

**Members**

Barnes H. Ellis, Chair  
Shaun S. McCrea, Vice-Chair  
Henry H. Lazenby, Jr.  
Peter A. Ozanne  
John R. Potter  
Janet C. Stevens  
Honorable Elizabeth Welch



**Ex-Officio Member**

Chief Justice Paul J. De Muniz

**Executive Director**

Nancy Cozine

**PUBLIC DEFENSE SERVICES COMMISSION**

**PUBLIC DEFENSE SERVICES COMMISSION MEETING**

Tuesday, March 20, 2012  
10:00 a.m. – 2:00 p.m.  
Office of Public Defense Services  
1175 Court St. NE  
Salem, Oregon 97301

**AGENDA**

- |   |                                 |
|---|---------------------------------|
| 1. Welcome Justice Balmer   | Chair Ellis                     |
| 2. <b>Action Item:</b> Approval of minutes - PDSC meeting on January 26, 2012<br><i>(Attachment 1)</i><br>PDSC retreat on January 26, 2012<br><i>(Attachment 2)</i> | Chair Ellis                     |
| 3. <b>Action Item:</b> Approval of Structural Adjustment to ACP Contribution Amounts<br><i>(Attachment 3)</i>   | Kathryn Aylward                 |
| 4. Waiver of Counsel in Juvenile Delinquency Cases<br><i>(Handout)</i>  | Nancy Cozine<br>Kathryn Aylward |
| 5. Public Meetings Laws – PDSC Training<br><i>(Attachment 4)</i>  | Paul Levy                       |
| 6. Report on Statewide Public Defense Survey<br><i>(Attachment 5)</i>   | Paul Levy                       |
| 7. Update on Clackamas County   | Caroline Meyer                  |
| 8. Strategic Plan Discussion<br><i>(Handout)</i>  | Chair Ellis<br>Nancy Cozine     |
| 9. Executive Director’s Annual Report<br><i>(Attachment 6)</i>  | Nancy Cozine                    |
| 10. February session Update   | Nancy Cozine<br>Kathryn Aylward |

11. OPDS Monthly Report

- Evidence-based practices in public defense; an NLADA priority
- ODAA – collaborative effort to preserve the lessons learned in 2003
- Recent application of *Brown v. Multnomah County*, 280 Or 95 (1977)
- Death Penalty Review – Update
- AD Update – process for collecting attorney feedback; other

***Please note: Lunch will be provided for Commission members at 12:00 p.m.***

***The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting, to Laura Kepford at (503) 378-3349.***

***Next meeting: The next meeting of the Commission is scheduled for May 10, 2012, 9:00 a.m. – 2:00 p.m. at the Roseburg City Council Chambers, City Hall, 900 SE Douglas Avenue, Roseburg, OR 97470.***

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, January 26, 2012

9:00 a.m. – 10:30 a.m.

The Oregon Gardens

Trillium Room

895 W. Main Street

Silverton, OR 97381

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
Chip Lazenby  
Peter Ozanne  
John Potter  
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine  
Kathryn Aylward  
Peter Gartlan  
Paul Levy  
Caroline Meyer  
Billy Strehlow  
Shelley Winn

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The meeting was called to order at 9:22 a.m.

**Agenda Item No. 1 Approval of the Minutes of PDSC's December 8, 2011, meeting**

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

Chair Ellis offered a quick report regarding his conversation with Justice Balmer, who is scheduled to be the new Chief Justice on May 1, 2012, and thereby a non-voting ex-officio member of the Commission with the power of Commission member appointment. The Chair noted his long acquaintance with Justice Balmer, and shared his belief that Justice Balmer would be very supportive of the PDSC's work; he anticipates a smooth transition.

**Agenda Item No. 2 February Session – Budget Update**

Ms. Cozine shared with the Commission that she and Ms. Aylward had visits with almost every member of the Ways & Means Public Safety Subcommittee, with one yet to visit, all but two or three members of the full Ways & Means committee, as well as members of the Judiciary committees. Ms. Cozine reported that all of their conversations have been going well, and that the majority of legislators have a remarkable memory of 2003, and are very supportive of the PDSC budget.

Ms. Aylward reminded commission members that the legislature, at the end of last session, held back three and a half percent of all agency budgets, and explained that because of declining revenue forecasts, it is anticipated that the three and a half

percent will not be available to agencies. The hold back for AD and CBS was \$614,000 – a huge amount, but one that can be managed with vacancy savings due to an unusually high number of retirements in this biennium. This means extra work for attorneys who are covering for positions that aren't filled, but we have been told that we must, like other agencies, manage without the 3.5%. Ms. Aylward went on to report that the account is a completely different situation. The hold back on the account was about \$7.5 million; expenditures are almost \$9 million a month. Ms. Aylward reported that she is working to identify any portion that won't be needed for the biennium, but also noted that if we receive those funds, the legislature must find another source from which to pull that funding.

Ms. Cozine and Ms. Aylward shared that they do not expect that the Commission will be asked to testify regarding their budget needs during the 2012 session.

**Agenda Item No. 3      Review of the Executive Director's Biennial Report to Legislature**

Ms. Cozine summarized the biennial report contents; Commissioner Potter suggested a minor edit to the structure of the mission statement. Ms. Cozine will make that change and circulate to legislators.

**Agenda Item No. 4      Michigan Debrief**

Ms. Cozine and Commissioner Ozanne shared information regarding their trip to Michigan, where they testified before the Michigan Commission on Indigent Defense - a 14 member commission, established by executive order and comprised of legislators, former judges, and advocates. The Commission was formed to address the failures of Michigan's current indigent defense system. Michigan has a county by county system that was the subject of the National Legal Aid and Defender Association's (NLADA) 2008 report: "Race to the Bottom." That report highlights some of the problems in Michigan, such as wrongful convictions, inadequate representation, and inconsistent representation throughout the state. Ms. Cozine and Commissioner Ozanne shared information with the Michigan Commission regarding Oregon's public defense model, and received very positive feedback. Michigan is hoping to establish a new system, and will consider an approach similar to Oregon's.

Commissioner Welch asked whether Ms. Cozine and Commissioner Ozanne were able to get any good ideas for Oregon. Ms. Cozine shared that she was able to meet with David Carroll from the NLADA, and that they discussed new ideas regarding data-based quality assurance measures. Ms. Cozine has since been exchanging emails with the executive director of North Carolina's Office of Indigent Defense Services, where they have created a model to measure the quality of a public defense systems through discrete data points. Ms. Cozine is in the process of setting up a meeting to get more information.

**Agenda Item No. 5      OPDS Monthly Report**

Mr. Gartlan provided updates regarding 2011 departures and hires within the Appellate Division (AD), noting that the departures were on good terms, and the hires and promotions were well-deserving, qualified candidates. Mr. Gartlan also shared that AD will soon begin the attorney evaluation process. AD explored moving to biennial reviews, at Commissioner Ozanne's suggestion, but most people wanted annual reviews; there are a few senior attorneys who will move to a biennial review schedule. Finally, Mr. Gartlan noted recent and upcoming Supreme Court arguments and briefs.

Ms. Aylward shared a recent CBS success. A CBS employee suggested that we request permission to electronically submit a form to another state agency – the State Financial Management System (SFMS) – they liked the idea so much that they are implementing the suggested process statewide, which will save time and money. Mr.

Ozanne noted that it is these types of efficiencies that keep OPDS in good standing with other agencies and with the Legislature. The Commission applauded the work of Ms. Aylward and CBS staff.

Mr. Levy announced that he is in the process of compiling and analyzing the results of the fifth annual state-wide public defense performance survey; he will offer a written report and summary at a future meeting. Mr. Levy also responded to the Chair's request for a brief update regarding the status of the death penalty review process. The Commission encouraged Mr. Levy to enlist the help of others, perhaps an out-of-state practitioner, for the review.

**Agenda Item No. 6**

**Commission feedback regarding 2012 contracting process**

Ms. Aylward summarized the process that CBS used when establishing contracts for 2012-13, and the manner and timing of sharing information with the Commission. Commission members applauded the changes made, and indicated that it was a significant improvement from past years. Commission members suggested that there should be more communication with contractors regarding the contracting time frames and potential for discontinuing contracts with providers, but said that these were small adjustments in an otherwise well-orchestrated effort. Commission members enjoyed receiving information from the analysts who are assigned to each region, and felt this gave them a broader understanding of the challenges and needs in each region, as well as the rationale behind contracting decisions in each region. Commissioner Ozanne expressed some reservations about having a volunteer commission oversee such a large budget. Chair Ellis commented that the reduced number of contracts and the annual contracting cycle established within CBS has made the process much more efficient and manageable for the Commission.

**MOTION:** Peter Ozanne moved that we adjourn the meeting; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting adjourned.

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UNOFFICIAL EDITED TRANSCRIPT

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895 W. Main Street  
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MEMBERS PRESENT: Barnes Ellis  
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The meeting was called to order at 9:22 a.m.

**Agenda Item No. 1 Approval of the Minutes of PDSC's December 8, 2011, meeting**

0:10 Chair Ellis The first item is approval of the minutes of the December 8, 2011, meeting. Are there any additions or corrections? If not, I would entertain a motion to approve the minutes.  
**MOTION:** John Potter moved to approve the minutes; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

0:35 Chair Ellis Let me make a quick report. Yesterday I had a really good telephone call with Tom Balmer, who is scheduled to be our new Chief Justice on May 1. I happen to have known him for a long, long time and I think he will be very supportive of the work that has been done and the work that will be done going forward. I anticipate a smooth transition. He does, of course, have the power to fire all of us if he wishes, or any of us as he may choose, but then again he does not get a vote. He has asked to meet with Nancy and myself sometime between now and when he takes office and we will figure that out. I mentioned to Greg Hazarabedian that Tom was going to be sitting in Eugene as a trial judge. I think all of a sudden he realizes that we don't have any trial judges on the Supreme Court anymore, which is true, and they don't have any former defense lawyers on the Oregon Supreme Court anymore after Justice De Muniz leaves. He expressed a desire to meet Greg when he is in Eugene and hopefully that will work out.

**Agenda Item No. 2 February Session – Budget Update**

- 2:13 Chair Ellis Item no. 2 on the agency is the upcoming legislative session and budget update. Nancy and Kathryn do you want speak to that?
- 2:30 N. Cozine Certainly. Kathryn and I have had visits with almost every member of the Public Safety Ways & Means. We have one more yet to visit. We have also offered to meet with everyone on Ways & Means and have met with all but about two or three. We have also met with judiciary members and all of our conversations have been going very well. People have a remarkable memory of 2003. We are very fortunate in that almost every one of those members was actually present in 2003, or soon thereafter, so they have been well educated about what happened during that time period. People are very supportive of the PDSC budget. We have also ...
- 3:20 Chair Ellis So 2003 was when Mr. Ozanne was the empresario and put on what I still think was one of the greatest legislative sessions I have any knowledge of. It was terrific. You had several district attorneys coming in and speaking in favor of our budget. You had crime victims speaking favorably of our budget, which is pretty remarkable. You had law enforcement people. You just had a range of voices and that continues to be a watershed moment.
- 3:59 N. Cozine It does and everyone is still talking about balance within the public safety system and how important it is to adequately fund every single component. We met with Senator Winters yesterday. That was another very good meeting. We have been talking with LFO quite a bit. We have had several meetings and many phone calls. I will let Kathryn give the update on that.
- 4:20 K. Aylward As you will recall, what the legislature did last session was to hold back three and a half percent of all agency budgets with the idea that agencies would come back in this February session and request all or some of that money. We have been hearing that because the forecasts continue to drop, there will be another revenue forecast on February 8, nobody expects it to go up that I know of. So that three and a half percent that was held probably isn't there anymore. Most agencies are being asked to just simply do without it. In our case for our operating budgets, AD and CBS, the hold back was \$614,000. We think that with vacancy savings we can do without that money. It is a huge amount. Our budget is \$12 million for AD and \$3 million for CBS, so it is a big chunk. We are able to do it because we have had an unusually high number of retirements in this biennium. When you have an opportunity and you hold positions vacant, it means extra work for attorneys who are covering for positions that aren't filled, but I think if all other agencies are managing, our operating budget should be able to as well.
- 5:52 Chair Ellis Where are we experiencing retirement?
- 5:55 K. Aylward Ingrid Swenson retired July 31. Dave Degner retired July 1. We have somebody else who has indicated he will be retiring March 31. For a little agency, that is five percent of the staff retiring. There is one problem. All the vacancy savings are in AD and CBS doesn't have any vacancy savings, so we are going to be asking the legislature for a rebalance - \$112,000 now is going to come from AD and go to CBS so that we can get through the biennium without needing additional funds.
- 6:37 Chair Ellis That works for you?
- 6:41 K. Aylward Now the account is a completely different situation. The hold back on the account was about \$7.5 million. Expenditures are almost \$9 million a month so that is a pretty big chunk of money. We think at this point that we can do without some of it. At the very least we need four and a half million. One of the things that we can bring forward to the legislature is the possibility of taking funds from the Application Contribution Program, ACP, it is the \$20 you pay to find out if you qualify for an attorney and some contribution that a defendant has made towards their representation. We think that maybe over a million can come out of that account, which is good and bad. We are going to the legislature and saying, "Remember that

seven and a half million, well we really only maybe need maybe four and a half and I can come up with a million or a million and half from another source, so really I only need three from the general fund.” I think it is really good news, but what it means is that \$3 million has to be taken away from somebody else. So we will see.

8:07 Chair Ellis

Who might that be?

8:09 K. Aylward

I think what we have heard is that the public safety agencies, which we are one of, the Department of Corrections is the big one; they don't really have a lot of options. They can't release prisoners; they can't not guard them. Whereas in other areas, human services, not all of the services they provide are mandated. It is a shame because it is children and the elderly.

8:45 Chair Ellis

So other than that transfer between AD and CBS are we seeking any other legislative action in the session?

8:59 K. Aylward

Well the request for money for the account will – what they are going to do is prepare sort of a laundry list bill that lists all agencies and all the adjustments and we will be section 34 of a huge, long bill. I don't anticipate that we will be presenting. We won't be coming forward to the legislature showing them charts and graphs and numbers, which is nice.

