contract as expressed by the Curry County consortium members.

There are many more concerns and questions but not enough response time was given. Each attorney has a full case load. Mondays are basically "all day in Court" days. And Mr. Gardner and Mr. Inokuchi are preparing for a Termination of Parental Rights trial that is scheduled for Tuesday – Thursday this week.

James Gardner – I will not take cases outside Curry County for no pay but am willing to negotiate for financial reimbursement. I will not give up my private practice. I disagree with doing away with the case count as I feel it's the only fair and equitable way to judge compensation. I am willing to negotiate financial terms.

Michael Love - I'm concerned by the possible number of out-of-county cases that I'm required to take. I live with a disability and caring for myself requires me to insure that my work-load is not overly demanding. While I could take one Coos County case at a time (depending on my Curry County caseload), I doubt that I can take more and maintain stability in my health. Cases in Coos County may require an over-night stay which adversely affects my ability to care for myself. Cases in Medford require over-night stays and I do not have the ability to do that at this time while maintaining my Curry County caseload. In addition, we are required to meet weekly with in-custody clients which presumably includes out-of-county clients. That will likely require me to work an entire Saturday (to travel to the jail, meet with the client and return to my home county). Working six days a week is a recipe for burning out for any attorney but more importantly it deprives a consortium attorney from balancing work and life. I have a number of other concerns with the proposed contract but given the short time to make comments I do not have the time to post them all here. I understand that OPDS is having difficulty finding attorneys to take conflict cases but forcing consortium attorneys to carry this load is unfair.

Rick Inokuchi -- Does everyone have to take outside cases? We have two (of our three) attorneys who are willing to do out-of-county cases on a limited basis. We need three attorneys in the consortium here in Curry to make things work in that juvenile dependency cases require three attorneys at least. So, if all three are required to do out-of-county cases, one of our attorneys is prepared to leave the consortium. The last time we had an attorney retire from the consortium, it took about 6 months to fill the vacancy. So, do all attorneys have to take outside cases for free or can some of us do it for the good of all?

In this County, defendants are appointed "subject to verification". Therefore, if they are found ineligible after the case has been completed, our appointment is yanked. In the case of out-of-county cases, would this mean our appointment/credit would get yanked even though we've already done the work?

How do **we** prioritize cases when they come in on a case-by-case basis? It seems that the State would need to do that.

When conflicts in court dates occur, is that an unreasonable refusal? The joke in the 15th judicial district is you can change a court date only if you move it up. Getting a trial date changed in Coos County requires an act of God.

“Any paid work” by any means requires written approval – does that include babysitting, lawn-mowing, pet-feeding, and other things done on the attorneys’ own time? What is a full-time caseload? How many hours a week are we talking about time-wise? Why do you need to okay work outside normal working hours?

Are there any limits on out-of-county cases we are forced to take for free?

We here in Curry County cannot appear at arraignments because that would create too many conflicts. Currently we have clients “for life” unless there is a reason to switch. I believe our conflict rate is low. It is hard to get help down here so we try to minimize conflict. Appearing at arraignments will generate more conflicts than it is worth. The practice by the Court here is for in-custody defendants to appear the next day following arraignment for a release decision. They are assigned an attorney as soon as we are notified and the attorneys see them before the next court appearance.

How does an attorney taking his caseload with him when he changes to another contract work? If I hire a contract attorney to join the consortium, does this mean I have to pay him for work he is doing for another contractor for the first few months including his travel?

Does the PDSC pay travel expenses, including mileage, travel time, lodging and meals, for out-of-county work? How much and how often does the attorney get reimbursed?

As to caseload standards:

If I have 35 non-PCRCP dependency cases, does that mean I can only do .5 FTE of adult cases? I do not understand the tables of standards that you’ve provided and how that works with a mixed caseload such as the one here in Curry County.

What is the difference in rates of pay for FTE? Why a difference between rural and urban?

Why don’t we have more time to respond to any of this?

Rick Inokuchi, Attorney at Law

P. O. Box 645

Gold Beach, OR 97444

541-247-7003

rinokuchi7@gmail.com

From: Wm. Jason Mahan <jmahan@armlaw.us>

Sent: Monday, April 18, 2022 12:52 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: Feed back

To Whom it May Concern:

I am the administrator for Roseburg Defense Consortium in Douglas County, Oregon. I would like to address the following proposed change:

“Contractors shall accept conflict and overflow appointments from jurisdictions within 100 miles of the counties specified in their contract.”

All our criminal attorneys perform less than 1 FTE. All attorneys within our consortium, except one, have privately retained or other work in addition to working under the contract. It is difficult for any of our attorneys to travel to another county to handle cases given our overall case load. This is particularly true of our criminal defense attorneys. It is increasingly difficult to find attorneys in our area who are willing to accept court appointed criminal cases. We are already losing an attorney who will no longer want to do appointed criminal defense due to the caseload. It is my prediction that requiring criminal defense attorneys to accept appointments in other jurisdictions will cause my consortium to lose at least one other defense attorney. Every county has different procedures, different judges, and different prosecutors which makes handling an out of county case more difficult. That being said, my biggest concern right now is that it is already difficult to find defense attorneys in our county that will do this work and rule changes like this will only make it more difficult.

I have some other concerns, but due to the short time frame to respond, I don't have the time to address them all.

Sincerely,

Jason Mahan
Roseburg Defense Consortium

Wm. Jason Mahan
Aller Robertson Mahan P.C.
223 SE Fowler
P.O. Box 880
Roseburg, Oregon 97470
Telephone: 541.673.0171
Fax: 541.673.2729

From: robert foltyn <rfoltyn@msn.com>

Sent: Monday, April 18, 2022 1:07 PM

To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>

Subject: stakeholders

Request for comments sent 2:47 on a Friday afternoon , April 15th, requesting a response by noon Monday April 18th.

That sure doesn't sound like I am a stakeholder in anything. Slave, maybe.

Robert J. Foltyn, Attorney at Law, 422 Main St. Klamath Falls, OR 97601 541-884-1721 fax 541-851-9448 **Oregon State Bar # 761360**

From: Olcott Thompson <mcaddir@gmail.com>
Sent: Monday, April 18, 2022 12:05 PM
To: Contracts2022StakeholderInput <Contracts2022StakeholderInput@opds.state.or.us>
Cc: per.ramfjord@stoel.com; Stephen I. Singer <Stephen.I.Singer@opds.state.or.us>; lisa@l2r2law.com; pjsolomon@sponsorsinc.org; mhardin913@gmail.com; Christine Thomas <Christine.Thomas@opds.state.or.us>; tchrist@sussmanshank.com; stwax@outlook.com; Alton.Harvey@opds.state.or.us
Subject: Proposed OPDS contract

Chair Ramfjord, Commission members, Mr. Singer:

I am the Executive Director of the Marion County Association of Defenders (MCAD), the consortium in Marion County. MCAD only handles adult criminal cases so my comments are solely about the proposed adult criminal contract as it relates to a consortium.

This email is not being sent to all the members of the Commission because I do not have the emails of all the Commission members. I trust it will be passed on to the rest of the Commission members.

I am going to try not to echo the comments of John Lamborn or Guy Greco.
I generally agree with their comments.

To me, the overall question is what amount is OPDS intending to spend on trial level contractors. There are a possible three numbers and the choice of the number makes a big difference in what can be funded.

Attached is a page from the OPDS report to the Commission last month on what is forecasted for trial level attorney costs, and the shortfall and "excess" depending on the fate of the \$100 million SPA.

If OPDS is using the amount forecasted, \$224,936,353, then they are giving lie to their earlier statements that OPDS could not spend or contract for amounts they did not already have. Also, why then is not the full amount that the Legislature allocated to trial attorney costs being expended. While OPDS undoubtedly has an overall deficit even with the \$100 million SPA, that deficit is in other budget items. The Legislature with the \$100 million SPA is telling OPDS it should be spending \$256,709,920 for trial level adult criminal representation, not \$31 million less.

As we all know there is a shortage of adult criminal defense attorneys and a way to retain and attract new attorneys is to provide better pay and a lesser caseload. By not spending all the Legislatively approved resources for trial attorney on trial attorneys OPDS is continuing to make it difficult to lower case loads and provide better pay to attorneys.

Over the years OPDS has balanced their mismanagement on the backs of the trial level attorneys. For years because OPDS could not budget properly trial level attorneys were only paid 2/3 of their monthly payment in the May before a biennium ended and then only 1/3 in June. While the then one month payment was made up in July it was the trial attorneys, not OPDS, that bore the brunt of the OPDS inability to manage its finances.

More recently, it was the trial level attorneys who helped bail out OPDS when its funding ran out at the end of the 2019-2021 biennium.

It is time to stop using the trial level attorneys as the solution to OPDS mismanagement. OPDS needs to step up and tell the Legislature what went wrong and why they need more money for what were Non-Routine Expenses. This is a perfect time for OPDS to get its fiscal house in order because the issues are not ones created by the present management and are, probably, the result of years of poor management.

The Legislature gave OPDS the money for the ABA study and now OPDS is throwing the results of that study to the side. First, in conjunction with OPDS, the ABA created 7 case type categories. Misdemeanors were divided into two types and felonies were divided into three. The felony types depended on the seriousness and difficulty of the crimes and their possible sentences, not on the A, B, or C categorization by the Legislature. Yet, the proposed contract goes back to one type of misdemeanor and A, B, and C felonies.

The proposed contract actually increases caseloads for attorneys and does not take into account existing caseloads. In paragraph 7.1.2.5(a)3 an attorney remains on a case if there is a diversion or deferral or conditional discharge until the final judgment is entered. Until now an attorney was “done” when those dispositions occurred and if there was a problem later (a show cause) the representation on the show cause was a new matter. No more. Attorneys get to do more without any recognition that there is more to do.

Further, numerical caseloads are going up. I challenge anyone to find a competent Jessica’s Law or murder attorney to agree that a full time case load for those cases is 12 new cases a year. Of all the ABA recommendations, their 3 to 4 caseload number was subject to very little criticism for being too low. In fact, that is, apparently, what the current caseload standard is for those cases. Why is OPDS proposing increasing the caseload?

Same with C felonies and probation violations. Why are they being increased?

ORS 151.216(1)(c)(A) requires the Commission to adopt caseload standards. Until that is done how can the proposed OPDS caseloads be properly measured. Like the ABA I agree it is virtually impossible to move to the ABA caseload standards immediately but the Commission and OPDS should be moving towards those standards, not away from them.

Caseload standards need to take into account the number of cases an attorney is handling. If the caseload number for a full time MB11 only attorney is 45 cases (the present proposed OPDS FTE number) then at any time the BM11 caseload of the attorney should be 45 cases or very close. A caseload should not be the number of new cases in a year but the number being handled at all times. Part of the reason there is a shortage of attorneys is attorneys are working on too many cases already and do not have the room to represent more people.

A relatively quick comment on the prohibition of no other paid work if an attorney is a 100% FTE. While I agree if you are a full time person that should be your job how does allowing pro bono work not take

away from the time meant to be spent doing the full time defense work but paid work does? Either prohibit both, limit both, and eliminate the prohibition.

Much has been said about the proposal to require the taking cases within 100 miles of an attorney's county's courthouse. From Marion County that includes Astoria, Hood River, Eugene, Newport, and everywhere in between, plus Madras. Yes, the problem of being centrally located. Taking a case in Multnomah County besides the 3 1/5 hour (at least) travel time to and from Portland also means increased taxes for a consortium lawyer. There are Tri-Met taxes, City of Portland taxes, and Multnomah County taxes. Getting paid the same amount for a Multnomah County case as a Marion County case means even less available for the attorney.

I understand the issue OPDS is having finding attorneys to represent people particularly in the Willamette Valley but conscripting attorneys will be counterproductive. Why continue to work in a system that does not value you or your work for decreasing pay, continuing too high caseloads and now being forced to travel up to 100 miles (each way) because OPDS cannot/will not provide the resources to attract and retain lawyers.

Yes, we are back to where I started, what amount is OPDS proposing to spend on trial level adult criminal representation for the rest of this biennium? Is it the amount they already have, the forecasted \$224,936,353, or the full \$256,709,920 after the \$100 SPA is released. Certainly contracts can be written based on the \$186,458,931 OPDS already has with what will happen if more funding is available.

The Commission needs this information and needs to set caseload standards before any proposed funding can be finalized.

Olcott Thompson
Executive Director
Marion County Association of Defenders



Special Purpose Appropriation Analysis

(in terms of General Fund)	Legislatively Adopted Budget	Special Purpose Appropriation	AY 2023 Forecast	Variance
Court Mandated Expenses	15,006,403	5,002,135	29,279,770	9,271,232
Juvenile Division (PCRP)	30,577,095	10,192,365	41,155,529	386,069
Non-Routine Expenses	43,663,533	14,554,511	60,205,933	1,987,889*
Trial Criminal	186,458,931	70,250,989	224,936,353	(31,773,567)
SPA Elements Subtotal	275,705,962	100,000,000	355,577,585	(20,128,377)
Administrative Programs	45,478,212	0	41,746,209	(3,732,003)
Grand Total	321,184,174	100,000,000	397,323,793	(23,860,381)

**CSS continued to grow at a net rate of \$1.8 million per month, maintaining the average monthly payout of \$2.4 million and a new case rate of \$4.5 million per month. This keeps the outstanding amount at approximately \$53M in unpaid authorizations or encumbrances.*

SCHALEGER PHILPOTT, PC

Telephone: (503) 882-2592

Attorneys at Law

160 Portland Avenue
Gladstone, OR 97027

Facsimile: (503) 656-8993

Rebecca S. Schaleger

Managing Partner

Rebecca@gladstonelawyers.com



Mandi M. Philpott

Managing Partner

Mandi@gladstonelawyers.com

LeAnna L. Erickson

Associate Attorney

LeAnna@gladstonelawyers.com

Bianca Pacheco-Mayberry

Associate Attorney

Bianca@gladstonelawyers.com

Brian C. Morgan

Associate Attorney

Brian@gladstonelawyers.com

COMMENTS TO PDSC BOARD

This letter is a written recitation of the oral comments I made at the PDSC meeting on April 8, 2022. As requested by the board, I am sending this to you and copying Mr. Singer, as he also asked for this information. There is additional information in this letter because I had previously written what I wanted to say and was unable to get it all in during my allotted time. This is information I had intended to share on April 8th.

I want to preface this with the understanding that my frustrations expressed in this comment are directed at OPDS as an agency. I have worked with some amazing contracts analysts and wonderful people at OPDS who have tried very hard to do what they can, within the confines of their role, to help me and my lawyers be able to continue working with OPDS.

Goal –

- ask board to please work with OPDS to implement PCRCP in all counties
- Ask board to inquire of opds why they are refusing to pay an extra rate for lawyers taking on additional, out of contract cases
- Ask board to inquire of OPDS why increased requirements for administrators and lawyers such as staffing and data reporting, which are time consuming and expensive, but not increased our pay commensurate with this.

I am the administrator for JACL, which is the only consortium that handles juvenile cases in Clackamas County. We have 9.75 FTE.

In Clackamas County we have had virtually the same contract for three years with no improvements, no raises, no ‘COLA,’ and no PCRCP. Meanwhile, COLA, benefits, and other perks have been granted to OPDS employees. The agency tells us they are broke and we all have to work as a team, but what we see is the money going to OPDS and not to us. What we are told is that OPDS cannot keep staff and lawyers working for them without these increases, and WE KNOW THIS. We cannot do it, either, but we are constantly asked to provide more detail, more information, and OPDS continues to tell us they are “working on it” while we get NONE of the funding or money that is afforded to OPDS. It becomes very, very difficult to sit and watch this and consider this part of a “team” effort.

I was a member of the focus group that engaged with the Corragio study. What may not have been mentioned was the lack of belief from anyone participating that OPDS really intended to actually DO anything to ameliorate the problems they have with communication and pay disparity. OPDS has been promising for some time that they are going to be making changes and we have yet to see them. At least in our county. The only changes we see are more requirements of us with no compensation for meeting these requirements.

Our county is a 20 minute drive from Portland. Multnomah County has PCRCP. WE do not. PCRCP is not scheduled to be in Clackamas County. We are asked to handle a much higher caseload for less money. We do not have state funded case managers. We have to repeatedly ask for (through NRE forms) and justify why we want to work with a case manager We have to limit which clients get the benefit of a case manager because we do not have enough for all of our cases. We are choosing which parents WE think should get the benefits of this additional help. This is not right.

We begged the legislature for PCRCP in our county to fund a family drug court. I wrote a two page letter explaining how this might actually save money in the long run. The legislature, in their infinite wisdom, decided that rather than fund a family drug court and PCRCP, they would provide money to OPDS to have some sort of family position within their agency. They have been clear that they did not ask for this money. Yet here we are again, OPDS gets the cash and we are expected to take the hit.

We are helping OPDS by taking out of county cases. For no additional funds. We have a contract until July of this year that OPDS had to pay us for no matter how many cases we do or do not have, yet we voluntarily took on many additional cases from Jackson County, Yamhill County, Lane County, Wasco County, Washington County, and Yamhill county in the last 6 months. For no additional pay. Because we believe these people need lawyers and it shocks us that OPDS does not have what they need to ensure proper representation.

But now we are being told that we HAVE to take on these additional cases. This takes away ANY feeling of goodwill we previously felt. Any feeling of being a team with OPDS. We are clearly their “employees” to order about. I can tell you that my lawyers will gladly help out when they can, but never in Washington County, and we would not sign any contract requiring us to do so. So perhaps before making these grand sweeping changes OPDS and the board should be talking to the people on the ground engaged in this difficult process.

It seems will get a contract shoved at us with almost ZERO time to digest it and negotiate it. We will be denied PCRCP and expected to carry higher caseloads. In our last contract, OPDS

expected us to take on NAC standards for caseloads. Well, there ARE no NAC standards for juvenile case. So someone in OPDS who has clearly never handled a juvenile caseload in their entire life came up with the idea that we could handle 80 cases (this is the PCRCP number) plus the additional 15% they were adding on for non PCRCP counties. Now, whoever came up with these numbers did not realize that in the PCRCP counties they are counting all of their OPEN cases. The 80 cases is not NEW cases per year, not is OPEN cases.

But OUR contract says we are expected to take on more than 80 NEW cases each year, including delinquency and dependency cases. Anyone who has done juvenile knows that these cases last YEARS. I have some cases that have been open a decade. The average case lasts 2 years, and you are actively working those cases while they are open. There are meetings, IEP, WRAP, CRB, court hearings, family decision meetings, and a multitude of things to manage on each case. Now, the 80 cases someone got from PCRCP means they have 80 OPEN cases. But OPDS expected us to handle a caseload of more than 80 NEW cases each year. They don't care how many OPEN cases we have. They told me they might have to cut my contract because even though we have more than 80 OPEN cases, we are not getting more than 80 NEW cases per lawyer every year. That is absolutely untenable. No one can handle that many new juvenile cases every year and still have quality representation. Why did no one at OPDS talk to someone who actually does juvenile before setting up these ridiculous and unrealistic goals that are written into our contracts?

I have very experienced lawyers who should get more than the newbies I am hiring. These lawyers have two decades of experience. They are felony qualified. They are able to do BM 11 hearings. They are resistant to doing waiver hearings or anything that requires their experience because OPDS DOES NOT PAY EXTRA for anyone with this extra experience. In fact, looking at the new proposed rough draft contracts, for adult criminal they are weighting major felonies differently than minor felonies and misdemeanors. But in the juvenile contract, they are all just "delinquencies." So a 15 year old accused of Sex 1 is the same level of case as a theft II? I would suggest that it is MORE important to protect a 15 year old from becoming a registered sex offender than and adult.

It seems OPDS STILL is looking at juvenile cases as "less than." It is VERY VERY DISHEARTENING. I don't assign to our newbie attorneys the Sex 1, Assault II, attempted murder (yes, we had a 10 year old youth in our county arrested for attempted murder.) Our experienced lawyers are being taken advantage of and they know it and they are tired of it. We are tired of being the only members of the "team" that are playing like it is a team. You want us to mentor the younger lawyers, you have qualification requirements for the lawyers (I have been unable to get my newbies felony qualified without having them be mentored by the more experienced lawyers) but we are not compensated for this.

Criminal cases OPDS not accepting help –

I am almost sorry I brought this up at the meeting cause for me, this is a side issue. My main concern is the juvenile issues I am trying to resolve every day, and I think everyone was more interested in this issue than the juvenile problems I brought up. However, here is the information regarding the adult criminal matter I discussed:

I used to represent a young man in juvenile court. I have known him since he was 11 and got charged with harassment for chucking a chicken nugget at his Gym teacher and was charged with harassment. I represented him over the next decade plus in minor criminal issues and eventually a dependency case involving his children. He is now in custody in Inverness facing attempted murder charges. I spoke with him, and he tells me he is innocent. He may actually BE innocent. He is on the list of people who are currently unrepresented.

I wanted to try to get him a lawyer so I reached out to friends and called in favors. I spoke with a VERY experienced criminal lawyer in Portland who only does retained cases. He indicated he would take the case on but he wanted no less than \$200 an hour, which is less than half his going rate. I was told that OPDS will not pay more than \$105. He declined to take the case.

Subsequently I reached out to a friend who lives in Eastern Oregon and is on contract with OPDS. She is also a very experienced criminal defense attorney. She spoke with my former client first to make sure he is not a total jerk, and after talking to him agreed to take his case, but wanted more than just one case credit for it because it was out of her jurisdiction. OPDS declined to allow this because they said they needed her experience in the county in which she regularly practices because they do not have enough experienced practitioners there, and she would be close to her case cap if they allowed her to take this case.

Frustrated, I finally decided I would take the case myself. Though I am murder qualified because I have handled them 15 years ago when I was in the DA's office, I have never DEFENDED a murder, but I was willing to do my darndest. I was not, however, willing to do it for a measly case credit on my JUVENILE contract. So I reached out to my contracts analyst, said I was willing to take it. That I wanted the \$105 an hour for it and I also wanted to be able to bill for my associate attorney since I planned to have someone help me on this.

That was denied. I was told they are not allowing people with contracts to get an hourly rate on these cases. Now, I am not interested in throwing my analyst under the bus. I believe she told me what she thought was accurate information. She told me I was unable to get an hourly rate

for this case on March 31st, 2022. All of the above happened in March of 2022. Perhaps OPDS needs to better communicate within itself if the information she gave me was not accurate.

This person who I have known for 15 years now – he is a PERSON. Not just a name on a list. And the situation we find ourselves in is untenable. The lawyers in my consortium keep taking all of these out of county cases because we are the kind of lawyers that believe in what we do. If we didn't, we could do this. Had I stayed in the DA's office I would be making MUCH more money now, have two months of paid vacation, PERS, benefits, disability, paid staff, paid overhead and host of other things that I forgo because I believe in this work. But with 4 teens getting ready to head off to college within the next few years, I may have to rethink this.

Stop making us take the financial hits. Pay us what we are worth. Pay the experienced lawyers more. Stop treating juvenile like an afterthought. You will lose us if you don't make changes NOW. Not next year or the year after. Thank you for your time.



Rebecca Schaleger

Eastern Oregon Defenders, LLC

La Grande, OR

Phone: 541-963-8485

April 18, 20223

Via E-Mail

Contracts2022StakeholderInput@opds.state.or.us

PDSC Chair Ramfjord and Commissioners

Re: Public Comment for 4/21/22 PDSC Meeting

Dear Chair Ramfjord and Commissioners:

Eastern Oregon Defenders (“EOD”) is the consortia serving Union and Wallowa counties with regards to both adult criminal and all juvenile matters. We are also members of the Oregon Defense Consortium Association. Our consortia discussed the proposed contract language and provided the following feedback:

Issues with Contract Language:

- 3.5.1 was modified to require attorney to accept appointments in counties, if the jurisdiction is not more than 100 miles away, as measured from the courthouse in contractor’s jurisdiction and the courthouse in the adjacent county. Contractor shall not unreasonably refuse appointments in counties more than 100 miles away. The “not unreasonably refuse” language comes from the PCRCP contracts. Weighting for out of county cases will be evaluated on a case-by-case basis, with those more than 100 miles away receiving additional credit
 - Concerns: for EOD, this would include Baker, Umatilla (Pendleton and Hermiston); it is also worth noting that La Grande lies in the center of the Eastern I-84 corridor. This section of the highway (Ontario – Pendleton) often closes in the winter when inclement weather strikes and/or makes travel hazardous. The mountain pass between La Grande and Pendleton is especially known for accidents and closures. Contractors – whether lead or co-counsel – should be able to accept or reject murder cases at an hourly rate at their own discretion, due to the time consuming nature of these cases. EOD’s contract has never included murder cases.
 - Suggested change: removal of this section in its entirety; OPDS’s inability to cover conflict cases is a direct result of their unwillingness to pay for them.
- 3.5.2 allows OPDS to adjust the FTE numbers based on changes in the middle of the contract
 - Concern: OPDS should not be allowed to unilaterally change the contract; also, removes current provision that does not permit OPDS to take away funds if the contractor is below their expected and contracted FTE.
 - Suggestion: change to “When caseload increases or decreases by 15% for six consecutive months, Contractor and OPDS shall discuss the circumstances surrounding the increase or decrease. **Upon agreement between OPDS and the contractor**, OPDS

may request an adjustment the number of FTE in the contract to meet the changing needs of the jurisdiction if..."

- 3.6 was amended to give the agency discretion to allow contractors to take cases on an hourly rate basis.
 - Concerns: what will be the factors in using this discretion?
 - Suggested change: language that broadly allows for all conflict cases to be taken at the contractors discretion with the assigned attorney billing OPDS at an hourly rate
- 4.2 fairly account for the time spent on non-contract work
 - Concern: how? Via hours worked, or money earned? What if the attorney does that work after hours, or on weekends – separate from their appointed work? As independent contractors, we need to be independent, and allowing OPDS access to our books is unprecedented and would harm any trust we have with our clients should they become aware of this ability of the state to seek access to our files.
 - Suggestion: remove this language entirely
- 7.1.2.2 Appearance at first proceedings
 - Concern: within the last year, EOD has spent considerable time working with the court to change process and procedure. We have done so and have an arrangement where all in-custody individuals are appointed counsel but out-of-custody clients are not, but there is an appointed attorney available all morning at the courthouse for those clients to consult with and they may request their arraignment be set over until they are appointed an attorney if they wish. This is our early disposition program. There is currently no mechanism for appointment before out of custody arraignments, and we cannot be held responsible for court procedure.
 - Suggestion: "Contractor shall provide representation at all **in-custody** arraignment and first appearance hearings, unless OPDS agrees in writing otherwise. Failure to provide such representation is a material breach of this contract. **Contractor shall ensure that out-of-custody individuals have the opportunity to meet with appointed counsel and that such individuals may set over arraignment until such counsel is appointed.**"
- 7.1.2.3(c): Filing petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed
 - Concern: many attorneys are not qualified to handle habeas corpus or writs. This places the attorneys in the hazardous position of being required to handle work they are not competent to handle.
 - Suggestion: removal
- 7.1.2.4(d): "Seeking 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;"
 - Concern: does this include DHS founded dispositions and administrative appeals? That is unclear and very concerning, as that is substantial work that is administrative and civil in nature.
 - Suggestion: "Seeking court orders or other remedies on behalf of a client if a term of sentencing favorable to the client is not followed or implemented"

- 7.1.2.4(f): “Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705, when requested by a former Client”
 - Concern: this could lead to a case being open for years. Does it also mean we are representing them for the entirety of their probationary term unless and until they get their reduction? What if they aren’t successful and they won’t be able to get it reduced, when do we close the case?
 - Suggestion: removal
- 7.1.2.5(a)(3): An attorney may not close a case that has been entered into a deferral, diversion, or conditional discharge agreement until the final judgment has been entered into the court register
 - Suggested change: “An attorney may not close a case that has been entered into a deferral, diversion, or conditional discharge agreement until the final judgment has been entered into the court register **unless that client has entered into a specialty court and there is another attorney designated to handle said specialty court.**” Or similar language with the same effect.
- 7.1.2.6 The original contract attorney shall accept reappointment to a previous client when...
 - Suggested change: **add “(d) Upon good cause as determined by the contractor.”** For example, an individual might be better suited to another attorney who is new to the contracting entity but has significant experience in an area relevant to the matter at issue.
- 7.1.3.1: in custody initial contacts
 - Concern: wallowa county houses inmates in Umatilla jail, which is 50 minutes away and requires 24 hours notice to set a visit – in person OR phone.
 - Suggestion: “Contractor shall, whenever possible, speak to and conduct initial interviews in person **or by electronic means** with in custody clients:”
- 7.1.5.1 Withdrawal from Case Only with Court Approval
 - Suggested change: **remove** “If the court approves Contractor’s request to withdraw, the Contractor shall notify OPDS in writing.”
 - This information could be included in monthly reports to OPDS
- 7.1.5.2 Prohibition on Withdrawal When a public defense attorney leaves a Contractor, they may not move to withdraw from their cases without contacting OPDS and obtaining OPDS’s written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise
 - Suggested change: **removal of this section** in its entirety. Not appropriate for independent contractors.
- 7.3.5.1: general liability insurance “with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon”
 - Concern: this appears to add an insurance requirement. This will raise costs for providers, and any increased cost should be reflected in the contract.
- 7.3.8: internal controls/OJCIN use
 - Concern: 1. That's up to OJD not OPDS or contractors to monitor. 2. This isn't required under law. 3. Most of that is public record anyway.
 - Suggestion: removal

- 7.6.3 & 7.6.4: Contractor shall comply with OPDS requests for information and data.
 - Concern: with great frequency, reports are sent to OPDS and then OPDS tells us they were not received. There is also no limit to this requirement and no apparent compensation for the additional workload that this requires. Moreover, OPDS has no means to meaningfully use the data.
 - Suggestion: removal, or at least language noting that “it shall not be a material breach if the data was previously requested and provided.”
- 7.6.4: “Funds withheld may be paid to Contractor once reporting is current.”
 - Suggestion: “Funds withheld **shall** be paid to Contractor once reporting is current.”
- 7.8.2.5: if Contractor is unable, or believes it will be unable, to accept court appointments to public defense cases, Contractor shall notify OPDS immediately and provide at least 30 days’ notice before refusing court appointments.
 - Concern: if contractor believes they can no longer competently and constitutionally take cases, they cannot and should not be required to take cases for 30 days because the contract says so
 - Suggestion: if Contractor is unable, or believes it will be unable, to accept court appointments to public defense cases, Contractor shall notify OPDS immediately, **unless the reason for such inability is due to circumstances protected under FMLA or similar state or federal laws. (removal of last line as written and addition of new last line)**

General Concerns:

- **The Model:** FTE model is just a flat rate model with extra steps – does not actually change anything or address the issues raised by the 6th amendment report
- **No weighting for delinquency cases** is problematic – should be broken down and weighted like adult criminal cases.
- **Compensation rates:** it is unknown within the range provided what pay rate will be given to providers. This range is helpful but without further breakdown, the data is incomplete and feedback is correspondingly limited on this subject. We do agree with abandoning the current rural/urban flat rate model.

Broader Suggestions:

- OPDS should contract with “coverage attorneys” whose responsibilities would include filling in for contractors across the state
 - This would allow solo and consortia practitioners the ability to take time off, increasing provider satisfaction
 - This would allow double-booked attorneys to ensure cases are heard in a timely manner, without the need for a set-over in an already backlogged system
 - OPDS could offer case weight for contract attorneys who volunteer to cover their public defense colleagues
- OPDS should fully fund contract administration costs for every contract entity
- OPDS should provide for paid hourly co-counsel in all JLAW and murder cases
 - These cases are too time consuming and the experienced and qualified attorneys who chose to dedicate their time to these challenging cases should be paid hourly. Having co-counsel in these cases is vital to providing effective assistance of counsel.

- OPDS should fund practice management software for all providers
 - This will streamline the process of collecting and analyzing data, as you can export case lists directly from the software and can standardize what that looks like to make that data quickly usable
 - OPDS might be able to negotiate a bulk deal to make this software less expensive for the attorneys who are using it now, saving money for providers
 - Hourly attorneys could track hours conveniently and easily via the software
- OPDS should fund and provide case managers and social workers who providers can access state wide

We appreciate the difficult task before you and urge you to reject the current contracts as written. This proposal will decimate and demoralize providers who are already dealing with years of unaddressed frustration and unfairness in dealing with OPDS.

We appreciate your time and thoughtful consideration, as well as your dedication to improving the public defense system.

Sincerely,

Eastern Oregon Defenders

Michelle Bartov

Rick Dall

Logan Joseph

Jim Schaeffer

Jared Boyd

OREGON COAST DEFENDERS, INC.

P.O. BOX 102
TIDEWATER, OREGON 97390
541-270-2043

GUY B. GRECO
ADMINISTRATOR

April 15, 2022

To: Public Defense Services Commission
Stephen Stringer, CEO, OPDS

Re: Proposed 2022-2023 Contract

I am the administrator of Oregon Coast Defenders, the indigent defense consortium for Lincoln County. I practiced criminal/indigent defense in Lincoln County for 43 years and have served as administrator of various consortia in this county for the last 27 and a half years. Members of our consortium have serious concerns regarding the proposed 2022-2023 Indigent Defense Contract, so much so, that some or all our contract attorneys may refuse to sign the proposed agreement as drafted.

