

**Public Defense Services Commission  
Service Delivery Plan for Washington County  
(October 12, 2007)**

**Introduction**

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

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

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of Washington County's public defense system, the comments and discussion that occurred during PDSC's public meetings on May 10, 2007 and October 12, 2007, and PDSC's service delivery plan for Washington County.

PDSC's Service Delivery Planning Process

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

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

Third, after considering OPDS's preliminary draft report and public comments

during the Commission's meetings in a county or region, PDSC develops a "service delivery plan," which is set forth in the final version of OPDS's report. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's service delivery plans (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing other best practices in public defense management.

Any service delivery plan that PDSC develops will not be the last word on a local service delivery system, or on the quality and cost-efficiency of the county's public defense services. The limitations of PDSC's budget, the existing personnel, level of resources and unique conditions in each county, the current contractual relationships between PDSC and its contractors, and the wisdom of not trying to do everything at once, place constraints on the Commission's initial planning process in any region. PDSC's service delivery planning process is an ongoing one, calling for the Commission to return to each region of the state over time in order to develop new service delivery plans or revise old ones. The Commission may also return to some counties in the state on an expedited basis in order to address pressing problems in those counties.

### Background and Context to the Service Delivery Planning Process

The 2001 legislation establishing PDSC was based upon an approach to public defense management widely supported by the state's judges and public defense attorneys, which separates Oregon's public defense function from the state's judicial function. Considered by most commentators and authorities across the country as a "best practice," this approach avoids the inherent conflict in roles when judges serve as neutral arbiters of legal disputes and also select and evaluate the advocates in those disputes. As a result, while judges remain responsible for appointing attorneys to represent eligible clients, the Commission is now responsible for the provision of competent public defense attorneys.

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The

Commission has undertaken a range of strategies to accomplish this mission.

Service delivery planning is one of the most important strategies PDSC has undertaken to promote quality and cost-efficiency in the delivery of public defense services. However, it is not the only one.

In December 2003, the Commission directed OPDS to form a Contractor Advisory Group, made up of experienced public defense contractors from across the state. That group advises OPDS on the development of standards and methods to ensure the quality and cost-efficiency of the services and operations of public defense contractors, including the establishment of a peer review process and technical assistance projects for contractors and new standards to qualify individual attorneys across the state to provide public defense services.

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams visited all of the juvenile contractors in Multnomah and Lane Counties and the criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole criminal and juvenile contractor in Benton County. Another site visit is planned for Columbia County in December of 2007.

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

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC has undertaken a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers. In 2006, the Commission devoted two of its meetings to investigating the condition of juvenile law practice across the state and developed a statewide Service Delivery Plan for juvenile representation.

In 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in these cases was

approved by the Commission in June of 2007.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services. Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission’s service delivery planning process. That process is aimed primarily at reviewing and improving the “structure” for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into “best practices,” recognize that careful attention to the structure of service delivery systems contributes significantly to the ultimate quality and effectiveness of public defense services.<sup>1</sup> A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC’s other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the “performance” of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time to time in the course of the Commission’s service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed through the Commission’s deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

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<sup>1</sup> Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g., Spangenberg and Beeman, “Indigent Defense Systems in the United States,” 58 Law and Contemporary Problems 31-49 (1995).

In light of the distinction between structure and performance in the delivery of public defense services and the relative capacities of PDSC and OPDS to address these issues, this report will generally recommend that, in the course of this service delivery planning process, PDSC should reserve to itself the responsibility of addressing structural issues with policy implications and assign to OPDS the task of addressing performance issues with operational implications.

### Organizations Currently Operating within the Structure of Oregon's Public Defense Delivery Systems

The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for “public” defenders and the advocates for “private” defenders. PDSC has repeatedly declared its lack of interest in joining this debate. Instead, the Commission intends to concentrate on a search for the most effective kinds and combinations of organizations in each region of the state from among those types of organizations that have already been established and tested over decades in Oregon.

The Commission also has no interest in developing a one-size-fits-all model or template for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to those proposals. As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense

services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

The following discussion outlines the prominent features of each type of public defense organization in Oregon, along with some of their relative advantages and disadvantages. This discussion is by no means exhaustive. It is intended to highlight the kinds of considerations the Commission is likely to make in reviewing the structure of any local service delivery system.

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys and the offices in which they work operate under contracts with PDSC and have organized themselves in the following ways:

1. Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the attributes one normally thinks of as a government-run "public defender office," most notably, an employment relationship between the attorneys and the office.<sup>2</sup> Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs.

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

As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

Because of the professional management structure and staff in most public defender offices, PDSC looks to the administrators of these offices, in particular, to advise and assist the Commission and OPDS. Boards of directors of public defender offices, with management responsibilities and fiduciary duties required by Oregon law, also offer PDSC an effective means to (a) communicate with local communities, (b) enhance the Commission's policy development and administrative processes through the expertise on the boards and (c) ensure the professional quality and cost-efficiency of the services provided by their offices.