9:28 Chair Ellis

Do you envision any hearings that we would be involved in?

9:31 N. Cozine

Chair Ellis, we have asked Senator Verger and we have asked Senator Devlin; they both indicated that they don't anticipate in either the full committee or subcommittee, having any hearings regarding the PDSC budget, and possibly not any hearings regarding very many budgets. They really feel like they can come to agreement among themselves and get everything done. It is a very short session and I think they want to limit the number of hearings they have regarding budget matters.

10:05 Chair Ellis

Okay. Any other questions on that? Mr. Lazenby nice to see you. Anything else on the February session?

**Agenda Item No. 3**

**Review of the Executive Director's Biennial Report to Legislature**

10:24 Chair Ellis

The next item is the review of the executive director's biennial report to the legislature. Nancy, do you want to comment on that?

10:33 N. Cozine

Certainly. It is in your materials. I hope that you all had a chance to review it. At the last meeting I had provided the outline of that report. It now has content and it covers the same topics that we have covered in the past and notes the progress that we have made in the last biennium. It also has a section on funding for the 2011-13 biennium. Unless the Commission has any questions, comments, or wishes me to make any changes, I will submit this to legislators either during the February session or immediately after.

11:17 Chair Ellis

Any comments from Commissioners on it? I thought it was very well done. I thought it was easy to read. I thought it was fine.

11:32 J. Potter

Mr. Chair, my only comment is very, very minor. In the introduction, where you start out with agency mission, it struck me that the paragraph that follows talks about a little bit of the history of the agency and should just drop in under introduction, and the mission which you have got listed near the end of the paragraph should be the mission.

12:02 N. Cozine

Yes.

12:07 Chair Ellis

So you would have a new topic of history and then (b) would be mission?

12:17 J. Potter Yes. That would work.

12:17 Chair Ellis Any other comments? Alright.

**Agenda Item No. 4 Michigan Debrief**

12:27 Chair Ellis Since our last meeting Commissioner Ozanne and Nancy went to Michigan. Do you want to share with us what you found and what is going on?

12:38 N. Cozine We did go to Michigan.

12:44 P. Ozanne You did all the work so you can do it again.

12:45 N. Cozine I don't agree. It was a lovely trip. Chair Ellis, members of the Commission, I think that we were able to represent Oregon well. The Michigan system is a county by county system. When you read the 2008 Race To The Bottom report that was prepared by the NLADA, it highlights some of the problems that they are having with wrongful convictions, inadequate representation, and inconsistent representation throughout the state. We were able to talk about the model that was created in Oregon, and all of the feedback that I have received was that they very much appreciated the information and that they really liked the Oregon model.

13:32 Chair Ellis You were meeting, if I understand it, with a group the governor of Michigan has put together to review that?

13:40 N. Cozine Their governor created a 14-member commission comprised of legislators, former judges, and advocates. I don't remember if there was a prosecutor on that team.

13:50 P. Ozanne No. I don't believe there was.

13:50 N. Cozine I don't think so either. The commission met in the senate building to discuss their system and to hear from current providers. That was also a very interesting component of the visit - hearing from some of the judges in Michigan, and some of the providers as well.

14:13 Chair Ellis Are the providers contract providers, FTE providers, or a mix?

14:19 N. Cozine They have both because it is county to county. It just depends upon which county you are in whether there is a public defender, FTE model, or a contract model. Essentially it is all contracted out. The counties are procuring services, but there are some counties that have a public defender office.

14:33 Chair Ellis Were we the only state they were hearing from?

14:35 N. Cozine They were also hearing from Louisiana. Louisiana's system was completely redone after hurricane Katrina and it is somewhat similar to our model.

14:49 P. Ozanne Yeah, I think the deck chairs are there. I think there were some political reasons for picking Louisiana which made it a good one.

15:01 Chair Ellis I associate the phrase "deck chairs" with the Titanic.

15:05 P. Ozanne That may be where they are lined up. I could tell by some of the expressions in the room that people are thinking that to be in the company of Louisiana would sometimes be nice. Mardi Gras time, but I would like to think that we are in a different league, which we are. Nancy is right. It is a different structure. It particularly appeals to conservatives because I am told the head of the office is really a conservative. By the way, the most outspoken and supportive legislators enjoyed the republican sweep in 2010, were the most enthusiastic about our system and about putting up the money. One of the things the Race To The Bottom report indicated is

kind of shocking – they have the University of Michigan, and legendary Wayne LaFave and all this, but they are either number two or three from the bottom in per capita contributions to public defense. It is disgraceful. The big issue, I think, at least my friend who is the chair of the commission who is a retired trial judge and I happened to work with him in another context, is really concerned about the judges and their willingness to let go.

16:28 Chair Ellis

They like the appointment power?

16:27 P. Ozanne

Yeah. They think they do. I guess they do. I think in fairness they are really worried about quality and they want to be sure that they are heard from. I think one of the things that we emphasized is that we listen to everybody and certainly to judges. We listen to prosecutors and we take information from a lot of sources. I think they were gratified by that. It was entertaining to watch some judges. There was a district court type judge. They still have the split courts as well as the county system. He spoke quite eloquently about the need to disengage the judiciary from the appointment process. Not the two representatives from the circuit court judges association, they started off with this argument of why it was so important to have the judges making the selections. We were all scratching our heads and looking at the principles that they had adopted. They have 11 principles of public defense. Number one or two is independence from the judiciary, and we are kind of wondering when this is going to change. Then we kind of sat there for awhile and then this one very able public defender, very diplomatically, essentially cross-examined two judges and said, “Well, are you for the principle number one here?” Put them on the record over a period that indeed they were supportive of independence. It was symbolic of some resistance, but I think they are not going to want to stand up if the legislature really seems to be interested. The other republican senator was quite interested in performance measures and I think was quite impressed with our efforts to be transparent and accountable financially. I did say facetiously that we probably aren’t as good as we sound. Personally I was very proud of us by the time we were done in talking about the accomplishments and the structure and the kinds of things that Kathryn and Pete and others have put in place over time. We should be proud.

19:01 Chair Ellis

Good. I am very glad you guys did that. I think it was the kind of thing that we ought to be doing and we ought to not just be sharing with other states the good things we do, we should be learning from other states the good things that they do that we could learn from. I am glad you are reaching out to the broader, national community. Anything else on Michigan?

19:31 Hon. E. Welch

Did you get any good ideas?

19:37 N. Cozine

It is on the retreat agenda to talk about. I was able to meet with David Carroll from the NLADA, and I talked to him a little bit about our interests in data. There is one other state that is pursuing quality assurance through data. I sent an email out to the executive director in North Carolina who is heading up its data project. It is unclear from their website what data points they are focused on, but on the website it indicates that they have created a model. We have exchanged emails and we are setting up a meeting so that I can get more information. That was exciting, and that is the only state, at least that I am aware of or that David Carroll was aware of, that is actually pursuing quality assurance through data. So if we were to move in that direction we would be the second state. It was very interesting. That was the big piece of information that I am came away with that I thought was very helpful. Also in the process of creating this 43-page power point, I looked through Oregon's history from 1980 and on and I also looked at other states. It created a lot of confidence in the model that we have. I look forward to the retreat and talking about where we are going next.

21:01 P. Ozanne

I think our system, of course when somebody is where they are, which is sort of step one. They have got a county system and just an ad hoc system. I think our contract

system has attraction for both good and bad reasons. The bad news is that they probably think they are going to get off more cheaply than they would if they installed a new system. But again, they really talked about stepping up and they wanted to know what our budget was. I could tell they were kind of "Wow. That is Oregon. How many people in Oregon?" They have 11 million and we have four million. Our annual budget is about twice as big. They wanted to know what proportion of that is death penalty. Nancy sent that information. I think they have a realistic sense of what it is going to cost them. The last thing that was interesting, and you will all be interested, it was a classic debate among them about centralized and decentralized government. They're struggling with what we all should be debating all the time in this country. How much should we have central authority? How much should we have local authority? That is what they are struggling with.

22:07 Chair Ellis

Do they have any community based defenders?

22:19 P. Ozanne

Yeah. They do have a non-profit - a Metro in one of the big cities.

22:22 N. Cozine

I think in several. We heard from one of them.

22:28 J. Potter

Are there any lawsuits going on in that state for inadequate assistance? If you read this report, it is shocking.

22:38 P. Ozanne

I think there was some federal litigation.

22:43 N. Cozine

I know that I read in the 2008 report that there had been some litigation. I am not sure whether anything is currently pending. I know that when I was preparing for the trip I looked at recent news articles. I can't remember specific content, but it seemed to me that there were still very concerning instances being brought to the public's attention up through the media.

#### **Agenda Item No. 5**

#### **OPDS Monthly Report**

23:12 Chair Ellis

Okay. Next item is the management team's monthly report.

23:24 P. Gartlan

Pete Gartlan. I reported that Ryan O'Connor, one of our senior deputies, left at the end of the year. We promoted Ingrid MacFarlane to a senior deputy position. Just to reacquaint you with the responsibilities. The senior deputy leads a team of about six attorneys at various experience levels. They are very much in a mentorship position. Ingrid has been an attorney since the late 80's and has had over 10 Supreme Court arguments. She has a wealth of experience and is a good mentor and teacher.

24:00 Chair Ellis

Where did Ryan go?

24:01 P. Gartlan

Ryan and a friend from law school set up a private practice in downtown Portland. Part of the practice includes a contract with CBS.

25:16 Chair Ellis

He left on cheerful terms?

24:15 P. Gartlan

Yes. Ryan is a loss to our office. He was a wonderful asset but he is going on to do what he wanted to do. He and his friend had talked about this since law school. Again, it is a positive departure.

24:31 Chair Ellis

That is fine.

24:31 P. Ozanne

When I was there Ingrid MacFarlane was a major loss. She has come back, right?

24:41 P. Gartlan

Correct. Two new attorneys joined within the last month or so. Kimberlee Volm has joined the juvenile appellate section unit. She is a Lewis & Clark graduate. Kyle Krohn joined the criminal section. He is a graduate of Georgetown. We have 13 attorneys now with less than two years experience with the division. We are pretty

young but they seem to be assimilating and coming up to speed. They are going to be good. They are good. Next we are in the process of evaluations again. I think it was about a year and a half ago in Newport, I think Commissioner Ozanne suggested that perhaps the evaluations should be on a biennial basis. We brought that up and most people wanted to have it on an annual basis, but the seniors - we left it to them if they wanted to be evaluated on an annual or biennial basis. Several want to be evaluated annually, so we will evaluate them, but the others we will evaluate on a biennial basis. It relieves some of the pressure on management with respect to the evaluation process.

- 26:22 P. Ozanne Just, if I may, and the reason as best you can determine for the people who wanted the year, they just wanted the feedback to see how they stand?
- 26:35 P. Gartlan Yes. I think particularly when you have a young group and you can see that a third of the office is young, we want to evaluate them on a regular basis, but with your comment we thought that maybe with the more experienced people, people with eight to 10 plus years experience, we didn't need to evaluate them on an annual basis.
- 26:54 P. Ozanne I think my experience in organizations and maybe others too is that there is this great idea of evaluations and then they never happen. I have always felt it is better to put less pressure and maybe every other year and do them, as opposed to say you are going to do it every year and it never happens. I think it is great that you are doing an annual one. It is just a lot of work.
- 27:18 P. Gartlan I think I have mentioned before that it is really beneficial - it is a lot of work but it is beneficial for both, for both the person being evaluated and for us. We generate more ideas about what we should be doing and how the system should work. It is beneficial both ways.
- 27:40 Chair Ellis I think it is a very important part of the management that you are doing. That is, in part, why the lawyers in AD all went through law school, where they got grades. They are all kind of - psychologically they really need that sense that somebody cares about what they do. They probably have less client feedback than people in civil practice would get. Management feedback is a very important part of their sense of how they are doing. I am glad you are doing them. I should share with you that in my call with Justice Balmer yesterday he was very complimentary about the appearances being made in the Supreme Court by the AD lawyers. He on his own - this is something that I have talked to you about a lot - on his own he says he really appreciates the way you share the limelight with several lawyers within the division who get the opportunity to appear before the Supreme Court. That has gone noticed.
- 29:01 P. Gartlan Thank you. Does that mean that he didn't want me to argue anymore?
- 29:10 Chair Ellis No. He said you do fine. I think it is great that we are not viewed as a Johnny One Note office. Are you done?
- 29:24 P. Gartlan I can be. We have three more arguments in the Supreme Court in March. Unfortunately, I won't be giving any of them. Two more are in briefing and I won't be giving those either. So we have five more in the office in the mix. Just to follow up, we have begun the first stages of developing questions for a survey monkey. Hopefully by the time we have the next meeting I will be able to report back. That is it for the AD report.
- 30:03 Chair Ellis Okay.
- 30:09 K. Aylward I have one little thing that I want to tell you about. There is something called the "State Financial Management System," SFMS, which basically is the big system that cuts all the checks for all the payments for all state agencies in the state of Oregon. It is a huge operation. They keep a list, a table, a database of vendors that they pay more than once. You have got the names in there, but every time a vendor changes

their address, their tax ID numbers, their name, whatever, agencies have to print out a form and sign it and say here is the change it is now 124 Main Street. They fax it over to SFMS. They print a piece of paper at SFMS and then they look at it and make the change in the system. We have an accounts payable rep in our office, Zach Kreft, and he thought that it didn't really make sense. Why don't we have an Adobe form that you can fill in and we will stamp it with an image of our signature. Then maybe we could just email it to them. Lorrie Railey in our office sent an email over to SFMS and of course their response was, "I don't know if we can accept an image signature. I don't know if we can take it by email. I will have to ask my supervisor." I thought it would never happen. In a couple of days we got an email back from them and they said, "Wow, what a great idea. We are going to put it in our SFMS newsletter and have all state agencies make their vendor changes by using this Adobe form and emailing it to us." It is a little thing. People think, well it saved what two pieces of paper for each activity, but it isn't just the paper. It is walking to the printer. It is signing. It is walking to the fax machine. It is all those things. It is the minutes of the employees that are saved. This is such a cool thing. You should be so proud of our little agency and how innovative we are.