We find it ironic that OPDS has provided us with *one business day* in which to submit comments to the proposed contract changes and to provide:

2. Feedback should be as specific as possible, addressing:
 - (A) what is problematic, and
 - (B) specifically, why.
3. Please propose specific alternative solutions

when OPDS provides *no rationale* for any of these changes. Below are our most serious, specific concerns with that proposal.

CONTRACT TERMS

1. 3.5.1(a) Contractor shall accept appointments to cases in counties other than those specified in this Contract. Contractor shall accept conflict and overflow appointments from jurisdictions within 100 miles, as measured from the courthouse in contractor's jurisdiction to the courthouse in the adjacent jurisdiction. Contractor shall not unreasonably refuse conflict and overflow appointments from jurisdictions more than 100 miles from Contractor's jurisdiction. These appointments will count toward the Contractor's overall contracted caseload and will be evaluated for weighting on a case-by-case basis. OPDS will provide additional weight to cases more than 100 miles from Contractor's jurisdiction.

Lincoln County's County seat, Newport, is relatively remote from the rest of the state. We are busier than a rural county because of the vibrant tourist economy in this area. The nearest county courthouse to Newport is over 50 miles away. In addition, courthouses in Tillamook, Yamhill, Marion, Polk, Linn, Benton and Lane Counties are within the 100-mile radius set forth in this clause. Even though the ABA study concluded that each indigent defense attorney in Oregon is expected to handle over three times the

recommended number of cases in order to provide adequate representation, you are now expecting us to significantly increase our workload by accepting cases many miles away from our jurisdiction. The simple act of interviewing a client in one of these counties will now involve at least a half day of time, including travel. Even with the increased use of telecommunication for simple motions and court appearances, travel will be necessary, for interviews, evidentiary hearings, trials and plea hearings. No additional compensation is offered for this work, and no mileage paid even though we will be expected to use our personal transportation for this travel.

Effective representation will suffer, not improve. As one of my contractors pointed out:

Everything about multi-county work consumes more of your time and resources. The time and cost of driving from A to B to C and back to A is only the beginning. You have to get to know and work with a different set of prosecutors in each county; you have to learn and work with a different set of both court and DA procedures and policies in each county; you have to coordinate your movements with the often arcane operations of multiple different county jails in order to see clients, and do it in a way that comports with the 24 hour meet and greet upon appointment requirement; you have to develop a plan for how, where, and when you can meet with out-of-custody clients (they are not going to come to meetings in your Newport office!); you are going to drive an hour and a half or two hours each way, each day you are in trial in Tillamook or Salem or Eugene, or alternatively you are going to set up a makeshift portable office in your hotel room when trying cases. It goes on and on. The reality is you can't handle as many cases when you're doing multi-county work, so as "multi-county" works its way into the contract, they'll need more lawyers to do the same work. Even with the relaxation of telephonic appearance policies in the aftermath of Covid, it's a purely counter-productive proposition.

Recommendation: This provision must be stricken from the contract. Lincoln County contractors will not agree to it.

Solution: Create a group of contractors who do nothing but multi-county representation in conflict cases. Structure compensation to reflect the idiosyncrasies involved with that type of practice.

2. 3.5.1(c) No one funded as a 1.0 FTE may engage in any other paid work, unless OPDS otherwise agrees in writing.

4.2 Work Outside Contract

Contractor may engage in additional paid work outside of this contract, but only to the extent that the additional paid work does not interfere with Contractor's ability to fulfill this contract. Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.

Members of the Oregon Coast Defenders are independent contractors and small business owners. They are not employees of OPDS nor PDSC. All your "case standards" are based on a contractor working 40 hours a week. While this may be true for employees of a public defender office, members of our consortium have the legal right to work as many hours as they please to earn income for their businesses. Indeed, your proposed changes proscribe *any work* beyond indigent defense work for a full time FTE attorney. That attorney could not take a paid part-time coaching position at a local school

without violating the contract. If a contractor wishes to work 45, 50, 60 hours or more, you cannot compel that contractor not to do so.

If by virtue of a contract of adhesion OPDS intends to restrict our ability to operate our businesses through these restrictions, contractors may be entitled to employee benefits available to other state employees including, workers' compensation, health insurance, tax withholding and pension benefits. Several of my contractors have expressed a willingness to enforce these rights under Oregon's Employment Code.

Recommendation: These provisions must be stricken from the contract. Lincoln County contractors will not agree to it.

Solution: These provisions are not appropriate for a consortium consisting of multiple independent businesses.

3. **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) (b)

7.1.3.2

Within 24 hours of appointment; or
By the next working day if the court appoints Contractor on a Friday, or if the day following the appointment is a court recognized holiday.

This change demonstrates that OPDS does not understand the rigors of practicing indigent defense. In Lincoln County it is not unusual for a contractor to be assigned a half dozen in custody cases at a single arraignment session. That contractor may have appointments, court hearings or trials scheduled for the next day. While a 24-hour rule may be preferred, it is not a practical requirement, especially for practitioners who are handling three times the number of cases as they should. Adding more pressure to an overworked attorney is not a way to encourage dedicated performance. And, as indicated above, it becomes next to impossible to comply if out-of- county appointments are factored in.

Recommendation: Do not change the clause.

Solution: Lower caseloads.

4. **7.1.5.2 Prohibition on Withdrawal**

When a public defense attorney leaves a Contractor, they may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

Oregon Coast Defenders expects its members to complete their assigned cases prior to separation from the Consortium. However, personal matters including retirement, illness or family responsibilities do not make that possible in every situation. While we realize that permission may be secured through OPDS in such circumstances, we prefer to handle these issues internally without OPDS involvement. When a contractor cannot complete all its case work, we are able to equitably re-assign cases within the

consortium. Since this provision appears directed at reassigning cases to other out-of-county-consortia (although no explanation is given for the proposed change), we recommend that permission be obtained only when the cases of the contractor cannot be maintained within the consortium.

Recommendation: See above.

Solution: See above.

5. 7.6.1 Caseload Reports

Within ten (10) days of the end of each month, Contractor shall provide to OPDS, in a format specified by OPDS, a monthly caseload report for the preceding month. Contractor may submit amended caseload reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly caseload report to be amended. Contractor must be current on case reporting at the time of their review meetings with their analyst.

We know of no reason why reports must be submitted 10 days sooner than the previous contract. We have seen no evidence that such a change will affect your data collection in a material way. Instead, you are simply putting an added burden on contractors and administrators to collect and organize data more quickly after the end of a month. Our contractors are overworked; many times, it is simply not possible to collect and organize case data immediately at the end of every month. Contractors get sick, they go on vacation, they have jury trials. Why in the world when it is recognized that every contractor is doing the work of three, would you increase the burden and pressure on each of them for little or no gain?

Recommendation: No change to the existing contract term.

Solution: See above.

ADULT CRIMINAL CASELOAD STANDARDS

The Commission is aware of the results of the ABA Task Force on Attorney Workload Standards. The overriding conclusion of the task force is also well known:

“To provide effective assistance of counsel currently, all 592 contract public defense attorneys in Oregon would: • Need to spend 6,632 hours per year working on case specific public defense work (26.6 hours per working day during a calendar year)”

According to the Report, if an attorney worked 40 hours per week, 52 weeks per year the total number of hours worked would equal 2,080 hours. Based on the results of the Delphi Study, a full-time equivalent caseload would look something like this:

Low-level misdemeanor	93.5 cases per annum
Complex misdemeanor	52.25 cases per annum
Low-level felony	52.3 cases per annum
Mid-level felony	43.6 cases per annum

High-level felony 14.0 cases per annum

Homicide and sex cases 3.75 per annum

It is not a coincidence that the standards proposed by OPDS are roughly three times the number recommended by the American Bar Association since it concluded that we have only 31% of the number of attorneys needed to provide adequate indigent defense representation.

While the actual ABA Standards reflected in the study may be aspirational, as a criminal defense attorney with over 43 years of experience I can say unequivocally that the standards proposed by OPDS do not come close to ensuring adequate representation for the accused.

The entire concept of using an FTE model as structured by OPDS ignores the conclusions made by the Sixth Amendment Center's study of the former case model using case codes for each case. Attached to this memorandum is a copy of a memo discussing why this FTE model creates an inherent conflict of interest between the lawyer and the client which creates a disincentive for the lawyer to spend an adequate amount of time on each case. The higher the number of cases which you use as a full-time FTE model, the greater the pressure to triage as many cases as possible.

Recommendation: Reduce the number of cases that constitute a 1.0 FTE.

Solution: Abandon this system entirely and convert to a task-based system of compensation (see attachment).

PROPOSED ATTORNEY FTE AMOUNT

Our consortium views the proposed compensation differential between urban and rural consortia to be arbitrary and capricious. If it is based on presumed cost of living differences, that is not an accurate benchmark to use. As indicated above, although the population of Lincoln County is lower than many counties in the Valley, as a tourist destination our population nearly triples during certain times of year. That means that the number of criminal cases we see is disproportionate to our actual population.

Lincoln County unfortunately is not a preferred destination for criminal defense attorneys. Over the last several years we have not had a sufficient number of attorneys to handle the number of criminal cases that are filed. That has led to extremely high caseload which, in turn, has led to burnout and attrition. Despite several years of recruitment, it has taken these several years to contract with enough people to reduce each contractor's workload to a somewhat manageable level. In order to retain these attorneys compensation must be as high as possible. We currently have 10 contractors in our consortium. At least three have indicated that they may leave the group if the proposed contract is imposed upon us.

Recommendation: A 1.0 FTE in Lincoln County must be set at least at \$234,100 and should be higher.

Solution: Abandon this system entirely and convert to a task-based system of compensation (see attachment).

CONCLUSION

Oregon Coast Defenders recognizes that the current indigent defense bar is expected to absorb all indigent cases within the budget mandated by the legislature which therefore constrains how much discretion OPDS has in awarding contracts through June 2023. But the proposed changes to the

contract are counterintuitive: By restricting contractors further, setting unrealistic case expectations, compelling long-distance travel while failing to realistically increase compensation, instead of recruiting additional lawyers to provide indigent defense as recommended by the ABA, you will instead reduce the number of attorneys willing to participate in the system.

Indigent defense is in crisis throughout the United States. By looking only to existing models of service the agency is perpetuating the crisis. What we need is to think out of the box and come up with a model that does not parrot the failures of others. In the meantime, don't further fracture the Oregon system by paying lip service to adequate representation while proposing a contract that does the opposite.

OREGON COAST DEFENDERS, INC.

P.O. BOX 102
TIDEWATER, OREGON 97390
541-270-2043

GUY B. GRECO
ADMINISTRATOR

August 26, 2020

To: Edward Jones, Interim Director OPDS
Per Ramfjord, Chair Public Defense Services Commission
The Honorable Elizabeth Welch, Vice-Chair Public Defense Services Commission.

From: Guy B. Greco, Administrator, Oregon Coast Defenders, Inc.,

Re: Attorney Compensation Model

Background

I am currently retired from the active practice of law. I was in private practice for 43 years. During that time, I practiced indigent criminal defense along with retained criminal and civil cases. I have administered indigent defense contracts for over 25 years and have continued to do so since my retirement in July 2020. I currently administer indigent defense services for adult criminal cases in Lincoln County.

Since 1988 I was active in State Bar activities. I served five years on the Board of Directors of the PLF and then four years on the Board of Governors along with numerous committees and task forces.

I have practiced indigent criminal defense during the days of hourly billings directly to the county and administered contracts through programs administered by IDSD and PDSC/OPDS. I have administrated every contract model since funding for indigent defense transferred to the State of Oregon.

Compensation Models

As indicated above, I practiced indigent defense when attorneys submitted hourly billings to their county for review and approval. When the State first took over funding, hourly billing was still the norm. The compensation model transitioned to fixed and “output” contracts then to per case compensation based on case type definitions. After the study conducted by the Sixth Amendment Center concluded that the per case type model of compensation violated the Sixth Amendment, the PDSC decided to abandon that model and convert to a “Full Time Equivalence” (FTE) form of attorney compensation.

Anyone who practiced indigent defense during the case weighting model could tell you before the Sixth Amendment Center study that this form of compensation violated the Sixth Amendment because it *disincentivized* aggressive and effective criminal defense. If a provider is compensated a fixed amount per case regardless of whether the case is tried or motions filed, the provider is *incentivized* to settle a case to increase the provider’s compensation. This created a direct conflict of interest between the interests of the client and the interests of the attorney.

The FTE model was adopted by PDSC and OPDS effective January 1, 2021. We have now had seven months of experience to determine whether this model addressed the concerns raised by the Sixth Amendment Center study. Unfortunately, this new compensation model fails to address those concerns and it also violates the Sixth Amendment right of a defendant to effective assistance of counsel.

Failure of the FTE Model

It is not too hard to see why the FTE model also violates the Sixth Amendment. The simple answer is that the model still compensates the provider on a case-by-case basis. Instead of weighing the complexity of a particular matter it breaks down cases into several categories: Felonies, misdemeanors, probation violations and mental health proceedings. A 1.0 (full) FTE simply counts the number of each category within the provider's caseload. No distinction is made between serious felonies and less serious ones. Any provider will tell you it is more work to represent a client charged with multiple sex offenses or manslaughter than theft by receiving. The model makes no distinction between such cases. A DUII or domestic assault case is more difficult than a disorderly conduct or criminal trespass in the second degree case. Again, the model makes no distinction. Once again, the provider is *disincentivized* from providing vigorous defense since trying fewer cases results in the same compensation as trying more cases or filing motions for the defendant.

As a practical matter, providers prefer to avoid representing clients charged with Measure 11 cases and would rather handle lesser felonies which require less work and are more likely to settle. That DUII case will result in more work for the same compensation if it is tried rather than settled. Again, the provider's financial interest conflicts with the client's interest in aggressive and effective representation. By adopting the FTE model in its present form, the underlying constitutional violation has been renamed but not eliminated.

Suggested Solutions

Hourly Billing

The only way to remedy the constitutional conflict is to *incentivize* the provider by compensating the provider based on the work performed.

One way to do so, of course, is to compensate by the hour. There has been much discussion along those lines. This would bring the compensation all the way back to 45 years ago when hourly billing, at an unsustainable rate, was the norm. There are many flaws with this approach:

1. It places an additional burden on the provider. In addition to representing the clients you add an additional administrative task on the provider.
2. The hourly rates used barely cover overhead.
3. It results in inequitable compensation among providers. The same task can have widely varying hourly outcomes. Some providers will simply bill more hours than others. Inexperienced practitioners would likely bill more hours for the same work provided more efficiently by more experienced practitioners. In that instance, the less experienced provider would receive more compensation than the more experienced.
4. It would create an administrative nightmare for OPDS. A significant portion of the OPDS budget would be allocated to staff to review and approve each individual hourly billing.

5. OPDS would not be able to control costs for the legislature. Hourly billing was abandoned years ago because the agency at the time could not accurately estimate the cost of indigent defense. The legislature wanted a fixed budget request based on the predictable cost of indigent defense representation. With hourly submissions varying wildly, the legislature demanded a fixed estimate of this cost.

The “Per Task” Model

How do you compensate the provider for providing aggressive and effective representation on a basis that can be cost controlled and still incentivize the provider? Reward the provider who files appropriate motions and incentivize providers to try cases instead of motivating them to settle every case.

One suggestion is to compartmentalize the nature of the case and tasks performed in a verifiable manner. First, case assignments should be weighted as in the previous compensation system. A higher sum should be assigned to the most serious felony cases and a lesser sum for lower felonies, misdemeanors, and probation violations. An additional sum should be awarded for motions to suppress, to dismiss and to compel discovery. A fixed sum should also be awarded per day of trial: one sum for each day of a jury trial and a lesser sum for each day of a bench trial. Although the number of motions and trials should increase under such a system, the estimated costs can be ascertained through the Oregon Judicial Case Information Network. A recent survey of defense providers contains the necessary information regarding the amount of time associated with each task for the agency to determine the amount of additional compensation necessary. This data can be used to determine contract amounts and to estimate costs for the legislature. Most importantly, it *incentivizes* each practitioner thereby removing the inherent conflict of interest that presently exists.

The Future of FTE

Incorporating this approach with the current FTE system is achievable and necessary. The FTE approach is necessary to determine the *maximum* caseload per provider in the indigent defense system. Based upon a calculator created by OPDS, my attorneys have caseloads approaching .80 to .90 FTE. The current contract requires each provider to handle a 1.15 FTE caseload max.¹ However, even at .80 to .90 these attorneys are overextended and struggling to provide effective representation. The FTE approach can be adjusted to account for this discrepancy and by incorporating a task-oriented approach, maximum caseload guidelines can be measured and controlled.

Conclusion

The conflict of interest inherent in the current and former compensation systems does an injustice to our clients. Until compensation is disconnected from the number of cases assigned to each attorney, and providers are motivated to go the extra mile for their clients, can we achieve an indigent defense system that truly represents the best interests of those clients. Now is the time for reform. If the current system continues much longer, it is inevitable that reform will be needed later once it again becomes apparent that the system conflicts with the interests of our clients.

¹ This also ignores the fact that OPDS is not including each provider’s actual open caseloads, which have been inflated by COVID delays. If you include those cases each provider is exceeding the 1.15 FTE limitation. The system is fundamentally flawed because it ignores the fundamentals of how criminal cases actually progress.

Jennifer I. Nash & Nicolas Ortiz, P.C.

ATTORNEYS AND COUNSELORS AT LAW

435 NW 4th St.
Corvallis, OR 97330

Phone: 541-752-3616
Fax: 541-738-0332

Jennifer I. Nash
Nicolas Ortiz
Kathleen Streck

Jnash@jinnopc.com
Nico@jinnopc.com
Kmsrek@jinnopc.com

April 18, 2022

TRANSMITTED VIA EMAIL ONLY

Contracts2022StakeholderInput@opds.state.or.us

Dear Public Defense Services Commission,

Thank you for the opportunity to provide feedback regarding the contract proposals for July 2022. Our firm currently has a contract for a .5 FTE lawyer in the Benton County PCRCP. We plan to submit a proposal for the same FTE for the 2022-2023 contract cycle. My comments below are related to the PCRCP contracts, but there is some cross-over applicability to the adult criminal and non-PCRCP juvenile contracts.

§3.6.1(a) Requires that a contractor accept appointments for cases that are in other counties, but within two counties of the contractor's office.

This is overly burdensome and, as a practical matter, nearly impossible. Every county is different in terms of scheduling of court appearances, meetings, procedures, foster care placements, etc. Courts are now generally requiring in-person appearances and placement visits (including visiting parents in treatment facilities) requiring significant travel, even when representing children and parents in a single county. As drafted, Benton County PCRCP lawyers would have to accept appointments in Douglas, Tillamook, Lincoln, Marion, Yamhill, Polk, Jefferson, Deschutes, and Klamath counties. Some of these counties are well over the 100 mile range specified in the adult criminal contracts. We cannot comply with a rule requiring us to accept appointments from 1/4 of the counties in the state. A requirement to accept out-of-county appointments when the caseload allows, should be limited to adjacent counties only. That requirement would still pose a significant challenge, but could be better managed than the current proposal.

§3.6.1(c) and 7.2.2(b) Prohibits 1.0 FTE lawyers from accepting other paid work without consent.

The requirement to be compensated solely by OPDS combined with the very lengthy and specific performance expectations in this contract likely converts all contractors to state employees, thus requiring state benefits. Simply stating in §7.3.2 that lawyers are independent contractors doesn't make it so. This section should be replaced with a requirement for the contractor not to accept any paid, or *unpaid*, work that interferes with the lawyers' ability to meet the performance requirements set forth in the contract, and include a requirement to prioritize public defense cases.

§3.6.1(d) Allowing pro bono work

Why is this section included in the contract if the point is to ensure that work under the contract is performed at a high standard? Read in conjunction with (c), it appears as though it is acceptable to work on as many private cases as a lawyer would like, so long as they are not compensated for those cases. This doesn't seem to further the goal of ensuring that a lawyer's caseload is sufficient to ensure that public defense cases are managed with high standards; it just appears to limit lawyer compensation.

§4.2 Allowing work outside the contract

As drafted, this paragraph is internally inconsistent with paragraphs 3.6.1(c) and 7.2.2(b), but should be left in the contract with 3.6.1(c), while omitting 7.2.2(b).

§5.2(b)(ii) Sets a goal to reduce the number of cases that take longer than 60 days for jurisdiction.

There should be a recognition that reducing the number of days that a case exceeds 60 days to jurisdiction is not always in the best interest of our clients, and is actually counter to their best interests in many cases--proceeding to trial within 60 days does not always allow for sufficient time to adequately prepare the case.

§6.1 Obligates OPDS to provide independent case managers to assist attorneys.

OPDS should also commit to train and monitor case managers for compliance with practice standards and expectations. This training and monitoring should not fall to the attorneys.

§7.3.8 Requires attorneys to use OECL and OJIN only for cases where they represent parties.

This should include a provision that also allows for use to review potential cases for conflicts of interest prior to representation.

§7.6.5 Allowing for a reduction in contract payments if reports are late

A fifteen day grace period before a reduction in payment would likely ensure that

the reports are received on time and would avoid the inevitable surprise of imposition of that penalty for being a single day late.

§10.2(c) Allowing for additional case credit for “extraordinary” work outside the scope of typical juvenile representation.

Some specific examples of “extraordinary” would be helpful. For example, is the filing of a custody or divorce petition considered “extraordinary”?

§10.3(a) When a dependency case should be closed

If the trial lawyer is assisting an appellate lawyer with the client’s appeal, the attorney should be able to claim case credit while working with the appellate lawyer on that appeal.

Please feel free to contact me if you have any questions or if I can be of any further assistance.

Very truly yours,



Jennifer I. Nash

PUBLIC DEFENDER SERVICES OF LANE COUNTY, INC.
180 E. 11TH AVENUE, EUGENE, OREGON 97401-3537
Phone: (541) 484-2611 Fax: (541) 484-5068

BROOK REINHARD, EXECUTIVE DIRECTOR
ROBERT C. HOMAN, ASSISTANT DIRECTOR
REID KAJIKAWA, DIRECTOR OF TRAINING
ZACHARY BROWER
TUCKER CAMPBELL
AMY COUNTER
TIMOTHY P. FLEMING
PAUL M.D. FRASER
MICHAEL HAJARIZADEH
ROWAN HARDENBROOK
JONATHAN HERITAGE
ALEX HUNTLEY-ROMANOW
JORDON HUPPERT

ROBERT KAISER
ALLISON KNIGHT
ZARA LUKENS
ANNIE MONTGOMERY
EILEEN M. PEPPLER
CAITLIN PLUMMER
JAMIE T. PRUITT
LISA ROMANO
LAURA RUGGERI
ANNETTE SMITH
MARLA SOILEAU
BRIAN J. WALKER

April 18, 2022

Oregon Office of Public Defense Services
1175 Court Street NE
Salem, Oregon 97301

Re: Contracts 2022 – Stakeholder Input

To Whom It May Concern:

I am the Business Manager at PDSLSC. In June, I will be starting my 12th year. During that time, I have worked on several RFP requests with our Management Team. We have spent long hours reviewing our current circumstances, evaluating our needs and wants, estimating for the upcoming budget cycle and preparing detailed information for OPDS review. Then, contracts are proposed in return, that do not seem to address the concerns we worked so hard to prepare.

In this new RFQ model, several standards are being presented as a baseline for the next contract.

The caseload standards will best be addressed by our Attorneys. But the basis of counting caseload does need to be reviewed. This past year the change from case credits to something else (assigned cases, open cases?) has been a catastrophe in trying to accumulate information to submit for review. The requests kept changing. Our proprietary system, CaseBase, was designed to count case credits and could not (and cannot) be changed quickly enough to capture the changing information OPDS has been requesting. So, it has been extremely difficult to try to report the several thousand cases PDSLSC has had for the year. And we do not know how those reports that were submitted have been reconciled to determine our workload and caseload.

A standard reporting of open cases (as is done with PCRCP) needs to be created for criminal cases. A Murder/Jessica's Law qualified Attorney cannot have an open caseload of several cases and then be expected to add another 12 cases during the coming year. 12 open cases are probably too many.

My concern for your consideration is Attorney leave and turnover. As an organization, we are under both OFLA/FMLA requirements. Employees are entitled to medical and family leave – of up to 12 weeks (or more in certain circumstances) per year. PDSLSC must maintain their opportunity to return to the same position at the end of their leave. Some of these leaves are planned and some are unexpected.

And, Attorneys have life changes that require them to leave their current positions and get another, possibly locally, position, or as happens more often in our office, relocate to another area.

To fill Attorney positions for those employees on OFLA/FMLA is almost impossible. How can we temporarily hire Attorneys qualified to handle cases for 12 weeks? First, we cannot afford it as

employees on leave are usually being paid out of their paid leave banks. So, hiring temporary attorneys, if we could find them, would double our costs. We do not have traveling Attorneys who can step in for experienced attorneys (using the traveling Nurse system as an example). So, our existing attorneys take over those cases belonging to Attorneys on leave and juggle more cases for a period.

When trying to replace attorneys, it takes way more than 30 days to hire a replacement. First there is the possible negotiation when an Attorney does give notice, then posting that position, reviewing resumes and applications, setting up first interviews, reference checks, possible second interviews, making an offer, and getting an Attorney to accept an offer. At that point, once the offer is accepted, the new hire needs to give notice and plan to turn over their existing case load at their former employment. Our policy manual asks for as much as 45 days notice for this task if an Attorney leaves PDSLCL.

So, when a newly hired Attorney accept our offer, they must give notice and often arrange to move from another location and/or state. Logistics, housing, moving all take time. And, if the Attorney is out of state, there are the requirements for the Oregon State Bar that must be met.

All of this is usually a 60-to-90-day process, if not more.

As an organization, we need to know that our funding is NOT going to be adjusted by the whims of vacancies. In addition to the base cost of a new employee, there are the hidden costs of the time and expense it takes for our management team to go through the hiring process: multiple interviews, review of candidates, onboarding for both the office and Lane County. This takes several people multiple hours of their time – time that is not being spent on the day to operation of the Public Defender Office.

And finally, case reporting. If we had an integrated system that would allow for standardized, streamline reporting, reports by the 10th of the month would probably be possible. But, considering that we still are unclear about exactly what needs to be reported (open cases or assigned cases or some mix of this), and our system is not set up for variations in reporting, 10 days is nowhere near enough time. In addition, here at PDSLCL, our Office Manager with 40 years experience has retired and while our new Office Manager has several years experience here as a Legal Secretary, her duties as Office Manager started in October 2021. So, there is still a learning curve in our office.

Please extend your timelines on hiring and reporting.

And please, give serious consideration to our Attorneys comments on caseload.

Thank you.

Sincerely,

PUBLIC DEFENDER SERVICES OF LANE COUNTY

Phil Anne Meile

Phil Anne Meile
Business Manager

cc: Brook Reinhard

PUBLIC DEFENDER SERVICES OF LANE COUNTY, INC.
180 E. 11TH AVENUE, EUGENE, OREGON 97401-3537
Phone: (541) 484-2611 Fax: (541) 484-5068

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BRIAN J. WALKER

April 18, 2022

Mr. Singer,

Thank you for the opportunity to provide feedback to the proposed contract between OPDS and defense providers. Please see below for my individual feedback on the contract.

7.4.1(b) – Vacancies

Requiring that vacancies be filled within 30 days is an unreasonable standard. With recruitment, interviews, background checks and reference checks, a requirement that vacancies be filled within 90 days is a much more achievable standard. A 30-day replacement is simply not doable, particularly at the current level of interest in this area of law.

7.6 – reports to OPDS

The provisions in this section are unnecessarily punitive. The contract provides for complete and total defunding of an office if reports are 90 days late. I expect, although it is not clear from the contract exactly *how* the reporting is supposed to take place, that I, as a staff attorney, am not personally in a position where I would be the one making these reports. Regardless, slashing the budgets of defense providers, even by 10% for being a day late is problematic. This seems like an unnecessary and harsh provision that should only be imposed if there is a demonstrated pattern of reporting issues that OPDS can point to with a specific public defense provider.

Caseload Standards

The proposed caseload standards, if meant to be a quota, are hugely problematic. I do not understand how these proposed numbers are in the same contract as a provision that requires us to ethically represent our clients. If the math equation to come up with this number was the amount of individuals needing attorneys divided by the existing number of attorneys, then OPDS already knows that quota is asking providers to do work that does not meet ethical standards. The ABA study said we have one third of the attorneys needed to provide competent representation. Based on that study, a more appropriate equation would be the total number of cases divided by the number of attorneys we *should* have under that study. I am not a statistician, but, at the very least, if OPDS is going to impose a quota, then it needs to be client-centered and incorporate the ABA study and Sixth Amendment study.

I would just add that the quotas, the 100-mile provision, and the decrease in FTE if our caseloads are reduced for 6 months, do not incentivize new or existing attorneys to join this area of practice. OPDS should be focusing on improving pay and workload for public defense providers to draw the 1,296 extra attorneys the ABA says we need into this field, as well as to ensure that our clients get competent and ethical representation. This contract does the exact opposite.

Finally, I watched your presentation at the OCDLA winter conference. I remember you speaking about

Louisiana and what you saw happening there. Far too few attorneys covering far too many cases, resulting in people pleading their clients out to serious crimes at arraignment, or encouraging them to take a lengthy prison sentence without due investigation. I was hopeful because it looked like you saw the connection – that when there are not enough attorneys to cover an astronomical number of cases, we simply cannot do our best, or even competent work.

I hope that if you make revisions to this contract you keep what you have seen in other states at the forefront of your mind and do not let pressure from the judiciary obfuscate what should be your top priorities: 1) drawing more attorneys into this field, 2) providing adequate compensation to existing defense providers, and 3) reducing defense attorney workload so that we can provide ethical representation.

Thank you for your time,

Rowan Hardenbrook

Executive Director
Shannon I. Wilson

Public Defender of Marion County, Inc.

198 Commercial St SE, Ste 240, Salem, OR 97301

Phone: (503) 480-0521

Deputy Director
D. Aaron Jeffers

Assistant Executive
Director
Kim Davis

swilson@pdm Marion.org

Office Managers
Cathy Case Hoffman
&
Jennifer Humbert

April 18, 2022

Dear Chair Ramfjord and Members of the Commission,

On April 8th, 2022, Oregon Public Defense Services proposed new adult criminal caseload standards for the upcoming July 2022 public defense provider contracts. **A caseload standard is the number of new cases, broken down by case type, that an individual attorney must agree to take per calendar year.** That means if a felony qualified attorney has 172.5 open cases, on July 1st, 2022, they will be required to handle an additional 138 new felony cases. If the goal of this caseload standard is to just place an active bar number next to a client's name, then adopting this caseload standard will meet that objective. However, if the P.D.S.C. aspires to standards ensuring constitutional legal representation for every client, the proposed caseload contract terms must be amended.

A workload standard is a snapshot in time of the actual work a public defender provides on their open cases. Under HB 2003 2(D)(f), **a workload plan must take into account the needs of each county or jurisdiction, practice structure and type of practice,** to ensure ethical representation. A workload standard allows for a caseload to be analyzed and adjusted based on the practices of the local jurisdiction, the experiences of the attorney, and the diverse needs of the community served. A workload standard is a crucial tool to manage the amount of time and resources available for defense services at the local level.

The Public Defender of Marion County is committed to providing client centered representation. Not all clients enter, or are impacted by, the criminal legal system in the same way. For example, about 35% of our clients are Spanish speaking. Many of our clients are released from the Oregon State Hospital and suffer from acute mental illness. Our clients and their families are impacted by the location of several prisons and facilities within our county. In addition, our district attorney files more Measure 11 cases per capita than any other county in the state. These are just some examples of the various factors that impact our workloads.

The Public Defender of Marion County requires a workload standard to determine each attorneys' ability to represent new clients without diminishing the time, attention, energy, and quality of representation afforded to our current clients. The caseload standard simply proposes we accept way more cases than our attorneys can adequately handle during a one-year period. Ethically, we cannot allow our attorneys to accept new case appointments that create a conflict of interest with current client representation. Without a workload standard adopted within this contract, we are prohibited from agreeing to the terms.

The Public Defender of Marion County opposes a caseload standard that dehumanizes our clients and prioritizes cost efficiency over ethics. Understanding what is necessary to provide

competent, compassionate, and ethical public defense services in our community, the Public Defender of Marion County proposes the following workload standards for our defense attorneys:

- Probation Violations: 20
- Simple Misdemeanors: 60
- Complex Misdemeanors: 40
- Low-level Felony (no mandatory sentences): 40
- Major Felony (M57, Level 10 Drug Cases): 30
- High Felony (M11, sex crimes, and firearm minimum sentencing): 12
- Homicide, Jessica’s Law, 3rd Strike, and M73 Sex Cases: 4

We are asking you to adopt the above workload standards to bring the proposed contract terms in line with our mandatory ethical obligations and our clients’ constitutional right to counsel. We appreciate your leadership and guidance as we formulate an ethical workload standard for the Public Defender of Marion County.