Due to the frequency of cases in which public defender offices have conflicts of interest due primarily to cases involving multiple defendants or former clients, no county can operate with a public defender office alone.<sup>3</sup> As a result, PDSC expects public defender offices to share their management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

2. Consortia. A "consortium" refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC's RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for "succession" in the event that some of the consortium's lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

Consortia offer the advantage of access to experienced attorneys who prefer the independence and flexibility associated with practicing law in a consortium in which they still represent public defense clients under

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<sup>3</sup> Id.

contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms, but in which they no longer wish to practice law.

In addition to the access to experienced public defense lawyers they offer, consortia offer several administrative advantages to PDSC. If the consortium is reasonably well-organized and managed, PDSC has fewer contractors or attorneys to deal with and, therefore, OPDS can more efficiently administer the many tasks associated with negotiating and administering contracts. Furthermore, because a consortium is not considered a law firm for the purpose of determining conflicts of interest under the State Bar's "firm unit" rule, conflict cases can be cost-efficiently distributed internally among consortium members by the consortium's administrator. Otherwise, OPDS is required to conduct a search for individual attorneys to handle such cases and, frequently, to pay both the original attorney with the conflict and the subsequent attorney for duplicative work on the same case. Finally, if a consortium has a board of directors, particularly with members who possess the same degree of independence and expertise as directors of not-for-profit public defenders, then PDSC can benefit from the same opportunities to communicate with local communities and gain access to additional management expertise.

Some consortia are made up of law firms, as well as individual attorneys. Participation of law firms in a consortium may make it more difficult for the consortium's administrator to manage and OPDS to monitor the assignment and handling of individual cases and the performance of lawyers in the consortium. These potential difficulties stem from the fact that internal assignments of a law firm's portion of the consortium's workload among attorneys in a law firm may not be evident to the consortium's administrator and OPDS or within their ability to track and influence.

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) a special qualification process to receive court appointments.

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack

features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

The foregoing observations are not meant to suggest that law firms cannot provide quality, cost-efficient public defense services under contract with PDSC. Those observations simply suggest that PDSC may have less influence on the organization and structure of this type of contractor and, therefore, on the quality and cost-efficiency of its services in comparison with public defender offices or well-organized consortia.

Finally, due to the Oregon State Bar's "firm unit" rule, when one attorney in a law firm has a conflict of interest, all of the attorneys in that firm have a conflict. Thus, unlike consortia, law firms offer no administrative efficiencies to OPDS in handling conflicts of interest.

4. Individual attorneys under contract. Individual attorneys provide a variety of public defense services under contract with PDSC, including in specialty areas of practice like the defense in aggravated murder cases, in post-conviction relief cases, and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

This type of contractor offers an important though limited capacity to handle certain kinds of public defense caseloads or deliver services in particular areas of the state. It offers none of the administrative advantages of economies of scale, centralized administration or ability to handle conflicts of interest associated with other types of organizations.

5. Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

## **OPDS's Preliminary Investigation in Washington County**

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense system begins with a review of an OPDS report like this.

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

On May 10, 2007 and October 12, 2007, PDSC held public meetings regarding the delivery of public defense services in Washington County. The purpose of those meetings was to (a) consider the results of OPDS's investigation in the county as reported in the preliminary draft report, (b) receive testimony and comments from judges, the Commission's local contractors, prosecutors and other justice officials and interested citizens regarding the quality of the county's public defense system and services, (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Washington County; and (d) approve a service delivery plan for the county.

The initial draft of this report was intended to provide a framework to guide the Commission's discussions about the condition of Washington County's public defense system and services, and the range of policy options available to the Commission – from concluding that no changes are needed in the county to significantly restructuring the county's delivery system. The initial draft was also intended to offer guidance to PDSC's invited guests at its May 10, 2007 meeting, as well as the Commission's contractors, public officials, justice professionals and other citizens who might be interested in this planning process, about the kind of information and comments that would assist the Commission in improving Washington County's public defense delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in a county's justice system is the single most important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for the county.

## **OPDS's Findings in Washington County<sup>4</sup>**

### The Court

There are fourteen judges in Washington County serving a current population of 514,269 county residents.<sup>5</sup> Judge Thomas W. Kohl is the presiding judge and Richard Moellmer is the Trial Court Administrator. The court maintains a central docket with master calendaring.

### The District Attorney

Robert Hermann is the District Attorney of Washington County. He has thirty-seven deputies, two of whom are assigned to juvenile court. The office uses a lateral assignment system. Cases are handled from the initial filing to the conclusion of the case by the same deputy district attorney.

### Criminal Case Processing

All criminal cases are processed initially through a courtroom in the Law Enforcement Center, which also houses the sheriff's office and the jail. Judge Rick Knapp is currently assigned to this court on a full-time basis. At arraignment defendants who are eligible for the new Early Case Resolution program (ECR), discussed below, are separated from those who are not. Persons ineligible for ECR treatment proceed to arraignment. Lawyers are not present for these arraignments. After arraignment the next hearing in felony cases is a preliminary hearing held a week later. In non-ECR cases a pre-trial conference is scheduled two weeks later if the defendant is in custody or four weeks later, if the defendant is not in custody. The county seeks to adjudicate all criminal cases within 120 days<sup>6</sup>. If a case is not resolved at the pretrial conference the next appearance is for case assignment on the Friday before the week of trial. All lawyers and their clients must be in the presiding judge's courtroom for case assignment to

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<sup>4</sup> OPDS's initial findings were amended in light of the testimony and other input received by the Commission on May 10, 2007. Data included in these findings was accurate as of the date of the public meeting but may have changed prior to the date of the final report.