32:17 Chair Ellis

Good.

32:17 J. Potter

Get a patent on that idea. Is that protected?

32:23 P. Ozanne

I was going to say while you were talking about watershed moments and things, but I remember distinctly how difficult it was – in fairness not to the Judicial Department's administration of the trial, but even the presence in Salem with the public defender office and the history of budget mismanagement. What a difficult time we had in the beginning being credible. Certainly in the few years that I was there things changed thanks to Kathryn and her staff and the lawyers building up credibility. That is really where the advantage we now have came from. We are not this suspect group always coming and asking for more money because they couldn't meet their budget even though it was a relatively small budget. It is the credibility of Kathryn and Pete and people that work for them that have really made our job, in terms of budget, that is why we are where we are. Those little things matter and they ripple through the system and they get to LFO. LFO buzzes in the committee chair's ear about who is running good shops. That all pays off. Congratulations.

33:41 K. Aylward

Thank you.

33:46 P. Gartlan

I have one more thing. This is so old news because it was early in the month, but Shannon Storey argued the first case for the juvenile appellate section. She did a really nice job. It was the first case from that section. The section was created a few years ago by the legislature. This was the first argument in the Oregon Supreme Court. She represented our office very, very well. I just wanted to mention that.

34:20 Chair Ellis

Good.

34:20 P. Levy

Just briefly yesterday we closed our fifth annual state-wide public defense performance survey. I will be reporting at a later meeting with a written report and a discussion of that. I thought it was significant and I wanted to share with you that last year we had hit a record number of responses. This year we have far exceeded last year's responses. We will be analyzing and looking at not only the responses, but more importantly the comments that come along with the ratings the people responding provide. I am really looking forward to seeing what we have with all these responses. Just to give you a preview we will follow up on the written responses. The analysts will share the information we get with the providers within the counties that they serve. Then, where the responders have put a name to their comments, and many do, where appropriate we will be following up with those individuals as well. We had 178 responses this year.

35:48 Chair Ellis

Okay. Any report on your capital case group of five that you are working on?

- 35:59 P. Levy Well, briefly, until yesterday afternoon I was wondering why I had only heard from one person, one of the five, and then Steve Gorham emailed a letter that is shared with the Commission. I don't know if you have each had a chance to read that letter, but we will be responding to Mr. Gorham and the others who haven't provided a substantive response. The one response we have had, the follow up with that has been proceeding fairly well. I will say this that at the last meeting the chair suggested that we enlist the service of Steve Kantor and Susan Mandiberg. I have not talked to them but I did talk to Matt Rubenstein, who I indicated then what I thought would be a good addition to this effort. He did not want to participate for reasons that I appreciate and understand.
- 37:11 Chair Ellis For the same reason that our current ....
- 37:12 P. Levy Yes. He is also very busy with his current job as one of a handful of resource attorneys for the federal public defender system in death penalty cases. He also thought that using people like Susan Mandiberg or Steve Kantor, what wouldn't be terribly beneficial to the review process because they simply are not involved in the death penalty work. I share that view. And yes, as Mr. Gorham complained, I thought it was an odd complaint, the process is still a little fluid. It is following the model, generally, of other peer reviews which will be not a passing of judgment by me, but a soliciting and collecting and recording of the judgments and opinions of others. That is proceeding with the one person who has provided a response that we can work with. We will talk to the others.
- 38:42 Chair Ellis My comments last meeting were not – the whole thrust of it was this is a pretty heavy responsibility to put on one person namely you. I still have that concern.
- 38:58 P. Levy I appreciate the concern. The effort to follow up with people – the effort to follow up with persons who have been named as having relevant information about the work of these five people, talking to them, hearing what they have to say and reporting that to the Commission. It is a lot of work but it is not overly onerous. If the burden was to myself pass judgment then that might be inappropriately placed on my shoulders, and it would also be quite a burden. I don't view it in that way. I am not passing judgment. I am collecting and reporting the judgments of others. When we were in Pendleton and talked about this with our death penalty panel, some of those panel members agreed to assist in some ways. I would still be taking advantage of that offer as well.
- 40:41 P. Ozanne Mr. Chair, aren't we, Paul, no criticism, but aren't we in the same boat as Kantor and Mandiberg in the sense that we are going to be collecting the information presented to us and then we as a body are no more qualified to rule if we are the judges. I agree with you about the law professor probably, unless they are uniquely involved in litigation, but it would be good to have an advisor, even to put on contract, to give comment on the information that is collected. Then give us a report on it. Maybe a practitioner from another state?
- 41:35 P. Levy In my tenure so far I have done fairly extensive investigations into complaints about attorneys. I have reported on those investigations. I have also, of course, drafted many peer reports as well. I am sort of drawing on that experience to envision a process where I am aiming the views of knowledgeable, informed people who have either been connected in part of the work with these folks, or have seen it, and these are people who we are all in a position to make assessment of how much weight we should give to their opinions. You will be provided in the report with the opinions and the views of others. I don't think this will ultimately be that difficult. To accept, reject, evaluate the information that I am reporting.
- 43:03 Hon. Elizabeth

Welch I am going to kind of change the subject, not the general subject but the specific one, I read Mr. Gorham's letter and the obvious thrust of it is that we haven't been told what the concerns are about our performance. I am just wondering is that true?

43:26 P. Levy It is not true with respect to those who asked. Two of them who didn't ask, I went up and told them what the nature of the concerns were. They said, "Thank you for sharing that. I feel much better knowing it." I found that a little curious. I am happy to share. The complaint was that it hadn't been shared formally. I am not sure what that means or how formal they would like it to be shared.

44:19 S. McCrea Can I interrupt for just a second?

44:20 P. Levy Sure.

44:20 S. McCrea I am sorry Paul but, Mr. Chair, in the email that Mr. Gorham sent us, I thought that he had indicated that he really wanted to be present and that he was going to be late.

44:32 Chair Ellis He did, but we have done the best we could.

44:33 S. McCrea It would be my suggestion that if we are going to have a fair process that the better course would be to come back to this at a time when I expect Mr. Gorham will be here sometime this morning. I don't want to put Mr. Levy in a position where there is an accusation that there was an attempt to provide this information without Mr. Gorham. It would appear from this letter that he is appearing for four of the five people that this Commission is investigating. My hope is that we will ...

45:11 Chair Ellis We are reviewing.

45:15 S. McCrea Reviewing. There appears to be strong feelings on the part of these four people. I would prefer as a Commissioner to err on the side of trying to have, as Commissioner Ozanne's favorite term, "transparency and due process" so that there are no contentions that we didn't do everything we could to make this a fair process. All I am suggesting is that we delay discussion a little longer.

45:45 Chair Ellis Tell you what. I will agree with that. Why don't we do the last item of the agenda and whenever that finishes we can come back to this and hear what he has to say. I really don't want this to migrate into a public hearing on the issues of these five individuals. The time to do that is after the review that we have already approved.

46:17 P. Levy I responded to Steve's email saying that I didn't expect this to be a topic of discussion at this meeting. I didn't think the Commission necessarily wanted to have this on the agenda.

46:29 Chair Ellis I just wanted to hear status. I will do what you request.

46:36 P. Ozanne Just a point of information, Mr. Chair, this is the beginning of a process that will apply to all of the contractors down the road right? The concern might be why was I chosen first, not why was I chosen out of X number? We are going to do this for everybody.

47:02 Chair Ellis That is the agenda. These five there were enough issues was why they were at the front of the line. Let's put that on hold for now. Anything else on the management team report?

47:20 N. Cozine No.

**Agenda Item No. 6 Commission feedback regarding 2012 contracting process**

47:22 Chair Ellis Okay. Item no. 5 is feedback on the contracting process and this said regarding the 2012 contracting process. I think we are looking at the process we have just been through.

47:41 N. Cozine Yes. For the contracts that began January 1.

47:49 Chair Ellis Correct. The reason this is here is there was, a year ago and two years ago, concerns expressed by some of the Commissioners about when does the Commission get a chance to be involved? It is the eleventh hour when it is really too late to do much. How much does the Commission get to really function? We did change the timing. We did change the way the input was presented. I think Kathryn and her group are very interested to know if the Commission is satisfied with that. Did the process work satisfactorily in this last cycle? I don't know if either of you wants to say something before we get input from the Commission?

48:50 K. Aylward No, thank you.

48:50 N. Cozine Mr. Chair, the only question that I have is, if there are comments that relate to the contracting process, our analysts might want to come to the table to respond if there are those instances.

49:09 Chair Ellis Billy and your group, why don't you come on up.

49:17 K. Aylward I think that comments from our point of view might fit better in a discussion of administrative model versus a market model that we will be having later at the retreat. We want to hear from you what you would like to have happen differently. If there are questions then certainly the analysts are here to help answer. I think our responses might fit elsewhere in the agenda.

49:48 Chair Ellis Why don't we start. Remind us the process that we have just been through. I am sure you have it in your mind the sequence that was followed.

49:49 K. Aylward Now I am going to need analysts. There is not much in my mind. The sequence we went through began at the June Commission meeting. We wanted to get some general guidance, some discussion, and I think there was just sort of a confirmation on our part of a couple of things like the reinforcement that we don't pay more than what people bid. We didn't really have everything put together but I think in August we had an executive session where the analysts presented to the Commission and went through – instead of the giant spreadsheet which we had done two years earlier in Eugene, we decided to do it more as a narrative where analysts would present their own counties, what the issues were, and who the contractors were; what their recommendations were for change; how caseload would be distributed. In this round, because the legislature removed from our budget any money for colas or personal services adjustments or anything, there was no money. So if none of the rates were going to change, then it was just an issue of how to split the pie. At that executive session we dealt only with the non-capital contracts. The Commission approved – not approved but we discussed and we felt that we had our marching orders. We then went and negotiated those contracts with contractors. We reached agreement with them because they all knew there weren't going to be any rate changes. We made some decisions. Some contractors were not offered a subsequent contract. It was very difficult, but all of that had been discussed with the Commission in executive session before we made those moves. Then I think it was probably at the September meeting that we came back and said, "Okay, here is the list. Everyone has agreed. Can you approve these contracts?" At that September meeting we also went into executive session, is that right, in order to discuss the capital contractors and what the plan was for death penalty legal representation and mitigation contractors. We discussed it at that time and that is when the Commission heard the discussion about possibly those five that were chosen for review - should they have a two-year contract, a one-year contract, no contract? How should we proceed? The recommendation of the Commission at that time was a one-year

contract and a review process. After that executive session we contacted the death penalty applicants, people who responded to the RFP, contacted them and reached agreement according to the lines that the Commission had been discussing. Then we came back at the October meeting for final approval of those contracts that we had reached agreement on. That was our process last time.

53:29 Chair Ellis

I would open it for comment from Commissioners.

53:33 J. Potter

I will start just by saying that I thought the process was better than we have had in the past. If we fell down anywhere in my judgment, it was just communication blips here and there. The first blip was notifying all contractors, or making sure that all contractors were aware that we changed the time schedule. There were a few surprised contractors. They claimed to be surprised. They hadn't received the email and didn't know of the deadline, so we ended up having to deal with contractors that didn't know. Clearly that was their fault. Clearly you made an attempt to get to them, but that just seemed like a communication that we have to improve on.

54:15 K. Aylward

Could I just correct the record. I have heard this now so many times. I have heard contractors say, "Oh the timing was different." I even heard Ingrid say, "Well, I know the timing was different." We changed the timing and brought it forward two years prior to that. So that last RFP that was released in May, had been released in May two years prior to that. The change in timing had already happened. It wasn't a surprise this time. It was a surprise two years prior to that.

54:47 J. Potter

The perception of mine was, and apparently Ingrid's was, and apparently some of the other contractors, were different than that. Just to clarify the process. I am seeing behind me hands flying up.

55:01 G. Hazarabedian

I think that it was Kathryn's directive that was released earlier in the previous session in May, but the deadline wasn't as accelerated as much as it was this time. I think that is the basic change this time around.

55:18 J. Potter

In any case a communication issue with that and that seems like an easy fix. In the August executive session, once again we didn't have discussions about all the contracts. There was some uncertainty in my mind what contractors knew about the possibility that they might not be getting a contract at that point. It would have been more helpful to me to know that negotiations had begun with these folks. If they have, are they aware that the potential for no contract exists, so that we don't get another sort of surprise on the part of the some contractors that had no clue that they were on the chopping block. Overall though, I thought that having our input was much improved.

56:14 C. Lazenby

I just want to say that I think that we are all busy. The old saying in journalism runs something like, "Say it. Say it again. Tell them what you said. Tell them what you are going to say. Tell them what you just said." I think that would have gone a long way toward people really having it in their face that the timelines are different. That they may be in danger of losing the contracts they have. That is a really emotional thing. I have heard it from some of the folks. I think from a perception standpoint, we just keep in mind as we are going through this, whether shrinking or changing our procedures we can't say it too much so that that perception doesn't become – just start out by saying that this is getting said enough that it is becoming a reality unto itself. That is the problem.

57:25 Chair Ellis

Other comments?

57:29 S. McCrea

I thought the executive session was really helpful because in the past you have presented the information. It was really, really good to take that time to go through each of the contracts. I really liked having analysts present so each one could talk to us about his or her area. It was good to have the contact with them and for them to have the contact with us. It was an environment where we could ask the questions

that we wanted to ask and get the answers that we needed to help us to help you. I thought that was a big, big factor and an improvement in the contracting process this time around.