Respectfully,



Shannon I. Wilson, Executive Director for the Public Defender of Marion County

cc

Stephen I. Singer Executive Director of Oregon Public Defense Services Stephen.I.Singer@opds.state.or.us	Commissioner Steven Wax stwx@outlook.com
Commissioner Mark Hardin mhardin913@gmail.com	Commissioner Paul Solomon pjsolomon@sponsorsinc.org
Commissioner Thomas M. Christ tchrist@sussmanshank.com	Commissioner Lisa Ludwig lisa@l2r2law.com
Commissioner Christine Thomas cthomas@gobhi.org	Commissioner Alton Harvey, Jr. Alton.harvey2011@gmail.com



Blue Mountain Defenders, LLC

930 W. Juniper Ave.
PO Box 749
Hermiston, OR 97838

Phone: (541) 567-1545
Fax: (541) 567-1589
E-mail: bmd@danstephensattorney.com

Date: April 18, 2022

To: Public Defense Services Commission
Steve Singer, Exec. Director OPDS
Eric Deitrick, General Counsel OPDS

Re: Stakeholder Feedback regarding Proposed Contract Provisions

The following information is offered in response to Oregon Public Defense Services (OPDS) request for attorney provider feedback, regarding proposed changes to defense contract terms.

Blue Mountain Defenders (BMD) is a Consortium of eight attorneys, providing defense service for both criminal and juvenile matters, within the 6th Judicial District, covering Umatilla and Morrow Counties.

BMD met as a group on April 13, 2022, and has had ongoing discussions about contract terms. We would like to express the following areas of concern.

1) Compensation

The rejection of the “rural/Urban” distinction is a welcome change. However, there are still some unknowns that need answers:

a) Attorneys who are Murder/Jessica Law qualified are now to be compensated at the highest level under the new stepped compensation method. Yet, the qualification standards for these cases are different. To be truly 1st chair Murder qualified, an attorney must have 2nd chaired a Murder case through a jury trial. That is not required for Jessica Law cases. Some BMD attorneys are Jessica Law qualified, but not Murder qualified. Will the Jessica Law attorneys be compensated at the same rate as Murder qualified counsel? They should be, since both case types are equally complex and litigation intensive. If they are not, attorneys will not be accepting Jessica Law cases, and that will reduce available attorneys for that serious case type.

- b)** The 15% differential payment makes more equitable sense, to account for the different experience levels between attorneys. Greater experienced attorneys handling more serious cases, should be entitled to more compensation. A 10% differential, is not enough of a difference to account for the greater level of experience and potential liability associated with higher level cases.
- c)** There is still the open question of how compensation rates will be broken down within the compensation range. That information is needed soon, both for purposes of attorney retention and attorney recruitment.

2) 100 mile radius for Coverage – Section 3.5.1(a)

The BMD members uniformly object to the provision under section 3.5.1(a) requiring coverage for out of area conflict/overflow cases, for the following reasons:

- a)** The problems of working within our own large geographic district is difficult enough, without having to travel even further to cover cases in other regions. There are a number of distant courthouses that would apply to us, right near the limit of 100 miles. That is a 200-mile round trip, for a single case. That is simply an unreasonable cost for attorney members to absorb.
- b)** Each defense contractor must obtain attorneys necessary to manage their own contract. It is unreasonable to expect one contractor to bail out another, merely because that contractor cannot properly manage his own contract.
- c)** Typically, "conflict" cases involve the most difficult types of cases: Measure-11, Jessica Law, Murder, or they represent the most difficult types of clients. This adds to the difficulty of case resolution, and necessitates multiple trips to the remote district to resolve the case. That makes the FTE offered for such cases unreasonably low.
- d)** Traveling to remote regions also necessitates large learning curves for attorneys who do not routinely interact with the remote courts and District Attorney offices. Judges are typically unsympathetic to attorney calendaring issues, which makes case management problematic. This also adds to the low FTE value for such cases.
- e)** While the proposal does allow for consideration of additional FTE weighting on a "case-by-case" basis, the lack of clarity for that is concerning. It leaves the decision to the regional contract analyst. There should be an automatic doubling of the FTE weight, with potential additional weight if the case becomes unreasonably complex, or proceeds to trial.

3) Requirement to Accept Cases – Section 3.5.1

BMD members object to the contract provision 3.5.1 requiring attorneys to accept cases for which they are qualified, for the following reasons:

- a)** Participants within BMD consortium are independent contractors, not employees of the consortium. Their voluntary participation is sometimes based upon internal agreements of what types of cases they wish to participate in. For instance, a member may wish to decline from a Sex case, or a Domestic Violence case, for reasons individual to that attorney. BMD normally can accommodate these preferences within its internal administrative case distribution. Attorneys do not want to be in the contractual position of having to take a case, merely because they meet the qualification standards. Attorneys contract to meet FTE levels, which they have agreed to meet.
- b)** Clearly, attorneys being paid for a certain level of cases must take that level of cases for which they are paid. However, within Measure-11 and lesser felonies, there are considerable variance of case types. If I have an attorney who is paid for Measure-11 cases, she should be able to refuse Sex cases, while still taking other Measure-11 case types (Robbery, Assault, etc). Not having that flexibility will discourage attorney retention.
- c)** The proposed FTE levels, though improved, are still well below the actual work level. Attorneys must be free to say “no” to an appointment, if they feel their appointed workload is exceeding their ethical obligations. Every case and every client are different, and an attorney's FTE status is not necessarily reflective of the actual work being expended at any given time.

4) New FTE Case Weighting – Section 10.2

While the proposed FTE levels are generally an improvement over the prior contract, there are still these glaring problems:

- a)** Murder should remain at 4 per year. Even that is unreasonably high. Two per year would be more appropriate given the work involved. But twelve per year is preposterous. Believing an attorney can ethically handle one murder case per month, simply reveals a complete lack of understanding of the work involved. It is also unworkable, since no single BMD attorney can ethically accept that number of murder cases per year. While it is unlikely the 6th Judicial District will experience 12 murders in a year, the expansion of coverage to a 100-mile radius (or more) makes it likely an attorney will receive a high number of such cases.

- b)** Same comments for Jessica Law cases.
- c)** Measure-11 cases at forty-five per year is still unreasonable. No attorney is willing or able to handle one measure-11 case per week.
- d)** Probation Violations at 825 per year, makes them nearly worthless for FTE levels. An attorney would have to do 3 ½ PV's per day, every day, for the entire year, to meet that number. This FTE level will make assignment of these cases more difficult.
- e)** BMD is only a conflict contractor for Umatilla County, with the local public defender office (Intermountain Public Defender – IPD) historically having the primary role. However, with the increasing disintegration of IPD, that dynamic is changing. IPD presently only has one qualified Murder/M-11 attorney, and his role will be reduced when he assumes the directorship. That means BMD will be taking essentially all the serious level felonies. BMD attorneys did not really sign up for that. If you review reporting data for Umatilla County, you will see Umatilla County experiences a considerably high number of serious felony cases. Assignment of large numbers of serious cases to our attorneys highlights the need to increase the FTE levels for these serious cases. Low FTE values for serious cases must be offset by lower-level cases. If we have to carry the full load of serious felony cases, BMD will begin to experience the same attorney attrition rate as IPD.

5) Tracking/Reporting of Non-Contract Work – Sections 4.2 & 7.6.3

There is forceful opposition to contract provisions 4.2 and 7.6.3 that requires potential accounting and reporting of non-contract work, for the following reasons:

- a)** Private counsel do not wish to be micromanaged in all aspects of their legal practice, merely to assuage a concern by OPDS whether they are devoting adequate time towards their appointed cases. There are considerable checks and balances to ensure an attorney is meeting his ethical obligations on any given case. This includes opposing counsel on the case, the judge handling the case, and the client's right to complaint with the Oregon State Bar and the OPDS complaint process. If an attorney is achieving his FTE level of cases, he is presumptively meeting his contract obligations.
- b)** Attorneys have various work preferences, and are at different stages in life. If an attorney wants to work six days a week, twelve hours per day, that is her prerogative. It is really improper for OPDS to dictate that all attorneys can only work a set number of hours per year. If a combination of FTE plus private hours were to exceed an OPDS defined full time FTE, it is more likely an example of a hard-working attorney, rather than one short changing his appointed cases.

c) There is no way BMD administration can gather and report non-contract work to OPDS, particularly since this now includes all work, not just legal work. The effort involved in collating private work hours from numerous attorneys into a report format, is an aspirational idea at best. There is no way to verify the veracity of any information gathered, since details of client files are confidential, and merely receiving a statement of hours is not verifiable by contractor.

d) Under provision 4.2 attorney providers are restricted from engaging in non-contract work that exceeds the OPDS determined number of hours associated with the attorney's declared FTE. Under provision 3.5.1(c), attorneys declaring a 1.0 FTE cannot engage in any such work. Yet, under provision 3.5.1(d) attorneys are allowed to engage in an unlimited number of pro bono hours, without apparent restrictions for such work. Taken together, it appears OPDS is primarily concerned about limiting attorney income, rather than ensuring adequate time is spent towards contract work.

e) Under contract provision 7.3.2 OPDS declares attorney providers "independent contractors" and denies entitlement to employee public benefits. However, whether or not a person or entity is functioning as an independent contractor is a question of law. The significant contractual restrictions and controls of OPDS over attorneys arguably may classify these attorney providers as "employees" under ORS 659A.001. "The single most important factor in determining whether an individual is an independent contractor or a servant is the *right to control* or interfere with the manner or method of accomplishing the result – *not the actual exercise of control.*" McKlusky v. City of North Bend, 308 Or.App 138 (Or.App 2020). Under this contract, OPDS is limiting hours attorneys can work in other paid work, while also allowing unlimited non-pay pro bono hours, regardless of what impact the pro bono hours may have upon contract performance. The level of control asserted by OPDS over attorneys' non-contract time likely classifies these providers as employees, with actionable grievances for violations of employment law.

6) Monthly Reporting/Penalties – Section 7.6.1 & 7.6.4

BMD administration objects to reducing the Monthly Reporting timeframe from the 20th of the month, to the 10th of the month, as proposed in contract provision 7.6.1. Moving up the report submission date from the 20th to the 10th is not achievable, *if OPDS wants accurate reports*. There is a lengthy process BMD staff go through with both the courts and member attorneys to meet the deadline of the 20th. BMD staff has to:

a) Repeatedly pester the Courts to execute ORAC's (Order Appointing Counsel). Very typically, near the end of each month, the clerks do not get timely signed ORAC's by judges. My staff has to insist that be done, and preferably Nunc Pro Tunc the date to the correct month, otherwise it is an appointment for the following month. Very typically, the ORACs are not all received until well after the first week of the month.

b) Communication and verification with member attorneys must thereafter be conducted, and that takes another week to get all responses. OPDS wants tracking of both new cases and still open cases. There is considerable back-and-forth that must occur so that all members and BMD administration are in agreement as to the tally of new and open cases. I would note, when OPDS was briefly requiring direct feedback from all attorney members, considerable time was allotted to OPDS to do that. That individual verification was ultimately dropped as too unwieldy for OPDS to timely accomplish. And yet now, OPDS wants to further tighten the verification process contractors must perform.

c) I am sure there are some contractors out there, that do not submit reports. That is probably the basis for this proposed contract provision. But making the reporting period even tighter makes no sense. The 20 days is truly needed to ensure report accuracy, and to avoid having to submit multiple amended reports. BMD always submits reports timely and accurately, but cannot do that if the timeframe is shortened.

d) The enforcement provision under 7.6.4 could still be utilized, for contractors who do not submit by the 20th. Yet, there is no reason to shorten the reporting time period.

e) If the contract provision is enacted as proposed, BMD will be forced to submit a subpar report by the 10th, that constitutes nothing but a rough draft, followed by a polished final Amended Report by the 20th, in keeping with our present timelines. That would be incredibly inefficient, but a necessary response to avoid suspension of contract funds.

Respectfully submitted,



Daniel Stephens, OSB# 964358
Manager, BMD

cc: BMD attorneys
File

April 18, 2022

Via E-Mail: Contracts2022StakeholderInput@opds.state.or.us

Re: Public Comment for 4/21/22 PDSC Meeting

Dear Chair Ramfjord and Commissioners:

I am a member of a consortium in Central Oregon, however I write to you in my individual capacity. In my practice, I represent individuals in juvenile matters. Although I am categorized as a .95 FTE, I do not take work outside of my contract because I do not have the capacity.

I participated in the ABA SCLAID study for Oregon which was published a few months ago. During the results presentation, Steve Hanlon, project director for ABA SCLAID said that public defense attorneys in Oregon are handling 66% more cases than they can ethically sustain. Mr. Hanlon went on to say that all full-time public defenders are violating the Oregon Rules of Professional Conduct by continuing to operate under these caseloads. I agree with Mr. Hanlon's assessment.

I am aware that OPDS and PDSC do not believe they are able to provide a solution to this crisis until the next legislative cycle. Assuming the agency's position is correct, the proposed contract, if accepted "as is" will only exacerbate the current situation, leading to a state-wide public defense crisis. Is this OPDS' goal?

I will start with a general observation and a concern. The revised contract is confusing regarding with whom OPDS intends to contract. The term *contractor* appears undefined and, depending on the contract section, could be interpreted to refer to a consortium, a firm, a public defenders office, or an individual attorney. The agency cannot have it all. It would help immensely if OPDS identified the entity it intends to bind with this contract and maintained consistency throughout the document.

The following are specific concerns that I have with respect to the revised contract:

155 NW Hawthorne Ave.
Bend, OR 97703
Jamie@gerlitzlaw.com
Phone (541) 389-6964
Fax (541) 389-6969

Concern: There should be express exceptions to contract provisions clearly exempting ethical violations as “material breaches.”

Suggestion: Include language such as this: If complying with any provision of this contract, including but not limited to the provisions requiring representation at first appearances (7.1.2.2), Reappointment to Prior Clients (7.1.2.6) and 30-day notice prior to “shut off (7.8.2.5), might reasonably result in a determination by any official body, including but not limited to the Oregon State Bar, the Oregon Supreme Court, or any local or statewide Ethics Committee, that an attorney has violated any rule of professional conduct the attorney must comply with the rules of professional conduct and not the contract. A contractor or contract attorney is not in breach of the contract because an attorney takes reasonable action to comply with the rules of professional conduct, even if the action is in conflict with the provisions of the contract.

Concern: Prohibition on Withdrawal 7.1.5.2. This provision intends to bind individual attorneys to court appointed cases unless OPDS grants permission otherwise. Yet, there are no standards for when OPDS will grant or withhold permission. Given that dependency cases can be open for years, this is unconscionable. Does OPDS contemplate requiring an attorney whose health is failing to continue to represent a client for years? Moreover, this provision does not provide for any payment obligation on behalf of OPDS. **Suggestion: This provision should be deleted.**

Concern: Mandatory appearance for shelter hearings in juvenile matters 7.1.2.2 In dependency cases, shelter hearings are substantive proceedings. Obtaining confidential information from the client about the matter is inevitable and therefore conflicts are created for the attorneys appearing at shelter hearings.

Moreover, shelter hearings arise with less than one-day’s notice. ORS 419B.183. Practitioners such as I am in trial or attending to another juvenile dependency/delinquency related matter every day of the week. These matters include, Citizen Review Board proceedings, client conferences, witness interviews, DHS meetings, etc. It is not always feasible to reschedule such matters. Smaller consortia do not have the number of attorneys necessary to provide attorneys at every shelter hearing. **Suggestion: Remove this paragraph or provide consortia more attorneys.**

Concern: Travel costs for provision requiring acceptance of cases within 100 miles 7.7.1. All reasonable travel connected with an assigned case outside of the contractor’s usual judicial district shall be reimbursed at the IRS business mileage rate in effect at the time of the travel. Travel to and from the judicial districts at issue is presumptively reasonable and need not be authorized in

155 NW Hawthorne Ave.
Bend, OR 97703
Jamie@gerlitzlaw.com
Phone (541) 389-6964
Fax (541) 389-6969

advance. **Suggestion: Reimburse mileage at the federal rate and provide appropriate case weights to account for the increased burden of travel time.**

This “new” contract is substantially different than the contract under which OPDS and indigent defense providers have been operating for years. OPDS is correct that the existing contract needs substantial revision. However, the process by which the contract is revised should be a deliberate, transparent, and thoughtful process whereby all stakeholders have a meaningful opportunity to digest, evaluate, and consider the proposed changes and offer thoughtful suggestions for improvement. The process whereby these revisions have been proposed is the opposite of this ideal. This process has been hasty and opaque. The amount of time allowed for comment was simply too short for a truly thorough analysis of the potential impact these revisions will have on indigent defense providers and their vulnerable clients.

Thank you for your thoughtful consideration of my comments.

Sincerely,

S/ Jamie L. Gerlitz

Jamie L. Gerlitz

155 NW Hawthorne Ave.
Bend, OR 97703
Jamie@gerlitzlaw.com
Phone (541) 389-6964
Fax (541) 389-6969

PUBLIC DEFENDER SERVICES OF LANE COUNTY, INC.
180 E. 11TH AVENUE, EUGENE, OREGON 97401-3537
Phone: (541) 484-2611 Fax: (541) 484-5068

BROOK REINHARD, EXECUTIVE DIRECTOR
ROBERT C. HOMAN, ASSISTANT DIRECTOR
REID KAJIKAWA, DIRECTOR OF TRAINING
GABRIEL K. BRADLEY
ZACHARY BROWER
TUCKER CAMPBELL
AMY COUNTER
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PAUL M.D. FRASER
MICHAEL HAJARIZADEH
ROWAN HARDENBROOK
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LAURA RUGGERI
NICHOLAS P. SEYMOUR
ANNETTE SMITH
MARLA SOILEAU
BRIAN J. WALKER

April 18, 2022

Stephen Singer via email at Contracts2022StakeholderInput@opds.state.or.us
Executive Director – Office of Public Defense Services

RE: Proposed 2022-2023 Contract Comments

Dear Executive Director Singer:

As a staff attorney at Public Defender Services of Lane County, Inc., I wanted to extend my thanks for incorporating our perspectives into your decision-making process. The proposed provisions of the upcoming contract will impact the daily practice of public defenders across the State, and more importantly, the lives of our clients. They are Constitutionally-entitled to quality defense. Speaking in terms about budgets, and numbers seems to overlook the very personal quality about the work that we do. I appreciate you keeping our clients' personhood in mind as you make decisions, because at the end of the day, they are the ones that face the real ramifications of these discussions. Access to justice is an ongoing issue in the criminal justice system, and I understand that it can be difficult to make concrete assertions about the ideals and goals for public defense.

The contract proposals are comprehensive but I would like to provide some commentary as to several aspects of the more tenuous provisions that cause the most concern for those of us practicing as public defenders.

The proposed Annual Caseload Standards strike me as unethical on their face. It's unsettling that the proposed caseload numbers by OPDS would essentially make practicing as a public defender *per se* unethical. Please consider the numbers and statistical analysis contained in the recently-released ABA study. While I believe that the caseload numbers could be enhanced on a temporary basis, there should also be an acknowledgement by OPDS that there is a long-term solution that would require lower caseload standards for public defenders in the long run. The indefinite nature of the caseload standards is personally worrisome, and also may cause qualified defenders to leave the profession in search of something that comports with our standard of ethics as attorneys.

I recently learned that OPDS funding is currently less than half of the cost of one investigator employed by our office. Investigators are so involved in our daily practice and I wish that OPDS would provide more funding for nonprofit public defense offices to employ these positions as they are completely ingrained in the adequate defense of our clients. The same goes for Social Workers—they are likewise absolutely indispensable to the proper, holistic defense of our clients.

With respect to the 100 mile rule proposal, I believe this problem can be further workshopped.

There are more economical solutions to the problem as presented. I understand that time is of the essence in devising a solution, but there are other ways to address the issue and I believe there should be additional time for public comments by those affected. For instance, there could be one or two practitioners that are paid to cover as overflow to certain jurisdictions. Even if they cannot personally take the appointment of a case, they can be responsible for delegating it to someone that is able. I think that requiring all attorneys to be willing to drive that distance will lead to a host of problems while not addressing the underlying issue. There need to be limits or checks on how many times a person can ask for a new court-appointed attorney, especially in remote areas.

While I understand the need for counsel in the post-judgment posture of a case, there just needs to be more clarity as to what our offices will be required to provide to our clients at that phase of the proceedings. We owe a different duty to “current clients” than we do to “former clients” and I believe that continuing our representation seemingly indefinitely in many instances would lead to conflicts of interest that prevent our office from taking on new cases. I believe the court should be a gatekeeper on this issue and we should be re-appointed for post-judgment relief in a specifically-articulated and enumerated scenarios.

Cost of living has skyrocketed over the past few years, and I humbly ask that you bear that in mind as you draft this contract. As public defenders, we work tirelessly for the rights of the accused and it can feel thankless at times. Providing adequate compensation for those in public defense is necessary to securing qualified defenders now and going forward.

We appreciate the opportunity to be heard, as this contract will have a significant impact on our livelihood. Thank you for your commitment to public defense and the criminal justice system.

Respectfully Submitted,

Amy L. Counter
Staff Attorney
Public Defender Services of Lane County

Director Singer and Commissioners:

My name is Reid Kajikawa, and I have been involved in Public Defense for seventeen years. I have practiced primarily in rural counties, and am the Director of Training at the Public Defender Services of Lane County and the Supervising Attorney for the University of Oregon School of Law Criminal Defense Clinic. I have experience in adult criminal, juvenile delinquency, juvenile dependency, and civil commitment cases, and I serve on the senior management team at PDSL. I write to address some concerns I have with the proposed contract terms that the Agency has proposed to the Commission and providers.

The Agency has proposed new contract terms that are more onerous and less economically sustainable than previous ones, further driving attorneys away from the practice, both on contracts and at Public Defense nonprofits. I'd like to address some of the terms that most concern me.

Caseload/Workload

3.5.2 Capacity Increase or Decrease

When caseload increases or decreases by 15% for six consecutive months, Contractor and OPDS shall discuss the circumstances surrounding the increase or decrease. OPDS may adjust the number of FTE in the contract to meet the changing needs of the jurisdiction if:

- (a) The probable number of available cases increases or decreases substantially, such that the proposed FTE amount no longer corresponds with caseload needs;
- (b) The introduction or discontinuation of a specialty court; or
- (c) OPDS determines that an increase or decrease in FTE capacity is in the state's interest.

When extending the 2020 contract into 2021, the Agency described their NAC standards based caseload expectations as a cap, not a quota. In practice, the Agency used them as a quota. Despite COVID-19 related backlogs in cases, when providers let the Agency know that the **workload** created by case backlogs and new appointments was unsustainable, providers were threatened with reduction in their contract payments if they sought to limit their appointments.

These terms are worse, putting that quota system in writing and forcing providers to accept these terms. The ABA study published this year states clearly that we have three times as much work than attorneys to do it. If there is a reduction in workload, that is good. That should be the goal. Removing attorneys from the system when there is a drop in workload sends the exact wrong message to the providers, but also to the legislature, signaling to them that the workload model, while aspirational, is not practically necessary.

How can providers believe that the Agency and the Commission is working in good faith to reduce caseload and workload under these contract terms?

If anything, the Agency should be glad if the caseload drops 66%. If there are cases in excess of the expected model, the rest of the contract provides for neighboring counties to absorb the work.

Caseload Standards:

10.1.1 The caseload of a full-time public defense attorney should not exceed the caseload standards specified below:

- a. Adult Murder/Jessica's Law: 12
- b. Adult BM 11 Cases: 45
- c. Adult A and B Felonies: 138
- d. Adult C Felonies: 165
- e. Adult Misdemeanors: 300
- f. Probation Violations: 825
- g. Civil Commitments:

These workloads remain excessive. To force providers to agree to these numbers is unmanageable. I fail to see how the Agency can look at the ABA and 6th Amendment Center reports, see very clearly that the workload is unviable, and bake these expectations into contract terms. In adding a requirement in 10.3 that murder cases shall have co-counsel, the combination of workload and actual people to do the work are not in balance. These numbers also fail to consider existing caseloads; the revolving door of contract extensions has given the Agency the belief that it can re-set our expected case appointment numbers, when those cases continue to require ongoing work.

Excessive caseloads have always existed. There were many, many years in which I closed between 300 and 400 cases, usually a mix of major, minor, and Ballot Measure 11 felonies. My burnout and recovery cycles were predictable; while they occurred quarterly early on, over time they were reduced to biannual and then annual—or sometimes less frequent—occurrences thanks to years of work dedicated to self-care and a managed practice. As a supervisor and a teacher, one of my biggest goals is to help new attorneys and students to accurately gauge their workload, to know when and how to ask for help, and to instill in them a belief that Public Defense should not use them up and throw them away.

These quotas placed on providers will lead to burnout and attrition.

There are a number of other concerning contract provisions. The Contract Reporting requirements place an undue burden on large offices: counting case statistics and numbers is quantitatively more difficult when you are counting 800-1000 cases as opposed to 40-80 for an independent contractor. Post-judgment obligations placed on the providers suggest that a case might remain open for years, such as earned misdemeanor treatment following the successful completion of probation, making conflicts more entangled than necessary.

Finally, pay disparities have always existed. In every jurisdiction I've practiced, Public Defender pay has lagged between \$20,000.00 and \$40,000.00 behind their counterparts at District Attorneys' offices. Moreover, the pace at which prosecutors' pay scales increase serves to widen the gap quickly and severely for attorneys with three to five years of experience, just when Public Defense needs those experienced attorneys the most.

For large nonprofits, continuing to require them to pay for administrative staff, investigation, rent, insurance, parking, bar dues, Continuing Legal Education, etc. out of an "FTE" pool of money designed to support an attorney continues to suppress Public Defender salaries.

While there may be exciting changes at the Agency level, I have never seen Public Defenders and Contract Defenders so discouraged by the way the Agency has treated them, and the way they **expect** the Agency to treat them in the future. The loss of goodwill that the Agency has with its providers is staggering when you remember that each of the providers is dedicated, and for some have **dedicated their entire careers**, to doing this work.

The unveiling of the new proposed contract terms continues the widening gap between the Agency's words and credibility with its providers. While the Agency claims that it is being transparent, it has not lived up to its claims. Transparency is not revealing new contract terms immediately before a Commission Meeting. Transparency does not involve handing a contract to a provider and giving them two weeks to review and sign.

It is clear that the Agency is trying to solve problems it sees in its providers with the new proposed contract terms it is attempting to impose on them.

The Agency has not told the providers what it believes those problems to be. The Agency has not sought a dialogue with its providers about whether those problems are systemic or isolated. The Agency has not collaborated with its providers to determine the relative severity of those problems. The Agency has not explored potential solutions with the provider community about how those problems should best be addressed.

Until the Agency engages with its providers **before**, during, and after they appear before the Commission, these rules, policies, and contract terms will continue to be seen as edicts by the provider community rather than steps toward improvement in the profession. The proposed changes solve none of the systemic problems of Public Defense, and make the job more difficult for each of the attorneys that chooses to stand beside people accused by the state.

Sincerely,



Reid Kajikawa (he/him)
Director of Training
Public Defender Services of Lane County
180 East 11th Avenue
Eugene, OR 97401

Contract Terms

- a. 1.4.2 Contractor – Is this the definition for the consortium or the attorneys contracted by the consortium?
- b. 1.4.6 and 10 – What are the caseload standards? Are they the same as the original contract?
- c. 3.3 termination by PDSC for cause - is completely undefined, one sided and can lead to arbitrary termination without recourse.
- d. 3.5.1(a) – This seems to be the largest issue my members have with the new contract. Our group meets and exceeds our obligations every month. There is no feasible, ethical way any of us can manage a workload that includes this provision. There are many counties within 100 miles from Lane County. If there is a clause about contractors who meet their obligations not being subject to this provision, we want that included in writing in the contract. Also, if there is an issue with groups who are not meeting the obligations of their contract then OPDS should renegotiate their contract and spend the available funds from that to pay attorneys to take those out of county cases for a reasonable hourly rate.
- e. 3.5.1 (c) and (d) – Why is pro bono work allowed but not paid? If we are worried about overloaded attorneys, it shouldn't matter.
- f. 3.6 – This takes us perilously close to being considered employees
- g. Section 5 – There is no definition of professionalism, so it leaves it to OPDS to define.
- h. 7.1.2.4(b) – Restitution hearings can take months to be heard, if not longer. There should be a 180-day limit on not receiving an additional case credit following a sentencing judgment.
- i. 7.1.2.6 – This is very difficult because we cannot predict time frames. If the DA refiles a case a year after dismissal and you are no longer contracted, are you legally obligated to retake the case. Same for if a client is arrested two years later or a case is remanded three years down the line.
 - i. (c) Please specify what special circumstances would warrant a reassignment. Many clients do not want the case returned to the trial attorney. Is that a special circumstance?
- j. 7.1.3.1(a) – This would be very difficult for cases that we are appointed to in compliance with 3.5.1(a), are in trial, are sick, or a number of different, unforeseen circumstances.
- k. 7.1.5.1 – “If the court approves Contractor’s request to withdraw, the Contractor shall notify OPDS in writing.” Is Contractor the consortium or the contracted attorney? If it is the individual attorney, is OPDS expecting an email or a letter every time we must withdraw from a case? Is OPDS expecting an email or letter from the Consortium administrator of the withdraw? Are you referring to cases that no one in the consortium can be appointed to and must go into the OPDS pool? Please make this clearer.
- l. 7.4.1(b) – 30 days is not long enough to find and contract with a new attorney, especially if the expectations are that new contracted attorney has equal or greater qualifications than the attorney who is leaving.

- m. 7.4.1(d) – Is this requirement for individual attorneys to have staff within 30 days or the Consortium? Again, no clear definition of contractor.
- n. 7.5.2 – No clear definition of contractor. Are individual attorneys supposed to use the accrual method?
- o. 7.6.3 – OPDS should not have access to non-contract work information.
- p. 7.6.4 – Monetarily penalizing us if we are a day or two late with the reports seems extreme, especially when you have shortened the deadline.
- q. 7.8.2.5 – It is not possible to give 30 days' notice if we have to shut off. Based on how the appointments are assigned and are ability to manage the workload, 2 weeks sounds much more doable. Also, then we are forced to take cases for 30 days when we are overwhelmed, which conflicts with our goal to be within the ethical limits to be effective as counsel.
- r. 9 – We interpret it as saying OPDS can end our contract at any time and then attorneys would still have to work on all appointments at a rate that is much lower than the contract provides.
- s. 10 Caseloads – Not defined. Is it going to remain the same form the last contract?
- t. 10.2 – Case weighting not included

To: Contracts2022StakeholderInput@opds.state.or.us

Date: April 18, 2022

From: Youth, Rights & Justice

Re: PCRCP Contract

Contract Term 3.6.1

Term summary: Contractor shall accept conflict and overflow appointments from jurisdictions no more than two counties distant from Contractor's place of business and will receive one additional case credit.

Comment: Out-of-county work is expensive and timely for contractors. Each county has different processes for work such as discovery, dockets, and scheduling meetings. It is extremely difficult to manage multiple processes. In order to stay true to the PCRCP model, significant travel is required as contractors must appear in-person for court, client contact and meetings.

Recommendation: Significantly limit or restrict out-of-county work or allow for more credits- the number of credits that reflect the additional workload.

Contract Term 7.1.5.2

Term summary: When a public defense attorney leaves a firm to go to another public defense office in the same or adjacent county, the leaving attorney is required to take cases with them.

Comment: This term creates significant workload in counties that appoint firms and not individual attorneys. This requires extensive conflict checking as well as the original firm to submit substitutions of counsel for each case. There are times when particular cases should be transferred and other times when the cases should remain at the firm.

Recommendation: OPDS should work with the original public defense firm and the new public defense firm to create a plan to address whether cases will transfer with the leaving attorney.

Contract Term 7.4.1

Term summary: Contractors are required to fill all attorney and support staff vacancies within 30 days and must fill attorney vacancies with an attorney who possesses equal or greater qualifications.

Comment: It is nearly impossible to fill any position within 30 days. In the current job market and public defense crisis it is difficult to impossible to find an attorney of equal or greater qualifications to fill a position of a leaving attorney. New attorneys are drawn to public defense and experienced attorneys move on to positions with greater pay. The retention of experienced public defenders is an issue that only OPDS and the legislature can adequately address.

Recommendation: Continue to allow firms 90 days to fill vacancies and do not require that firms hire an attorney of equal or greater qualification.

Contract Term 1.4.8 Pre-appointment Representation

Term Summary: OPDS allows for pre-appointment representation during a child welfare investigation.

Comment: Pregnant teens and young adults currently in the custody of DHS and OYA, parents with an open DHS case with children already involved in the dependency system, and pregnant

women with substance abuse disorders are subjected to child welfare investigations at incredibly high rates. DHS does not open a formal investigation until birth. The time period from birth to petition is too short (typically 24 to 72 hours) to provide pre-petition representation. Additionally, it takes months of work with a pregnant or expectant client to develop an appropriate plan to eliminate the need for a dependency petition. OPDS has been approving pre-petition representation for pregnant and expectant parents.

Recommendation: We recommend that OPDS continue to approve pre-petition representation for pregnant and expectant parents. The language for pre-petition appointment should include “pregnant or expectant parent and at substantial risk of a child welfare investigation.”

Contract Term 10.3 Case Closure

Term Summary: For dependency and termination-of-parental-rights cases, the Contract is required to close the case within 30 days of the court entering an order or judgment terminating the parental rights of the attorney’s client.

Comment: At times, the court continues the contractor’s appointment so the contractor can assist the client with a post-adoption communication agreement.

Recommendation: The term should allow for attorneys to remain appointed following the termination of their client’s parental rights if the contractor is actively working on assisting their client in obtaining a post-adoption communication agreement.

PUBLIC DEFENDER SERVICES OF LANE COUNTY, INC.
180 E. 11TH AVENUE, EUGENE, OREGON 97401-3537
Phone: (541) 484-2611 Fax: (541) 484-5068

BROOK REINHARD, EXECUTIVE DIRECTOR
ROBERT C. HOMAN, ASSISTANT DIRECTOR
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CAITLIN PLUMMER
JAMIE T. PRUITT
LISA ROMANO
LAURA RUGGERI
ANNETTE SMITH
MARLA SOILEAU
BRIAN J. WALKER

April 18, 2022

Stephen Singer
Executive Director
Office of Public Defense Services

Mr. Singer,

I wanted to thank you for the opportunity to comment on the new contract proposal between OPDS and public defense providers prior to Thursday's commission meeting. I know this is a rapidly-evolving process and many of the contract terms I'm concerned about are already in the process of being further modified by the agency, but given the time constraints, I'm going to try to address each area that I believe as problematic. You indicated it would be most helpful for providers to divide their comments into three different areas: Contract Terms, Caseload Standards, and FTE and reimbursement rates. I'm happy to do so, but first I want to address a threshold matter regarding a core assumption for the next fiscal year:

OPDS should not be attempting to cover 100 percent of projected caseloads for 2022-2023.

You stated in your memo to providers that one reason the projected caseload standards for the fiscal year are so high is that all the cases must be covered. I must respectfully disagree. Until Oregon is able to bring down caseloads for lawyers, we'll continue to hemorrhage defense attorneys in this state, making the problem even worse. I couldn't agree more with the recent statements of Chief Justice Martha Walters – we need a holistic solution to the public defender crisis in Oregon with assistance from the judiciary, executive and legislature. You certainly cannot directly change how many cases are charged by prosecutors in this next year, but the PDSC can determine how many cases OPDS can reasonably take with the available supply of lawyers. The legislature can add funding for more lawyers (I've hired six with the emergency funding, but at the same time, two existing lawyers have departed my office.) And the judiciary can assist by setting over arraignments for defendants accused of out of custody misdemeanors and minor felonies until lawyers are available to take the cases.

1) Contract terms

3.5.1 Court Appointments

This provision seems more suited towards consortium and solo attorney contracts than for nonprofit public defenders. Regardless, the second sentence needs to factor in existing workload. My suggestion: "Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys **with available workloads to cover that case type.**"

3.5.1(a) 100 mile rule

This rule appears to be overbroad and needs clarification. Regarding conflict appointments, if a defendant is on their fourth or fifth attorney in a county, the Court should be denying the withdrawal, not subjecting counsel from a neighboring county to a case that no lawyer within the county is willing to take. If the

contemplated case appointment is based on a case overload, the contractor should discuss whether it can take the case in good faith with their OPDS analyst, but a contractor should not be *required* to take cases from the neighboring jurisdiction, particularly without factoring in the existing workload for that contractor, and whether it would violate their ethical limits for cases. Other factors that should be discussed when negotiating whether contractors should take neighboring county appointments: 1) Whether the Court in the neighboring jurisdiction will allow remote appearances on all matters other than a jury trial, 2) Whether the defendant is in custody and the visitation policies of the local jail, if so, 3) Whether the neighboring Court is willing to be flexible with contractor's existing case commitments in their home jurisdiction, 4) the round trip time required to drive from the neighboring county office to the courthouse in the jurisdiction.

3.5.2 Capacity Increase/Decrease

According to the ABA report for Oregon, the state has less than one third of the attorneys needed to adequately represent all client cases. Given this finding, any jurisdictional variances that have cut caseloads by more than 15 percent represents a significant step towards the more reasonable cases called for by the ABA study. As addressed further in the case weighting comments, we should be striving for smaller open caseloads so attorneys have the time to meaningfully work on client cases, which is likely to improve outcomes and reduce recidivism and spending on public safety long term. If OPDS believes this term is needed at all, make the percentage difference larger than 15 percent, and make 3.5.1(c) an "and" instead of an "or", as it may well be in the state's interest to keep greater lawyer capacity in jurisdiction with case shortages, particularly given how hard it is to hire, onboard and train new lawyers. Finally, if a county's caseload has **increased** significantly, contractors and OPDS should not be waiting for six months to address how to add capacity in that jurisdiction.

4.2 Work Outside Contract

This provision illustrates the difficulty with expecting nonprofit public defender offices to train and supervise lawyers without specifically funding training and supervision. I don't know how to account for my training and supervision time if OPDS does not believe it is work pursuant to the contract (since it is not paid by OPDS.)

5.6 Periodic Review

I am unsure how to read this provision given the specific rules in 3.5.2 (see above). Is this still pursuant to the ethical limitations on lawyers to not take excessive caseloads?

7.1.1 Standard of Representation

I do not know how to reconcile this section with the proposed caseload matrix in section 10.2. I cannot agree that contracting for a lawyer take 825 probation violations or 45 major felonies (Measure 11 cases) in one year is ethical, particularly when the lawyer's existing caseload isn't even considered.

7.1.2.4 Post-judgment proceedings

I respectfully would request significant clarity on these rules (they have been problematic for years, but I believe now would be a good time to fix them.) I will also reach out to OPDS General Counsel for a more substantive conversation. These provisions, when they are not paired with a time limitation, create an arguable expectation that a client continues to be represented by the lawyer in perpetuity. For conflict checking new cases, I need a bright line rule that my staff can use to determine when we can take a case and when we must decline it ethically. I would suggest that OPDS adopt a new, specific rule on how long these obligations persist once a case is closed, and then if there is a need to assist the (former) client further, these rules should indicate that defense counsel should not unreasonably refuse a *new* appointment from the Court except pursuant to 7.1.1 (including ORPC 1.7 and 1.9). Here are some specifics on how I'd suggest the subsections change:

- a) This should be time limited to no more than 90 days post-judgment, and then require a new appointment.
- b) This is reasonable, but a time limitation of 90 days would still be appropriate in most cases.
- c) Of course, but this should be limited to 90 days as I am unaware of any avenues for relief for defendants post 30 days (or 90 days when it is due to defense counsel's failure to request the appeal.)

- d) Again, I understand the need for this rule, but it should be time limited absent a new appointment. I would argue 90 days is reasonable.
- e) The time restrictions for filing a motion for a new trial is already severely limited, so I don't believe an additional time limitation is needed on this provision.
- f) This should be subject to a new appointment being requested by the defendant and approved by the Court, subject to 7.1.1 and ORPC 1.7 and 1.9.
- g) This is reasonable, assuming the former client has given informed consent and counsel is not violating ORPC 1.6.
- h) I don't view this provision as "representation". The client, at this point, is my former client, not my current client. This provision should also be subject to the phrase "within a reasonable period of time".

7.1.2.6 Reappointment to Prior Clients

The beginning phrase should read "shall not unreasonably refuse appointment". Also, I assume all these provisions count as a separate case?

7.3.2 Independent Contractor Clause

Many terms of this contract are more consistent with an employer-employee relationship. I don't believe my signature on this contract indicates that I am forming a legal conclusion on whether I am an independent contractor or not.

7.4.1(b) Vacancies

I commented at the Commission meeting on April 8 on this topic. On further reflection, I'd like to modify my comments: 90 days should be given instead of 30, unless OPDS determines that the contractor is not making good faith efforts to promptly hire another attorney. Further, OPDS should extend the timeline to hire an attorney beyond 90 days if the agency determines the contractor is making significant efforts to hire and, through no fault of their own, is unable to make a hire within the timeline.

7.4.1(c) Notifying OPDS when attorney on leave

This provision is fine, assuming OPDS does not change the funding levels for a contractor's attorneys who are on leave when a contractor cannot control the leave situation, but contractors who are employers and not solo providers need a separate provision for covering OFLA and increased funding due to the payroll tax deduction for OFLA that begins in 2023. I am happy to discuss this further.

7.4.1 (d) Rules for retaining support staff

I'm generally in favor of these rules and I think they lead to a more client-centered practice. However, many offices (including mine) have far more than .5 support staff per attorney. Unless OPDS is planning paying for the increased ratios of support staff in nonprofit public defender offices (which the OPDS-led contracting improvement workgroup recommended in September 2021), OPDS should not be requiring contractors to fill support staff vacancies unless the contractor dips below a .5 per 1 attorney FTE ratio.

7.4.2 Certification to OPDS

I believe this requirement was previously grouped as a consortium requirement but not a PD requirement, which makes sense given the recent history on consortia non-compete agreements, etc. My attorneys are not parties to this contract, they are employees, and frankly, many of the terms of this contract are likely to dissuade public defenders from working on public defense cases if those terms are not further modified. Do you really want me to certify that they've read the contract?

7.6 Reports to OPDS

OPDS has changed the required format several times during the last 2.5 year contract. Generally, these reporting changes were not accompanied by extensive notice, nor was it readily apparent how OPDS was actually using the data that contractors were scrambling to gather. I would respectfully request that these reporting provisions include a reasonable time period and notice of new procedures before contractors are required to comply with changes to reporting requirements. Specifically to section 7.6.4, it does not seem necessary or reasonable that OPDS would propose to withhold funds to a contractor who is late unless there is a consistent pattern and practice of late reports, particularly given that OPDS was in a position

last June where it had to take out short-term loans from several contractors to pay its own financial obligations, including six figures from my office.

2) Caseload Standards

The caseload standards as proposed are a significant barrier to me recommending to my board of directors that I sign the proposed contract. I am sympathetic to why OPDS cannot secure more funding in the middle of a biennium, and I realize that more money would have been available without the disastrous failure to account for NRE funds that was in no way your fault and happened years before you arrived here. However, these caseload standards, if they operate as a quota and not a maximum, will further drive attorneys away from public defense and cause our clients to lose even more faith in our ability to adequately represent them – as the client survey in the April 21 agenda packet indicates. It is because of those reasons I am urging the PDSC to reject the idea that it is responsible for providing 100 percent of projected cases in the next fiscal year. I understand why every murder and measure 11 client must be represented regardless of the budget or attorney situation, but OPDS cannot control the charging practices of 36 different district attorneys, nor can it control the docketing calendars of our circuit courts. However, if our system partners know that only 70 percent of cases can be covered, for instance, it allows our prosecutors and circuit courts to do the same sort of triage we are tasked with on a daily basis.

With these caveats in mind, here is what I propose for an intermediate caseload standard for July 1, 2022, until the legislature can secure more funds and more attorneys to work towards the ABA standards for Oregon.

Murder/Jessica’s Law/3 Strikes :	4
Measure 11/Other Major Felony:	30
Class A and B Felonies	100
Class C Felonies/Complex Misd	125
Misdemeanors/Contempt	200
Probation Violations	300
Civil Commitments	150

Once the agency can secure reasonable caseload standards, the more important distinction is workload standards that vary by region that takes into account any number of variables that determine how many cases attorneys can reasonably carry at any given time. I will defer to the comments made in the letter by Public Defenders of Oregon on this topic to avoid repetition. The most important takeaway I would have is that any attorney with an existing workload should not be required to take a full caseload that ignores the realities of their current client cases.

3) FTE and Reimbursement rates

Overall FTE/Reimbursement rate feedback: I understand why you are advocating a tiered rate that pays more for more experienced attorneys. This is a reasonable long-term approach. However, until OPDS can account for the numerous factors driving higher costs in a public defender’s office, any financial policy that treats nonprofit public defender offices in a similar posture as consortia will naturally favor consortia. Nonprofit Public Defender offices have professional staffers who address holistic defense issues with clients. We have decades of client files and data to maintain. We are expected to staff arraignments and be the “information booth” to people navigating the system for the first time. We do the bulk of training, supervising and developing attorneys in Oregon, including the recruiting pipeline for current law students. We pay staff investigators instead of relying on the more lucrative NRE funds. For all these reasons, nonprofit PDs should be paid at a higher rate than consortia. Until that time, a tiered rate that rewards case specialization is likely to reward consortia, who can cut their overhead and support staff expenses (often at client expense) and offer higher rates of pay for experienced attorneys.

Given these factors, I would ask that OPDS fully fund the cost of staff investigators for nonprofit public defenders, and pay for training and supervision so I can reduce the caseload for my supervisors and focus on the quality assurance that Oregonians should expect from an adequately-resourced public defender’s

office. I would also advocate strongly for either no percentage tier between experience levels at this present time, **or use a 5 percent differential** instead of 10 or 15 percent.

Cost of living increases: By June, my office will have operated for 2 ½ years without an OPDS cost of living increase. I know a 3 percent COLA is being contemplated; from January 2020 to March 2022, CPI has already increased 11.5 percent, and it is likely to increase further in the next three months. I would ask for a 12 percent COLA.

I realize there is likely not money in the budget for this amount of a COLA. However, I think this is a fairly minimal request, given the requirements that the PDSC must comply with in HB 2003 (specifically the policies that require promoting public defender provider compensation that is comparable to prosecution compensation, and requiring considering overhead costs “that account for the cost of living and business cost differences in each county or jurisdiction”

Conclusion

I appreciate you reviewing these comments. I know there’s a short time frame for considering changes to the proposed contracts, and I would invite you and the PDSC to consider whether several more weeks are needed to hammer out issues before sending these contracts out to providers. As always, I respect your commitment to public defense and the work of our volunteer commission.

Sincerely,

Brook Reinhard

Brook Reinhard
Executive Director
Public Defender Services of Lane County

PUBLIC DEFENDER SERVICES OF LANE COUNTY, INC.
180 E. 11TH AVENUE, EUGENE, OREGON 97401-3537
Phone: (541) 484-2611 Fax: (541) 484-5068

BROOK REINHARD, EXECUTIVE DIRECTOR
ROBERT C. HOMAN, ASSISTANT DIRECTOR
REID KAJIKAWA, DIRECTOR OF TRAINING
GABRIEL K. BRADLEY
ZACHARY BROWER
TUCKER CAMPBELL
AMY COUNTER
TIMOTHY P. FLEMING
PAUL M.D. FRASER
MICHAEL HAJARIZADEH
ROWAN HARDENBROOK
JONATHAN HERITAGE
JORDON HUPPERT

ROBERT KAISER
ALLISON KNIGHT
ZARA LUKENS
ANNIE MONTGOMERY
EILEEN M. PEPPLER
CAITLIN PLUMMER
JAMIE T. PRUITT
LISA ROMANO
LAURA RUGGERI
NICHOLAS P. SEYMOUR
ANNETTE SMITH
MARLA SOILEAU
BRIAN J. WALKER

April 18, 2022

Stephen Singer
Executive Director
Office of Public Defense Services

Mr. Singer:

I would first like to thank you for the opportunity to commit on the contract proposal and will take this opportunity to address some of the same issues that have confronted public defense for decades.

I would like to challenge what has been termed, one of the significant constraints in the contracting process: that all of the cases have to be covered.

Nineteen years ago, in March, 2003, because of a budget shortfall, the State Court Administrator issued a directive that suspended payment for indigent defense services for certain types of charges. The courts, relying on that directive, declined to appoint counsel for those cases. Because no attorneys were available for this class of case, the prosecution of those cases was “suspended” until the next legislature restored the funding. See, e.g. *State v. Tatarinov*, 211 Or App 280 (2007), where this was discussed by the Court of Appeals in a “speedy trial” context. This was a terrible solution to a persistent problem, but it was a solution. Until there is sufficient funding to adequately fund indigent defense, some cases simply should not be prosecuted.

I would also like to address the lack of definition of what constitutes a case. Cases differ widely from county to county, so it is very important to define a case in the context of how that case is viewed in each jurisdiction. In Lane County, it is common practice to file an Information that sometimes includes multiple victims and oftentimes includes multiple incident dates. If the case does not get negotiated, motions to sever are common and what began as a single Information can lead to multiple trials. The simple solution would be to agree that crimes which occur on different incident dates are separate cases. Whatever the solution, the definition of what constitutes a case needs to be addressed with more specificity. This concept effects workload as much as it does caseload.

Finally, I would like to discuss Caseload Standards. In our office, all of our attorneys handle a mix of cases. That being said, the proposed standards are untenable. It would be impossible, and unethical to handle 12 murder cases in a single year. Measure 11 cases should not be lumped together. Measure 11 sex cases are difficult by their very nature. They are a different class of case in complexity and generally, need a higher level of expertise. These cases subject an attorney to burnout more often than any other category of cases. I suggest that an attorney should handle no more than six Measure 11 sex cases per year. 850 probation violations would result in 15 cases per week per attorney. Probation violations can be very complex, especially dealing with cases which could lead to long prison sentences because they were initially “downward departure” cases. A maximum of 5 cases per week or 260 cases per attorney would seem more reasonable.

There are more contract terms which should be addressed but I will leave that to others. There are deadlines which appear to be unreasonable and other terms regarding post adjudication representation which are unworkable.

I thank you for the opportunity to address some of my concerns and I hope that my 45 years of experience in indigent defense may help you in formulating a workable contract.

Sincerely

Robert C. Homan
Assistant Director

Director Singer and Commissioners:

My name is Reid Kajikawa, and I have been involved in Public Defense for seventeen years. I have practiced primarily in rural counties, and am the Director of Training at the Public Defender Services of Lane County and the Supervising Attorney for the University of Oregon School of Law Criminal Defense Clinic. I have experience in adult criminal, juvenile delinquency, juvenile dependency, and civil commitment cases, and I serve on the senior management team at PDSL. I write to address some concerns I have with the proposed contract terms that the Agency has proposed to the Commission and providers.

The Agency has proposed new contract terms that are more onerous and less economically sustainable than previous ones, further driving attorneys away from the practice, both on contracts and at Public Defense nonprofits. I'd like to address some of the terms that most concern me.

Caseload/Workload

3.5.2 Capacity Increase or Decrease

When caseload increases or decreases by 15% for six consecutive months, Contractor and OPDS shall discuss the circumstances surrounding the increase or decrease. OPDS may adjust the number of FTE in the contract to meet the changing needs of the jurisdiction if:

- (a) The probable number of available cases increases or decreases substantially, such that the proposed FTE amount no longer corresponds with caseload needs;
- (b) The introduction or discontinuation of a specialty court; or
- (c) OPDS determines that an increase or decrease in FTE capacity is in the state's interest.

When extending the 2020 contract into 2021, the Agency described their NAC standards based caseload expectations as a cap, not a quota. In practice, the Agency used them as a quota. Despite COVID-19 related backlogs in cases, when providers let the Agency know that the **workload** created by case backlogs and new appointments was unsustainable, providers were threatened with reduction in their contract payments if they sought to limit their appointments.

These terms are worse, putting that quota system in writing and forcing providers to accept these terms. The ABA study published this year states clearly that we have three times as much work than attorneys to do it. If there is a reduction in workload, that is good. That should be the goal. Removing attorneys from the system when there is a drop in workload sends the exact wrong message to the providers, but also to the legislature, signaling to them that the workload model, while aspirational, is not practically necessary.

How can providers believe that the Agency and the Commission are working in good faith to reduce caseload and workload under these contract terms?

If anything, the Agency should be glad if the caseload drops 66%. If there are cases in excess of the expected model, the rest of the contract provides for neighboring counties to absorb the work.

Caseload Standards:

10.1.1 The caseload of a full-time public defense attorney should not exceed the caseload standards specified below:

- a. Adult Murder/Jessica's Law: 12
- b. Adult BM 11 Cases: 45
- c. Adult A and B Felonies: 138
- d. Adult C Felonies: 165
- e. Adult Misdemeanors: 300
- f. Probation Violations: 825
- g. Civil Commitments:

These workloads remain excessive. To force providers to agree to these numbers is unmanageable. I fail to see how the Agency can look at the ABA and 6th Amendment Center reports, see very clearly that the workload is unviable, and bake these expectations into contract terms. In adding a requirement in 10.3 that murder cases shall have co-counsel, the combination of workload and actual people to do the work are not in balance. These numbers also fail to consider existing caseloads; the revolving door of contract extensions has given the Agency the belief that it can re-set our expected case appointment numbers, when those cases continue to require ongoing work.

Excessive caseloads have always existed. There were many, many years in which I closed between 300 and 400 cases, usually a mix of major, minor, and Ballot Measure 11 felonies. My burnout and recovery cycles were predictable; while they occurred quarterly early on, over time they were reduced to biannual and then annual—or sometimes less frequent—occurrences thanks to years of work dedicated to self-care and a managed practice. As a supervisor and a teacher, one of my biggest goals is to help new attorneys and students to accurately gauge their workload, to know when and how to ask for help, and to instill in them a belief that Public Defense should not use them up and throw them away.

These quotas placed on providers will lead to burnout and attrition.

There are a number of other concerning contract provisions. The Contract Reporting requirements place an undue burden on large offices: counting case statistics and numbers is quantitatively more difficult when you are counting 800-1000 cases as opposed to 40-80 for an independent contractor. Post-judgment obligations placed on the providers suggest that a case might remain open for years, such as earned misdemeanor treatment following the successful completion of probation, making conflicts more entangled than necessary.

Finally, pay disparities have always existed. In every jurisdiction I've practiced, Public Defender pay has lagged between \$20,000.00 and \$40,000.00 behind their counterparts at District Attorneys' offices. Moreover, the pace at which prosecutors' pay scales increase serves to widen the gap quickly and severely for attorneys with three to five years of experience, just when Public Defense needs those experienced attorneys the most.

For large nonprofits, continuing to require them to pay for administrative staff, investigation, rent, insurance, parking, bar dues, Continuing Legal Education, etc. out of an "FTE" pool of money designed to support an attorney continues to suppress Public Defender salaries.

While there may be exciting changes at the Agency level, I have never seen Public Defenders and Contract Defenders so discouraged by the way the Agency has treated them, and the way they **expect** the Agency to treat them in the future. The loss of goodwill that the Agency has with its providers is staggering when you remember that each of the providers is dedicated, and for some have **dedicated their entire careers**, to doing this work.

The unveiling of the new proposed contract terms continues the widening gap between the Agency's words and credibility with its providers. While the Agency claims that it is being transparent, it has not lived up to its claims. Transparency is not revealing new contract terms immediately before a Commission Meeting. Transparency does not involve handing a contract to a provider and giving them two weeks to review and sign.

It is clear that the Agency is trying to solve problems it sees in its providers with the new proposed contract terms it is attempting to impose on them.

The Agency has not told the providers what it believes those problems to be. The Agency has not sought a dialogue with its providers about whether those problems are systemic or isolated. The Agency has not collaborated with its providers to determine the relative severity of those problems. The Agency has not explored potential solutions with the provider community about how those problems should best be addressed.

Until the Agency engages with its providers **before**, during, and after they appear before the Commission, these rules, policies, and contract terms will continue to be seen as edicts by the provider community rather than steps toward improvement in the profession. The proposed changes solve none of the systemic problems of Public Defense, and make the job more difficult for each of the attorneys that chooses to stand beside people accused by the state.

Sincerely,

Reid Kajikawa (he/him)
Director of Training
Public Defender Services of Lane County
180 East 11th Avenue
Eugene, OR 97401

April 18, 2022

VIA EMAIL ONLY (Stephen.Stinger@opds.state.or.us; Alena.Haines@opds.state.or.us;
amy.jackson@opds.state.or.us)

Oregon Public Defense Services Commission
Stephen Stringer, CEO OPDS
Alena Haines, Executive Assistant for Executive Director and PDSC
Amy Jackson, Yamhill County Contract Administrator

RE: Proposed 2022-23 Contract

I am the executive director for the Yamhill Justice League, LLC (YJL) the entity providing public defense for the indigent defendants. I have been practicing law since 1990 (32 years). I have been admitted to practice in Illinois (2001-inactive). I have served as the executive director of YJL since 2020. Many of our attorneys have serious concerns about the proposed 2022-23 Indigent Defense Contract. I hope we don't lose any of our attorneys due to the proposed 2022-23 Indigent Defense Contract.

It is unreasonable that OPDS has provided us with one business day prior to the Easter Holiday weekend in which to submit comments to the proposed contract changes and to provide: 1. Feedback should be as specific as possible, addressing: (A) what is problematic, and (B) specifically, why? 2. Please propose specific alternative solutions when OPDS provides no rationale for any of these changes.

Because of the Easter Holiday weekend, I have cut and pasted responses from other consortia that generally voice YJL's concerns about the proposed 2022-23 Indigent Defense Contract. Below are some of our most serious, specific concerns with that proposal:

This is an observation many of us have noticed: Legally, contracts between PDSC and us "Contractors" are contracts of adhesion and the product of unequal bargaining power. See, *Trinity v. Apex Directional Drilling LLC*, 363 Or 257, 434 P.3d 20 (Or. 2018) If I am hired by anyone else, I can tell them what my price is and that price is subject to negotiation. Anyone else can go out on the open market and seek legal services from whomever they like and challenge me to match a competitor's price. Us "Contractors" have no such option with you. If we want to provide services to indigent clients we are required to contract with you and accept the rates and terms you demand.

For example, General Term 1.4.5 defines Attorney Full Time Equivalent (FTE) as a "unit of measurement equivalent to an individual attorney's public defense client representation based on the caseload standards *adopted by the PDSC*." Caseload standards are then supposed to be set out in section 0 of the contract. Of the seven case categories set out in section 10.1.1, *no standards are identified*. "Case Weighting" is then set out in section 10.2, yet *no case weight is identified*. The proposed contract is vague and so we will wait and see what you actually propose to us.

3.5.1(a) Contractor shall accept appointments to cases in counties other than those specified in this Contract. Contractor shall accept conflict and overflow appointments from jurisdictions within 100 miles, as measured from the courthouse in contractor's jurisdiction to the courthouse in the adjacent jurisdiction. Contractor shall not unreasonably refuse conflict and overflow appointments from jurisdictions more than 100 miles from Contractor's jurisdiction. These appointments will count toward the Contractor's overall contracted caseload and will be evaluated for weighting on a case-by-case basis. OPDS will provide additional weight to cases more than 100 miles from Contractor's jurisdiction.

McMinnville is the Yamhill County seat and being forced to take cases 100 miles away will take YJL attorneys to Florence, Newport, Lincoln City, Astoria, The Dalles, Bend, Dallas, Portland, Hillsboro, Salem, and Eugene, Oregon. Currently, YJL will not take conflict cases from Washington County as their DA's Office and many of their judges are highly unreasonable. In addition, as one contractor pointed out: Everything about multi-county work consumes more of your time and resources. The time and cost of driving from A to B to C and back to A is only the beginning. You have to get to know and work with a different set of prosecutors in each county; you have to learn and work with a different set of both court and DA procedures and policies in each county; you have to coordinate your movements with the often arcane operations of multiple different county jails in order to see clients, and do it in a way that comports with the 24 hour meet and greet upon appointment requirement; you have to develop a plan for how, where, and when you can meet with out-of-custody clients; you are going to drive an hour and a half or two hours each way, each day you are in trial in Tillamook or Salem or Eugene, or alternatively you are going to set up a makeshift portable office in your hotel room when trying cases. It goes on and on. The reality is you can't handle as many cases when you're doing multi-county work, so as "multicounty" works its way into the contract, they'll need more lawyers to do the same work. Even with the relaxation of telephonic appearance policies in the aftermath of Covid, it's a purely counter-productive proposition.

3.5.1(c) No one funded as a 1.0 FTE may engage in any other paid work, unless OPDS otherwise agrees in writing. 4.2 Work Outside Contract Contractor may engage in additional paid work outside of this contract, but only to the extent that the additional paid work does not interfere with Contractor's ability to fulfill this contract. Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on noncontract work.

Even though the ABA study concluded that each indigent defense attorney in Oregon is expected to handle over three times the 2 recommended number of cases in order to provide adequate representation, you are now expecting us to significantly increase our workload by accepting cases many miles away from our jurisdiction. The simple act of interviewing a client in one of these counties will now involve at least a half day of time, including travel. Even with the increased use of telecommunication for simple motions and court appearances, travel will be necessary, for interviews, evidentiary hearings, trials and plea hearings. No additional compensation is offered for this work, and no mileage paid even though we will be expected to use our personal transportation for this travel. Effective representation will suffer, not improve.

Members of the YJL are independent contractors and small business owners. They are not employees of OPDS nor PDSC. All your "case standards" are based on a contractor working 40 hours a week. While this may be true for employees of a public defender office, members of our consortium have the legal right to work as many hours as they please to earn income for their businesses. Indeed, your proposed changes proscribe any work beyond indigent defense work for a full time FTE attorney. That attorney could not take a paid part-time coaching position at a local school without violating the contract. If a contractor wishes to work 45, 50, 60 hours or more, you cannot compel that contractor not to do so.

If by virtue of a contract of adhesion OPDS intends to restrict our ability to operate our businesses through these restrictions, contractors may be entitled to employee benefits available to other state employees including, workers' compensation, health insurance, tax withholding and pension benefits.

Thus, if friend 'Cory Criminal' 70 or 100 miles away from my office but wants my representation, I now am required to ask PDSC for *permission* to take her case? What will be your criteria for either granting or denying such permission? What timeframe do you promise to respond to such requests? Will you have a department staffed to cover these requests from your Contractors? And then we see sub (d) that says a Contractor can do all the *pro bono* work the Contractor wants to do? Is your emphasis in revising this Contract the fear that my *time* as your FTE might go somewhere else, or is it solely a financial concern? What's the purpose of drawing a line between other retained work and *pro bono* work if time spent is the big concern? Is any of this subject to negotiation prior to obtaining my signature? Do you think section 7.2.2 answers these questions?

Recommendation: This provision must be stricken from the contract.

Solution: These provisions are not appropriate for a consortium consisting of multiple independent businesses. Create a group of contractors who do nothing but multi-county representation in conflict cases. Structure compensation to reflect the idiosyncrasies involved with that type of practice.

Section 4.3 now seems to impose a timekeeping obligation on us Contractors. It wasn't that long ago that PDSC did an experiment regarding timekeeping that was quickly abandoned. What timekeeping program will we be required to use? Will that be an expense the Contractor bears? Would not my time records answer all your questions about what we do every day?

Section 7.1.2.1 Is an interesting thing. If a person calls me and says they are subject to an investigation and they can't afford thousands of dollars to retain me (which presumably I can't take because of my FTE status until I'm appointed and *then* it's covered ??) before a case is filed this section says: ... Contractor *shall* commence representation of a client prior to appointment by the court ... *upon written request from OPDS.*" How does that happen? How does OPDS determine the four factors enumerated in this section? Is there a form the Contractor is supposed to fill out? Does the client contact you? Do we facilitate that? Does OPDS send me a written request to take the case?

And then, we come to section 7.3.2 where you declare Contractors to be "Independent." If Contractors are "Independent" and section 3.5,(c) says "No one funded as a 1.0 FTE may engage in any other paid work, unless PDSC otherwise agrees in writing" how does OPDS square that with ORS 670.600(3)(c) which says a person is an independent contractor if "The person provides contracted services for two or more different persons within a 12-month period ..." The exclusive work OPDS demands of a 1.0 FTE in this contract would legally result in the "Contractor" actually being a PDSC "Employee" and I'm pretty sure you don't want that result.

I don't want my office to be paid less than we are now because of (a) some arbitrary rural/urban line drawing or (b) get involved in a time intensive case-counting exercise that never worked out here before or (c) because PDSC didn't historically contract with enough lawyers to Constitutionally defend indigent people in other places.

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) (b) 7.1.3.2 Within 24 hours of appointment; or By the next working day if the court appoints Contractor on a Friday, or if the day following the appointment is a court recognized holiday. This change demonstrates that OPDS does not understand the rigors of

practicing indigent defense. In Yamhill County it is not unusual for a contractor to be assigned several in custody cases at a single arraignment session. That contractor may have appointments, court hearings or trials scheduled for the next day. While a 24-hour rule may be preferred, it is not a practical requirement, especially for practitioners who are handling three times the number of cases as they should. Adding more pressure to an overworked attorney is not a way to encourage dedicated performance. And, as indicated above, it becomes next to impossible to comply if out-of- county appointments are factored in.

Recommendation: Do not change the clause.

Solution: Lower caseloads or increase the time to 48 hours.

7.1.5.2 Prohibition on Withdrawal When a public defense attorney leaves a Contractor, they may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

YJL expects its members to complete their assigned cases prior to separation from the Consortium. However, personal matters including retirement, illness or family responsibilities do not make that possible in every situation. While we realize that permission may be secured through OPDS in such circumstances, we prefer to handle these issues internally without OPDS involvement. When a contractor cannot complete all its case work, we are able to equitably re-assign cases within the consortium. Since this provision appears directed at reassigning cases to other out-of-county-consortia (although no explanation is given for the proposed change), we recommend that permission be obtained only when the cases of the contractor cannot be maintained within the consortium.

Recommendation: See above.

Solution: See above.

7.6.1 Caseload Reports Within ten (10) days of the end of each month, Contractor shall provide to OPDS, in a format specified by OPDS, a monthly caseload report for the preceding month. Contractor may submit amended caseload reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly caseload report to be amended. Contractor must be current on case reporting at the time of their review meetings with their analyst. We know of no reason why reports must be submitted 10 days sooner than the previous contract. We have seen no evidence that such a change will affect your data collection in a material way. Instead, you are simply putting an added burden on contractors and administrators to collect and organize data more quickly after the end of a month. Our contractors are overworked; many times, it is simply not possible to collect and organize case data immediately at the end of every month. Contractors get sick, they go on vacation, they have jury trials. Why in the world when it is recognized that every contractor is doing the work of three, would you increase the burden and pressure on each of them for little or no gain?

Recommendation: No change to the existing contract term.