- 58:17 K. Aylward I think our office felt the same way too. It was good.
- 58:22 Chair Ellis Other comments?
- 58:22 Hon. Elizabeth Welch I said it at the time – I was very satisfied.
- 58:36 P. Ozanne Because I have not been a good commissioner, in my opinion in terms of my attendance because of other things, I don't ...
- 58:45 Chair Ellis You were forgiven.
- 58:45 P. Ozanne Thank you. I don't think I have a fair picture of it. I thought the efforts were great on the part of our staff to address concerns we expressed. It was a wonderful learning experience for me to be on this side of the table as opposed to there. Judge Welch raised a very good question as to what exactly is our role here. I agree with Kathryn that it is probably a subject that we will take up in the retreat. I remain challenged, I guess I would say, by a voluntary Commission overseeing a \$200 million dollar biennial budget. Maybe it is just inherent. Maybe I should make a pitch for paid board members. A corporation that has this kind of revenue would be paying their board members to pay attention. It is hard to be really engaged as a volunteer. I appreciate that now. I also admire how much those of you who have been doing this for longer than I have, how big a sacrifice it is. I would like to talk more about it during the retreat. I think there were efforts made to address the concerns. I appreciate that. Especially now that Judge Welch is satisfied. That is a big deal. It was a shock when she said that. As a director I hadn't really thought about it in the way that I am now sitting here.
- 1:00:31 Chair Ellis I thought the process was much better and I thought it was meaningful. The statute does say we are supposed to review and approve contracts. I share Judge Welch's previous expression of concern that came in the form of a list of 100. That felt like we were at 20,000 feet. I felt this time we did have the chance to have input on the strategy and we did have a chance to have input on those individual contracts where there were identifiable issues. This Commission has had pretty good continuity. We've had some change in membership, but people in this room today have all been working in this area now for quite some number of years. That helps because I think I do know a lot of the contractors and I do know a lot of markets that we are dealing with. So when the analysts talk to us about it, I think we are better able to exercise the responsibility that we have. I commend the process. I think it was a lot better. That is not to say that the prior process was terrible. We have gone from a period before this Commission was formed where you would go deep into a biennium before a contract would even be discussed with the provider. It was just way, way off the charts out of control. I think we are now really much more on top of it. The number of contractors has reduced which helps. I think the size of the contracts tends to be larger, so we are dealing with a granularity of the contracts that is larger. I felt much better. I think it was good. How about from your standpoint?
- 1:02:47 K. Aylward We would love to share those thoughts with you with regard to the discussion at the retreat involving administrative versus market models.
- 1:02:58 Chair Ellis Okay.
- 1:02:59 P. Ozanne I would like to personally thank Kathryn. You could have been defensive. I hope you knew – and I was one of them most, next to Judge Welch perhaps, outspoken about it. I hope you knew that it wasn't personal criticism. How much I admire the

work you have done. As I said earlier you are largely responsible for the credibility we enjoy. I appreciate the fact that you responded to the concerns.

1:03:38 K. Aylward

I didn't take any of your comments personally.

1:03:40 P. Ozanne

As I have found with the quality assurance process, the Commission was such a help to me standing behind me, so it wasn't just my judgment. I hope the positive part for you is that you are not alone. The decisions aren't yours. They are shared with us. I will take the credit and the blame.

1:04:04 Chair Ellis

Any input from the analysts that are here? I think that concludes Item no. 5. Anything more that you want to share with us Paul on the capital contract review?

1:04:32 P. Levy

There really isn't. I told Steve that I didn't expect this to be on the agenda.

1:04:48 Chair Ellis

I was just looking for information on status. Okay. Any other subjects anybody wants to raise in the formal public meeting? If not, I would entertain a motion to adjourn.

**MOTION:** Peter Ozanne moved that we adjourn the meeting; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

**Meeting adjourned.**

# Attachment 2

## Minutes of January 26, 2012, Public Defense Services Commission Retreat

Discussion regarding administrative model versus competitive model for contract bids. Commission members agreed that we have reached a balance point between these two systems, and it seems to be working well. Some Commission members questioned whether the Commission's role should shift away from oversight of quality toward oversight of resources. Commission members agreed that it helps to have more information regarding how things are going in each county throughout the year, and expressed a desire to hear from analysts on a more regular basis. Peter Ozanne suggests that the Commission should consider an external review of our current structure and system to develop ideas for the future and ensure that Oregon's public defense system remains a national model.

Discussion about using data as a component of quality assurance. Commissioner Ozanne suggests that contractors could be required to collect and perform regular reviews of identified data points. Kathryn Aylward would like analysts to visit their counties regularly as an additional quality assurance measure; Paul Levy indicates that he is interested in development of a measurement tool that analysts can use to evaluate providers.

Commissioner Welch supports use of data in measuring performance in juvenile cases. Lack of data was a big issue in waiver of counsel conversation, as we did not have the data we needed to make accurate assumptions. Current evidence suggests that youth waive counsel in juvenile delinquency cases because of potential for costs imposed through Application Contribution Program (ACP). Commission members questioned whether the letter circulated by the Chief Justice increased use of the waiver of counsel colloquy. If not, Commission members are interested in exploring possible ACP rule changes (to address possible chilling effect that financial contribution could be having on parents' and kids' willingness to participate in ACP), a CJO requiring appointment of counsel in delinquency cases, or a legislation requiring appointment of counsel in all juvenile delinquency cases. Judge Welch would like to see the performance standards revised (and improved); a champion is needed to work on standards of representation in juvenile delinquency proceedings.

Recruitment and training remains an issue for some contract providers. Professionalism within defense community has improved efforts. Commissioner Potter urges OPDS to solicit input from small counties prior to creating a strategy. The current budget environment reduces opportunities and need for sophisticated recruitment efforts, but PDSC/OPDS does need to continue the conversation.

The Commission had a short discussion about planning for the transition of certain leadership responsibilities. Within the CBS Division, budget pieces need to be transitioned to someone with economics and budget background. Rather than focus on getting a person who can take over all of Kathryn Aylward's current functions, cover budget layer first, then move to delegating other responsibilities. Commission members also discussed their terms, and shared ideas about profiles to think about for future appointments to the Commission: diversity, individual with state agency background, business community member, retired trial court administrator, geographic diversity, former appellate judge.

The Commission discussed their thoughts on future development of OPDS. Expanding to have satellite appellate division office locations (possibly sharing space with contractors) raised some concerns about the possible impact on OPDS office culture and training. The idea of a statewide public defender office is not appealing to most Commission members, who feel we have made advancements by prioritizing contracts with public defender offices, and managing conflicts through consortia. If a statewide PD model were implemented, it could be tested on a particular case type (e.g. PCR and death penalty), but there is some question about whether current providers would be interested in transitioning to such a model. Paul Levy shared that a statewide public defender system could provide an opportunity to systematically improve case outcomes. Commission members expressed an interest in learning about what other states are doing. Paul Levy suggested that there is an ABA Summit on State of Public Defense that could be helpful.

Chair Ellis encouraged continued collaboration with Oregon's prosecutorial community, with whom the PDSC has enjoyed a very positive relationship over the years.

# Attachment 3

<b>GUIDELINE MAXIMUM CONTRIBUTION AMOUNTS SCHEDULE</b>	
<b>CHARGE</b>	<b>GUIDELINE MAXIMUM CONTRIBUTION AMOUNT</b>
<b>Aggravated Murder</b>	<b>\$15,000</b>
<b>Murder and Jessica's Law Cases</b>	<b>\$5,250</b>
<b>Class A Felony - Person</b>	<b>\$700</b>
<b>Class A Felony - Property</b>	<b>\$350</b>
<b>Class A Felony - Drug</b>	<b>\$300</b>
<b>Class B Felony - Person</b>	<b>\$550</b>
<b>Class B Felony - Property</b>	<b>\$275</b>
<b>Class B Felony - Drug</b>	<b>\$250</b>
<b>Class C Felony - Person</b>	<b>\$350</b>
<b>Class C Felony - Property</b>	<b>\$250</b>
<b>Class C Felony - Drug</b>	<b>\$225</b>
<b>Class C Felony - Attempt to Elude</b>	<b>\$350</b>
<b>Class U Felony and Extradition</b>	<b>\$250</b>
<b>Felony DWS/R and Felony FTA</b>	<b>\$175</b>
<b>Misdemeanor DWS/R and Misdemeanor FTA</b>	<b>\$100</b>
<b>DUII</b>	<b>\$350</b>
<b>Order to Show Cause - DUII Diversion</b>	<b>\$50</b>
<b>Other Misdemeanor</b>	<b>\$225</b>
<b>Contempt of Court / Violation of Restraining Order (VRO)</b>	<b>\$225</b>
<b>Juvenile - Termination of Parental Rights - Representation of Parent</b>	<b>\$1,500</b>
<b>Juvenile - Termination of Parental Rights - Representation of Child</b>	<b>\$1,125</b>
<b>Juvenile Dependency - Representation of Parent</b>	<b>\$330</b>
<b>Juvenile Dependency - Representation of Child</b>	<b>\$330</b>
<b>Juvenile Delinquency - Felony</b>	<b>\$290</b>
<b>Juvenile Delinquency - Misdemeanor</b>	<b>\$200</b>
<b>Probation Violations</b>	<b>\$50</b>
<b>Civil Commitment</b>	<b>\$0</b>
<b>Habeas Corpus</b>	<b>\$150</b>
<b>Post-Conviction Relief</b>	<b>Use the amount listed above for the most serious conviction on which the petitioner seeks relief.</b>

**Public Defense Services Commission  
Schedule of Compensation  
For Purposes of Recoupment Pursuant to ORS 151.505(2)**

	<b>Typical contract rate</b>	<b>Average expenses (rounded)</b>	<b>Total cost</b>
Murder	\$20,000	\$16,000	\$36,000
Measure 11 felony	\$1,600	\$1,900	\$3,500
Non-M11 A felony	\$980	\$320	\$1,300
Non-M11 B felony	\$820	\$180	\$1,000
C/U felony	\$600	\$150	\$750
Misdemeanor, contempt, extradition	\$310	\$40	\$350
FAPA & Support	\$600	\$0	\$600
Probation violation	\$200	\$0	\$200
Habeas corpus	\$1,500	\$100	\$1,600
PCR	\$2,300	\$1,100	\$3,400
Civil commitment	\$310	\$40	\$350
Juvenile felony	\$600	\$400	\$1,000
Juvenile misdemeanor	\$310	\$40	\$350
Juvenile probation violation	\$200	\$0	\$200
Juvenile dependency	\$700	\$100	\$800
Termination of parental rights	\$2,300	\$300	\$2,600

Effective October 22, 2010

# Attachment 4

# Oregon Public Meetings Law

Public Defense Services Commission Training  
Presented by Paul Levy, General Counsel  
Office of Public Defense Services  
March 20, 2012

## 1) Policy of the Public Meetings Law, ORS 192.610 to 192.710.

“The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORE 192.610 to 192.690 that decisions of governing bodies be arrived at openly.” ORS 192.610.

Thus, the provisions of the law require that (1) meetings of governing bodies at which decisions are made or discussed be open to the public; (2) that the public have notice of the time, place and principal subjects of the meetings; and (3) that meetings are accessible to persons wishing to attend.

The law provides for public *attendance* at meetings, not public *participation*.

## 2) Governing Bodies

The law applies to “governing bodies” of state and local government “public bodies.” ORS 192.630(1).

“Public bodies” include boards and commissions. ORS 192.610(4). It does not include agency heads.

A “governing body” has authority to make decisions for a public body on policy and administration. ORS 192.610(3).

Advisory groups and subcommittees of a public body are subject to the public meetings law if they have authority to make decisions for or recommendations to a public body on policy or administration. “For example, an advisory committee appointed by an individual official, such as the Governor, the individual head of a department or a school principal, is *not* ordinarily a governing body...if the advisory committee reports only to the individual appointing official. If, however, that single official lacks authority to act on the advisory group’s recommendations, and must pass those recommendations on unchanged to a public body, the Public Meetings Law applies to the advisory group’s meetings.” *Atty Gen Public Records and Meetings Manual 2010*, 117 (hereafter, *AG Manual*; emphasis in original).

### 3) Public Meetings

A meeting is the convening of a governing body “for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.” ORS 192.610(5).

A majority of the voting members of the Public Defense Services Commission (PDSC) constitutes a quorum for the transaction of business. ORS 151.213(5).

A gathering of less than a quorum of a governing body is not a “meeting” under the Public Meetings Law.

“Retreats,” long-range or strategic planning sessions, and “working lunches” are public meetings if official business is discussed by a quorum of a governing body. Purely social gatherings are not “meetings” under the Public Meetings Law.

Staff meetings are not meetings under the Public Meetings Law because no quorum is required.

### 4) Exemptions

The definition of “meeting” specifically excludes “on-site inspection of any project or program,” and “attendance of members of a governing body at any national, regional or state association to which the public body or the members belong.” ORS 192.610(5).

Statutory exemptions are set forth in ORS 192.690(1) and (2). None of these provisions apply to the PDSC.

### 5) Electronic Meetings

The Public Meetings Law, last amended in 1979 in this connection, provides for meetings by telephonic or electronic communications, so long as all procedural requirements of regular meetings are satisfied. ORS 192.670.

Thus, “communications between and among a quorum of members of a governing body convening on electronically-link personal computers are subject to the Public Meetings Law...”. *AG Manual*, 124.

The use of contemporaneous email, by which a quorum of members of a governing body deliberate through use of a “reply all” option, has not been addressed by statute, appellate caselaw or the *AG Manual*. But for the risks of communications through email among members of a governing body, see *Dumdi v. Handy*, Lane

County Circuit Court No. 16-10-02760 (January 14, 2011), discussed in the attached *Letter from Legislative Counsel Dexter Johnson to Senator Floyd Prozanski*, March 28, 2011.<sup>1</sup>

## 6) Procedural Requirements

### a) Notice

In addition to providing general notice to the public at large, notice must be “reasonably calculated to give actual notice to interested persons including news media which have requested notice.” ORS 192.640(1).

Notice must include the time, place and principal subjects of the meeting.

Notice of executive sessions must include reference to the specific statutory provision authorizing the executive session. ORS 192.640(2).

Special meetings must have at least 24 hours notice.

If an “emergency meeting” does not permit giving 24 hours notice, the minutes must describe the “actual emergency” that exists. ORS 192.640(3).

### b) Minutes

“Sound, video or digital recording” or written minutes must be made for public meetings. ORS 192.650. Neither a complete recording nor verbatim minutes are required, so long as the minutes “give a true reflection of the matters discussed at the meeting and the views of the participants.” *Id.*

Minutes must include at least:

- Members present.
- All motions, proposals and other measures, and their disposition.
- Results of all votes and the vote of each member by name (for governing bodies with 25 or fewer members).
- Substance of all discussion.
- Reference to all documents discussed.

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<sup>1</sup> The entire 44 page opinion by Judge Michael Gillespie is available here: <http://media.kval.com/documents/Dumdi-Handy.Decision.2011.01-18.pdf>

- For emergency meetings, a description of the emergency requiring the meeting.

Minutes must be made available to the public within a reasonable time.

Same rules apply to executive sessions, except audio record of meeting need not be transcribed, and disclosure of material from meeting is not required if inconsistent with the purpose for which the executive session is convened. ORS 192.650(2).

c) Location of meeting

Except for training sessions and emergency meetings, public meetings must be within the governmental unit's jurisdiction, or at its administrative headquarters or at the "nearest practical location." ORS 192.630(4).

No meeting may be held where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced.

The location must be accessible to persons with disabilities and accommodations made, upon request, for hearing impaired persons.

No smoking. Fine of \$10 for violation! ORS 192.990.

## 7) Executive Sessions

Public meetings may be closed to the general public if the meeting is for a purpose set forth in the Public Meetings Law executive session provisions, ORS 192.660, which include, as relevant to the PDSC:

- Certain personnel and labor relations matters, including hiring, performance reviews, discipline and dismissal of staff.
- Consideration of information or records that are exempt by law from public inspection under the Oregon Public Records law or other provisions of law.
- To consult with legal counsel regarding current or likely to be filed litigation.

Executive sessions may not be held for the purpose of taking any final action or making any final decision. ORS 192.660(6). "It is quite likely that the governing body may reach a consensus in executive session, and its members of course will know of that consensus. The purpose of the 'final decision' requirement is to allow the public to know the *result* of the discussions. Taking a formal vote in open session satisfies that requirement, even if the public vote merely confirms a tentative decision reach [sic] in an executive session." *AG Manual*, 149 (emphasis in original).

The person presiding over the executive session must identify the specific statutory provision authorizing the meeting before closing the meeting to the public.

Ordinarily, representatives of the news media may attend executive sessions. The governing body may require that the media not report about the subject of the session. Without such a requirement, the proceedings may be reported.

## **8) Enforcement**

Unlike the Oregon Public Records law, the Oregon Attorney General has no role in the Public Meetings Law, except to act as legal counsel to state agencies.

“Any person affected by a decision” of a public body may sue for a violation of the Public Meetings Law, pursuant to ORS 192.680, which set forth the “exclusive remedy” for an alleged violation.

- A suit must be commenced within 60 days following the date that a decision becomes a public record.
- A decision made in violation of the law is voidable but not void if the public body reinstates it in compliance with the law.
- But if violations are the result of intentional disregard or willful misconduct, the court shall void the decision or order such other equitable relief as appropriate.
- A court may order payment by a public body of reasonable attorney fees to a successful plaintiff, but members of the governing body may be jointly and severally liable to the public body for those fees for willful misconduct.

Notwithstanding the exclusive remedy described above, violations of the law’s executive session provisions may also be investigated by the Oregon Government Ethics Commission, which may impose a civil penalty of not to exceed \$1,000 for violations. However, “[a] civil penalty may not be imposed ...if the violation occurred as a result of the governing body acting upon the advice of the public body’s counsel.” ORS 244.350(2)(b).



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

March 28, 2011

Senator Floyd Prozanski  
900 Court Street NE S417  
Salem OR 97301

Re: *Dumdi v. Handy* and changes to Oregon Public Meetings Law

Dear Senator Prozanski:

You asked for our review of the Lane County Circuit Court case *Dumdi v. Handy*, Case No. 16-10-02760 (January 14, 2011).<sup>1</sup> You specifically asked whether, in our view, the court held that the public meetings law, ORS 192.610 to 192.690, applies to one-on-one meetings of public officials or to e-mail communications between public officials. We find that the court reached that conclusion, but only with respect to meetings or communication that constituted deliberations on a matter that rose to the level of being a decision because the matter had been officially noticed as a pending decision of the governing body.

**The public meetings law**

The public meetings law generally requires all meetings of a governing body of a public body to be open to the public. ORS 192.620. A governing body of a public body that consists of two or more members is the members that have authority to make decisions for or recommendations to the public body on policy or administration. ORS 192.610 (3). For purposes of the public meetings law, a meeting is the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. ORS 192.610 (5). Unless a statute, ordinance or rule of the public body in question provides otherwise, a quorum consists of a majority of the members of a governing body. ORS 174.130. A quorum of a governing body may not meet in private for the purpose of deciding or deliberating toward a decision on any matter, except as otherwise provided under ORS 192.610 to 192.690. ORS 192.630 (2). Finally, a meeting of a governing body that is held through the use of telephonic or electronic means of communication also must comply with the public meetings law. For meetings other than executive sessions, this includes making available a place where the public can listen to the communication at the time it occurs. ORS 192.670.

There are numerous types of meetings that may be conducted in executive session, or that are altogether exempt from the public meetings law. ORS 192.660, 192.690. None of the meetings at issue in the *Dumdi* case falls within an existing executive session or exempt category.

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<sup>1</sup> Citations to the court opinion are omitted in this opinion.

## Facts

The Lane County Board of Commissioners (board) is the five-member governing body for Lane County. Defendants are three of the five commissioners. Three commissioners are required to vote affirmatively in order for the board to take any formal action.

Among other duties, the board is charged with adopting an annual budget for the county. The board may choose to modify an adopted budget by adopting a supplemental budget. For the fiscal year 2009-2010, the board adopted supplemental budget #2 on December 9, 2009, which reallocated funds so as to be used for half-time aides for the county commissioners. Plaintiffs in the case asserted that events leading up to the adoption of supplemental budget #2 and the adoption of supplemental budget #2 were violations of Oregon's public meetings law. The court agreed with plaintiffs.

Some of the events on which the court based its conclusion occurred in the spring of 2009, as the 2009-2010 budget was being developed. Commissioner Handy and his assistant, Phyllis Barkhurst, facilitated the establishment of an informal group known as the Budget Interest Group (BIG). BIG meetings were typically attended by some combination of the defendants and county budget committee members appointed by the defendants,<sup>2</sup> though a conscious effort was made to avoid having a quorum of either the board or the budget committee at BIG meetings. The public was not invited to BIG meetings and BIG meetings were not noticed in compliance with public meetings law. Also, the two county commissioners not named as defendants—Commissioners Bill Dwyer and Faye Stewart—and the budget committee members that they appointed, did not attend BIG meetings. Commissioner Handy testified at trial that he did not want BIG meetings to be “the usual dog and pony show.” The court also considered the following May 5, 2009, e-mail from Barkhurst: “I am suggesting that the BIG be the place where the strategizing occurs along with the budget committee meetings and any meetings where two of you can gather and discuss.”

Although BIG meetings were not noticed or recorded, documents reflecting budget discussions were often considered at BIG meetings. Examples cited by the court included spreadsheets setting forth budget items and columns indicating “Yes” and “No” to reflect whether a consensus existed among BIG attendees on a particular item. Other e-mails sent by Barkhurst recounted vote commitments for upcoming budget committee meetings. Finally, other e-mails from Commissioners Fleenor, Sorenson and Hardy discussed their positions on county budget items. BIG did not meet after May 19, 2009. The budget committee approved a recommended budget on May 19, 2009. Additional modifications were made by the board, which took final action to approve the county budget on June 24, 2009. Significantly, the 2009-2010 budget adopted by the board did not include funding for commissioner aides.

At the same time that the board was making its final deliberations on the budget, the e-mails of the defendants were reviewed by County Counsel in response to a public records request made by *The Register-Guard* of Eugene. County Counsel warned the commissioners that, although there may not have been technical violations of the quorum requirements, counsel was concerned that the spirit of the public meetings law appeared to have been violated.

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<sup>2</sup> Local budget law requires a county to establish a budget committee, which develops a proposed budget that it recommends to the board. Each commissioner is a member of the budget committee and the board also appoints an equal number of electors as members of the budget committee. See ORS 294.336. Under the public meetings law, the budget committee also constitutes a governing body of a public body, because the budget committee deliberates on and makes recommendations to the board. ORS 192.610 (3).

The circumstances surrounding the adoption of the county budget and the role of BIG are not at direct issue in the case, but we believe the court considered these circumstances as a kind of procedural framework through which budget decisions were made by the county. County commissioners considered supplemental budget #2 in the fall of 2009, including a string of e-mails between Barkhurst and Commissioners Handy and Fleenor that discuss the inclusion of funding for commissioner aides and the politics associated with that decision. The board met formally on December 9, 2009, and adopted supplemental budget #2, including funding for the aide positions. Three commissioners, Handy, Dwyer and Sorenson, voted in favor of the supplemental budget. There was no public discussion of the aide positions during the hearing. Most significantly, however, Commissioner Handy sent an e-mail to Barkhurst on December 11, 2009, recounting events occurring the morning of December 9 in advance of the formal board hearing. The contents of this e-mail are, we believe, pivotal to the court's decision. The e-mail recounts Commissioner Handy coming into the County Administrative Offices (CAO) when Commissioners Dwyer, Sorenson and Stewart were present in their own offices within the CAO suite—with doors open—and “knock[ing] everyone over with my booming voice” in discussing funding for the aide positions and *The Register-Guard* coverage on the issue. The e-mail describes Handy then visiting individually with Dwyer, Stewart and Sorenson to further discuss the vote. The e-mail describes a visit from Handy to Dwyer on December 8 during which Dwyer stated he would vote for the budget, Handy's visit with Dwyer the morning of December 9 confirming that support and Handy's visit to Sorenson's office communicating Dwyer's support to Sorenson. The case finally describes other instances in which two or three commissioners met informally during this period, but provides that there was a record of the content of their discussions.

### **Analysis of the court's decision**

There are four issues addressed in the court opinion: (i) the effect of the statute of limitations; (ii) the extent to which the plaintiffs have standing to claim a violation of the public meetings law; (iii) whether the public meetings law was, in substance, violated; and (iv) whether the violation, if any, amounted to a willful violation for which individual liability for attorney fees and costs attaches.

We briefly summarize the statute of limitations and standing issues, as they have only limited bearing on the questions you ask. ORS 192.680 (5) establishes a statute of limitations under which a suit for violation of the public meetings law must be commenced within 60 days after the date the decision by the governing body becomes public record. The court could, therefore, only consider whether deliberations leading up to the adoption of supplemental budget #2 violated the public meetings law. Persons have standing to commence a suit for violation of the public meetings law if they are “affected by a decision of a governing body.” ORS 192.680 (2). The court concluded that plaintiffs met the threshold of being “affected” by the board's decision on supplemental budget #2, because all that is needed is a showing that the governing body had an obligation to allow the public to be informed of the deliberations and decisions of the governing body and the decision to adopt supplemental budget #2 was such a decision.<sup>3</sup>

The court found that it is not possible to establish a bright line to distinguish between conduct that amounts to deliberations toward a decision for which public meetings law applies, and conduct that does not amount to deliberations toward a decision. The court noted that a

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<sup>3</sup> The court cited *Harris v. Nordquist*, 96 Or. App. 19 (1989).

meeting of a quorum of the board in which they discuss county business, pursue their own agendas on matters they think important, and even seek the support of fellow commissioners is not, of itself, a violation of public meetings law. Where such conduct suddenly changes into a violation of the public meetings law, in the court's view, is following formal notice that the decision that is the subject of informal discussion is a pending decision before the board. In this case, that date occurred on December 1, 2009, when notice was given to *The Register-Guard* for publication that supplemental budget #2 was to be formally considered by the board on December 9, 2009. The court concluded that there were no violations of public meetings law requirements with respect to supplemental budget #2 before December 1, 2009, but one-on-one meetings between Handy and the other commissioners, or e-mails or other communications between Handy and the other commissioners, that occurred after December 1, 2009, were designed to line up votes in support of supplemental budget #2 and took place outside of the public view. The court characterized these one-on-one meetings and other communications as deliberations orchestrated to avoid any public discussion and to avoid adverse public comment or criticism. Therefore, the court found that all communications occurring after December 1, 2009, in which supplemental budget #2 was discussed, constituted a violation of the public meetings law.

We have reviewed other decisions made under the public meetings law and find the court's emphasis on communications after a date on which a matter formally becomes a decision that a governing body is working toward to be unique. The court also cites no authority for the proposition that conduct allowable under the public meetings law suddenly becomes a violation of the public meetings law when a matter formally becomes a pending decision of a governing body. In the court's opinion, whether or not a quorum of a governing body is present becomes far less important than whether or not communications between two or more members of the governing body are about a pending decision. The form of the communication is not particularly important to the court's analysis, though the court found that e-mail was sufficiently akin to back-and-forth conversation to be capable of being deliberations toward a decision and, therefore, potentially subject to public meetings law. In our view, the court's emphasis on when a matter formally becomes a pending decision of a governing body is not justified under the statutes and existing precedent. The actual act that is prohibited under the public meetings law is for a quorum of a governing body to meet in private for the purpose of deciding on or deliberating toward a decision on any matter. ORS 192.630 (2). The statute does not prohibit less than a quorum from deliberating. For example, in *Harris v. Nordquist*, the meetings asserted to be violations of the public meetings law all involved a quorum of a school board that met privately in local restaurants following the school board's official meetings.<sup>4</sup> The court's reasoning in the *Dumdi* case also does not solve the policy problem of ensuring transparency in public process; the case would merely result in greater importance being given to the timing of when matters are officially noticed. Whether the case will be appealed to the Court of Appeals is unknown at this time. We advise waiting for appellate level review before considering a modification to the public meetings law statutes as a response to this case.