Solution: See above

It is not a coincidence that the standards proposed by OPDS are roughly three times the number recommended by the American Bar Association since it concluded that we have only 31% of the number of attorneys needed to provide adequate indigent defense representation. While the actual ABA Standards reflected in the study may be aspirational, as a criminal defense attorney with over 32 years of experience I can say unequivocally that the standards proposed by OPDS do not come close to ensuring adequate

representation for the accused. The entire concept of using an FTE model as structured by OPDS ignores the conclusions made by the Sixth Amendment Center's study of the former case model using case codes for each case. Attached to this memorandum is a copy of a memo discussing why this FTE model creates an inherent conflict of interest between the lawyer and the client which creates a disincentive for the lawyer to spend an adequate amount of time on each case.

The proposed changes to the 2022-23 contract are counterintuitive: By restricting contractors further, setting unrealistic case expectations, compelling long-distance travel while failing to realistically increase compensation, instead of recruiting additional lawyers to provide indigent defense as recommended by the ABA, you will instead reduce the number of attorneys willing to participate in the system. Indigent defense is in crisis throughout the United States. By looking only to existing models of service the agency is perpetuating the crisis. What we need is to think out of the box and come up with a model that does not parrot the failures of others. In the meantime, don't further fracture the Oregon system by paying lip service to adequate representation while proposing a contract that does the opposite.

Sincerely yours,
Yamhill Justice League

Mark P. Pihl
mark.pihl@pihlaw.com

Mpp: pm

Linda J. Reynolds
Attorney at Law
689 Cottage Street NE
Salem, Oregon 97301
April 18, 2022

To: Public Defense Services Commission Stephen Stringer, CEO, OPDS
Re: Proposed 2022-2023 Contract

Dear Mr. Stringer and Commission Members:

As I received your request for comments mid-Friday of the Easter holiday weekend and chose to spend the weekend attending previously made family plans rather than meeting the unrealistic deadline of noon today for submitting comments, know that it only addresses the highlights of my many concerns.

As background know that I have been an OPDS contractor providing indigent services for all of my thirty-year career. As a law-student, I was a welfare mother and lived in government subsidized housing incurring well over \$100,000 in student loans. Except for only a few years of my practice, I have only practiced criminal law related cases. I am now, and have been since its inception, a member of the Marion County Association of Defenders (MCAD) consortium. I am bi-lingual, speak Spanish, and run a solo practice. As a public-defense contractor, until this year, I have only once before earned over \$70,000 a year and during that year, I worked over 80 hours every week, and handled over 400 clients' cases. I have also done interpreting work for OPDS contractors, sometimes earning more interpreting than I did practicing law full-time. If I retired today at age 62, I would receive \$1400/month in social security.

My career spans from individual attorneys contracting at the \$35 dollar per hour rate that I initially received, to consortium hourly rates, case-counting based on case (level) types, and the current flat rate I receive for a 79%. Because I am self-employed, I have never qualified for student-loan forgiveness even though I have devoted my entire career to serving the poor. After 30 years of paying, I still owe over \$100,000 in student loans. I started my career before facsimile machines were in regular use and cell phones were just a novel concept. I have typed up my own invoices which once were paid after a judge approved them and used MCAD provided software and billing systems that have tracked a multitude of statistics and data required of me for OPDS purposes. In short, I have weathered whatever was asked and focused on zealously defending my clients no matter how or how much I was paid, and in doing have routinely gone along to get along and endured every micro-managing obstacle thrown out at me by OPDS directly or as mandated by my MCAD affiliation. I no longer want to remain silent.

As a starting point, I know that I am considered an independent contractor and have repeatedly signed contracts naming me as such, but I have consulted with labor-law attorneys, wage claims representatives at the Oregon's Bureau of Labor and Industry (BOLI), as well as

revenue personnel and none of them would classify me as such. This is my first written commentary about my concerns and complaints. In this regard, the proposed contract is also one-sided, heavily in favor of OPDS/PDSC and at a minimum appears to be an adhesion contract. The only benefit of that to me is the ease that I would likely be allowed out of it.

1.4.5 and 1.4.6 FTE and Caseload Standards

I cannot reconcile different rates for Rural vs. Urban County contractors. Each contractor that I know throughout this state deserves a raise and to earn a decent living. While there may very well be “jurisdiction-specific needs”, the reality of this work is that we are all underpaid and overworked, the varying rates, in my humble opinion does not lend itself to attorney retention or development for criminal caseload and should be eliminated complete.

I am Jessica Law/ major felony qualified but have spent a good portion of my career handling Spanish-speaking misdemeanors -a need that was very needed in Marion County when I started in 1992 and exists today. I have obtained unanimous not-guilty verdicts on both Ballot Measure 11 (BM 11) and misdemeanors trials alike. By being allowed to take misdemeanors, and prioritizing Spanish-speaking misdemeanor court appointments, I have been able to better assist a specific group with specific language and cultural needs that I feel is under-represented. Not only does my current ability to assist with Spanish-speakers enable me to delegate my time and commitment to a specific group which I wish to serve, it also eliminates the need for other attorneys in my county to spend time securing interpreters and it saves money and time which would otherwise be paid for with OPDS funds.

(3.4.1) For the past several years, I have become increasingly immobilized with debilitating arthritis which does not lend itself to sitting days on end in trial which in my experience, major-felony caseloads require. I have recently had neck/spinal surgery and will soon also undergo low back/spinal surgery. My current contract with MCAD, focusing on taking several of the Early Disposition Program docket per month, and receiving misdemeanor appointments, has so far eliminated the concern of worrying about days-long trials. Requiring me to go back to accepting BM 11 just because I am experienced does not respect my personal health needs or concerns and, in many cases and would be a physical impossibility for me health-wise. If I am an independent contractor, then I should be allowed to accept the types of cases that I want within my consortium contract’s need considering my own needs without permission or explanation.

3.5 Contractor Workload

(3.5.1) As noted above, I have real personal issues that prevent me from accepting every case for which I am qualified and prioritizing the most serious case types. **3.5.1(a)** As noted, I am in Marion County and being forced to accept conflict and overflow appointments from all jurisdictions within 100 miles is a non-started nor do I believe that it’ll reduce case loads or save the state money or address the current shortfall in overall attorneys. Even though I have represented clients in at least 15 counties during my 30-year career, I have not accepted any cases, retained nor appointed, outside Marion County in well over a decade. There are

numerous counties within 100 miles of the Marion County courthouse. On the outskirts, some of these would require at least a two-hour, one-way drive plus additional time for traffic and other unexpected delays. I advise clients that contact me for services in another county that a reputable attorney in that county would best serve them. I do not know the prosecutors, judges, local practices, standard offers, docket management, nor jail visitation specifics of other counties and this is only some of the critical information needed to best serve any client.

Other counties handle their dockets in entirely different ways, whether it's the case management systems or our county's Rule 7 practices. Some counties have night, weekend, or telephonic jail visiting provisions and others do not. It would be impossible for me to meet my ethical and professional responsibility obligations to individual clients, nor to schedule hearings, trials, office consultations or jail visits in my county of choice if I were also to be expected to suddenly take an appointed out-of-county, in-custody cases 100 miles away where OPDS also required me to visit that client within 24 hours. This provision should be eliminated.

(7.1.2) In another regard, asking us to stay on cases until there is a final order will not limit overall caseloads. Our county takes us off appointed cases upon pleas whether on a conviction, a deferred sentence or entry into diversion. If you were to include every client that received a diverted or deferred sentence that has not yet had a final order, you would automatically add dozens if not hundreds of clients to my existing caseload. For example, on last week's arraignment docket a former 2003 DUII diversion client was to be arraigned on a pending Motion to terminate his diversion that has been in warrant status for nearly two decades. In Marion County it will cause a problem that doesn't yet need fixing.

As I want you to consider some of my concerns, I will end with what I have written so far to nearly comply with your arbitrary noon today deadline for comments. I have so much more that I would like to add regarding, OPDS being able to one-sidedly adjust caseload capacities, funding shortfalls, pre-appointment, and post-appointment representation, and case closures.

Sincerest regards,
/s/ Linda J. Reynolds
Attorney at Law
OSB #921198



April 18, 2022

Dear Director Singer,

Oregon AFSCME appreciates your inclusion of our members in the feedback session on Thursday, April 14th and for the additional opportunity to provide written feedback.

Sadly, the only true solution that would support the goals of reducing the caseloads to provide for constitutionally adequate representation and to stabilize the workforce - attorneys and staff - are adequate investments from the legislature. Additional support and partnership is needed from the Courts and District Attorneys who are all feeling the current pressures of our crisis - that has been long coming, warned about, and like many other things made worse by the COVID pandemic. Until we have that full partnership and adequate funding, public defense services in Oregon will continue to be in crisis.

Concerns of inadequate funding to meet the goals the proposed OPDS contracts aim to achieve aside, the current language does not allow for the flexibility needed for those offices working under Collective Bargaining Agreements (CBAs). Our primary concern is how contractors would be paid and instructed to pay attorneys covering higher level cases over those covering lower level cases. The contract language needs to be clear that funding may be used by providers to pay attorneys and staff at wage levels agreed upon in the CBA that account for things like seniority, and additional responsibilities like supervision and mentoring. To pay solely on case level, does not ensure that people with seniority are incentivized to stay, nor does it help keep newer employees stay if they do not have the adequate supervision and support from longer term attorneys and staff.

We stand in solidarity with the concerns highlighted by Public Defender of Oregon (PDO) in their letter dated April 13, 2022 around continued ethical issues for the proposed caseloads and workloads and for the 90 days needed to fill attorney vacancies. For continued stability and continuity of services, providers need to be able to have a reasonable caseload and have their contracts have needed flexibility in budgeting for the overall workload without undue penalty when shutting off case pickup. The attorneys and staff in trial level public defender offices represented by AFSCME were already feeling the pressures of incredibly high caseloads before the pandemic and now have the build up of long open cases that will remain open as we begin to work through the COVID related backlog. Providers need funding stability that a clear and manageable workload model would provide. The standard of budgetary stability also applies for the 90 day timeline (PDO) requests for filling an attorney vacancy without penalty. The stability of support staff is just as important to the representation of the clients. We need funding that ensures that the providers are not unduly penalized for a system that doesn't adequately support recruitment and retention of attorneys and staff. Dropping funding that supports the legal assistants, investigators, and other support staff will only add to the instability in the



workforce. Further, it puts those who make the lowest wages in the system at risk for the highest level of financial instability.

Finally, our members remain concerned about the provision of a person making a lateral move being required to take their open cases with them. While it is understandable that shuffling attorneys leaves a wake of clients being shuffled to a new attorney with an already high caseload, the proposed language doesn't appropriately address the issue either. Instead of keeping people in the work whether at their current employer or another, it incentivizes people to leave public defense work completely.

We remain hopeful that these issues can be resolved and look forward to our continued work together to improve Oregon's Public Defense Services.

In unity,

Eva Rippeteau
Political Coordinator
Oregon AFSCME Council 75

President

Shannon I. Wilson,
Marion County

Secretary

Jessica Kampfe,
Multnomah County

Treasurer

Brook Reinhard,
Lane County

Public Defenders of Oregon

180 E. 11th Eugene, Oregon 97401
info@publicdefendersoforegon.org

Members

Joel Wirtz, Deschutes County
Carl Macpherson, Multnomah &
Washington Counties
Stacey Lowe, Coos County
Kati Dunn, Baker, Malheur, Grant,
& Harney Counties
Erik Swallow, Douglas County
Doug Engle, Jackson & Josephine
Counties

April 18, 2022

Dear Executive Director Singer,

Thank you so much for your strong leadership these last few months as you took the helm of a state public defense agency in critical need. Public Defenders of Oregon, a nonprofit 501(c)4, has been founded to advocate for nonprofit public defender offices across Oregon. We organized in response to the overwhelming and urgent need to provide sound and sustainable public defense practices, to build and retain a strong public defense workforce, and to center the needs of all people deserving effective and ethical representation. We are looking forward to working with OPDS, the legislature, executive branch, and the judiciary in rebuilding the public defense systems.

Public Defenders of Oregon understands the extreme time pressure you were under to revise contracts and realize that working on this process in the middle of a biennium is challenging. As such, we are offering the following suggestions to help aid in crafting contracts that are client centered, constitutionally compliant, and are ethically structured in a way that allows us to agree to the terms.

The Proposed Contract’s Caseload Standards and Case Weighting (Section 10) is Too High.

The proposed Annual Caseload Standards, articulated at the April 8, 2022, commission meeting, are unethical. The proposed contract terms require public defense providers to agree to unethical practices and to provide something less than our constitutionally mandated levels of representation. Also, these terms vastly exceed the standards articulated in the recently released American Bar Association report. As an imperfect, short-term compromise towards actual sustainable caseload numbers, we propose the following maximum cases that an attorney may handle during a one-year period:

- Probation Violations: 300
- Misdemeanor (low-level): 200
- DV and high-level misdemeanor: 125
- Low-level Felony: 125
- High-level Felony (M11, sex, and gun minimum): 30

- Homicide, Jessica’s Law, 3rd strike sex case, and M73 sex case: 4

We believe our suggested annual caseloads reflect necessary supervision and training for all levels, but particularly new lawyers who start in our misdemeanor units. We suggest that OPDS also change the way it counts open case credits. Charging instruments with multiple incident dates should be counted as separate cases to account for case complexity and jurisdictional differences.

OPDS should not be attempting to cover 100 percent of projected caseloads for 2022-2023

While we appreciate the budget constraints of OPDS, creating caseload numbers contrary to the ABA report and lawyers' ethical standards is harmful to our clients and the professionals that represent them. It will take substantial time and funding to increase the supply of defense attorneys in Oregon, particularly as existing caseloads demands are one of the primary reason attorneys are leaving our offices. As Chief Justice Martha Walters has stated recently, we need long-term solutions to the public defender crisis in Oregon with assistance from the judiciary, executive and legislature. We encourage OPDS and the PDSC to prioritize representation on cases where a person is incarcerated, and cases where person crimes are charged. We are committed to working with OPDS and our system partners in the Courts, Legislature and prosecutor offices to address prioritization given that our system is under-funded and under-resourced system, which has led to accused being unrepresented.

The Proposed Contract Does Not Account for Ethical Workloads.

We are asking for a workload (open case) standard to become part of the contract to ensure ethical representation. In fact, this is required under HB 2003 2(D)(f). Many providers are currently carrying heavy open caseloads coming out of the Covid-19 pandemic and cannot ethically agree to accept new appointments on a large number of cases. Workload numbers are quite different than annual caseload numbers. A workload standard contemplates the average time needed to resolve certain cases --probation violation turnaround is 2 to 3 weeks, whereas a typical murder case is likely to take 18 months to resolve. Workload standards consider the needs of each county or jurisdiction, barriers to effective client communication, practice structure, and type of practice overseen by OPDS. We welcome further discussion as to why these standards are necessary and appropriate. In touch with the realities of public defense work and aware of what is necessary to guarantee 6th Amendment protections for our clients, we propose the following maximum open workload standards:

- Probation Violations: 20
- Misdemeanor (low-level): 70
- Misdemeanor (DV and high-level misdemeanors): 40
- Low level Felony (no mandatory minimum sentences): 40
- Mid-level Felony (M57, level 10 drug case): 40
- High level Felony (M11, sex, and gun minimum): 12
- Homicide, Jessica’s Law, 3rd strike sex case, and M73 sex case (including co-counsel cases): 6

Pursuant to HB 2003 2(D)(f), and best practices, the contracts should also reflect and consider jurisdictional aspects when determining workload standards. We request that the following factors be considered:

- Travel time (jail and courts)
- Jail access issues
- Number or percentage of clients who are in custody vs. out of custody
- The length of time cases are open: for example, in some counties workload caps will need to be lower because cases move very quickly and/or the court does not grant defense set overs
- Trial rates
- Attorney trial schedules: for example, in some jurisdictions, attorneys have several trials scheduled for multiple or all weeks per month
- District Attorney charging practices
- Discovery practice: volume; timing of disclosure; body camera and in-car video footage
- Court practices and barriers: virtual vs. in court appearances; docketing complexity; number of court dates and required appearances
- Justice Reinvestment programs and Specialty Courts, which can be time intensive
- Need for use of interpreter services
- Behavioral health needs and resources
- Attorneys required to practice in multiple jurisdictions
- Attorney experience level
- Plea negotiation practice: for example, some DA's expect or require extensive mitigation and/or use of experts during plea negotiations and/or JSC's
- Presence of supervision and training: the impact on both the supervisor who is handling cases and the supervisee

In addition to adopting and incorporating workload standards, the contracts should contain several components to address this need. First, the contract should require quarterly reporting and meetings to address workloads. Second, the contracts should require dialogue with the contract analyst and provider to adjust workloads based on the practice in their jurisdiction. Third, the contracts should expressly allow the provider to not accept new appointments due to workload issues and pursuant to Oregon State Bar Formal Opinion No 2007-178.

The Contracts Need to Reflect the Training, Supervision and Community Centered Outreach Public Defender Organizations Provide.

The non-profit public defender offices serve as the teaching hospitals of our profession as well as critical public safety stakeholders in our local communities. We are recruiting and training the next generation of public defenders by hiring and training certified law students and new

attorneys. To continue to train new public defenders we require a large misdemeanor caseload, and enough experienced attorneys to supervise for competency, professionalism, and performance. This requires public defender offices have salary flexibility to ensure they can continue to train the next generation of public defense leaders. The contract should also reflect a minimum of 1 FTE attorney for training/supervision/administration per ten public defenders to ensure adequate time is devoted to developing attorneys as well as engaging in public outreach as a critical public safety stakeholder. Not funding training and supervision results in significant disparities between providers, and negatively impacts our salary ranges for everyone working in our offices. Further, not funding supervision and training leads to turnover, as lawyers leave public defense when they are not adequately resourced to succeed on behalf of their clients.

The non-profit public defender offices must be funded for the full cost of investigation. We currently receive a varying range of funds to employ investigators, the various funds are consistently far less than our actual costs. Not a single non-profit public defender office receives adequate funding for our full-time investigators. This directly contributes to lower attorney and staff pay.

Finally, case managers and social workers are a critical part of the defense team and should be funded in the contract to ensure we can be a critical stakeholder dedicated to tackling recidivism. Now, our attorneys are spending significant amounts of time providing these services. The addition, and increase, of behavioral health specialists will allow attorneys more time for legal work for their clients.

The Contract's Provision on the Reappointment of Former Clients Requires Limitations to Account for Turnover in Public Defender Offices and Different Jurisdictional Practices.

To ensure adequate representation, we are seeking to close dismissed cases and receive a new case credit when a case is returned from warrant status after 6-months. Because of retention issues due to systemic underfunding, it is very likely that the "re-opened" closed case is going to a new attorney within the office. Not all dismissed without prejudice cases are created equal and keeping them open creates conflict of interest problems for public defenders, thereby reducing the number of new cases we can take.

- The court dismisses cases without prejudice prior to trial when the state is not able to proceed. Many of these cases will never be reissued. Providers should be able to treat these as closed cases.
- The court dismisses cases without prejudice when the state allows an information to expire prior to indictment to avoid going to the grand jury with insufficient evidence. Providers should be able to close these cases after 180 days.
- There are also cases dismissed without prejudice that everyone knows will be refiled. These cases would be appropriate to come back to the same lawyer within 180 days.

Non-Profit Public Defender Offices Need at Least 90 Days to Fill Vacant Attorney FTE Under the Contract.

Recruiting and retaining public defenders is at an all-time low. While turnover is high, it is also difficult to fill vacancies. The process of advertising, interviewing, negotiating a salary, providing notice to the former employer, and onboarding a new hire takes a minimum of 60 days when it goes smoothly. There are innumerable complications that require an even longer timeline, including relocation plans which are long a burden for rural jurisdictions and now increasingly common for all providers as we recruit nationally to address the shortage of public defenders in Oregon.

The contract requires providers to employ a 1:2 ratio of support staff to attorney FTE. That attorney FTE funding pays for both the lawyer and the support staff. Removing that funding would result in the loss of experienced professional legal assistants, receptionists, office managers and other key positions. FTE also pays for fixed costs, such as rent and other foundational operations that are not scalable on short notice. OPDS should consider removing the time limitation to fill vacancies if the provider is working diligently to recruit new hires or at a minimum leave the 90-day timeline in place.

The proposed contracts need to account for reasonable cost of living increases:

By June, our offices will have operated for 2 ½ years without an OPDS cost of living increase. We know a 3% COLA is being contemplated; however, from January 2020 to March 2022, CPI has already increased 11.5 percent, and it is likely to increase further in the next three months. We would therefore request a 12 percent COLA. We understand this size of COLA has a substantial cost, but it is a consistent step in the right direction toward complying with the provisions of HB 2003 2(c): “promote policies for public defense provider compensation and resources that are comparable to prosecution compensation and resources” and “recognize the need to consider overhead costs that account for cost of living and business differences in each county and jurisdiction.”

Specific Contract Terms and Requests

Lastly, we have issues with several contract provisions. First, section 7.6.4 (Penalty for Late Reports) is overly punitive as written. Due to lack of resources, and consistent with public defense nationally, public defender offices do not have adequate staff for technology and data collection areas. OPDS has had a history of requesting reports that the agency cannot collate and use. As solutions, we are requesting that OPDS provide training and uniform software to providers so that reporting is helpful to both sides. We also request that the timeline and penalties become more reasonable. We ask that the first step be a discussion with the provider as to why a report is late. To withhold 10% of funds if the report is not received on the due date is draconian. No funds should be withheld until at least 30 days past the due date, and if so, the percentage should be more reasonable, such as 1-5% incrementally from 30 to 90 days late.

Second, section 3.5.2 (Capacity Increase or Decrease) allows for a potential decrease in FTE. The current draft contract is unclear on whether active, open caseloads are accounted for in the caseload numbers. The current proposed caseloads are excessive, particularly if they do not account for open caseloads. Additionally, the contract does not accurately account for the level of supervision and training we provide; therefore, the contract requires full caseloads for attorney trainers and supervisors, which is not possible. If this section is to remain, it must account for workloads, current open caseloads, ethical standards, and training/supervision.

Third, section 7.8.2.5 requires providers to give 30 days' notice before refusing court appointments. While we understand why 30 days' notice would be preferable, this should not be a requirement. This does not account for the variable turnover in our offices. It does not account for the difficulty to recruit and retain. It does not account for the impact of an attorney going out on leave, which can be sudden. It does not account for the fact that many of our attorneys are consistently at or near capacity, which creates significant issues when an attorney resigns or goes out on leave and we have to redistribute those cases quickly. Lastly, and for the previously stated reasons, this provision is contrary to OSB Formal Op No 2007-178. We believe the time frame should be changed to a minimum of 7 days' notice while acknowledging that more notice would be preferred.

As you can see, we have serious concerns about many of the contract provisions for July 2022. We look forward to working with you in finding solutions that give nonprofit public defenders the ability to continue our model of client-centered representation, fulfill our constitutional duties, maintain ethical caseloads, recruiting and developing a new generation of public defense lawyers, and providing the resources we need to retain the excellent and dedicated lawyers and non-lawyer professionals in our offices.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon I. Wilson". The signature is fluid and cursive, with the first name "Shannon" being more prominent and the last name "Wilson" following in a similar style.

Shannon I. Wilson, President of Public Defenders of Oregon

Attachment 6c

April 21, 2022 OPDS Stakeholder Meeting (In person/remote hybrid)

In Person:

OPDS: Stephen Singer, Eric Dietrich, Laurie Bender, Shannon Flowers, Katherine Berger, Christine Breton

Commenting Stakeholders: Evyan Andries, Mary Bruington, Kati Dunn, Robert Harris, David Hayes, Jessica Kampfe, Carl MacPherson, John Pritchard, Eva Rippeteau, Michael Rees, Brook Reinhard, Jon Sarre, Bruce Tarbox, Elizabeth Wakefield, Shannon Wilson

Section 3.5.1(a)

Contractor shall accept appointments to cases in counties other than those specified in this Contract. Contractor shall accept conflict and overflow appointments from jurisdictions within 100 miles, as measured from the courthouse in contractor's jurisdiction to the courthouse in the adjacent jurisdiction. Contractor shall not unreasonably refuse conflict and overflow appointments from jurisdictions more than 100 miles from Contractor's jurisdiction. These appointments will count toward the Contractor's overall contracted caseload and will be evaluated for weighting on a case-by-case basis. OPDS will provide additional weight to cases more than 100 miles from Contractor's jurisdiction.

[Group polled – who agrees that 100 miles provision should be taken out? 7 remote/3 in person agree.]

Robert Harris: what I'm hearing most about is the 100 miles provision. I think I talked to Steve and understand a bit more about why this happens, efficient use of resources, etc. I have at least 2 people say they're not going to sign contracts/do PD work. Is it a bluff? I don't know. Can you afford it? I don't know. Why is this a problem for private providers?

- Efficiencies of scale. If you're told you need to drive 100 miles for 2-3 cases, that decreases efficiencies of scale. I think you understand that, but the contract language leaves it too open to agency discretion what benefit a provider will get for taking cases outside of their jurisdiction. Providers aren't going to be willing to just trust OPDS to be fair.
- Would like this provision to be gone. I don't know how to try a case in Marion County. I don't know what to do about Clatsop County? I think this can be explained to any legislator who thinks this is a good idea.
- We are seeking to address lack of providers and lack of time for providers. Everything we look at, how does this attract new providers? Keep providers? Everything we look at should be looking at those things.

Moderator: Providers in some parts of the state are way under contract and some in other parts who are way over contract. Those tend to be the situations where people don't have attorneys. What's the proposed solution? People are being paid the same to do fewer cases.

- Robert Harris: should be negotiated individually, not imposed across the board

Evyan Andries: How often do you think this would be invoked?

- Stephen Singer: I do think it will be relatively rare. Need 2 things: a jurisdiction that is undercapacity. Looking at the data now, there are very few of those. Then they have to have a neighboring jurisdiction that is overcapacity (Within 100 miles). Those two things happening will be relatively rare. It will most often happen up in the metro area.

- Evyan: the language in the contract doesn't address that specifically. As it currently reads it doesn't seem to be about just that type of issue.
- Steve: if the neighboring contractor is at capacity, it wouldn't apply to them.
- Evan: but the language doesn't say that.

Kati Dunn: "Under capacity" is problematic. We are told at times we are under capacity when we're not because we've been using the NAC+15% standard, which doesn't work. In Eastern Oregon, if I'm asked to take a case in Pendleton, that courthouse is 98.5 miles from me, which is 2.5-3 hours driving. I recently drove up there for a 1.5 hour Motion to Suppress hearing and spent 6 hours driving. That comes back to the capacity issues. Director said we have to cover all the cases. Can we talk to the chief justice to try and lower the charging of lesser charges during this crisis?

Brook Reinhard: I didn't raise my hand [agreeing to remove the condition] because I think it's a limited application, but I think it's a bad idea. Responding to the idea that 'we need to cover all the cases':

- Disagree, there's always e-board when the cases are different than what you expected
- Agree with what Kati said. If we look at this and ask what can attorneys handle, why allow county-level DAs to decide this?
- Why not do an 8 month contract with the money we have? Go back to legislature to say this is all we can afford and need more money.

Mary Bruington: I have mixed feelings about this provision, I'm in a jurisdiction that could benefit from this provision (Washington County). If it's implemented, one of the underlying assumptions that's false is that the courts will respect and accommodate these kinds of issues. If we were consistently treated as professionals who can manage our calendars with integrity and could say I have a case in Yamhill that day and need a set over, that would be one thing. I have concerns about the extent to which courts will acknowledge this kind of issue. I would suggest some kind of provision where OPDS communicates with the court of where the person mainly practices and support/provide help to the attorneys they are asking to do this.

Kati Dunn: Think through the impact this will have on the frequency in which attorneys can visit in custody clients if you have to drive 6 hours to see them.

John Pritchard: If we are accepting the premise that we need to increase our attorneys by 200%, how can anybody be determined to be underloaded at this point? Unless they're only taking 25% of their contracted amount. So how could this every apply to anybody?

- Stephen Singer: there was reference to the NAC + 15 standards and we are getting away from those. However, even with that, there are jurisdictions or potential jurisdictions that with those standards (not the ABA, we obviously can't do the ABA, we can't go to the courts and say we're only taking 1/3 of the cases and your own the other 2/3. Politically we can't do that. There might be somewhere in between we can do.) There are jurisdictions that were under, or that we forecast that might be under. It might be that there are none. We're trying to do a better job forecasting cases by case types. I will tell you, forecasting what caseloads are going to look like for 2022-2023 is about as hard as I've seen in public defense because there just aren't any good models to show what things are going to look like coming out of a pandemic. They just don't

exist, the good data we have is old. The recent data is hugely distorted by the effects of the pandemic, so it's a challenge.

Evyan Andies: 100 miles in Oregon is not the same everywhere.

Carl MacPherson: I'm conflicted. I'd try to reduce it to 25-50 miles. 100 is too much.

Section 3.5.1

All attorneys under contract shall accept court appointments to all criminal case types for which they are qualified pursuant to the PDSC's Qualification Standards. Contractor shall prioritize court appointments for the most serious case types for which is has qualified attorneys.

Jessica Kampfe: There are reasons within a PD office why we would want more specialized attorneys in lower severity caseloads to help with training and supervision.

Robert Harris: People might just want a break or for other reasons they don't want to take murders but they will help with lower level cases.

Eva Rippeteau: From perspective of newer attorneys, that they might be getting a significantly higher or more burdensome caseload sooner than they're ready to should also be addressed.

Section 7.4.1 (b)

Contractor shall retain an FTE attorney within 30 days of any vacancy, or OPDS may remove those funds from the contract. The 30 days may be extended with written agreement by OPDS. Contractor shall fill the vacancy as soon as practicable with an attorney who possesses equal or greater qualifications as defined in the PDSC Qualification Standards unless OPDS otherwise agrees in writing. Contractor shall immediately notify OPDS of a vacancy or potential attorney vacancy when ti becomes aware of a vacancy or potential vacancy.

Brook Reinhard: It's very challenging to hire people right now. I've hired 5 attorneys and had 2 leave and 2 more tell me they're leaving simultaneously while I've had a job listing up since February. Generally someone says they're leaving in 3 weeks time, so we are scrambling to redistribute those cases and raise everyone else's caseloads. 30 days is an unreasonably short period of time. There should be room for OPDS to talk to providers who aren't putting in a good faith effort, that's reasonable, and maybe cut off the salary piece but keep the support staff/overhead portions of it going.

[Moderator notes a lot of head nodding from the other public defender office providers.]

Bruce Tarbox: Yes, we've had a significant issue with that – both covering cases when people leave but in terms of bringing new people in – the quality of applicants has not been up to par. We're competing with everybody else or we might be taking from someone else. Feels like scavenging. Developing younger attorneys is difficult.

[Moderator asks whether the Consortiums also have the overhead issues when they lose an attorney like the public defender offices.]

Robert Harris: well, what happens with those cases? The funds should be redistributed to the other attorneys.

Jon Sarre: For instance, when Ernie Warren left we had to find homes for 10 murders that had already been paid for, so we had to ask consortium attorneys to take on murders without being paid additionally.

Robert Harris: So in some ways it's better than a PD office because nobody's being overworked and with nobody doing 1.0 FTE it creates some flexibility.

Section 7.2.2(b)

Contractor shall ensure that the attorney assigned to represent a client under this contract: (b) Has a current workload, including other paid work 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.... Contractor's non-contract work shall be no greater than their percentage of FRE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.

Section 3.6.2

Language: OPDS may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under the contract. On OPDS's request, Contractor shall provide access to its facilities and make records available to OPDS or agent at all reasonable times, and promptly respond to requests for information in connection with fiscal or performance audits.

Robert Harris:

- Reporting requirement
- Reporting details? Some of that will be privileged
- How would you value their FTE based on how much they made on the retained work? You might need to talk to ALL the retained attorneys in this state to find out how they do this? Otherwise you're collecting inaccurate number? How do you treat the \$20K retainer?

Moderator: how about # of cases?

- Robert Harris: have you talked to a family or PI lawyer? It's complicated.

Jon Sarre agrees

Section 7.1.5.2

Prohibition on Withdrawal. When a public defense attorney leaves a Contractor, they may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

Kati Dunn: I like that as a manager generally, since I don't have to find homes for those cases. I did notice the use of the word "adjacent" jurisdictions. which is a problem out here in East Oregon

Moderator: can you think of a way it would work in Eastern Oregon?

Kati Dunn: I think this should be any jurisdiction

Brook Reinhard: issue is flexibility to say no, you really do need to take that case to trial that's in 2 months. Biggest issue is cases that are actively set for trial. The client relationship is established.

Stephen Singer: so some kind of threshold requirement, like set for trial. Newer cases are easier to move.

Brook Reinhard: Like 100 miles, it should be negotiable with the analysts

Jessica Kampfe: if they are going to another provider in the same jurisdiction, they should take their cases (within the bar's rules)

Robert Harris: If someone leaves a consortium all together, they're not being paid to do that work anymore. I might have trouble getting people to join the consortium if they're told they might have to take 50 unpaid cases once you leave. This is important for private attorneys retiring especially

Eric Dietrich: we might be able to do some kind of hourly work

David Hayes: how do you enforce this against individual attorneys who never signed anything?

Eric Dietrich: that's why we only have it for people who want to stay in the system with another provider.