The final issue the court considered was whether the defendants' conduct in violating the public records law was "willful." ORS 192.680 (4) provides that if the court finds that a violation of the public meetings law by any member of the governing body is the result of willful misconduct, the member or members engaged in the willful misconduct shall be jointly and severally liable. The court concluded that in this context "willful" could mean either (i) acting with a conscious objective of causing the result or acting in a manner that is contrary to the applicable rule; or (ii) acting with knowledge that the conduct of the person was a violation. The

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<sup>4</sup> *Harris*, 96 Or. App. at 24.

court concluded that it need not determine which was the applicable standard, as the acts of defendants Handy and Sorenson were willful under either standard. The reason Handy's and Sorenson's conduct was "willful" was because they had both been expressly warned by County Counsel that their conduct during the spring of 2009 could be interpreted as violating the spirit of the public meetings law and the pattern of their conduct between December 1 and 9, 2009, was similar to that during the spring of 2009. In our view, if the court's reasoning that defendants' conduct violated the public meetings law is sound, then the court's finding that Handy's and Sorenson's conduct was willful misconduct is a justifiable conclusion. The evidence supports Handy's actions as being motivated to avoid public meetings and the evidence supports Sorenson's knowledge that such actions might be viewed by some as violating the spirit of the public meetings law. We conclude, however, that the reasoning of the court does not support the conclusion that a public meetings law violation occurred in the first place.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dexter A. Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dexter A. Johnson  
Legislative Counsel

# Attachment 5

**Report on the Fifth Annual OPDS Statewide  
Public Defense Performance Survey**  
Paul Levy, OPDS General Counsel  
March 22, 2012

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In early January 2012, the Office of Public Defense Services (OPDS) conducted its fifth annual statewide public defense performance survey. A summary of the survey results, along with the results of the three preceding annual surveys, is attached to this report. Because OPDS used a somewhat different instrument for its first survey, the results of that survey are not easily compared to subsequent surveys.

Overall, the 2012 survey shows general satisfaction with the quality of public defense representation in Oregon, a result similar to that seen in each of the previous surveys. With the caveat that the survey is not a scientifically designed or validated instrument, the survey appears to confirm the efficacy of quality improvement efforts by the Public Defense Services Commission (PDSC), its staff, public defense contractors, and others, particularly in the area of juvenile representation and the death penalty. As with previous surveys, the narrative comments included in responses to the 2012 survey are among the most helpful features of our survey effort. A significant number of the over 200 comments identified specific concerns with the quality of public defense services. OPDS staff is able to associate responses and comments with particular judicial districts. This allows OPDS to follow up on concerns with local justice system stakeholders, and to provide contractors with feedback about the services they are providing.

### **Conduct of Survey**

OPDS uses an online survey tool to collect and tabulate responses. OPDS sends a link to its online survey to all Circuit Court judges, all elected district attorneys, the director of each county juvenile department, and to all coordinators of local Citizen Review Boards (CRB). As in prior years, Chief Justice Paul De Muniz sent an email message to all Circuit Court judges endorsing the survey and urging judges to respond. The response rate was good again this year, with the total number of responses far exceeding previous years. This increase occurred because a link to the survey was apparently shared with all deputy district attorneys in Multnomah County, of whom 33 responded to the survey. In addition to the responses from judges shown on the attached survey summary, a number of judges responded directly by email to OPDS with comments about public defense representation in their judicial districts.

## **Criminal Representation**

As in previous surveys, most respondents (83.8%) report that overall representation in criminal cases is good (66.9%) or excellent (16.9%). Most respondents say that the quality of criminal representation has remained about the same, although 18% say it improved in the past year and 12% say it has gotten somewhat worse. As in each previous survey, most respondents say that criminal caseloads are too large. And consistent with previous surveys, about half of all respondents indicate that they question the competence of some attorneys handling criminal cases. In connection with this information, the 61 comments provided by respondents are especially helpful. The themes of these comments are similar to those in prior surveys: lack of client contact, inadequate case preparation, showing up late or missing court appearances, and insufficient or ineffective attorney training and supervision by contractor administrators. As mentioned above, OPDS will follow up on comments concerning specific counties and providers.

## **Juvenile Representation**

In response to the first annual survey in late 2007, respondents rated the overall quality of juvenile representation slightly less favorably than the representation in criminal cases. In subsequent surveys, including the current one, representation in both dependency and delinquency cases is said to be good or excellent by a higher percentage of people than in criminal cases, with no indication that opinions about criminal representation have worsened. Unlike in criminal cases, a significant majority of respondents do not question the competency of any attorney providing representation in either dependency or delinquency cases, although the comments provided in connection with this question provide useful information for further inquiry and work by OPDS. Also unlike the responses regarding criminal cases, most respondents indicate that the size of both dependency and delinquency caseloads are about right.

## **Death Penalty Representation**

The survey presented one open-ended question concerning death penalty representation, inviting any comments concerning representation in those cases. The 31 comments from those who said they were familiar with the quality of representation in death penalty cases are appended to the attached summary of survey results. The comments generally remark upon the very high quality of the work now being performed, although several comments question the work of some attorneys.

## **Civil Commitment Representation**

The 2010 survey was the first to ask about the quality of representation in civil commitment cases. As with responses from that year and from 2011, the results in 2012 show a very high level of satisfaction with public defense representation in these cases.

## **Conclusion**

While undoubtedly not a comprehensive measure of the quality of public defense services, survey results do permit OPDS to track significant changes in reported quality from year to year in specific areas of the state and types of practice. The overall favorable opinion about the quality of public defense services, including the indication that some respondents see improvement in these services, supports the conclusion that PDSC is largely fulfilling its principal responsibility to deliver quality public defense services in Oregon. At the same time, many respondents identified specific concerns about inadequate client contact, need for better or more training, and issues of professionalism. These comments, which are similar to ones received in past surveys, point to the need for continued efforts to improve provider management and the importance of ongoing PDSC engagement with all justice system stakeholders in Oregon.

# 2012 Annual Statewide Public Defense Performance Survey



## 1. Please tell us your role in your county's justice system.

	('09)	('10)	('11)	Response Percent	Response Count
Judge	95	92	109	58.1%	104
Prosecutor	11	13	20	25.1%	45
Juvenile Department	16	25	14	11.2%	20
Citizen Review Board	14	10	11	5.6%	10
Other				0.0%	0
Other (please specify)					1
<b>answered question</b>					<b>179</b>
<b>skipped question</b>					<b>2</b>

## 2. How long have you worked in your county's justice system?

	('09)	('10)	('11)	Response Percent	Response Count
1 to 3 years	8.8%	7.2%	7.4%	8.5%	15
3 to 5 years	7.4%	6.5%	7.4%	9.7%	17
5 to 10 years	11.0%	10.9%	11.4%	14.8%	26
10 years and more	72.8%	75.4%	73.4%	67.0%	118
<b>answered question</b>					<b>176</b>
<b>skipped question</b>					<b>5</b>

### 3. Please tell us where you work (Judicial District).

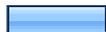
		Response Percent	Response Count
JD 1 Jackson County		3.3%	6
JD 2 Lane County		5.0%	9
JD 3 Marion County		5.0%	9
<b>JD 4 Multnomah County</b>		<b>26.5%</b>	<b>48</b>
JD 5 Clackamas County		6.6%	12
JD 6 Morrow & Umatilla Counties		3.9%	7
JD 7 Hood River, Wasco, Sherman, Wheeler, Gilliam Counties		3.9%	7
JD 8 Baker County		1.1%	2
JD 9 Malheur County		1.1%	2
JD 10 Union & Wallowa Counties		1.7%	3
JD 11 Deschutes County		1.7%	3
JD 12 Polk County		2.2%	4
JD 13 Klamath County		3.3%	6
JD 14 Josephine County		2.2%	4
JD 15 Coos & Curry Counties		3.3%	6
JD 16 Douglas County		1.1%	2
JD 17 Lincoln County		1.7%	3
JD 18 Clatsop County		2.2%	4
JD 19 Columbia County		2.2%	4
JD 20 Washington County		9.4%	17
JD 21 Benton County		1.1%	2
JD 22 Crook & Jefferson Counties		2.2%	4

JD 23 Linn County		2.2%	4
JD 24 Grant & Harney Counties		1.7%	3
JD 25 Yamhill County		2.2%	4
JD 26 Lake County		1.1%	2
JD 27 Tillamook County		2.2%	4
<b>answered question</b>			<b>181</b>
<b>skipped question</b>			<b>0</b>

#### 4. Are you able to comment on the quality of public defense representation in adult criminal cases?

		Response Percent	Response Count
Yes		76.5%	137
No (the survey will skip questions related to these cases)		23.5%	42
<b>answered question</b>			<b>179</b>
<b>skipped question</b>			<b>2</b>

#### 5. Please rate your overall impression of the quality of public defense representation in adult criminal cases.

		('09)	('10)	('11)	Response Percent	Response Count
Excellent		15.8%	13.4%	20.7%	16.9%	23
Good		68.3%	74.2%	65.5%	66.9%	91
Fair		15.8%	12.4%	13.8%	14.7%	20
Poor					1.5%	2
<b>answered question</b>						<b>136</b>
<b>skipped question</b>						<b>45</b>

**6. Within the past year, has the quality of public defense representation changed in adult criminal cases?**

		('09)	('10)	('11)	Response Percent	Response Count
Improved significantly		1.0%	1.0%	2.6%	1.5%	2
Improved somewhat		20.0%	21.9%	22.2%	16.5%	22
<b>Remained about the same</b>		69.0%	68.8%	69.2%	<b>69.9%</b>	<b>93</b>
Worsened somewhat		10.0%	8.3%	6.0%	12.0%	16
Worsened significantly					0.0%	0
					<b>answered question</b>	<b>133</b>
					<b>skipped question</b>	<b>48</b>

**7. Do public defense attorneys in your judicial district provide satisfactory representation of clients in adult criminal cases?**

		('09)	('10)	('11)	Response Percent	Response Count
Always		22.0%	18.9%	25.6%	25.2%	34
<b>Often</b>		65.0%	73.7%	65.0%	<b>63.0%</b>	<b>85</b>
Sometimes		13.0%	7.4%	8.5%	11.1%	15
Rarely					0.7%	1
Never					0.0%	0
					<b>answered question</b>	<b>135</b>
					<b>skipped question</b>	<b>46</b>

**8. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in criminal cases?**

		('09)	('10)	('11)	Response Percent	Response Count
Yes		44.4%	54.6%	49.6%	52.3%	69
No		55.6%	45.6%	50.4%	47.7%	63

If "yes," please describe your concerns.

61

answered question

132

skipped question

49

**9. How would you describe the adult criminal caseloads of public defense attorneys in your judicial district?**

		('09)	('10)	('11)	Response Percent	Response Count
Significantly too large		9.3%	16.0%	10.1%	9.0%	12
<b>Somewhat too large</b>		60.8%	41.5%	42.2%	51.1%	68
About right		29.9%	41.5%	45.9%	36.8%	49
Somewhat too small		2.3%	0%	0%	2.3%	3
Significantly too small		0.8%	0%	0%	0.8%	1

answered question

133

skipped question

48

**10. Are you able to comment on the quality of public defense representation in juvenile dependency cases?**

		Response Percent	Response Count
Yes		56.8%	100
No (the survey will skip questions related to these cases)		43.2%	76
<b>answered question</b>			<b>176</b>
<b>skipped question</b>			<b>5</b>

**11. Please rate your overall impression of the quality of public defense representation in juvenile dependency cases.**

		('09)	('10)	('11)	Response Percent	Response Count
Excellent		24.4%	29.5%	31.8%	26.3%	26
Good		61.0%	61.5%	60.0%	64.6%	64
Fair		14.6%	7.7%	8.2%	9.1%	9
Poor					0.0%	0
<b>answered question</b>						<b>99</b>
<b>skipped question</b>						<b>82</b>

**12. Within the past year, has the quality of public defense representation changed in juvenile dependency cases?**

		('09)	('10)	('11)	Response Percent	Response Count
Improved significantly		4.8%	1.3%	4.7%	3.1%	3
Improved somewhat		27.7%	28.2%	35.3%	22.9%	22
<b>Remained about the same</b>		63.9%	67.9%	57.6%	<b>67.7%</b>	<b>65</b>
Worsened somewhat		0.0%	2.6%	2.4%	6.3%	6
Worsened significantly					0.0%	0
<b>answered question</b>						<b>96</b>
<b>skipped question</b>						<b>85</b>

**13. Do public defense attorneys in your judicial district provide satisfactory representation of clients in juvenile dependency cases?**

		('09)	('10)	('11)	Response Percent	Response Count
Always		34.1%	31.6%	29.4%	31.3%	31
<b>Often</b>		48.8%	58.2%	64.7%	<b>61.6%</b>	<b>61</b>
Sometimes		17.1%	10.1%	5.9%	7.1%	7
Rarely					0.0%	0
Never					0.0%	0
<b>answered question</b>						<b>99</b>
<b>skipped question</b>						<b>82</b>

**14. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in juvenile dependency cases?**

		('09)	('10)	('11)	Response Percent	Response Count
Yes		21.7%	23.4%	18.3%	20.8%	20
No		78.3%	76.6%	81.7%	79.2%	76

If "yes," please describe your concerns.

23

answered question

96

skipped question

85

**15. How would you describe the juvenile dependency caseloads of public defense attorneys in your judicial district?**

		('09)	('10)	('11)	Response Percent	Response Count
Significantly too large		11.1%	4.1%	7.4%	9.3%	9
Somewhat too large		43.2%	45.2%	32.1%	34.0%	33
<b>About right</b>		44.4%	47.9%	59.3%	48.5%	47
Somewhat too small		1.2%	1.4%	1.2%	8.2%	8
Significantly too small					0.0%	0

answered question

97

skipped question

84

**16. Are you able to comment on the quality of public defense representation in juvenile delinquency cases?**

		Response Percent	Response Count
Yes		82.0%	82
No (the survey will skip questions related to these cases)		18.0%	18
<b>answered question</b>			<b>100</b>
<b>skipped question</b>			<b>81</b>

**17. Please rate your overall impression of the quality of public defense representation in juvenile delinquency cases.**

		('09)	('10)	('11)	Response Percent	Response Count
Excellent		22.1%	23.5%	32.9%	28.4%	23
Good		63.6%	67.6%	57.1%	66.7%	54
Fair		14.3%	8.8%	10.0%	4.9%	4
Poor					0.0%	0
<b>answered question</b>						<b>81</b>
<b>skipped question</b>						<b>100</b>

**18. Within the past year, has the quality of public defense representation changed in juvenile delinquency cases?**

		('09)	('10)	('11)	Response Percent	Response Count
Improved significantly		1.3%	4.4%	2.8%	1.2%	1
Improved somewhat		26.9%	20.6%	25.4%	17.3%	14
<b>Remained about the same</b>		67.9%	73.5%	67.6%	<b>80.2%</b>	<b>65</b>
Worsened somewhat		3.8%	1.5%	2.8%	1.2%	1
Worsened significantly					0.0%	0
<b>answered question</b>						<b>81</b>
<b>skipped question</b>						<b>100</b>

**19. Do public defense attorneys in your judicial district provide satisfactory representation of clients in juvenile delinquency cases?**

		('09)	('10)	('11)	Response Percent	Response Count
Always		32.5%	27.9%	32.4%	37.0%	30
<b>Often</b>		53.2%	64.7%	60.6%	<b>56.8%</b>	<b>46</b>
Sometimes		14.3%	7.4%	7.0%	6.2%	5
Rarely					0.0%	0
Never					0.0%	0
<b>answered question</b>						<b>81</b>
<b>skipped question</b>						<b>100</b>

**20. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in juvenile delinquency cases?**

		('09)	('10)	('11)	Response Percent	Response Count
Yes		20.5%	23.5%	9.9%	18.8%	15
No		79.5%	76.5%	90.1%	81.3%	65

If "yes," please describe your concerns.

17

answered question

80

skipped question

101

**21. How would you describe the juvenile delinquency caseloads of public defense attorneys in your judicial district?**

		('09)	('10)	('11)	Response Percent	Response Count
Significantly too large		5.3%	3.0%	0.0%	3.7%	3
Somewhat too large		30.7%	25.8%	29.0%	22.2%	18
<b>About right</b>		62.7%	65.2%	68.1%	67.9%	55
Somewhat too small		1.3%	4.5%	2.9%	6.2%	5
Significantly too small					0.0%	0

answered question

81

skipped question

100

**22. Are you able to comment on the quality of public defense representation in death penalty cases?**

		Response Percent	Response Count
Yes		22.5%	39
No (the survey will skip questions related to these cases)		77.5%	134
answered question			173
skipped question			8

**23. Please provide any comments you have concerning the quality of public defense representation in death penalty cases.**

	Response Count
(see below)	31
answered question	31
skipped question	150

**24. Are you able to comment on the quality of public defense representation in civil commitment cases?**

		Response Percent	Response Count
Yes		40.7%	70
No (the survey will skip questions related to these cases)		59.3%	102
answered question			172
skipped question			9

**25. Please rate your overall impression of the quality of public defense representation in civil commitment cases.**

		('10)	('11)	Response Percent	Response Count
Excellent		23.4%	35.7%	37.1%	26
<b>Good</b>		70.2%	51.4%	<b>52.9%</b>	<b>37</b>
Fair		6.4%	11.4%	10.0%	7
Poor				0.0%	0
<b>answered question</b>					<b>70</b>
<b>skipped question</b>					<b>111</b>

**26. Within the past year, has the quality of public defense representation changed in civil commitment cases?**

		('10)	('11)	Response Percent	Response Count
Improved significantly		0.0%	0.0%	0.0%	0
Improved somewhat		16.7%	15.7%	15.7%	11
<b>Remained about the same</b>		81.3%	84.3%	<b>82.9%</b>	<b>58</b>
Worsened somewhat				1.4%	1
Worsened significantly				0.0%	0
<b>answered question</b>					<b>70</b>
<b>skipped question</b>					<b>111</b>

**27. Do public defense attorneys in your judicial district provide satisfactory representation of clients in civil commitment cases?**

		('10)	('11)	Response Percent	Response Count
Always		48.9%	47.1%	51.4%	36
Often		40.4%	45.7%	41.4%	29
Sometimes		10.6%	5.7%	5.7%	4
Rarely				1.4%	1
Never				0.0%	0
<b>answered question</b>					<b>70</b>
<b>skipped question</b>					<b>111</b>

**28. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in civil commitment cases?**

		('10)	('11)	Response Percent	Response Count
Yes		4.3%	4.3%	10.0%	7
No		95.7%	95.7%	90.0%	63
If "yes," please describe your concerns.					6
<b>answered question</b>					<b>70</b>
<b>skipped question</b>					<b>111</b>

**29. How would you describe the civil commitment caseloads of public defense attorneys in your judicial district?**

		('10)	('11)	Response Percent	Response Count
Significantly too large		0.0%	0.0%	0.0%	0
Somewhat too large		0.0%	4.5%	2.9%	2
<b>About right</b>		<b>91.3%</b>	<b>88.1%</b>	<b>87.1%</b>	<b>61</b>
Somewhat too small		8.7%	4.5%	8.6%	6
Significantly too small				1.4%	1
<b>answered question</b>					<b>70</b>
<b>skipped question</b>					<b>111</b>

**30. Please provide any comments, concerns, or suggestions that you may have about the quality of public defense representation in your county or judicial district.**

	Response Count
	80
<b>answered question</b>	<b>80</b>
<b>skipped question</b>	<b>101</b>

**31. Your name (optional)**

	Response Count
	63
<b>answered question</b>	<b>63</b>
<b>skipped question</b>	<b>118</b>

**Page 9, Q23. Please provide any comments you have concerning the quality of public defense representation in death penalty cases.**

1	varies these cases typically lend towards resolution a few attorneys still want to fight over everything but many of the attorneys we now deal with still litigate vigorously but more professionally and look for realistic resolution of those cases that lend to resolution some are excellent at it	Jan 23, 2012 4:34 PM
2	High quality. However, I believe Indigent Defense needs to be more actively involved in heightened review of requests for expenditures to perform unnecessary or cumulative tests or to obtain expert witnesses and documentation in repeated challenges on issues already settled against the defense.	Jan 23, 2012 2:04 PM
3	I am extremely impressed with the quality of public defense representation in death penalty cases. It exceeds the high quality of public defense representation apparent in other adult criminal cases.	Jan 23, 2012 1:29 PM
4	Excellent without exception	Jan 23, 2012 11:48 AM
5	have been involved in 2 death penalty cases. One currently. Counsel in both cases were exceptional.	Jan 23, 2012 11:45 AM
6	generally speaking, most of the attorneys are competent	Jan 23, 2012 11:45 AM
7	Answered above -- since capital case representation was not excluded from the prior category.	Jan 23, 2012 10:54 AM
8	The attorneys I have worked with in death penalty cases have represented their clients well.	Jan 20, 2012 9:49 AM
9	Generally good, however, some attorneys appear to believe that this is a proper forum for their individual ideological beliefs rather than simple representations of a client.	Jan 19, 2012 10:47 AM
10	No problems that I've encountered.	Jan 19, 2012 9:57 AM
11	I have one case pending but it is in the initial stages only. The Defense Counsel are experienced and excellent lawyers.	Jan 17, 2012 3:45 PM
12	It runs the spectrum from very good to questionable.	Jan 17, 2012 2:59 PM
13	I presided over a multiple week death penalty case in Douglas County in February - April of last year. The quality of the work by both the defense ( two attorneys ) and the prosecution ( two attorneys ) was excellent. Both sides were well prepared and conducted themselves in a professional manner.	Jan 16, 2012 4:02 PM
14	I have only worked on one death penalty case and the quality of public defense representation in my view was excellent.	Jan 13, 2012 10:07 AM
15	Counsel is experienced and is NOT overworked. They are adequately compensated based on their experience. They appear to have more than enough resources to do everything they need to do (a better problem than the alternative).	Jan 12, 2012 3:10 PM
16	The quality is generally high. I believe there are huge wastes in expenditures of	Jan 12, 2012 2:02 PM

**Page 9, Q23. Please provide any comments you have concerning the quality of public defense representation in death penalty cases.**

	money in capital cases. I believe it is part of the strategy of anti-death penalty folks to make it ridiculously expensive and I think the public defense folks are helping them	
17	They are assigned from your agency. The attorneys I have seen seem well prepared, do a good job staying in contact with their clients and preparing their cases.	Jan 11, 2012 5:44 PM
18	I am concerned that the list is too small and that too many of the attorneys on the list think that more motions and obstructionism is automatically good representation	Jan 11, 2012 5:17 PM
19	We have had few cases but I have had not concern about the representation in those cases.	Jan 11, 2012 3:14 PM
20	There were way too many pretrial motions. It was rediculous the amount of time and energy that was spent on frivolous motions.	Jan 11, 2012 2:19 PM
21	I have seen a marked increase in quality.	Jan 11, 2012 9:41 AM
22	Those attorneys who are on the list but are not part of Metro Public Defenders do a good job. Metro Public Defenders do not have the personel with the proper experience to represent defendants in these matters.	Jan 11, 2012 9:35 AM
23	I believe that the system as a whole provides very good representation for those charged with aggravated murder. Most providers are very competent in providing representation to their clients while at the same time are cooperative with the court in making sure the case is fairly and expeditioully handled.	Jan 11, 2012 9:27 AM
24	Excellant.	Jan 11, 2012 9:07 AM
25	very high	Jan 11, 2012 9:07 AM
26	Although i have not done a death penalty trial. I have done a number of judicial settlements conferences and I can say without question the defense attorneys are always prepared and very professional. Always more prepared the the state and available to answer all their clients questions.	Jan 11, 2012 9:07 AM
27	The attorneys who have handled death penalty cases in my court have not come from our local Public Defenders office, but from the private bar. They have been excellent. Currently I do have a case involving the local office but we have just started.	Jan 11, 2012 9:04 AM
28	Like everything, it varies from one attorney to the other. I actually think the handful of judges who preside over these cases in Multnomah County are better suited to comment on the quality of the defense attorneys. I know one judge who tries to "recruit" other defense attorneys to do these types of cases because of their concerns about the quality of representation...	Jan 11, 2012 8:52 AM
29	I presided over two potential death penalty cases in 2011. Death penalty cases are highly unusual here. Both cases resolved through negotiated pleas. In both cases, the quality of representation by defense counsel was very good.	Jan 11, 2012 8:41 AM

# Attachment 6

# **Public Defense Services Commission The Executive Director's Annual Report for 2011**

## **Introduction**

The Public Defense Services Commission was able to continue meeting or nearly meeting its Key Performance Measures and annual goals, as outlined in the strategic plan, during 2011. The PDSC also fulfilled its statutory obligations to provide quality public defense services in a cost efficient manner. These successes were achieved despite continued step increase freezes and reduced spending in all areas of operation.

## **PDSC's Accomplishments in 2011**

### **1. The Commission**

The Commission held eight public meetings during 2011, and met in executive session several times during the year to review statewide contracting plans and to accomplish the recruitment and hiring of a new executive director for the Office of Public Defense Services.

The March meeting, held in Lincoln County, included an update on the Lane County service delivery plan, as well as a system delivery review in Lincoln County. The Commission heard from contractors and others, including Presiding Judge Littlehales, who indicated that overall the public defense services provided in Lincoln County are adequate. The Commission accepted information regarding the proposed Service Delivery Plan for Lincoln County at its meeting in May. This plan noted the need for incorporation of specific structural changes by consortium providers, including the creation of, and oversight by, a board of directors. The Commission approved the Service Delivery Plan for Lincoln County in June 2011, with instructions to OPDS staff to continue to update the Commission on the progress of the Lincoln County consortium's efforts to implement an active and effective board of directors. The matter was raised again as the Commission began to review and approve service delivery plans for 2012-13 contacts, at which point the Consortium administrator indicated that a Board of Directors would be actively engaged prior to the start of 2012.

The Commission requested an additional update regarding progress in Lincoln County; that update is currently scheduled for the spring of 2012.

The Commission continued its review of the service delivery in Deschutes County in June, and approved the Service Delivery Plan for Deschutes County at its July meeting. The Commission's 2010 visit to this county revealed dropping caseloads in specific case types, some disparity in the way cases were distributed (resulting in an underage to one provider and overages for others), and concerns regarding some juvenile dependency court providers and the jurisdiction's Early Disposition Program (EDP). There were also significant changes on the horizon, with a new District Attorney being sworn into office on January 4, 2011. During 2011, violation and misdemeanor case filings increased in that county, while felony cases decreased, and very few cases were funneled into the EDP. Ultimately, the Commission approved a plan indicating that the service delivery system in Deschutes County appears to be working satisfactorily, with a recommendation to discontinue contracting with particular juvenile dependency providers if the quality of representation did not improve, and a recommendation to no longer enter into a special EDP contract, but to distribute those cases as they do other misdemeanor cases.

The Commission received information at the March meeting regarding the annual statewide survey results. The survey was sent to district attorneys, judges, citizen review board managers, juvenile directors, and other system partners statewide. There were, overall, favorable comments regarding public defense providers in the state. OPDS analysts and General Counsel followed up with specific individuals, both those who offered comments and those who were the subject of comments, when appropriate.

The May meeting included a review of the PDSC Budget Presentation prepared for the 2011 legislature, and review and approval of the Request for Proposals that was used to solicit bids for 2012-13 public defense services contracts. It also received a budget update in June, and received contractor recommendations regarding contracting priorities for 2012-2013. The Commission held an executive session to review the 2012-13 contract proposals, approve the priorities for statewide contracting plans for contracts beginning January 1, 2012, and to review information submitted by candidates for the executive director position.

In July, the Commission received a report from Ingrid Swenson, Executive Director, regarding representation of parents and children in juvenile dependency cases. This report outlined the efforts made over the last eight years to improve representation in juvenile dependency proceedings. With 32% of Oregon's public defense cases falling within juvenile dependency, adequate representation is a critical issue. Ms. Swenson's report indicates that some improvements have been achieved (as assessed through annual surveys), but emphasizes the importance of continued efforts to identify and fund additional improvement strategies.