Jon Sarre: this adjacent jurisdiction thing really disadvantages both the old and new offices. Which support staff handles the two cases? There's not a lot of uniformity between jurisdictions here. This doesn't seem to serve anybody that well. I've been in a M11 trial in Multnomah and expected to try a DUII in Washington

Moderator: so echoing before, we need the judiciary on board to make this work

Eva Rippeteau: Is there something to address the issue both of the employees' individual rights to choose where they're employed and the end goal of the incentive to reduce the amount of movement between contractors and incentivize longevity. Bring in new attorneys and retain current workforce.

Elizabeth Wakefield: I understand what the problem is, the chain of problems it creates. There's still the issue of we have an open caseload and we bring someone in from another firm to cover that caseload and they come in with an existing caseload they have to go back to address.

Robert Harris: we should be making these jobs more attractive, not less. We're not going to fix every problem with this contract, just deal with it directly with the providers causing issues.

Moderator: any ideas on how we can address this problem of people jumping between agencies

Jessica Kampfe: One reason people jump between providers is that it clears out their existing caseload. The work is exhausting, people are burned out. If we had reasonable caseloads with case caps, it would address the issue. We are dealing with the symptom not the problem

Carl MacPherson: I agree with what Jessica said. I'll also say my philosophy on why I agree is because of the client, the client is why we do this. There's a higher ethical responsibility to clients to maintain that relationship, you can't just abandon them.

Brook Reinhard: we need judges to have flexibility to make this work. Like some counties are not letting out of county attorneys cover release hearings remotely.

Criminal Caseloads

Carl MacPherson: In Oregon when we roll out PCRCP, because of caseload cap, we consider current open cases. The way this is written, it's ambiguous on whether it counts cases that are brought into the year. If you're going to have a caseload standard, you have to provide for the cases the providers are bringing into the next year. You can't have 80 open minor felonies and come July 1 you are reset to 0 and have to take on another 160 cases.

- 1.4.6 as written is problematic for not taking existing cases into consideration.
- HB2003 says to take each jurisdiction into consideration
 - o We can handle double the number of majors in multnomah as Washington because of the way the counties operate. So we need a workload standard.
 - o Particularly when the PD contracts don't provide for supervision, so when you give us these case matrices, we have a number of supervision FTE caseloads we have to cover.

Stephen Singer: anybody have any ideas on how to work to an open workload standard in the time we have allotted for this contracting round? We at OPDS want to do this, but we couldn't feasibly do it for this contracting round so we had to unhappily put it off to the next contracting cycle. If anybody has good ideas on how to do that in the limited amount of time you have, we'd love to hear it.

Michael Rees: from the union perspective, caseloads are our #2 issue for the next contract. We've already hit the point where a large number of attorneys are our firm have asked to come off pick up and obtained it on ethical grounds. That ethical line doesn't change.

- Stephen Singer: and that's going to remain, that falls to each attorney to make an ethical judgment on when they have reached an ethical limit when they can't take anymore cases.
- Michael Rees: can you express that in the contract?
- Eric Deitrich: we put this in last time for this exact reason. Specific terms, section 6, attorneys must comply with rule 1.16 of rules of ethical conduct.
- Elizabeth Wakefield: why is that not incorporated as part of the general provisions?

Kati Dunn: I don't think it's a long, lengthy by time project to figure out what an open caseload should be. Practitioners have met and discussed this. We have a very good sense of what an open caseload should be. If you have data you're able to do case weighting off the 300 misdo caseloads, you have all you need. Since each county has different challenges and lifespans of cases, each contractor ought to set the current caseload limit individually with their analyst.

Brook Reinhard: (referencing the letter previously sent by Shannon to Director Singer) Detailed previous efforts to shut off based on open caseloads, sharing information with OPDS under previous leadership, and were threatened with getting their funding shut off if they continued to do it. A contractor with lower caseloads is a good thing, it means more time with each client. I agree there are elements here to

put this together. There are variances by jurisdiction. I could handle double the cases in Douglas as I could in Lane.

Evyandries: I agree. This also comes up with the 100 miles issue. If a jurisdiction has cut off under these standards it can cause disproportionate outcomes.

PCRCP vs non-PCRCP Caseloads

Elizabeth Wakefield: PCRCP is 80, non-PCRCP is 69. They should both be 69. Every case should be turned into a PCRCP.

Moderator: we would like to, but Legislature won't let us.

Stephen Singer: PCRCP is 80 open – it is a workload. Non-PCRCP is 69 annual.

Shannon Flowers: PCRCP advisory board that's been convened since the fall, we are going to address this next. The feedback from providers is that 80 needs to be readdressed. We know it's an issue. Not going to change it this round, but it's on the table for the next round.

Case Weights

Michael Rees: 12 Murders/JLaws a year is too high

Jon Sarre: a year? You can't do that.

Stephen Singer: we agree. It's the way we started with the 300 cases. We agree that is something we need to look at.

Robert Harris: is there a possibility to do open caseloads to just murders/jlaws/m11 cases. You're not going to be in a 4 month trial on a misdemeanor, but the murder/jlaw cases it's really hard. They're all over the place. Could there be a mixed case standard?

Stephen Singer: the weighting for M11 vs other felonies was an effort to get at that versus the prior general felony standard. We did reduce the caseloads from where they're at currently. [Steve explained methodology to get to these numbers.]

Jon Sarre: it ignores the fact that scheduling it... I don't have 12 murders and I'm already booked with trials through the end of next year.

Stephen Singer: is part of that because they're more likely to have co-defendants?

Jon Sarre: it can be, but in my cases it's not.

Bruce Tarbox[read out by moderator] – can the expected hours per case be included in the contract?

- Stephen Singer: we have the number 22 for a misdemeanor. At 2080 hours a year, that comes out at about 1/3 the standards we've set, which matches the ABA standard.

Shannon Wilson: agency should put in some description or consideration that so many of the clients we're dealing with right now are in acute mental health crisis, which takes a lot more work in terms of time and energy for even a misdemeanor than 4-5 years ago when there were more services available.

Would go a long way towards acknowledging to providers that we see what you're doing. The more we make this look like a factory the more dehumanizing.

Brook Reinhard: I participated in the ABA study and murder was the one caseload we felt like we already had a good handle on. It's very well resourced compared to others and we could all see very well firsthand how resourced. A well resourced misdemeanor was hard to conceptualize in terms of how much time that would take. 300 misdemeanors looks doable, even though 300 clients a year is unconscionable. It increases recidivism. But 12 murders a year is impossible. 800+ PVs will also bring back more PVs because you just churn through them, resolving in quick, uninformed ways.

Carl MacPherson: Strongly agree with what Shannon and Brook said. Misdemeanors need to be broken up between DV and DUII misdemeanors. It's backwards to have the newest attorneys with the highest caseloads. More clients can cause a lot more stress more than more cases. I appreciate what you're doing to break out the felonies, but I can't stomach more than 150. And certainly not 12 murders.

Laurie Bender: would you break them out between mandatory minimums vs not?

Carl MacPherson: yes.

Jon Sarre: there are also jurisdictional programming issues. MCJRP in Multnomah, those cases take 2-3 months.

Reimbursement Scales

Robert Harris: is there only going to be 2 tiers (referencing the reimbursement range)

- Stephen Singer: 4 within this

Robert Harris: how do you handle folks with mixed caseloads? Based on their qualification? Cases? Mix?

- Stephen Singer: based on their qualification, not actual caseload. If they are qualified for major felonies, they're expected to take major felonies. If they are taking other types of cases.

Robert Harris: what if our JLaw qualified attorney doesn't want to do JLaw?

- Stephen Singer: those are situations we will have to look at separately
- Eric Dietrich: that's in the RFQ. What are your attorneys qualified at and what do they want to take going forward?

Robert Harris: I would be remiss to point out it's been 2.5 years since we've gotten a COLA. With inflation, gas prices, some people are going to get cuts – like firms currently only handling misdemeanors and C felonies who are currently getting \$211K per attorney. Will Jessica's murder-qualified misdemeanor manager have to take a pay cut to misdemeanor level?

Stephen Singer: or a third option, we take this feedback and address the supervision piece.

Michael Rees – at MPD, our attorneys are probably skewing more towards the people earlier in their careers and I think that's appropriate because I think big nonprofits are an incubator for young public defenders to hone their craft. When we got a 6 month flat extension, our membership got a message loud and clear that they are not valued, their work is not valued. It takes a whole lot of reassurance and cheerleading to keep people from quitting, and a lot of people have told me that they're thinking of

quitting. If I go to them and tell them, as far as I can tell we're going to get another flat extension, I don't know what we're going to do. I don't know what the union will do, but I will not support the local signing on to the contract with a flat extension. We are not happy. Until the legislature comes around and understands if you want this work done you have to pay for it, we're not going to pay for it.

Stephen Singer: you put your finger on the problem – the biennium contract was set in 2021 and doesn't change until 2023, so the budget is the budget. More money needs to come from the legislature, we can't spend money we don't have

Michael Rees: If the legislature said you need to buy gas at \$2 a gallon, it wouldn't happen. You know you can't do it at this funding.

Elizabeth Wakefield: Non-attorney staff feel very unappreciated and underpaid. It's not just attorneys.

Jessica Kampfe: I don't disagree with the idea of structuring pay scale based on the severity of cases people take. I think it's very disruptive in this short of a turnaround for a number of reasons. It's not how OPDS has ever done it previously. IT's going to put providers in the same jurisdiction on very different footing. MPD has a murder contract, they do much more serious cases than MDI does. So you're going to have MPD funded differently than MDI when they're less than a block away from each other. That's going to disrupt people moving between organizations. The other thing I'm hearing is people are going to be required to take what they're qualified at. I can't tell a client with 100 level open felonies that they have to take a murder starting July 1 because they're murder qualified. Unless we are going to conflict off those other felonies. It's going to be very disruptive in a very short period of time. We are also a union shop with a pay scale based on seniority not caseload severity. We have very senior attorneys not taking murders. This will create a big problem. If you are going to move to this, I think you should wait until next year so we have more time to decide how it will affect each provider.

- Stephen Singer: All of the differentials, whether you are misdemeanor to murder, all of them are higher than what they are currently are. So all of your reimbursements under the 10% differentials are all more money than the money lawyers are currently getting.

Carl MacPherson: 211K in urban for attorneys, so there will be a drop for misdemeanor caseloads.

- More important to me is that the top for murders should be the same as PCR. There's no justification for PCR and murder qualified attorneys to get paid differently.
- 5% administrative costs will be helpful with PD offices who didn't get it previously, but we haven't heard anything about inflation.
 - o Stephen Singer: we calculated this across all the contracts and it did come up to at least 3%, that's obviously not enough

Brook Reinhard: discussed the on-ramping/supervision time it takes to get a misdemeanor attorney up to speed. Would like to see the tiers [Steve: you'll probably get those Friday] I don't think this is a bad thing long term, but we don't want to do anything in the short term to lose any attorneys

Kati Dunn: I'm baffled we're having any conversations about paying anybody less. OPDS shouldn't be inserting itself into its decisions about our salary. Paying less for misdemeanor attorneys disincentivizes offices like Carl's and Jessica's from hiring misdemeanor lawyers, which is where we get murder attorneys from. We shouldn't be disincentivizing anybody from joining our profession. It's not any

cheaper to employ and provide support staff and benefit for misdemeanor lawyers just because they're misdemeanor lawyers. Our administrative finances don't go down.

- Stephen Singer: clarifies that the administrative amounts don't change between tiers

Kati Dunn: 5% doesn't cover the lack of coverage for administrative and supervision costs. There are mechanisms by which OPDS can advocate for additional funding before 2023

Evyan Andies: are these budgets based on the existing budget with or without the 100M? [discusses changes in budget in this biennium versus the last] – the agency has seen the biggest boost that it's seen in awhile, so why isn't it translating to more of an increase?

- Stephen Singer: biggest answer to that question is that when the 2021 budget was calculated and put forth, the thing that was not included that we are now including the outstanding NRE/CSS liability. For some reason that liability had never been taken into account in the budget, so part of what you're seeing is that there's now an unaccounted for and unbudgeted \$75M liability in the CSS's. The largest portion of those is our hourly rate investigation by the non-non-profit defenders. So, consortia and law firms.

Evyan Andies: since the budget now functions differently and CSS's are now budgeted for from a different bucket, is that being removed from trial level services?

Stephen Singer: it's part of the trial level services budget. What's in the CSS bucket is not even close to enough to pay for it, so it's going to have to come from some of these other buckets. The second thing that's affecting it to a lesser extent is court-mandated expenses budget includes hourly rate attorneys. Because of the shortage and the huge backlog, we have been forced to spend a lot more than was budgeted for on hourly rate attorneys to handle backlog cases.

Evyan Andies: so \$10M for court-mandated expenses, then an additional \$25M for NREs?

- Stephen Singer: right now we're in that range, but because we don't know what rate courts will reopen and then translate into increases in NRE requests, it's something we're going to have to address through e-boards. Even if we move over money from trial level services, we won't have enough.

Evyan Andies: Why does the unbudgeted liabilities come out of trial level expenses and not somewhere else?

Attachment 6d

Proposed Changes to 2022-2023 Attorney Caseload Standards

Adult Criminal Caseload Standards

Because it supplies the best and most current information regarding appropriate caseloads for public defense providers, OPDS used *The Oregon Project: An Analysis of the Oregon Public Defense System and Workload Standards* from the American Bar Association in developing caseload standards. Based on using more recent national and regional standards including standards in neighboring Washington State, OPDS is adopting a lowered baseline assumption that 300 misdemeanors are equivalent to 1.0 FTE with ABA-recommended relative weights utilized to develop the following standards:

Old Case Types	Old Standard	New Case Types	New Standard
<i>Murder</i>	4.6	Murder/Jessica's Law	6
<i>Felony (all types)</i>	172.5	Ballot Measure 11	45
		Major (A/B) Felonies	138
		Minor (C) Felonies	165
<i>Misdemeanors</i>	460	Misdemeanors	300
<i>Probation Violations</i>	460	Probation Violations	825

Note: Civil Commitments are unchanged at 230 cases

Juvenile Caseload Standards

PCRP and Non-PCRP Dependency remain unchanged:

Contract/Case Type	Standard
PCRP (per 1.0 FTE)	80 delinquency or dependency open cases
Non-PCRP Dependency (per 1.0 FTE)	69 cases

Non-PCRP Delinquency: following the ABA workload analysis and using 300 juvenile misdemeanors to constitute 1.0 FTE, the following standards were adopted:

Delinquency Case Type	Old Standard	New Standard
Murder	4.6	6
All Other Delinquency Cases	230	132

Note: Double credit given for delinquency cases where the state moves for waiver into adult court

Attachment 7a

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR QUALIFICATIONS (RFQ)
FOR
PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

July 1,2022 to June 30, 2023

Table of Contents

PART I - GENERAL INFORMATION	2
1.1 Request for Statements of Qualification (RFQ) Description	2
1.2 Applicable Contracting Procedure	2
1.3 Authority	3
1.4 Funding Source	3
1.5 Schedule of Events	3
1.6 Submission Review Procedures.	4
1.7 Submission Evaluation Criteria.....	5
1.8 Submission Records	6
PART II - PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS	6
2.1 Submitting Statement of Qualification	6
2.2 Application Format	7
2.3 Acceptance of RFQ and General Contract Terms	8
2.4 Multiple Submissions	8
2.5 Modification of Submissions	8
2.6 Mistakes in Submissions	9
2.7 Withdrawal of Submissions	10
2.8 Evaluation of Submitted Statement of Qualification	10
PART III - RFQ APPLICATION SUMMARY AND FORMS	10
3.1 Summary of Information Sought	10
3.2 Applicant Information and Certification.....	12
3.3 Certification of Compliance with Oregon Tax Law	13
3.4 Independent Contractor Certification Statement	14
3.5 Current Statement of Attorney Qualifications.....	15
3.6 Summary of Contract Sought.....	16
PART IV - CONTRACT GENERAL TERMS	17

PART I - GENERAL INFORMATION

1.1 Request For Statements of Qualification (RFQ) Description

The Public Defense Services Commission (PDSC) is seeking Statements of Qualification in order to award contracts to attorneys and entities to provide legal services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense. Contracts are predicated on the number of full-time equivalent (FTE) attorneys providing public defense services pursuant to caseload standards adopted by the PDSC. OPDS will establish how many FTE attorneys will be funded and the financial value of those contracts.

PDSC is accepting statements of qualification for adult criminal (jurisdiction specific and statewide), juvenile, and PCRCP contracts. The financial values of the adult criminal and juvenile contracts are tiered and contingent upon the types of cases to which an attorney agrees to make themselves available to receive court appointments. Contract attorneys must select a level of qualification that will determine the types of cases for which they are willing to receive appointments, pursuant to the PDSC's Qualification Standards for Court Appointed Counsel. If an attorney does not want to accept court appointments up to the most serious case type for which they are currently qualified, the applicant must identify this adjustment in its submission.

OPDS will review the statements of qualification to determine which attorneys and entities it will award contracts to, pursuant to the FTE need for each jurisdiction. OPDS will then make recommendations to the PDSC. The contracts awarded will be for 12 months, beginning July 1, 2022.

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

- Part 1) General Information
- Part 2) Application Instructions
- Part 3) Application
- Part 4) Contract General Terms

1.2 Applicable Contracting Procedure

ORS 151.216 authorizes PDSC to adopt policies and procedures 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 RFQ as the PDSC procedures for contracting for personal services.

1.3 Authority

ORS 151.219 authorizes the OPDS executive director to “negotiate contracts, as appropriate, for providing legal services to persons eligible for appointed counsel at state expense.”

PDSC may contract with individual attorneys or entities that include attorneys. 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.

OPDS reserves the right to determine which attorneys and entities to whom it will award contracts, including the types of contracts. OPDS reserves the right to seek additional information from attorneys and entities in determining to whom it will award contracts. PDSC reserves the right to amend or cancel this RFQ 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 PDSC to pay for legal representation 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 Schedule of Events

Release of RFQ	April 22, 2022
2022 submission deadline	May 6, 2022
Notice of intent to award contracts	June 1, 2022
Commission review and approval of contracts	June 23, 2022

PDSC presently intends to award public defense legal services contracts according to the 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.

1.6 Submission Review Procedures

The instructions and information necessary to prepare and submit statements of qualification (“submissions”) are found in Part II of this RFQ. OPDS will evaluate submissions based on the contents of the applications and any other information available to OPDS. Applicants must submit a completed submission using the forms and format provided. Applications must be received by OPDS by May 6, 2022.

A. Inadequate Submissions

OPDS may immediately reject submissions that do not meet the minimum RFQ requirements. If a submission is inadequate, OPDS may give the submitter an opportunity to correct the submission. If OPDS finds the corrected submission inadequate, OPDS's decision to reject the submission will be final and not subject to appeal.

B. Facially Adequate Submissions

OPDS will evaluate submissions as set forth in Part II of the RFQ. OPDS will evaluate each submission based on the statements of qualification and any other information available to OPDS. During the evaluation period, OPDS may:

- 1) request additional information from applicants to clarify information or material in the submission; and
- 2) consult with judges, court administrative staff, attorneys, and others who have knowledge of the attorney or entity or the local caseloads and practices to aid in the review of the submitter’s merits.

C. Contract Awards

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

D. General Contract Terms

OPDS 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 3 of this RFQ, unless otherwise specifically agreed by OPDS.

1.7 Submission Evaluation Criteria

OPDS shall evaluate statements of qualification based on the criteria listed below:

- 1) The submitted statement of qualification is complete and timely, in conformance with the RFQ.
- 2) The applicant and any additional attorneys providing services under the contract meet the minimum attorney qualification standards for the types of cases proposed, as specified in PDSC's Qualification Standards for Court-Appointed Counsel.
- 3) The submission is adequate to ensure effective legal representation. Among the factors OPDS 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 submission meets the needs and best interests of the court(s), county(ies), judicial district(s), and region(s) involved. Among the factors OPDS may consider are the other service providers available, the applicant's ability to work with OPDS, the court(s), and other service providers.
- 5) The number of 1.0 FTE attorney requests included in the submission, with increased weight given to those submitters willing to do full-time public defense work.
- 6) Contractor's efforts to attract and retain a diverse workforce, including persons providing services under the contract who are fluent in the languages of persons in the community to be served by contractor.
- 7) Contractor's efforts 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.
- 8) Contractor's efforts 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 Improvement Program.

OPDS has the sole discretion to award or not to award contracts. OPDS reserves the right to solicit submissions after the close of the RFQ process if, in a particular jurisdiction, no sufficient statement of qualification is received, caseload exceeds original

estimates, or other circumstances require an additional provider(s).

1.8 Submission Records

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

Written inquiries on preparing applications may be sent to: rfq@opds.state.or.us.

PART II - STATEMENT OF QUALIFICATION APPLICATION INSTRUCTIONS AND REQUIREMENTS

This part of the RFQ contains the instructions and requirements for preparing and submitting statements of qualification for public defense legal services contracts.

2.1 Qualifications Sought

OPDS is seeking qualified attorneys to provide legal representation to financially eligible individuals throughout Oregon. OPDS will enter into contracts with attorneys or entities pursuant to the following framework. Contract attorneys must select the types of cases for which they are willing to receive appointments, pursuant to the PDSC's Qualification Standards for Court Appointed Counsel. If an attorney does not want to accept court appointments up to the most serious case type for which they are currently qualified, the applicant must identify this adjustment in its submission.

Jurisdiction Specific Trial-Level Criminal Contracts: All jurisdictions, with the following levels of qualification:

- A. Murder
- B. Major Felony (includes Ballot Measure 11 and Jessica's Law cases)
- C. Minor Felony and Civil Commitment
- D. Misdemeanor

Statewide Criminal Contracts: Provide legal services statewide, with the following levels of qualification

- A. Trial-level Murder
- B. Trial-level Post-Conviction Relief
- C. Trial-level Habeas Corpus
- D. Psychiatric Security Review Board Representation
- E. Miscellaneous Appellate-level Representation
 - Post-conviction relief
 - Habeas corpus
 - Civil commitment
 - Juvenile dependency and delinquency

Juvenile Contracts: All jurisdictions except for PCRCP jurisdictions, with the following level of qualification

- A. Juvenile Delinquency Only
- B. Juvenile Dependency Only
- C. Juvenile Dependency and Delinquency
- D. Juvenile Dependency and Delinquency - Murder

PCRCP Contracts: Benton, Clatsop, Columbia, Coos, Douglas, Lincoln, Linn, Multnomah, Polk, and Yamhill counties.

- A. Juvenile Dependency
- B. Juvenile Dependency and Delinquency

2.2 Submitting Statements of Qualification

The applicant is responsible for any costs incurred in preparing or delivering the submission. The applicant is responsible for ensuring that the submission is received timely by OPDS. There is no implied promise to award a contract to any applicant based upon the submitted statement of qualification.

A. Form of Submission

Submissions MUST be submitted as an email attachment in a Portable Document Format (PDF) that has been formatted with optical character recognition (OCR). 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 submission.

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

B. Deadline

Statements of qualification must be received by OPDS no later than May 6, 2022

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

2.3 Application Format

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

2.4 Acceptance of RFQ and General Contract Terms

- A. Applicants are responsible for reviewing the terms and conditions of the RFQ 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 RFQ. Further, the applicant accepts the terms and conditions of the general terms of the contract contained in Part III.

2.5 Modification of Submissions

A. When Permitted

Applicants may not modify statements of qualification after the submission deadline, unless OPDS agrees thereto, upon written request by applicant. Until the submission deadline, an applicant may modify its statement of qualification 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 submission.

B. Delivery

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

C. Included in Submission File

All documents relating to the modification of submissions will be made part of the submission file.

2.6 Mistakes in Submissions

A. When Corrections Permitted

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

B. Procedure When OPDS or Applicant Discovers Mistake

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

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

1) Minor Inaccuracies

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

- a) matters of form rather than substance that are evident from the submission 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 Statement of Qualifications is Evident

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

3) Mistakes Where Intended Correct Statement of Qualification is Not Evident

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

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

2.7 Withdrawal of Submissions

A. Request to Withdraw

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

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

B. Included in Submission File

All documents relating to the withdrawal of submissions will be made a part of the submission file.

2.8 Evaluation of Submitted Statement of Qualification

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

PART III - RFQ APPLICATION SUMMARY AND FORMS

3.1 SUMMARY OF INFORMATION SOUGHT

- A. Applicant Information Form (Section 3.2)
- B. Certification of Compliance with Oregon Tax Laws (Section 3.3)

- C. Independent Contractor Certification Statement (Section 3.4)
- D. Current Statement of Attorney Qualification (Section 3.5)
- Total Current Attorney FTE working under existing contract, including the following information:
 - Each attorney's name
 - Years of experience for each attorney in contract type sought (juvenile/criminal)
 - Highest level of qualification, pursuant to the PDSC's Qualification Standards, for contract type sought (juvenile/criminal)
 - Qualification sought for '22-'23 contract
 - Total number of support staff, as defined in the proposed general terms, including their names and percent FTE.
 - Total number of investigators, including their name and percent FTE.
 - Any specialty court that the attorney/entity currently staffs, and the attorney FTE currently funded to staff the court.
- E. Summary of Contract Sought (Section 3.6):
- Total FTE, including contract type (juvenile/criminal) and a breakdown of the levels of qualification sought.
 - Proposed number of FTE investigators
 - Proposed specialty court the attorney/entity would like to staff, along with the number of weekly attorney hours needed to staff the court
- F. Typed document, no longer than 2 pages, on how the applicant meets the criteria articulated in section 1.7 of this RFQ

3.2 APPLICANT INFORMATION AND CERTIFICATION

Name and Type of Business Entity (e.g. LLC, non-profit, corporation):

Contact Person for Application: _____

County or Counties to be served: _____

Address: _____

Telephone: _____

Email: _____

Fed ID No or SSN _____

I hereby certify that I have the authority to submit is statement of qualification on behalf of the applicant and that I have read the terms and conditions of the general terms of the contract.

Signature: _____

Printed Name: _____

Date: _____

3.3 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 on 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 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: _____

3.4 INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS 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:

YOU MUST MEET AND INITIAL **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 and have initialed three (3) or more of the criteria listed above.

Signature _____ Date _____

Contracting Entity Name _____

3.5 CURRENT STATEMENT OF ATTORNEY QUALIFICATIONS

(Under Development)

DRAFT

3.6 SUMMARY OF CONTRACT SOUGHT

(Under Development)

DRAFT

PART IV - CONTRACT GENERAL TERMS

DRAFT

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
TERMS FOR CRIMINAL CASE TYPES**

July 1, 2022 to June 30, 2023

Table of Contents

GENERAL TERMS 4

1 DEFINITIONS AND RULES 4

1.1 Interpretation of Terms 4

1.2 Construction and Jurisdiction 4

1.3 Severability 4

1.4 Definitions 4

1.5 Financial Verification Required for Court Appointment 5

2 MUTUAL RIGHTS 5

2.1 Waiver 5

2.2 Attorney Fees 5

2.3 Termination 5

3 RIGHTS OF PDSC 5

3.1 Subcontracts and Assignment of Contract 5

3.2 PDSC Rights for Failure to Obtain Workers’ Compensation 6

3.3 Termination by PDSC for Cause 6

3.4 Funding Modification, Suspension, or Termination 6

3.5 Contractor Workload 6

3.6 Review, Verification, and Inspection of Records 7

4 RIGHTS OF CONTRACTOR 8

4.1 Termination by Contractor for Cause 8

4.2 Work Outside Contract 8

4.3 Client Records 8

4.4 Personnel Records 8

5 MUTUAL OBLIGATIONS 8

5.1 Professionalism 8

5.2 Successors in Interest 8

5.3 Compliance with Applicable Law 8

5.4 Notice of Contract Modification, Suspension, or Termination 9

5.5 Modification or Termination Due to Legislative Action or Court Interpretation 9

5.6 Periodic Review 9

5.7 Other Contractors and Vendors 9

6 OBLIGATIONS OF PDSC 9

6.1 State Funding Shortfall 9

6.2 Contract Payment 10

7 OBLIGATIONS OF CONTRACTOR 10

7.1 Performance Obligations of Appointed Counsel 10

7.2 Quality Assurance Obligations of Contract Administrator 13

7.3 Special Obligations to State of Oregon 14

7.4 Capacity and Equipment 16

7.5 Record Keeping 17

7.6 Reports to OPDS 17

7.7 Costs, Expenses, and Client Clothing 18

7.8 Special Notices 19

7.9	No Dual Payments for Contract Work	20
7.10	Independent Audit Required	20
7.11	Contract Administrator Duties.....	20
8	MUTUAL RISKS.....	21
8.1	Impossibility of Performance	21
8.2	Tort Liability.....	21
9	WIND-DOWN PROCEDURES	21
	SPECIFIC TERMS.....	22
1	PARTIES TO CONTRACT	22
2	TERM OF CONTRACT	22
3	NOTICE.....	22
4	TOTAL VALUE AND PAYMENT SCHEDULE.....	22
5	CASES, FTE, AND STAFF	22
6	ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT.....	23
7	MERGER CLAUSE.....	23
	PAYMENT SCHEDULE.....	24

DRAFT

GENERAL TERMS

1 DEFINITIONS AND 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 term or provision held to be invalid.

1.4 Definitions

1.4.1 State of Oregon

- (a) Public Defense Services Commission (PDSC) is the commission established under ORS 151.213.
- (b) Office of Public Defense Services (OPDS) is the office established by the PDSC under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system.

1.4.2 Contractor

“Contractor” is an entity that provides public defense services for eligible individuals, and includes Contractor’s agents, employees, members, officers, representatives, and successors. A contractor does not include subcontractors.

1.4.3 Client

A “Client” is a person whom OPDS or a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.4 Case

Any action in this state in which a Contractor has been appointed to represent or advise a client under the terms of the Public Defense Services Contract in a matter to which there is a right to appointed counsel at state expense.

Contractor’s Initials _____

1.4.5 Attorney Full Time Equivalent (FTE)

Attorney FTE is the unit of measurement equivalent to an individual attorney's public defense client representation based on the Caseload Standards and Case Counting Guidelines.

1.4.6 Caseload Standards and Case Counting Guidelines

These standards represent the maximum number of cases for which a 1.0 FTE public defense provider can provide legal services to in a one-year contract period. The Caseload Standards and Case Counting Guidelines are listed in an addendum.

1.5 Financial Verification Required for Court Appointment

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case 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.

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, OPDS may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts and Assignment of Contract

Contractor shall not subcontract for or delegate any of the services required under this contract or assign Contractor's interest in this contract without obtaining OPDS' prior written consent. Prior written consent must be obtained in each case a subcontract is sought. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

Contractor's Initials _____

3.2 PDSC Rights for Failure to Obtain Workers' Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide OPDS with a certificate of exemption, OPDS may:

- (a) Withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) Suspend this agreement until Contractor complies; or
- (c) Terminate this contract.

3.3 Termination by PDSC for Cause

3.3.1 Reasons for Contract Termination

OPDS may terminate this contract for cause, for any or one of 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; 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 inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by prevailing standards of performance and rules of professional conduct; or
- (e) Some other cause which has substantially impaired Contractor's ability to provide constitutionally adequate legal services under this contract or fulfill the obligations of this contract.

3.3.2 No Appointments After Notice

When Contractor receives OPDS' notice of termination for cause, Contractor shall not accept any further cases under the contract unless OPDS otherwise agrees in writing.

3.4 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within the 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. OPDS may propose to modify, suspend, or terminate this contract if OPDS reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and OPDS has complied with the procedures set out below in Section 6.1 (State Funding Shortfall).

3.5 Contractor Workload

3.5.1 Court Appointments

All attorneys under contract shall accept court appointments in accordance with the OPDS Caseload Standards and Case Counting Guidelines and shall accept court appointments to all criminal case types for which they are qualified pursuant to the PDSC's Qualification Standards. Contractor shall

Contractor's Initials _____

prioritize court appointments for the most serious case types for which it has qualified attorneys.

- (a) Contractor shall accept appointments to cases in counties other than those specified in this Contract. Contractor shall accept conflict and overflow appointments from jurisdictions within 100 miles, as measured from the courthouse in contractor's jurisdiction to the courthouse in the adjacent jurisdiction. Contractor shall not unreasonably refuse conflict and overflow appointments from jurisdictions more than 100 miles from Contractor's jurisdiction. These appointments will count toward the Contractor's overall contracted caseload and will be evaluated for weighting on a case-by-case basis. OPDS will provide additional weight to cases more than 100 miles from Contractor's jurisdiction.
- (b) No public defense contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.
- (c) No one funded as a 1.0 FTE may engage in any other paid work, unless OPDS otherwise agrees in writing.
- (d) Nothing in this section precludes a contractor from engaging in pro bono legal services.

3.5.2 Capacity Increase or Decrease

When caseload increases or decreases by 15% for six consecutive months, Contractor and OPDS shall discuss the circumstances surrounding the increase or decrease. OPDS may adjust the number of FTE in the contract to meet the changing needs of the jurisdiction if:

- (a) The probable number of available cases increases or decreases substantially, such that the proposed FTE amount no longer corresponds with caseload needs;
- (b) The introduction or discontinuation of a specialty court; or
- (c) OPDS determines that an increase or decrease in FTE capacity is in the state's interest.

3.6 Review, Verification, and Inspection of Records

3.6.1 Request

OPDS 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 OPDS deems necessary during the contract term.

3.6.2 Production of Records and Access to Facilities

OPDS may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. On OPDS's request, Contractor shall provide access to its facilities and make records available to OPDS or agent at all reasonable times, and promptly respond to requests for information in connection with fiscal or performance audits. OPDS will not remove Contractor's original office records or other property from Contractor's premises without Contractor's approval. Contractor shall keep such data and records in an accessible location and condition.

3.6.3 Other Information

Upon OPDS's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality and personnel confidentiality (Sections 4.3), Contractor shall provide any other information that OPDS deems necessary.

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 Work Outside Contract

Contractor may engage in additional paid work outside of this contract, but only to the extent that the additional paid work does not interfere with Contractor's ability to fulfill this contract.

Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.

4.3 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 or confidential 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.

4.4 Personnel Records

Contractor grants no right to OPDS or designee of OPDS 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 OPDS or OPDS's designee reasonable access to other information, including 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 Professionalism

Contractor and OPDS shall work collaboratively and professionally on all aspects of contract administration.

5.2 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.3 Compliance with Applicable Law

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to

Contractor's Initials _____

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.

5.4 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall be in writing and:

- (a) State the reasons therefor;
- (b) 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.

5.5 Modification or Termination Due to Legislative Action or Court Interpretation

OPDS and Contractor may renegotiate this contract if there is a significant change in workload, caseload, or increased cost of doing business due to legislation or court interpretations of federal or state laws. In addition, OPDS may modify, suspend, or terminate this contract as needed to comply with legislation or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.6 Periodic Review

At the request of either party, OPDS and Contractor will periodically review case assignment trends and any other matters needed to determine contract compliance or any necessary contract modifications. In counties where more than one Contractor provides legal services, periodic review shall include a review by OPDS of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates contemplated under the contracts, OPDS shall notify the court and Contractors that appointment rates must be adjusted and corrected.

5.7 Other Contractors and Vendors

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

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.

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. Counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

7.1.2 Representation at all Stages of a Proceeding

Contractor shall comply with 7.1.1 and 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, probate proceedings, and other civil proceedings not otherwise provided for under this contract.

7.1.2.1 Pre-appointment representation

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 shall commence representation of a client prior to appointment by the court in order to preserve and protect the rights of the client, upon written request from OPDS. In determining whether to authorize pre-appointment representation, the agency will consider whether:

- (a) The individual is a clear target of the investigation;
- (b) The agency has a good faith basis to conclude the individual seeks counsel;
- (c) It is reasonable for the agency to believe the person qualifies for public defense counsel; and
- (d) The case is of a magnitude for which pre-indictment/petition appointment is reasonable.

7.1.2.2 Appearance at first proceedings

- (a) Contractor shall provide representation at all arraignment and first appearance hearings, unless OPDS agrees in writing otherwise. Failure to provide such representation is a material breach of this contract.
- (b) Contractor shall work with OPDS and the court to determine schedules for providing representation at arraignments and first appearance hearings in jurisdictions in which there is more than one Contractor.
- (c) Contractor shall provide 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's Initials _____

Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:

- (a) Providing representation at all scheduled hearings and court proceedings.
- (b) Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
- (c) Filing petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,
- (d) 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 provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- (a) Seeking 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) Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- (c) Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- (d) Seeking 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) Filing a motion for new trial;
- (f) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705, when requested by a former Client;
- (g) Consulting with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and
- (h) Upon request, providing copies of the entire file to appellate or post-conviction relief counsel.

7.1.2.5 Case Closure

Contractor may close the case when:

- (a) The final judgment has been entered into the court register, and the attorney has met all other contractual obligations:
 - 1. If the case is a probation violation, the attorney may close the case upon final disposition of the probation violation;
 - 2. A judgment of dismissal constitutes a final judgment;
 - 3. An attorney may not close a case that has been entered into a deferral, diversion, or conditional discharge agreement until the final judgment has been entered into the court register;

- (b) A judge has signed an order removing the attorney from the case; or
- (c) A bench warrant for a client's failure to appear has been active for 180 days.

7.1.2.6 Reappointment to Prior Clients

The original contract attorney shall accept reappointment to a previous client when:

- (a) A case was dismissed without prejudice and has been refiled;
- (b) A case is reactivated following service of a bench warrant after contractor closed the file pursuant to 7.1.2.5; or
- (c) A case is remanded to circuit court following an appeal unless specific circumstances warrant assignment of a different attorney.

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 court recognized 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

7.1.5.1 Withdrawal from Case Only with Court Approval

Contractor shall comply with rule 1.16 of the Oregon Rules of Professional Conduct and 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 Contractor shall notify OPDS in writing. Consistent with the Oregon Rules of Professional Conduct, the Contractor shall ensure continuous representation of a client until withdrawal is granted and then assist in the prompt establishment of a new attorney/client relationship.

7.1.5.2 Prohibition on Withdrawal

When a public defense attorney leaves a Contractor, they may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

7.2 Quality Assurance Obligations of Contract Administrator

7.2.1 Quality Assurance Procedures

Contractor shall ensure that persons providing client representation under this contract, including any subcontractors OPDS approves, meet the standards of representation set forth in Section 7.1.1 of this contract. Contractor shall comply with quality assurance programs adopted by OPDS. Contractor shall establish and implement, as appropriate for Contractor's entity structure, quality assurance procedures consistent with the practices recommended in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010).

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 PDSC's Qualification Standards for Court-Appointed Counsel) and has been approved for appointment to the applicable case type by OPDS. Contractor shall provide to OPDS 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 other paid work 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. No contract attorney funded as a 1.0 FTE may take on any other paid work. Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.
- (c) Provides continuous representation from the commencement of proceedings 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 and/or constitutional 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.

Contractor's Initials _____

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, OPDS, 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 VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, 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 Chapter 659A, and all regulation and administrative rules established pursuant to those laws.

Contractor's Initials _____

7.3.5 Contractor Insurance to Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide OPDS 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, OPDS, 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 OPDS 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 received, 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 (OEI) to access only those cases

Contractor's Initials _____

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 Capacity and Equipment

7.4.1 Number of Persons Providing Services

Contractor shall secure, at its own expense in whole or in part from contract funds, all, members, personnel, or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support services to perform its contract obligations.

- (a) Contractor shall not require any attorney performing the services required by this contract to sign a noncompete agreement;
- (b) Contractor shall retain an FTE attorney within 30 days of any vacancy, or OPDS may remove those funds from the contract. The 30 days may be extended with written agreement by OPDS. Contractor shall fill the vacancy as soon as practicable with an attorney who possesses equal or greater qualifications as defined in the PDSC Qualification Standards unless OPDS otherwise agrees in writing. Contractor shall immediately notify OPDS of a vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.
- (c) Contractor shall notify OPDS when a contract attorney is on leave for more than 30 days or is otherwise unavailable to accept appointments. Contractor shall provide the date that the leave begins and the contractor's plan to cover the attorney's caseload while the attorney is on leave.
- (d) Contractor must retain a minimum of 0.5 support staff per 1.0 attorney FTE to assist the attorneys on the contract in a manner detailed in the contract's specific terms. Support staff are persons who provide support for attorneys and clients through administrative, clerical, communicative, technical, or similar work. Support staff does not include contracted services such as answering services or photocopying services. Contractor shall immediately notify OPDS of any support staff vacancies and shall fill the vacancy within 30 days. Failure to retain a minimum number of support staff is a material breach of this contract.

7.4.2 Certification to OPDS

Contractor shall provide an updated attorney certification form for all attorneys providing legal services pursuant to the contract within 30 days of the contract's execution, excepting attorneys who have submitted an updated attorney certification form within the past 12 months of the contract's effective date. Contractor shall also provide certifications for any attorneys added during the contract. Contractor shall certify that the attorney added 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.

Contractor's Initials _____

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(8)(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.

7.4.4 Contractor Offices

Contract attorneys shall maintain an office in the judicial district in which they have contracted to provide legal services. If a contractor has contracted to provide services statewide, then contractor shall maintain an office in a location of their choice within Oregon. If a contractor has contracted to provide services in more than one judicial district, then contractor shall maintain an office in one of the judicial districts in which they have contracted to provide legal services. A failure to maintain an office is a material breach of this contract.

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 OPDS, or OPDS'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 OPDS

7.6.1 Caseload Reports

Within ten (10) days of the end of each month, Contractor shall provide to OPDS, in a format specified by OPDS, a monthly caseload report for the preceding month. Contractor may submit amended caseload reports, if necessary, at any time up to forty-five (45) days after completion of a

Contractor's Initials _____

periodic review that includes the monthly caseload report to be amended. Contractor must be current on case reporting at the time of their review meetings with their analyst.

7.6.2 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by OPDS, 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 OPDS. Contractor shall make the data available for OPDS review upon request.

7.6.3 Other Reports

Contractor shall comply with OPDS requests for information and data. Contractor shall provide information and data to OPDS in a reporting form that the agency develops, including information and data on non-contract work, to the extent permitted by the Oregon Rules of Professional Conduct. Contractor shall comply with any due dates established by OPDS. Information and data may include information related to Contractor's non-contract work to the extent permitted by the Oregon Rules of Professional Conduct.

7.6.4 Penalty for Late Reports

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports. If Contractor fails to submit a reasonably accurate report on the due date, OPDS may withhold the following percentage of funds from Contractor's monthly payment, and each subsequent monthly payment, until OPDS receives the report and supporting documentation. Funds withheld may be paid to Contractor once reporting is current.

- (a) Not received by due date: 10% of contract funds
- (b) 30 days late: 25% of contract funds
- (c) 60 days late: 50% of contract funds
- (d) 90 days late: 100% of contract funds

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.

7.7.2 Client Clothing

Prior to requesting preauthorization to purchase clothing for a client's court appearance, Contractor

Contractor's Initials _____

agrees to contact contractors who maintain “clothing rooms” to determine whether suitable clothing is available. (Contact OPDS 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 OPDS 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;
- (b) Contractor’s ability to accept appointments;
- (c) Contractor’s ability to meet financial obligations; and
- (d) Matters affecting Contractor’s ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided to OPDS 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 Persons Providing Services Under the Contract

Contractor shall provide, to OPDS and the affected court, notice of the names of attorneys providing services under this contract and any changes in the number of persons providing services under this contract. Upon request by OPDS, Contractor shall provide a current list of attorneys and non-attorneys providing services under this contract and provide timely responses to OPDS surveys or other inquiries concerning the diversity of attorneys and others performing services for Contractor.

7.8.2.3 Events Which Could Impair the Contract

Contractor shall notify OPDS in writing within forty-eight (48) hours 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 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 has been convicted of a crime.

(c) **Formal Bar Complaint**

A formal accusation of misconduct has been filed by the Oregon State Bar against an

Contractor’s Initials _____

attorney performing services for Contractor.

(d) **Bar Discipline**

Disciplinary action is taken by the Oregon State Bar against an attorney performing services for Contractor.

(e) **Uninsured Practice of Law**

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.

(f) **Unforeseen Events**

An attorney performing services for Contractor experienced an event that impacts their ability to perform services under this contract, including, but not limited to events such as fire, flood, burglary, embezzlement.

7.8.2.4 Nonassignment of Available Cases

Contractor shall notify OPDS immediately upon determining that the court is not assigning Contractor to cases available for appointment. OPDS shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

7.8.2.5 Contractor Shut-Off

If Contractor is unable, or believes it will be unable, to accept court appointments to public defense cases, Contractor shall notify OPDS immediately and provide at least 30 days' notice before refusing court appointments.

7.9 No Dual Payments for Contract Work

Contractor shall not:

- (a) Expend funds under this contract for work performed outside this contract without OPDS 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 Solicit or accept payment from a client for legal services on a matter on which Contractor has been appointed by the court.

7.13 Contract Administrator Duties

Contract Administrator is responsible for contract administration. Contract administration shall include, without limitation, selection of prospective contract attorney members, assigning cases and oversight of case assignments, timely and accurate tracking and reporting of caseloads to OPDS, management and disbursement of contract funds, working with OPDS to organize regular meetings to review data and ensure sufficient support to achieve program expectations, consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing, corresponding with OPDS regarding contract inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations, maintaining records of all case reporting, financial and other records regarding contract members and making such records available to OPDS upon request, negotiating new contracts and

contract changes with OPDS as necessary, actively participating in system improvement initiatives including multi-disciplinary training and partner meetings, and providing training and mentorship to contract attorneys and staff. Contract administrators and OPDS will meet a minimum of three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

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 WIND-DOWN PROCEDURES

Unless OPDS agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall continue to provide legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination. OPDS and contractor shall negotiate wind-down terms that allow for contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay attorneys at the existing PDSC authorized hourly rate to wind-down their contract caseload.

Contractor's Initials _____

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 July 1, 2022 through June 30, 2023.

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 VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$_____ during the term of this contract. PDSC shall pay the total value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

5 ATTORNEY FTE, SPECIALTY COURT, ADMINSTRATIVE, AND INVESTIGATOR BREAKDOWN

Contractor shall provide legal representation in the Circuit Court of _____ County. Contractor shall procure _____ attorney FTE to provide legal services pursuant to this contract, in accordance with the attached Caseload Standards and Case Counting Guidelines. Contractor shall maintain an additional support staff ratio to attorney of at least 0.5:1. The minimum number of FTE support staff for this contract is _____. This includes:

A. Caseload FTE Funding

The following comprise the total contract value:

Attorney rates funded:

Murder	_____ FTE at _____	per year.
Major Felony	_____ FTE at _____	per year.
Minor Felony and Civil Commitment	_____ FTE at _____	per year.
Misdemeanor	_____ FTE at _____	per year.

Contractor’s Initials _____

The following rates represent a portion of the above FTE Attorney values as developed by OPDS and are included for transparency purposes:

Staff rate: \$ _____

Overhead rate: \$ _____

B. Specialty Court FTE: This includes _____ FTE for the following specialty court programs:

C. Administrative Fees: Contractor shall receive _____ per year to carry out the responsibilities of 7.13 of the general terms of this contract.

D. Investigation: Contractor shall procure _____ FTE investigators at a rate of _____ per investigator per year.

6 **ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT**

Contractor may not distribute funds based upon a fixed-fee per case model. In addition to section 7.1.1 of the general terms of the contract, attorneys providing legal services pursuant to this contract must comply with section 1.7 of the Oregon Rules of Professional Conduct.

7 **MERGER CLAUSE**

THIS WRITING TOGETHER WITH THE GENERAL TERMS 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 AND ALL ATTORNEYS PERFORMING LEGAL SERVICES PURSUANT TO THIS CONTRACT HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Stephen I. Singer, Executive Director
Office of Public Defense Services Public Defense Services Commission

Date

Contractor

Date

Title or Representative Capacity

Contractor's Initials _____

CONTRACT BETWEEN PDSC AND XXXX PAYMENT SCHEDULE

DRAFT

Contractor's Initials _____

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
TERMS FOR JUVENILE CASE TYPES**

July 1, 2022 to June 30, 2023

Table of Contents

GENERAL TERMS 4

1 DEFINITIONS AND RULES 4

 1.1 Interpretation of Terms 4

 1.2 Construction and Jurisdiction 4

 1.3 Severability 4

 1.4 Definitions 4

 1.5 Financial Verification Required for Court Appointment 5

2 MUTUAL RIGHTS 5

 2.1 Waiver 5

 2.2 Attorney Fees 5

 2.3 Termination 5

3 RIGHTS OF PDSC 5

 3.1 Subcontracts and Assignment of Contract 5

 3.2 PDSC Rights for Failure to Obtain Workers' Compensation 6

 3.3 Termination by PDSC for Cause 6

 3.4 Funding Modification, Suspension, or Termination 6

 3.5 Contractor Workload 6

 3.6 Review, Verification, and Inspection of Records 7

4 RIGHTS OF CONTRACTOR 8

 4.1 Termination by Contractor for Cause 8

 4.2 Work Outside Contract 8

 4.3 Client Records 8

 4.4 Personnel Records 8

5 MUTUAL OBLIGATIONS 8

 5.1 Professionalism 8

 5.2 Successors in Interest 8

 5.3 Compliance with Applicable Law 8

 5.4 Notice of Contract Modification, Suspension, or Termination 9

 5.5 Modification or Termination Due to Legislative Action or Court Interpretation 9

 5.6 Periodic Review 9

 5.7 Other Contractors and Vendors 9

6 OBLIGATIONS OF PDSC 9

 6.1 State Funding Shortfall 9

 6.2 Contract Payment 10

7 OBLIGATIONS OF CONTRACTOR 10

 7.1 Performance Obligations of Appointed Counsel 10

 7.2 Quality Assurance Obligations of Contract Administrator 13

 7.3 Special Obligations to State of Oregon 14

 7.4 Capacity and Equipment 16

 7.5 Record Keeping 17

 7.6 Reports to OPDS 17

 7.7 Costs, Expenses, and Client Clothing 18

 7.8 Special Notices 19

7.9	No Dual Payments for Contract Work	20
7.10	Independent Audit Required	20
7.11	Contract Administrator Duties.....	20
8	MUTUAL RISKS.....	21
8.1	Impossibility of Performance	21
8.2	Tort Liability.....	21
9	WIND-DOWN PROCEDURES	21
	SPECIFIC TERMS.....	22
1	PARTIES TO CONTRACT	22
2	TERM OF CONTRACT	22
3	NOTICE.....	22
4	TOTAL VALUE AND PAYMENT SCHEDULE.....	22
5	CASES, FTE, AND STAFF	22
6	ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT.....	23
7	MERGER CLAUSE.....	23
	PAYMENT SCHEDULE.....	24

DRAFT

GENERAL TERMS

1 DEFINITIONS AND 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 term or provision held to be invalid.

1.4 Definitions

1.4.1 State of Oregon

- (a) Public Defense Services Commission (PDSC) is the commission established under ORS 151.213.
- (b) Office of Public Defense Services (OPDS) is the office established by the PDSC under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system.

1.4.2 Contractor

“Contractor” is an entity that provides public defense services for eligible individuals, and includes Contractor’s agents, employees, members, officers, representatives, and successors. A contractor does not include subcontractors.

1.4.3 Client

A “Client” is a person whom OPDS or a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.4 Case

“Juvenile case” means any case initiated under ORS chapter 419B or ORS chapter 419C or as required in a contested adoption proceeding consistent with *Zockert v. Fanning*, 310 Or 514, 524 (1990).

1.4.5 Attorney Full Time Equivalent (FTE)

Contractor’s Initials _____

Attorney FTE is the unit of measurement equivalent to an individual attorney's public defense client representation based on the Caseload Standards and Case Counting Guidelines.

1.4.6 Caseload Standards and Case Counting Guidelines

These standards represent the maximum number of cases for which a 1.0 FTE public defense provider can provide legal services to in a one-year contract period. The Caseload Standards and Case Counting Guidelines are listed in an addendum.

1.5 Financial Verification Required for Court Appointment

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case 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.

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, OPDS may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts and Assignment of Contract

Contractor shall not subcontract for or delegate any of the services required under this contract or assign Contractor's interest in this contract without obtaining OPDS' prior written consent. Prior written consent must be obtained in each case a subcontract is sought. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

Contractor's Initials _____

3.2 PDSC Rights for Failure to Obtain Workers' Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide OPDS with a certificate of exemption, OPDS may:

- (a) Withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) Suspend this agreement until Contractor complies; or
- (c) Terminate this contract.

3.3 Termination by PDSC for Cause

3.3.1 Reasons for Contract Termination

OPDS may terminate this contract for cause, for any or one of 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; 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 inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by prevailing standards of performance and rules of professional conduct; or
- (e) Some other cause which has substantially impaired Contractor's ability to provide constitutionally adequate legal services under this contract or fulfill the obligations of this contract.

3.3.2 No Appointments After Notice

When Contractor receives OPDS' notice of termination for cause, Contractor shall not accept any further cases under the contract unless OPDS otherwise agrees in writing.

3.4 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within the 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. OPDS may propose to modify, suspend, or terminate this contract if OPDS reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and OPDS has complied with the procedures set out below in Section 6.1 (State Funding Shortfall).

3.5 Contractor Workload

3.5.1 Court Appointments

All attorneys under contract shall accept court appointments in accordance with the OPDS Caseload Standards and Case Counting Guidelines and shall accept court appointments to all juvenile case types for which they are qualified pursuant to the PDSC's Qualification Standards. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

- (a) Contractor shall accept appointments to cases in counties other than those specified in this Contract. Contractor shall accept conflict and overflow appointments from jurisdictions within 100 miles, as measured from the courthouse in contractor's jurisdiction to the courthouse in the adjacent jurisdiction. Contractor shall not unreasonably refuse conflict and overflow appointments from jurisdictions more than 100 miles from Contractor's jurisdiction. These appointments will count toward the Contractor's overall contracted caseload and will be evaluated for weighting on a case-by-case basis. OPDS will provide additional weight to cases more than 100 miles from Contractor's jurisdiction.
- (b) No public defense contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.
- (c) No one funded as a 1.0 FTE may engage in any other paid work, unless OPDS otherwise agrees in writing.
- (d) Nothing in this section precludes a contractor from engaging in pro bono legal services.

3.5.2 Capacity Increase or Decrease

When caseload increases or decreases by 15% for six consecutive months, Contractor and OPDS shall discuss the circumstances surrounding the increase or decrease. OPDS may adjust the number of FTE in the contract to meet the changing needs of the jurisdiction if:

- (a) The probable number of available cases increases or decreases substantially, such that the proposed FTE amount no longer corresponds with caseload needs;
- (b) The introduction or discontinuation of a specialty court; or
- (c) OPDS determines that an increase or decrease in FTE capacity is in the state's interest.

3.6 Review, Verification, and Inspection of Records

3.6.1 Request

OPDS 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 OPDS deems necessary during the contract term.

3.6.2 Production of Records and Access to Facilities

OPDS may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. On OPDS's request, Contractor shall provide access to its facilities and make records available to OPDS or agent at all reasonable times, and promptly respond to requests for information in connection with fiscal or performance audits. OPDS will not remove Contractor's original office records or other property from Contractor's premises without Contractor's approval. Contractor shall keep such data and records in an accessible location and condition.

3.6.3 Other Information

Upon OPDS's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality and personnel confidentiality (Sections 4.3), Contractor shall provide any other information that OPDS deems necessary.

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 Work Outside Contract

Contractor may engage in additional paid work outside of this contract, but only to the extent that the additional paid work does not interfere with Contractor's ability to fulfill this contract.

Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.

4.3 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 or confidential 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.

4.4 Personnel Records

Contractor grants no right to OPDS or designee of OPDS 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 OPDS or OPDS's designee reasonable access to other information, including 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 Professionalism

Contractor and OPDS shall work collaboratively and professionally on all aspects of contract administration.

5.2 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.3 Compliance with Applicable Law

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to

Contractor's Initials _____

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.

5.4 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall be in writing and:

- (a) State the reasons therefor;
- (b) 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.

5.5 Modification or Termination Due to Legislative Action or Court Interpretation

OPDS and Contractor may renegotiate this contract if there is a significant change in workload, caseload, or increased cost of doing business due to legislation or court interpretations of federal or state laws. In addition, OPDS may modify, suspend, or terminate this contract as needed to comply with legislation or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.6 Periodic Review

At the request of either party, OPDS and Contractor will periodically review case assignment trends and any other matters needed to determine contract compliance or any necessary contract modifications. In counties where more than one Contractor provides legal services, periodic review shall include a review by OPDS of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates contemplated under the contracts, OPDS shall notify the court and Contractors that appointment rates must be adjusted and corrected.

5.7 Other Contractors and Vendors

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

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.

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. Counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

7.1.2 Representation at all Stages of a Proceeding

Contractor shall comply with 7.1.1 and provide comprehensive representation in all stages of a juvenile case, 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, probate proceedings, and other civil proceedings not otherwise provided for under this contract.

7.1.2.1 Pre-appointment representation

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 shall commence representation of a client prior to appointment by the court in order to preserve and protect the rights of the client, upon written request from OPDS. In determining whether to authorize pre-appointment representation, the agency will consider whether:

- (a) The individual is a clear target of an investigation;
- (b) The agency has a good faith basis to conclude the individual seeks counsel;
- (c) It is reasonable for the agency to believe the person qualifies for public defense counsel; and
- (d) The case is of a magnitude for which pre-petition appointment is reasonable.

7.1.2.2 Appearance at first proceedings

- (a) Contractor shall provide representation at all shelter hearings, detention hearings, and other initial appearances, unless OPDS agrees in writing otherwise. Failure to provide such representation is a material breach of this contract.
- (b) When practicable, Contractor shall meet with client prior to a shelter hearing, detention hearing, or other initial appearance to review available discovery.
- (c) Contractor shall work with OPDS and the court to determine schedules for providing representation at shelter hearings, detention hearings, or other initial appearances.
- (d) Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case.

Contractor's Initials _____

7.1.2.3 Representation following the commencement of proceedings

Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:

- (a) Providing representation at all scheduled hearings and court proceedings.
- (b) Filing petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,
- (c) 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 provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- (a) Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of 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) Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- (c) Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- (d) Seeking 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) Filing a motion for new trial;
- (f) File a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- (g) File request for a review hearing under ORS 419C.626, as requested by a youth client;
- (h) Consult with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation; and
- (i) Upon request, provide copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation.

7.1.2.5 Case Closure

(a) For dependency, permanent guardianship, and termination-of-parental-rights cases, Contractor may close the case when the attorney has met all of their contractual obligations and the court has entered one of the following into the court register:

- (i) An order or judgment dismissing the petition;

- (ii) An order or judgment dismissing the case and/or terminating the wardship over the child;
- (iii) An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
- (iv) An order or judgment disestablishing the parentage of the attorney's client;
- (v) An order or judgment terminating the parental rights of the attorney's client;
- (vi) An order or judgment granting an adoption of the attorney's client; or
- (vii) An order terminating or vacating the attorney's appointment.

(b) For delinquency cases, Contractor may close the case when the attorney has met all of their contractual obligations and the court has entered one of the following into the court register:

- (i) An order or judgment dismissing the petition;
- (ii) An order or judgment dismissing the case and terminating the wardship over the youth;
- (iii) An order terminating or vacating the attorney's appointment;
- (iv) A bench warrant, which has remained in effect for 180 days.

7.1.2.6 Reappointment to Prior Clients

The original contract attorney shall accept reappointment to a previous client when:

- (a) A case was dismissed without prejudice and has been refiled;
- (b) A case is reactivated following service of a bench warrant after contractor closed the file pursuant to 7.1.2.5; or
- (c) A case is remanded to circuit court following an appeal unless specific circumstances warrant assignment of a different attorney.

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 court recognized 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

7.1.5.1 Withdrawal from Case Only with Court Approval

Contractor shall comply with rule 1.16 of the Oregon Rules of Professional Conduct and 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 Contractor shall notify OPDS in writing. Consistent with the Oregon Rules of Professional Conduct, the Contractor shall ensure continuous representation of a client until withdrawal is granted and then assist in the prompt establishment of a new attorney/client relationship.

7.1.5.2 Prohibition on Withdrawal

When a public defense attorney leaves a Contractor, they may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

7.2 Quality Assurance Obligations of Contract Administrator

7.2.1 Quality Assurance Procedures

Contractor shall ensure that persons providing client representation under this contract, including any subcontractors OPDS approves, meet the standards of representation set forth in Section 7.1.1 of this contract. Contractor shall comply with quality assurance programs adopted by OPDS. Contractor shall establish and implement, as appropriate for Contractor's entity structure, quality assurance procedures consistent with the practices recommended in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010).

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 PDSC's Qualification Standards for Court-Appointed Counsel) and has been approved for appointment to the applicable case type by OPDS. Contractor shall provide to OPDS 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 other paid work 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. No contract attorney funded as a 1.0 FTE may take on any other paid work. Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.
- (c) Provides continuous representation from the commencement of proceedings until the final

Contractor's Initials _____

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 constitutional and/or criminal law during each year of this contract, if the attorney is handling juvenile delinquency and/or waiver 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.

7.3 Special Obligations to State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend, and hold harmless PDSC, OPDS, 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

Contractor's Initials _____

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 VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, 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 Chapter 659A, 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 OPDS 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, OPDS, 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

Contractor's Initials _____

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 OPDS 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 (OEI) 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 Capacity and Equipment

7.4.1 Number of Persons Providing Services

Contractor shall secure, at its own expense in whole or in part from contract funds, all, members, personnel, or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support services to perform its contract obligations.

- (a) Contractor shall not require any attorney performing the services required by this contract to sign a noncompete agreement;
- (b) Contractor shall retain an FTE attorney within 30 days of any vacancy, or OPDS may remove those funds from the contract. The 30 days may be extended with written agreement by OPDS. Contractor shall fill the vacancy as soon as practicable with an attorney who possesses equal or greater qualifications as defined in the PDSC Qualification Standards unless OPDS otherwise agrees in writing. Contractor shall immediately notify OPDS of a vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.
- (c) Contractor shall notify OPDS when a contract attorney is on leave for more than 30 days or is otherwise unavailable to accept appointments. Contractor shall provide the date that the leave begins and the contractor's plan to cover the attorney's caseload while the attorney is on leave.
- (d) Contractor must retain a minimum of 0.5 support staff per 1.0 attorney FTE to assist the attorneys on the contract in a manner detailed in the contract's specific terms. Support staff are persons who provide support for attorneys and clients through administrative, clerical, communicative, technical, or similar work. Support staff does not include contracted services such as answering services or photocopying services. Contractor shall immediately notify OPDS of any support staff vacancies and shall fill the vacancy within 30 days. Failure to retain a minimum number of support staff is a material breach of this contract.

Contractor's Initials _____

7.4.2 Certification to OPDS

Contractor shall provide an updated attorney certification form for all attorneys providing legal services pursuant to the contract within 30 days of the contract's execution, excepting attorneys who have submitted an updated attorney certification form within the past 12 months of the contract's effective date. Contractor shall also provide certifications for any attorneys added during the contract. Contractor shall certify that the attorney added 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(8)(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.

7.4.4 Contractor Offices

Contract attorneys shall maintain an office in the judicial district in which they have contracted to provide legal services. If a contractor has contracted to provide services statewide, then contractor shall maintain an office in a location of their choice within Oregon. If a contractor has contracted to provide services in more than one judicial district, then contractor shall maintain an office in one of the judicial districts in which they have contracted to provide legal services. A failure to maintain an office is a material breach of this contract.

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 OPDS, or OPDS'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

Contractor's Initials _____

aggravated murder, juvenile waiver, and ORS 137.707 cases. Case files in aggravated murder, juvenile waiver, and ORS 137.707 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to OPDS

7.6.1 Caseload Reports

Within ten (10) days of the end of each month, Contractor shall provide to OPDS, in a format specified by OPDS, a monthly caseload report for the preceding month. To assist OPDS in providing accurate information to the Oregon Department of Human Services in support of claims for allowable expenses under Title IV-E of the Social Security Act, 42 USC § 474(a)(3), Contractor shall ensure that, in all such reports, any pre-appointment representation is properly identified. Contractor may submit amended caseload reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly caseload report to be amended. Contractor must be current on case reporting at the time of their review meetings with their analyst.

7.6.2 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by OPDS, 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 OPDS. Contractor shall make the data available for OPDS review upon request.

7.6.3 Other Reports

Contractor shall comply with OPDS requests for information and data. Contractor shall provide information and data to OPDS in a reporting form that the agency develops, including information and data on non-contract work, to the extent permitted by the Oregon Rules of Professional Conduct. Contractor shall comply with any due dates established by OPDS. Information and data may include information related to Contractor's non-contract work to the extent permitted by the Oregon Rules of Professional Conduct.

7.6.4 Penalty for Late Reports

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports. If Contractor fails to submit a reasonably accurate report on the due date, OPDS may withhold the following percentage of funds from Contractor's monthly payment, and each subsequent monthly payment, until OPDS receives the report and supporting documentation. Funds withheld may be paid to Contractor once reporting is current.

- (a) Not received by due date: 10% of contract funds
- (b) 30 days late: 25% of contract funds
- (c) 60 days late: 50% of contract funds
- (d) 90 days late: 100% of contract funds

7.6.5 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

Contractor's Initials _____

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.

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 OPDS 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 OPDS 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;
- (b) Contractor's ability to accept appointments;
- (c) Contractor's ability to meet financial obligations; and
- (d) Matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided to OPDS 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 Persons Providing Services Under the Contract

Contractor shall provide, to OPDS and the affected court, notice of the names of attorneys providing services under this contract and any changes in the number of persons providing services under this contract. Upon request by OPDS, Contractor shall provide a current list of attorneys and non-attorneys providing services under this contract and provide timely responses to OPDS surveys or other inquiries concerning the diversity of attorneys and others performing services for Contractor.

7.8.2.3 Events Which Could Impair the Contract

Contractor's Initials _____

Contractor shall notify OPDS in writing within forty-eight (48) hours 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 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 has been convicted of a crime.

(c) **Formal Bar Complaint**

A formal accusation of misconduct has been filed by the Oregon State Bar against an attorney performing services for Contractor.

(d) **Bar Discipline**

Disciplinary action is taken by the Oregon State Bar against an attorney performing services for Contractor.

(e) **Uninsured Practice of Law**

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.

(f) **Unforeseen Events**

An attorney performing services for Contractor experienced an event that impacts their ability to perform services under this contract, including, but not limited to events such as fire, flood, burglary, embezzlement.

7.8.2.4 Nonassignment of Available Cases

Contractor shall notify OPDS immediately upon determining that the court is not assigning Contractor to cases available for appointment. OPDS shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

7.8.2.5 Contractor Shut-Off

If Contractor is unable, or believes it will be unable, to accept court appointments to public defense cases, Contractor shall notify OPDS immediately and provide at least 30 days' notice before refusing court appointments.