The Commission held executive sessions in July and September to review individual contract proposals for 2012-13. Contractors and other interested parties were invited to provide input during two separate public meetings following contract negotiations, after which the Commission approved over 100 contracts for the provision of trial court non-death penalty representation, as well as all death penalty representation and mitigation services. At the September meeting, OPDS staff provided the Commission with recommendations to approve contracts pursuant to the Statewide Contracting Plan, and the Commission approved statewide contracts for non-death penalty representation. During an executive session in September, the Commission reviewed and approved the contracting plan for capital contracts.

The Commission held its October meeting in Umatilla County, in conjunction with the annual Public Defense Management Conference. Representatives of the Sixth Judicial District were invited to attend and provide the Commission with a Service Delivery update regarding criminal and juvenile representation in that district. Presiding Judge Pahl, two contractors, and representatives from the district attorney's office and juvenile department provided an overview of their systems, and while representation was reported as adequate, participants noted a tendency for juveniles to waive counsel in delinquency proceedings, and also noted the need for improvements in the Sixth Judicial District's drug court program. Commission members discussed at their December meeting whether there was a need to engage in further system improvement efforts in the Sixth Judicial District, and concluded that though there were some issues, they did not rise to the level of requiring further action.

During the October meeting the Commission also received input from providers who bid on capital contracts, and approved the plan for capital contracts. The Commission also received an update regarding the 2011-13 budget, and approved the OPDS 2011-13 Compensation Plan. Finally, the October meeting included a review of the Annual Performance Progress Report, which details the PDSC level of compliance with Key Performance Measures (KPMs). As in past years, PDSC met or nearly met all of its KPM targets, the last of which reflects the Commission's adherence to all of the recommended best practices for boards and commissions.

The Commission ended the year with its December meeting, at which time the Commission reviewed and adopted a schedule for meetings and activities in 2012. A retreat was scheduled for January 2012 to review the Commission's priorities and create a plan for progress in future years.

## **2. OPDS's Contract and Business Services Division**

### **A. Public Defense Program Administration**

During 2011, the Contracts and Business Services Division (CBS) successfully managed all aspects of OPDS business, including its primary obligation - the administration of existing contracts through the end of 2011, as well as negotiation and execution of contracts for services for 2012-2013.

Throughout 2011, CBS analysts and accounts payable representatives managed the final months of 2011 contracts, which included regular monthly payments for over 100 contracts statewide, review and approval or denial of non-routine expense requests, and reimbursement of providers for routine expenses. These activities resulted in more than 25,500 payment transactions and review of more than 16,500 expense requests.

CBS analysts dedicated significant time to the negotiation of new contracts for 2012 through 2013, including trial and appellate court representation, and death penalty contracts. Due to declining caseloads, analysts had to eliminate contracts in several counties, which required the redistribution of some caseload responsibilities. The process of redistributing caseloads, while a part of every contracting cycle, was particularly challenging this

year due to the need for elimination of contracts that had been in place for many years. The analysts addressed this challenge with a great deal of professionalism, and kept the Commission informed of the Division's rationale and plans at each step of the process. Analysts presented their contracting plans to the Commission during executive sessions, and during those presentations, demonstrated extensive knowledge regarding the service delivery needs in each county.

CBS staff also continued to make internal process improvements throughout 2011. The paperless systems developed in 2010 remain in effect, and will be expanded in 2012 to include accounts payable.

The Division continues to meet its KPM target regarding customer satisfaction, with a continued high level of confidence in the work of the division expressed by customers through spontaneous emails and comments. The Division will solicit specific customer satisfaction feedback again in 2012, when it sends out the biennial customer service survey.

#### B. CBS Division Director

The CBS Division Director provides management and oversight of all CBS business functions. The Director also serves as the Chief Financial Officer, responsible for creating and implementing the 2011-13 budget. The budget, developed during the latter part of 2010 and finalized through the 2011 legislative process required constant attention and management, as statewide budget deficits constrain spending in all state agencies. The CBS Director created a draft compensation plan for 2011-13, which was presented to the Commission for approval in October 2011. That plan includes furlough days, salary step increase freezes, and health benefit contribution amounts for all OPDS employees. Finally, the CBS Director prepared hundreds of fiscal impact statements and participated in legislative discussions regarding ways to reduce the cost of public defense services during the 2011 legislative session.

#### C. General Counsel

OPDS General Counsel continues to provide guidance to the Commission, OPDS staff and its customers on legal issues, attorney ethics and standards of practice. General Counsel analyzed several legal issues this year,

including the recent Washington state case holding that some Washington state trial-level contractors providing public defense services were county employees. Counsel provided the Commission with a detailed review of the opinion, and demonstrated the ways in which the Washington state model differs from the Oregon model. In each regard, Oregon remains free of the components that would lead a court to find that an employer-employee relationship exists between the Commission and its contractors. General Counsel continues to be involved in assessing other matters critical to the operation of OPDS, including issues arising under Oregon's public records, open meetings, government ethics, and public contracting laws, and also solicits the advice of OPDS's assigned attorney within the Department of Justice when necessary.

General Counsel also worked with the Marion County courts and OPDS contractors to help implement changes to the handling of both capital and non-capital post-conviction relief cases in Marion County.

General Counsel continued to provide critical services within OPDS quality assurance programs. Counsel planned, coordinated, and participated in the Quality Assurance Task Force (QATF) peer review of the criminal representation provided by Multnomah Defenders, Inc., and worked with the QATF and others to propose modifications to peer review protocols. He also continued to work closely with the death penalty provider community and attended regular meetings, providing organization and oversight for the death penalty peer panel, and the death penalty resource attorney program. This background will serve the agency well as General Counsel develops and implements a death penalty service delivery review in 2012. Finally, General Counsel planned and participated in several continuing legal education programs, and planned and produced a very well received day-long diversity training program for OPDS staff and other invited guests.

Administration of the OPDS Complaint Process and Attorney Certification Process are additional quality assurance responsibilities of OPDS General Counsel. General Counsel continues to work closely with the Oregon State Bar to ensure that the OPDS complaint process is not duplicative of their work. General Counsel also assists in the review of Non-routine Expense requests to help ensure compliance with constitutional and statutory requirements to provide funding for experts and other case expenses when

a sufficient showing is made that the assistance is reasonable and necessary.

### **3. Appellate Division**

The Appellate Division (AD) continues to function well under a modified structure, established in 2010, when the Division's Assistant Chief Defender was appointed to the Court of Appeals. The new structure includes three Chief Deputy Defenders (instead of one Assistance Chief and two Chief Deputies) working at the direction of the Chief Defender, and offers a broad platform for support and training within the Division. Each Chief Deputy is responsible for discrete areas within the division (outreach, operation, and personnel). Through its management and team structure, AD trains, supervises, and evaluates its forty attorneys, allocates and redistributes manageable individual caseloads, and maintains documentation of its workflow. During 2011, the Division processed approximately 1,800 incoming cases, filing notices of appeal in 1,400 cases.

AD management revised the AD Manual and distributed the final version in October. This manual documents all processes and expectations for the division, and is a critical source of information for AD management and employees.

The Appellate Division was able to fill several positions in 2011, in both the criminal and juvenile sections. Each position received applicant pools of 120 to 180 individuals, with many qualified candidates. A hiring freeze was implemented at the end of 2011, and the Division expects to hold the positions that were unoccupied at the end of 2011 vacant through the next year. This necessity increases the pressure within the Division to get the new attorneys trained and accomplished in appellate court practice. Of the 40 attorneys in the Division, thirteen have been with OPDS for less than two years.

The Oregon Supreme Court issued 18 opinions in 2011 in cases litigated by AD's criminal section, eight of which were favorable to the defense. Some of the more noteworthy include: a ruling that merely visiting a pornographic website does not constitute "possession" of pornography under the controlling statute; an opinion that provides trial courts with guidance for assessing the reliability and probative value of dog sniffs for

search and seizure purposes; a ruling disapproving the “natural and probable consequences” theory of aid-and-abet criminal liability; and a reaffirmation of a criminal defendant’s due process right to introduce reliable hearsay evidence in his defense.

The Juvenile Section continues to serve Oregon well by pursuing cases and obtaining opinions that bring clarity to Oregon’s juvenile dependency laws. The Court of Appeals issued several important written opinions in 2011. Notably, the Juvenile Section argued its first case in the Oregon Supreme Court in January, 2012, and in February the court issued a favorable ruling that is expected to have a significant impact on the way trial courts structure visitation orders among siblings.

Attorneys from both the Criminal and Juvenile Sections continue to have increased interaction with the trial bar through CLE presentations, the Attorney Regional Contact Program, and by responding to an increasing number of daily inquiries from the trial bar. Attorneys from the division gave CLE presentations at, among others, the annual Oregon State Bar (OSB) Criminal Law Section CLE, at OSB’s Appellate Section CLE, at multiple OCDLA programs (including the OCDLA annual conference), and gave brown bag CLE presentations at various public defender and defense firms in the Portland, Eugene, and Roseburg areas. In addition, the division is a regular contributor to the OCDLA newsletter, and several of its attorneys drafted the OCDLA’s “Post-Judgment and Extraordinary Remedies Manual,” under the direction of Senior Deputy Defender Eric Johansen.

The Appellate Division’s Criminal Section slightly increased its median number of days to filing of the opening brief to 234 (from 226 in 2010). This slight increase is attributable to increased caseloads experienced as a result of budget cuts, but is still a dramatic reduction from 2006, when the median number of days to filing was 328. The limited increase is a significant accomplishment in light of the number of attorneys with less than two years experience and the number of positions that have been held vacant during the course of the year. The Division remains close to achieving its KPM goal of maintaining a median number of 210 days to filing of the opening brief.

#### **4. Executive Director**

The responsibilities of the executive director, as set forth in ORS 151.219, were completed through the work of the former and current executive directors. The Commission's agenda for 2011 was set by the former executive director, and finished by the incoming executive director. Each member of the OPDS management team shared critical information during the transition, and assisted in creating consistency throughout the year.

During the first half of the year, the Executive Director participated in a very active legislative session, advocating for a budget package that would provide adequate resources for public defense in Oregon. The 2011 session brought unprecedented statewide budget shortfalls, making that task a larger challenge than in past years. Members of the legislature were reminded of the challenges wrought by the PDSC budget shortfalls in 2003, and enough funding was secured to ensure funding for appellate and trial court services through the biennium. Legislative communication efforts were continued by the new executive director in November and December 2011, in preparation for the short 2012 legislative session.

Both executive directors participated in policy work groups and advisory committees. The Governor's Public Safety Team meetings, staffed by the Governor's Deputy Legal Counsel, are held one to two times each month and attended by all public safety agency heads. It serves as a critical point of communication and planning for Oregon's public safety system. Each executive director also served as a member of the Judicial Department's Juvenile Court Improvement Project (JCIP) Advisory Committee, a federally funded program to improve the functioning and case outcomes in juvenile dependency cases. Beginning in September 2011, the executive director participated in the Oregon State Bar's Judicial Administration Committee, which is working to develop a program for reaching out to business and community groups throughout the state to educate Oregon citizens about the importance of the court system, including the critical importance of access to justice in criminal, juvenile, and other case types. The Oregon State Bar remains committed to supporting funding for the courts, public defense, and legal aid, and sees this project as a critical foundation for building support around the state of Oregon.

The executive director and her management team also worked with OPDS's volunteer advisory groups, and assisted in the planning of important continuing legal education seminars. The Contractor Advisory Group, Quality Assurance Task Force, and Death Penalty Peer Panel met several times during the year, and provided input on proposed changes and important policy decisions. These groups all had meetings with the executive director at the October Management Conference, which was planned by OPDS management in collaboration with OCDLA. The Juvenile Law Training Academy was another conference planned and co-sponsored by OPDS, with OCDLA. Both conferences received very positive reviews. Each executive director also served as an editorial board member of the Juvenile Law Reader published by Youth, Rights and Justice.

The OPDS management team met almost weekly during 2011, with meeting agendas and minutes created and maintained by the executive director. Through these meetings, the management team is able to ensure consistency in procedures and policies in the office, address questions that arise during the course of the week, review documents and other materials that impact the office, review Commission meeting agendas to ensure that each division has an opportunity to share critical information with the Commission, and ensure that the team is working toward the OPDS goals and strategies as outlined in the agency strategic plan.

### **Challenges for 2012**

#### **The 2011-13 budget**

All state agencies were asked to submit cut plans of 10.5% in preparation for the short 2012 legislative session, and were told that no agency would be given the 3.5% of their budget that was "held back" at the end of the 2011 legislative session. Like all agencies, PDSC provided a cut plan, but has been actively discussing the challenges and risks associated with underfunding the public defense function. The lessons of 2003, when district attorneys had to stop or suspend criminal prosecutions due to lack of funding for defense counsel, remain a clear memory for many in the legislature. The legislature was not able to come to agreement on any legislation during the 2011 session that would have reduced the crime seriousness level of certain crimes, thereby reducing or eliminating the costs associated with defending those crimes or violations. There is

legislative support for continuing this effort during 2012, in preparation for the 2013 legislative session, but the work group has not yet begun to meet, and will not do so until after the February legislative session.

The agency submitted several policy option packages for the 2011-13 biennium, but those were not funded by the legislature. If funded, they would have addressed the following long-term agency needs: reduced caseloads for juvenile dependency attorneys, salary parity for appellate division attorneys (with their Department of Justice counterparts), increased hourly rates for attorneys, and pay parity for employees of non-profit public defender offices (with district attorneys in their jurisdictions) and increased compensation for investigators.

The appellate division's challenges for 2012 will also be budget-related, as it will have to function with several vacant positions throughout the remainder of the biennium. This could compromise the positive gains the division has made in improving its median date to filing of the opening brief, and if caseloads climb too high, could also result in reduced quality of representation. The appellate division remains committed to finding efficiencies and providing the best representation possible despite the challenges ahead.