7.9 No Dual Payments for Contract Work

Contractor shall not:

- (a) Expend funds under this contract for work performed outside this contract without OPDS 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

Contractor's Initials _____

Solicit or accept payment from a client for legal services on a matter on which Contractor has been appointed by the court.

7.13 Contract Administrator Duties

Contract Administrator is responsible for contract administration. Contract administration shall include, without limitation, selection of prospective contract attorney members, assigning cases and oversight of case assignments, timely and accurate tracking and reporting of caseloads to OPDS, management and disbursement of contract funds, working with OPDS to organize regular meetings to review data and ensure sufficient support to achieve program expectations, consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing, corresponding with OPDS regarding contract inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations, maintaining records of all case reporting, financial and other records regarding contract members and making such records available to OPDS upon request, negotiating new contracts and contract changes with OPDS as necessary, actively participating in system improvement initiatives including multi-disciplinary training and partner meetings, and providing training and mentorship to contract attorneys and staff. Contract administrators and OPDS will meet a minimum of three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

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 WIND-DOWN PROCEDURES

Unless OPDS agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall continue to provide legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination. OPDS and contractor shall negotiate wind-down terms that allow for contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay attorneys at the existing PDSC authorized hourly rate to wind-down their contract caseload.

Contractor's Initials _____

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 July 1, 2022 through June 30, 2023.

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 VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$_____ during the term of this contract. PDSC shall pay the total value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

5 ATTORNEY FTE, SPECIALTY COURT, ADMINSTRATIVE, AND INVESTIGATOR BREAKDOWN

Contractor shall provide legal representation in the Circuit Court of _____ County. Contractor shall procure _____ attorney FTE to provide legal services pursuant to this contract, in accordance with the attached Caseload Standards and Case Counting Guidelines. Contractor shall maintain an additional support staff ratio to attorney of at least 0.5:1. The minimum number of FTE support staff for this contract is _____. This includes:

A. Caseload FTE Funding

The following comprise the total contract value:

Attorney rates funded:

Juvenile Delinquency Only	_____ FTE at _____ per year.
Juvenile Dependency Only	_____ FTE at _____ per year.
Juvenile Dependency and Delinquency	_____ FTE at _____ per year.
Juvenile Dependency and Delinquency Murder	_____ FTE at _____ per year.

Contractor’s Initials _____

The following rates represent a portion of the FTE Attorney value as developed by OPDS and are included for transparency purposes:

Staff rate: \$_____

Overhead rate: \$_____

B. Specialty Court FTE: This includes _____ FTE for the following specialty court programs:

C. Administrative Fees: Contractor shall receive _____ per year to carry out the responsibilities of 7.13 of the general terms of this contract.

D. Investigation: Contractor shall procure _____ FTE investigators at a rate of _____ per investigator per year.

6 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

Contractor may not distribute funds based upon a fixed-fee per case model. In addition to section 7.1.1 of the general terms of the contract, attorneys providing legal services pursuant to this contract must comply with section 1.7 of the Oregon Rules of Professional Conduct.

7 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS 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 AND ALL ATTORNEYS PERFORMING LEGAL SERVICES PURSUANT TO THIS CONTRACT HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Stephen I. Singer, Executive Director
Office of Public Defense Services Public Defense Services Commission

Date

Contractor

Date

Title or Representative Capacity

Contractor's Initials _____

CONTRACT BETWEEN PDSC AND XXXX PAYMENT SCHEDULE

DRAFT

Contractor's Initials _____

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
TERMS FOR PARENT CHILD REPRESENTATION
PROGRAM (PCRP)**

July 1, 2022 to June 30, 2023

Contents

GENERAL TERMS 4

1 DEFINITIONS AND RULES 4

 1.1 Interpretation of Terms 4

 1.2 Construction and Jurisdiction 4

 1.3 Severability..... 4

 1.4 Definitions..... 4

 1.5 Appointments That Do Not Qualify to be Counted..... 4

2	MUTUAL RIGHTS.....	5
2.1	Waiver.....	5
2.2	Attorney Fees.....	5
2.3	Termination.....	5
3	RIGHTS OF PDSC.....	5
3.1	Subcontracts and Assignment of Contract	5
3.2	PDSC Rights for Failure to Obtain Workers' Compensation.....	6
3.3	De Minimis Changes in Contractor Reports/Documents.....	6
3.4	Termination by PDSC for Cause.....	6
3.5	Funding Modification, Suspension, or Termination.....	7
3.6	Contractor Workload	7
3.7	Review, Verification, and Inspection of Records.....	7
4	RIGHTS OF CONTRACTOR.....	8
4.1	Termination by Contractor for Cause.....	8
4.2	Court Appointments Outside Contract.....	8
4.3	Client Records.....	8
4.4	Personnel Records.....	8
5	MUTUAL OBLIGATIONS	8
5.1	Professionalism	
5.2	Successors in Interest	9
5.3	Compliance with Applicable Law.....	9
5.4	Notice of Contract Modification, Suspension, or Termination	9
5.5	Modification or Termination Due to Legislative Action or Court Interpretation	9
5.6	Periodic Review	9
5.7	Other Contractors and Vendors	9
6	OBLIGATIONS OF PDSC.....	9
6.1	State Funding Shortfall.....	10
6.2	Contract Payment	10
6.3	Payments in Addition to Contract Price	10
7	OBLIGATIONS OF CONTRACTOR.....	11
7.1	Performance Obligations of Appointed Counsel	11
7.2	Quality Assurance Obligations of Contract Administrator.....	13
7.3	Special Obligations to State of Oregon	14
7.4	Capacity and Equipment	16
7.5	Record Keeping.....	17
7.6	Reports to OPDS.....	18
7.7	Costs, Expenses, and Client Clothing.....	19
7.8	Special Notices.....	19
7.9	No Dual Payments for Contract Work	21
7.10	Independent Audit Required	21
7.11	Limits on Nonprofit Public Defender Attorneys.....	21
7.12	Limits on Pro Bono Work	21
7.13	Contract Administrator Duties.....	21
8	MUTUAL RISKS.....	21

8.1	Impossibility of Performance	22
8.2	Tort Liability.....	22
9	WIND-DOWN PROCEDURES	22
10	CASELOAD STANDARDS.....	22
SPECIFIC TERMS.....		25
1	PARTIES TO CONTRACT.....	25
2	TERM OF CONTRACT	25
3	NOTICE.....	25
4	TOTAL VALUE AND PAYMENT SCHEDULE.....	25
5	CASES, FTE, AND STAFF	25
6	ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT.....	26
7	MERGER CLAUSE.....	26
CONTRACT BETWEEN PDSC AND CONTRACTOR PAYMENT SCHEDULE.....		27
CONTRACT BETWEEN PDSC AND CONTRACTOR FTE.....		28

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GENERAL TERMS

1 DEFINITIONS AND 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 term or provision held to be invalid.

1.4 Definitions

1.4.1 Attorney Full Time Equivalent (FTE)

"Attorney FTE" is the unit of measurement equivalent to an individual attorney's public defense client representation based on the caseload standards adopted by the PDSC.

1.4.2 Case

Any action in this state in which a Contractor has been appointed to represent or advise a client under the terms of the Public Defense Services Contract in a matter to which there is a right to appointed counsel at state expense.

1.4.3 Client

A "client" is a person whom OPDS or a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.4 Collateral Representation

"Collateral representation" means legal services provided by an attorney appointed in a juvenile case in matters outside the juvenile case to improve the position of the parent, legal guardian, child, or youth client in the juvenile case. "Collateral representation" includes, but is not limited to, legal services provided in relation to:

- (a) a charge or conviction for a violation or crime under state or federal law;
- (b) a petition for custody and parenting time; and
- (c) a petition for a restraining order or stalking protective order.

1.4.5 Contractor

“Contractor” is an entity that provides public defense services for eligible individuals, and includes Contractor’s agents, employees, members, officers, representatives, and successors. A contractor does not include subcontractors.

1.4.6 Juvenile Case

“Juvenile case” means any case initiated under ORS chapter 419B or ORS chapter 419C or as required in a contested adoption proceeding consistent with *Zockert v. Fanning*, 310 Or 514, 524 (1990).

1.4.7 Open Caseload

“Open caseload” means the total number of cases in which an attorney providing legal services under this contract is actively representing a client at any given time.

1.4.8 Pre-appointment Representation

“Pre-appointment representation” (also referred to as “prepetition representation”) means representation of a parent, legal guardian, or child during a child welfare investigation by the Oregon Department of Human Services and representation of a youth during a law enforcement investigation, before a court has appointed counsel for that person and typically before a proceeding under ORS chapter 419B or ORS chapter 419C has been initiated.

1.4.9 State of Oregon

- (a) Public Defense Services Commission (PDSC) is the commission established under ORS 151.213.
- (b) Office of Public Defense Services (OPDS) is the office established by the PDSC under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system.

1.5 Financial Verification Required for Court Appointment

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case 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.

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.

Contractor’s Initials _____

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, OPDS may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts and Assignment of Contract

Contractor shall not subcontract for or delegate any of the services required under this contract or assign Contractor's interest in this contract without obtaining OPDS' prior written consent. Prior written consent must be obtained in each case a subcontract is sought. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

3.2 PDSC Rights for Failure to Obtain Workers' Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide OPDS with a certificate of exemption, OPDS may:

- (a) Withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) Suspend this agreement until Contractor complies; or
- (c) Terminate this contract:
 - i. for repeated instances of failure to comply; or
 - ii. for failure to comply within 30 days after OPDS suspends this contract.

3.3 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, OPDS 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 and place in which contractor must submit any required report or other document.

3.4 Termination by PDSC for Cause

3.4.1 Reasons for Contract Termination

OPDS may terminate this contract for cause, for any the following reasons:

Contractor's Initials _____

- (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; however, 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 inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by prevailing standards of performance and rules of professional conduct; or
- (e) Some other cause which has substantially impaired Contractor's ability to provide constitutionally adequate legal services under this contract or fulfill the obligations of this contract.

3.4.2 No Appointments After Notice

When Contractor receives OPDS' notice of termination for cause, Contractor shall not accept any further cases under the contract unless OPDS otherwise agrees in writing.

3.5 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within the PDSC's current appropriation or are expected to become available to cover the costs of this contract. However, payments under this contract are subject to the availability of funds. OPDS may propose to modify, suspend, or terminate this contract if OPDS reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and OPDS has complied with the procedures set out below in Section 6.1 (State Funding Shortfall).

3.6 Contractor Workload

3.6.1 Court Appointments

All attorneys under contract shall accept court appointments to all juvenile case types for which they are qualified pursuant to the PDSC's Qualification Standards. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

- (a) Contractor may be appointed to cases in counties other than those specified in this Contract. If Contractor's caseload has sufficient workload capacity, Contractor shall accept conflict and overflow appointments from jurisdictions no more than two counties distant from Contractor's place of business. Those cases will count toward the Contractor's open caseload.
- (b) No public defense contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.
- (c) No one funded as a 1.0 FTE may take on any other paid legal work, unless OPDS otherwise agrees in writing
- (d) Nothing in this section precludes a contractor from engaging in pro bono legal services.

3.6.2 Open Caseload Standard

To comply with performance standards, generally an attorney should limit full-time representation to no more than 80 open cases at any given time. OPDS recognizes that an attorney's open caseload may

fluctuate as cases are received, assigned, and closed. A contract administrator may request a good cause variance from the caseload limit, and OPDS may approve or deny such request.

3.6.3 Capacity Increase or Decrease

When caseload increases or decreases by 15% for six consecutive months, Contractor and OPDS shall discuss the circumstances surrounding the increase or decrease. OPDS may adjust the number of FTE in the contract to meet the changing needs of the jurisdiction if:

- (a) The probable number of available cases increases or decreases substantially, such that the proposed FTE amount no longer matches caseload needs;
- (b) The introduction or discontinuation of a specialty court; or
- (c) OPDS determines that an increase or decrease in FTE capacity is in the state's interest.

3.7 Review, Verification, and Inspection of Records

3.7.1 Request

OPDS 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 OPDS deems necessary during the contract term.

3.7.2 Production of Records and Access to Facilities

OPDS may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. On OPDS's request, Contractor shall provide access to its facilities and make records available to OPDS or agent at all reasonable times, and promptly respond to requests for information in connection with fiscal or performance audits. OPDS will not remove Contractor's original office records or other property from Contractor's premises without Contractor's approval. Contractor shall keep such data and records in an accessible location and condition.

3.7.3 Other Information

Upon OPDS's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality and personnel confidentiality (Section 4.3), Contractor shall provide any other information that OPDS deems necessary.

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 Work Outside Contract

Contractor may engage in additional paid work outside of this contract, but only to the extent that the additional paid work does not interfere with Contractor's ability to fulfill this contract.

Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE

contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract legal work.

4.3 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 or confidential 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.

4.4 Personnel Records

Contractor grants no right to OPDS or designee of OPDS 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 OPDS or OPDS's designee reasonable access to other information, including 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 Professionalism

Contractor and OPDS shall work collaboratively and professionally on all aspects of contract administration.

5.2 Commitment to PCRCP Principles and Goals

- (a) Parties agree to work together, in good faith, to successfully implement and maintain the PCRCP.
- (b) Parties agree to work toward accomplishing shared goals, namely:
 - i. Providing competent, effective, and quality legal representation throughout the life of the case.
 - ii. Reducing the number of cases in which the time to establish jurisdiction is greater than 60 days in the county.
 - iii. Reducing the number of youth and children in out-of-home placements in the county.
 - iv. Reducing the time to achieve permanency in the county.
 - v. Providing attorney representation of parents, youth and children at all shelter and detention hearings in the county.
 - vi. Increasing the number of youth and children who are reunified with their parent(s) in the county.

5.3 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.4 Compliance with Applicable Law

Contractor's Initials _____

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.

5.5 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall be in writing and:

- (a) State the reasons therefor;
- (b) 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.

5.6 Modification or Termination Due to Legislative Action or Court Interpretation

OPDS and Contractor may renegotiate this contract if there is a significant change in workload, caseload, or increased cost of doing business due to legislation or court interpretations of federal or state laws. In addition, OPDS may modify, suspend, or terminate this contract as needed to comply with legislation or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.7 Periodic Review

At the request of either party, OPDS and Contractor will periodically review case assignment trends and any other matters needed to determine contract compliance or any necessary contract modifications. In counties where more than one Contractor provides legal services, periodic review shall include a review by OPDS 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, OPDS shall notify the court and Contractors that appointment rates must be adjusted and corrected.

5.8 Other Contractors and Vendors

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

6. OBLIGATIONS OF PDSC

6.1 Case Managers

PDSC shall provide independent 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.

6.2 Regular PCRCP Meetings

OPDS, on behalf of PDSC, shall organize regular meetings with contractors and attorneys to review data, ensure appropriate staffing levels, communicate any information regarding program issues and provide opportunity for provider feedback and questions.

6.3 Systemic Improvement

Contractor's Initials _____

OPDS, on behalf of PDSC, shall facilitate stakeholder discussion to support the PCRPs systemic improvement efforts.

6.4 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.

6.5 Contract Payment

Payment under this contract shall be based on the Payment Schedule included in the Specific Terms.

7 OBLIGATIONS OF CONTRACTOR

7.1 Performance Obligations of Appointed Counsel

7.1.1 Standard of Representation

Appointed counsel shall adhere to the Oregon State Bar performance standards, namely:

- (a) Specific Standards for Representation in Juvenile Dependency Cases (June 23, 2017), <https://www.osbar.org/docs/resources/juveniletaskforce/JTFER3>;
- (b) Specific Standards of Representation in Criminal and Juvenile Delinquency Cases (Apr 25, 2014), <https://www.osbar.org/docs/resources/juveniletaskforce/JTFER2.pdf>

Appointed counsel shall also fulfill applicable national performance standards, including those of the 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. Further, 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 comprehensive representation at all stages of a juvenile case, including but not limited to the types of proceedings and representation below.

7.1.2.1 Pre-appointment representation

Contractor may commence pre-appointment representation only with pre-approval from OPDS. In determining whether to authorize pre-appointment representation, OPDS will consider whether:

- (a) The agency has a good faith basis to conclude the individual seeks counsel; and

Contractor's Initials _____

- (b) It is reasonable for the agency to believe the person qualifies for public defense counsel.

7.1.2.2 Appearance at first proceedings

- (a) Contractor shall provide representation and advocate for client at all scheduled appearances, detention hearings, shelter hearings, and other initial appearances in juvenile cases. Failure to appear at these proceedings is a material breach of this contract.
- (b) As practicable, Contractor shall meet with client prior to a detention hearing, shelter hearing, or other initial appearance to review available discovery.
- (c) Notwithstanding subsection (a), where OPDS has approved in writing other arrangements for representation at first proceedings, Contractor is not required to provide representation.
- (d) Contractor shall provide 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, including but not limited to:

- (a) Contractor shall provide representation at all scheduled hearings and court proceedings. Failure to provide representation at all hearings and court proceedings is a material breach of this contract;
- (b) Filing a petition for writ of mandamus or habeas corpus arising from the case on which counsel is appointed;
- (c) Attending all meetings where Department of Human Services (DHS), Oregon Youth Authority (OYA) and/or other state actors or parties are present and discussing matters relevant to the case;
- (d) Meeting with client to review available discovery, prior to any court hearing;
- (e) Advocating for client at all court hearings;
- (f) Meeting and communicating regularly with clients including:
 - i. Before court hearings and Citizen's Review Board (CRB) reviews.
 - ii. In response to contact by the client.
 - iii. When a significant change of circumstances must be discussed with the client.
 - iv. Whenever notified that the youth's or child's placement has changed.
 - v. When a lawyer is apprised of emergencies or significant events impacting the youth or child.
- (g) Utilizing independent investigators and case managers/social workers/mitigation specialists, as appropriate, to provide comprehensive representation; and
- (h) Conducting a thorough, continuing, and independent review and investigation of the case.
- (i) 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 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) Litigate issues of restitution arising from the case until a final order on restitution is entered by the court;
- (c) Complete questionnaires, forms, or other process necessary to obtain appellate counsel for clients requesting an appeal;
- (d) Seek court orders or other remedies on behalf of a client if a term of disposition favorable to the client is not followed or implemented by a probation department, 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) File a motion for new trial;
- (f) File a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- (g) File request for a review hearing under ORS 419C.626, as requested by a youth client;
- (h) Consult with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation;
- (i) Upon request, provide copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation;

7.1.2.6 Reappointment to Prior Clients

The original contract attorney shall accept reappointment to a previous client when:

- (a) A case was dismissed without prejudice and has been refiled;
- (b) A case is reactivated following service of a bench warrant after contractor closed the file pursuant to 7.1.2.5; or
- (c) A case is remanded to circuit court following an appeal unless specific circumstances warrant assignment of a different attorney.

7.1.3 High Quality Representation

Contractor shall provide high quality representation of parents, legal guardians, children and youth in juvenile cases including, but not limited to:

- (a) Developing a method to maintain regular contact with each client throughout the case;
- (b) Having staff available to respond to immediate client questions when the attorney is in court or otherwise unavailable;
- (c) Conducting an initial interview of the client, when possible, within 72 hours of appointment;
- (d) Having staff available to adequately support attorney functions; and
- (e) Endeavoring to spend, on average, one-third of their time meeting with clients, one-third on case preparation; and one-third on court appearances and case-related meetings.

7.1.4 Client Contact

Contractor's Initials _____

7.1.4.1 Client Contact Generally

Contractor shall engage in regular and consistent client communication as specified in the Oregon State Bar performance standards.

7.1.4.2 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 court recognized holiday.

7.1.4.3 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

7.1.5.1 Withdrawal from Case Only with Court Approval

Contractor shall comply with rule 1.16 of the Oregon Rules of Professional Conduct and 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 Contractor shall notify OPDS in writing. Consistent with the Oregon Rules of Professional Conduct, the Contractor shall ensure continuous representation of a client until withdrawal is granted and then assist in the prompt establishment of a new attorney/client relationship.

7.1.5.2 Prohibition on Withdrawal

When a public defense attorney leaves a Contractor, they may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

7.1.6 Regular PCRPs Meetings

Contractor shall attend regular meetings with OPDS to review data, ensure appropriate staffing levels,

Contractor's Initials _____

provide feedback, and ask questions related generally to PCRCP and providing high-quality representation of parents, legal guardians, children, and youth in juvenile cases.

7.1.7 PCRCP Caseload Plan

Contractor shall develop and implement a plan to ensure that the open caseload for each attorney providing services under the Contract generally does not exceed 80 cases per 1.0 FTE, or the contracted proportion thereof. Contractor shall provide such plan details and timeliness to OPDS in writing.

7.2 Quality Assurance Obligations of Contract Administrator

7.2.1 Quality Assurance Procedures

Contractor shall ensure that persons providing client representation under this contract, including any subcontractors OPDS approves, meet the standards of representation set forth in Section 7.1.1 of this contract. Contractor shall comply with quality assurance procedures adopted by OPDS. Contractor shall establish and implement, as appropriate for Contractor's entity structure, quality assurance procedures consistent with the practices recommended in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010).

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 PDSC's Qualification Standards for Court-Appointed Counsel and has been approved for appointment to the applicable case type by OPDS. Contractor shall provide to OPDS 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 other paid work 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. No contract attorney funded as a 1.0 FTE may take on any other paid work. Contract attorneys funded less than a 1.0 FTE may engage in non-contract legal work, to the extent that non-contract work is proportional in time to their percentage of FTE (e.g., a .5 FTE contract attorney shall spend half their time on contract work). Contractor shall fairly account for the time spent on non-contract work.
- (c) Provides continuous representation, from the commencement of proceedings until the final judgment dismissing case and terminating wardship.

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 constitutional and criminal law during each year of this contract, if the attorney is handling juvenile delinquency and/or waiver 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.

7.3 Special Obligations to State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend, and hold harmless PDSC, OPDS, 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.

Contractor's Initials _____

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 VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, 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 Chapter 659A, 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 OPDS 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, OPDS, 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

Contractor's Initials _____

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 OPDS 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 Capacity and Equipment

7.4.1 Number of Persons Providing Services

Contractor shall secure, at its own expense in whole or in part from contract funds, all, members, personnel, or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support services to perform its contract obligations.

- (a) Contractor shall not require any attorney performing the services required by this contract to sign a noncompete agreement;
- (b) Contractor shall retain an FTE attorney within 30 days of any vacancy, or OPDS may remove those funds from the contract. The 30 days may be extended with written agreement by OPDS. Contractor shall fill the vacancy as soon as practicable with an attorney who possesses equal or greater qualifications as defined in the PDSC Qualification Standards unless OPDS otherwise agrees in writing. Contractor shall immediately notify OPDS of a vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.
- (c) Contractor shall notify OPDS when a contract attorney is on leave for more than 30 days, or is otherwise unavailable to accept appointments. Contractor shall provide the date that the leave begins and the contractor's plan to cover the attorney's caseload while the attorney is on leave.
- (d) Contractor must retain a minimum of 0.5 support staff per 1.0 attorney FTE to assist the attorneys on the contract in a manner detailed in the contract's specific terms. Support staff are persons who provide support for attorneys and clients through administrative, clerical, communicative, technical, or similar work. Support staff does not include contracted services such as answering services or photocopying services. Contractor shall immediately notify OPDS of any support staff vacancies and shall fill the vacancy within 30 days. If the vacancy is not filled within 30 days, OPDS may remove the contract funds allocated for support staff.

Contractor's Initials _____

7.4.2 Certification to OPDS

Contractor shall provide an updated attorney certification form for all attorneys providing legal services pursuant to the contract within 30 days of the contract's execution, excepting attorneys who have submitted an updated attorney certification form within the past 12 months of the contract's effective date. Contractor shall also provide certifications for any attorneys added during the contract. Contractor shall certify that the attorney added 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(8)(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.

7.4.4 Contractor Offices

Contract attorneys shall maintain an office in the judicial district in which they have contracted to provide legal services. If a contractor has contracted to provide services statewide, then contractor shall maintain an office in a location of their choice within Oregon. If a contractor has contracted to provide services in more than one judicial district, then contractor shall maintain an office in one of the judicial districts in which they have contracted to provide legal services. A failure to maintain an office is a material breach of this contract.

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 OPDS, or OPDS'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

Contractor's Initials _____

aggravated murder, cases where a waiver motion was filed, and ORS 137.707 cases. Case files in aggravated murder, cases where a waiver motion is filed, and ORS 137.707 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to OPDS

7.6.1 Case Management System

Contractor shall use a case management system or other data collection method that will provide data reports demonstrating time spent with clients and on case preparation, court appearances, and case-related meetings, as well as case-related outcomes and use of case managers and investigators.

7.6.2 Open Caseload Reports

By the twentieth (20th) day of each month, or the following business day if the twentieth day falls on a weekend or holiday, Contractor shall provide to OPDS, in a format specified by OPDS, a report of the open cases for each attorney providing legal services under the Contract for the preceding month. To assist OPDS in providing accurate information to ODHS in support of claims for allowable expenses under Title IV-E of the Social Security Act, 42 USC § 474(a)(3), Contractor shall ensure that, in all such reports, any pre-appointment representation, collateral representation for which additional case counts are granted pursuant to section 10.2.2(c), and cases in which a guardianship has been established are properly identified. Contractor may submit amended open caseload reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly caseload report to be amended. Contractor must be current on case reporting at the time of their review meetings with their analyst.

7.6.3 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by OPDS, 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 OPDS. Contractor shall make the data available for OPDS review upon request.

7.6.4 Other Reports

Contractor shall comply with OPDS requests for information and data. Contractor shall provide information and data to OPDS in a reporting form that the agency develops, including information and data on non-contract work, to the extent permitted by the Oregon Rules of Professional Conduct. Contractor shall comply with any due dates established by OPDS. Contract administrators and analysts will meet three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

7.6.5 Penalty for Late Reports

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports. If Contractor fails to submit a reasonably accurate report on the due date, OPDS may withhold the following percentage of funds from Contractor's monthly payment, and each subsequent monthly payment, until OPDS receives the report and supporting documentation. Funds withheld may be paid to Contractor once reporting is current:

Contractor's Initials _____

- (a) Not received by due date: 10% of contract funds
- (b) 30 days late: 25% of contract funds
- (c) 60 days late: 50% of contract funds
- (d) 90 days late: 100% of contract funds

7.6.6 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.

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 OPDS 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 OPDS 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;
- (b) Contractor's ability to accept appointments;
- (c) Contractor's ability to meet financial obligations; and
- (d) Matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided to OPDS 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.

Contractor's Initials _____

7.8.2.2 Persons Providing Services Under the Contract

Contractor shall provide, to OPDS and the affected court, notice of the names of attorneys providing services under this contract and any changes in the number of persons providing services under this contract. Upon request by OPDS, Contractor shall provide a current list of attorneys and non-attorneys providing services under this contract and provide timely responses to OPDS surveys or other inquiries concerning the diversity of attorneys and others performing services for Contractor.

7.8.2.3 Events Which Could Impair the Contract

Contractor shall notify OPDS in writing within forty-eight (48) hours 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 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 has been convicted of a crime.

(c) **Formal Bar Complaint**

A formal accusation of misconduct has been filed by the Oregon State Bar against an attorney performing services for Contractor.

(d) **Bar Discipline**

Disciplinary action is taken by the Oregon State Bar against an attorney performing services for Contractor.

(e) **Uninsured Practice of Law**

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.

(f) **Unforeseen Events**

An attorney performing services for Contractor experienced an event that impacts their ability to perform services under this contract, such as fire, flood, burglary, embezzlement.

7.8.2.4 Nonassignment of Available Cases

Contractor shall notify OPDS immediately upon determining that the court is not assigning Contractor to cases available for appointment; OPDS 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 OPDS authorization;

Contractor's Initials _____

- (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 Solicit or accept payment from a client for legal services on a matter on which Contractor has been appointed by the court.

7.10 Contract Administrator Duties

- (a) Contract Administrator is responsible for contract administration. Contract administration shall include, without limitation, selection of prospective contract attorney members, assigning cases and oversight of case assignments, timely and accurate tracking and reporting of caseloads to OPDS, management and disbursement of contract funds, working with OPDS to organize regular meetings to review data and ensure sufficient support to achieve PCRCP expectations, consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing, corresponding with OPDS regarding contract inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations, maintaining records of all case reporting, financial and other records regarding contract members and making such records available to OPDS upon request, negotiating new contracts and contract changes with OPDS as necessary, actively participating in system improvement initiatives including multi-disciplinary training and partner meetings, and providing training and mentorship to contract attorneys and staff.
- (b) The Contract Administrator shall ensure that they carry a reduced caseload to allow for adequate administration time. The amount to which caseload is reduced shall be agreed upon by the Contract Administrator and OPDS.

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 WIND-DOWN PROCEDURES

Unless OPDS agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall continue to provide legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination. OPDS and contractor shall negotiate wind-down terms that allow for contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay attorneys at the existing PDSC authorized hourly rate to wind-down their contract caseload.

10 CASE COUNTING STANDARDS

10.1 General Case Counting Standards

- (a) Representing one parent, legal guardian, or child in a dependency case counts as one case.
- (b) Representing one parent, legal guardian, or child in a termination-of-parental-rights case counts as one case.
- (c) Representing multiple children in a dependency case counts as one case for the first child and as 0.5 cases for each additional child.
- (d) Representing one youth in a delinquency case counts as one case.
- (e) Pre-appointment representation of one child, youth, parent, or legal guardian, preapproved by OPDS, counts one case.
- (f) Pre-appointment representation of multiple children, preapproved by OPDS, counts as one case for the first child and as 0.5 cases for each additional child.
- (g) When representation on a case begins and ends within the same calendar month, the case can count toward the attorney's open caseload until the end of that calendar month unless the court allows the attorney to withdraw due to a conflict.

10.2 Case Count Adjustments

- (a) Delinquency cases in which the alleged conduct, if committed by an adult, would constitute murder or a crime subject to ORS 137.707 shall be granted an additional case count.
- (b) Any case in which the attorney accepts an appointment in a county other than those specified in this Contract shall be granted an additional case count.
- (c) Cases that involve extraordinary circumstances and require work well beyond the range of work typically required in juvenile cases may be granted additional case counts, subject to OPDS's discretion. No earlier than thirty (30) days after being appointed in any particular case, an attorney seeking approval for extraordinary circumstances case counts for that case shall use the form provided by OPDS.
- (d) For any client or sibling group, the attorney may count a maximum of three cases in their open caseload, except that additional case counts granted pursuant to subsections (a) through (c) above shall be in addition to this maximum.

10.3 Case Closure

- (a) For dependency, permanent guardianship, and termination-of-parental-rights cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
 - i. An order or judgment dismissing the petition;
 - ii. An order or judgment dismissing the case and/or terminating the wardship over the child;
 - iii. An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
 - iv. An order or judgment disestablishing the parentage of the attorney's client;
 - v. An order or judgment terminating the parental rights of the attorney's client;
 - vi. An order or judgment granting an adoption of the attorney's client; and
 - vii. An order terminating or vacating the attorney's appointment.
 - viii. An order terminating or vacating the attorney's appointment

- (b) For delinquency cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
- i. An order or judgment dismissing the petition;
 - ii. An order or judgment dismissing the case and terminating the wardship over the youth;
and
 - iii. An order terminating or vacating the attorney's appointment.
 - iv. A bench warrant for a youth's failure to appear has been active for 180 days.

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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 [REDACTED] (“Contractor”).

2 TERM OF CONTRACT

The contract term shall be from July 1, 2022 through June 30, 2023.

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: [REDACTED]
(Contract Administrator email address)

4 TOTAL VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$ [REDACTED] during the term of this contract. PDSC shall pay the total value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

5 CASES, FTE, AND STAFF

Contractor shall provide legal representation in the Circuit Court of [REDACTED] County for the estimated number of cases listed in the Estimated Case Matrix. The estimated number of cases is a target quota and not a mandate. Contractor shall procure [REDACTED] FTE to provide legal services pursuant to this contract.

The total contract value per attorney FTE is [REDACTED], which is listed here for purposes of transparency. The following rates comprise the total contract value:

- Attorney rate - \$ _____
- Staff rate - \$ _____
- Overhead rate - \$ _____
- Administration/Supervision rate - \$ _____

Contractor’s Initials _____

Contractor shall procure _____ FTE investigators. Contractor shall maintain an additional support staff ratio to attorney of at least 0.5:1. The minimum number of FTE support staff for this contract is _____.

6 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

Contractor may not distribute funds based upon a fixed fee per case model. All attorneys providing legal services pursuant to this contract must comply with all OPDS requests for reports, including but not limited to monthly caseload reports. In addition to section 7.1.1 of the general terms of the contract, attorneys providing legal services pursuant to this contract must comply with section 1.7 of the Oregon Rules of Professional Conduct.

7 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS 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 AND ALL ATTORNEYS PERFORMING LEGAL SERVICES PURSUANT TO THIS CONTRACT HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Stephen Singer, Executive Director
Office of Public Defense Services Public Defense Services Commission

Date

Contractor

Date

Title or Representative Capacity

Contractor's Initials _____

CONTRACT BETWEEN PDSC AND XXXX PAYMENT SCHEDULE

DRAFT

Contractor's Initials _____

DRAFT

Contractor's Initials _____