<sup>5</sup> By way of contrast, Multnomah County has thirty-eight judges and a population of 681,454. Washington County's population increased by fifteen percent between 2000 and 2006. Source: US Census Bureau.

<sup>6</sup> Criminal cases, including felonies other than Measure 11 offenses, are resolved within 120 days of the arraignment. According to information received from the presiding judge, In 2001 there were 545 cases over a year old. As of December of 2006 there was only one misdemeanor and six felonies over a year old.

indicate whether each matter is ready for trial the following week. Cases are sometimes double set. If the first case does not proceed to trial, the back-up case is tried.

Trials are held on Tuesdays through Fridays. Mondays are pre-trial conference days. Each judge handles a certain number of pretrial conferences. There is very little time for each pretrial conference, although the number of pretrial conferences is decreasing as a result of the ECR program. In addition, the domestic violence docket, the diversion docket, the drug court, the mental health court and the civil motion docket are all scheduled on Mondays.

### ECR Program

Prior to the implementation of the ECR program two of the judges undertook to conduct an early disposition program on their own. It was used primarily for probation violations and minor misdemeanors such as Driving While Suspended, Theft II and Theft III. A significant number of cases were resolved but there was no participation by defense counsel and there was some inconsistency in outcome depending on which judge was hearing the case.

In 2005, in order to address the issue of jail overcrowding, Washington County undertook to update its Criminal Justice System Master Plan. To assist with the project it retained the services of David M. Bennett, a nationally recognized criminal justice expert. To examine one mechanism for addressing overcrowding, Mr. Bennett took a team of Washington County officials to Reno, Nevada to observe its early disposition program. Adapting what they learned to their own county, Washington County officials created what may now be a model program, which appears to comply in all important respects with PDSC's Guidelines for Participation of Public Defense Attorneys in Early Disposition Programs.

The list of misdemeanor and felony offenses eligible for ECR treatment is set forth in Exhibit B. The list includes property offenses, drug offenses and other miscellaneous non-person offenses. During the first three weeks of the program, of the 305 cases referred to the ECR court, 196 were resolved. The court also deals simultaneously with any pending probation violations and any violations arising out of the new criminal conduct, allowing the defendant full resolution of all pending matters and avoiding the need for additional court hearings. Probation staff is present in the ECR court with files for defendants with open probation cases. Probation staff also assists defendants in arranging for community service. Since the court also imposes restitution and fees, the trial court administrator plans to place a cashier at the justice facility to facilitate the receipt of these funds. Resolution of both the new charge and any probation

violations at the initial appearance means that there will be significantly fewer Failures to Appear since defendants will not be required to return to court.<sup>7</sup>

District Attorney Bob Hermann is very pleased with the results of the program to date. He assigned a very senior deputy to the court. The DA's office is able to provide discovery to the defense by 11:30 am for cases to be heard at 3:00 pm. Mr. Hermann believes that the program will not result in a widening of the net in his county.

Nine lawyers from four of the contract offices are participating in ECR. Currently contractors are receiving full case credit for these cases and a number of law enforcement and court representatives urged PDSC not to lower these rates because, although the lower level cases are now being resolved with less attorney time, the remaining cases are more difficult and will require more attention.

### Drug court

Presiding Judge Thomas Kohl was instrumental in creating Washington County's drug court, which has now been operating for two years. Approximately thirty-eight clients are currently being served by the drug court and, in view of its success, it will expand to include up to fifty people. Initially, the court was available only to defendants accused of possessing controlled substances but it soon became clear that others, including defendants with significant non-person felony histories, could benefit from the court. The program lasts from twelve to eighteen months depending on the individual. Clients are in court once a week for the duration of their involvement. Keith Rogers of MPD has staffed this court since the beginning. A second attorney will be needed in the near future. MPD currently receives only their normal case credit for these cases regardless of the number of appearances that may be required.

### Mental Health Court

A court for probationers with mental health issues has just been inaugurated. Judge Marco Hernandez organized the Mental Health Court Policy Planning Committee which created the court. Keith Rogers of MPD is a member of the committee. According to Judge Hernandez, approximately seventy-eight percent of Washington County's prisoners have mental health issues. Currently, there are only three participants in the court but the number is expected to grow to twenty and, eventually, to forty. Participants attend court proceedings once every two weeks. The length of the program is indefinite. A single MPD attorney currently staffs the court and the office receives the underlying case credit

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<sup>7</sup> Sheriff Rob Gordon indicated that this category of offenses had already fallen significantly after the county implemented a policy requiring arraignment before release. After ECR went into effect the number of Failures to Appear went from between twenty-five and thirty per week to none.

(generally a probation violation credit). A second attorney will be needed as the number of participants increases.

### System Issues in Criminal Cases

A number of concerns about the operation of the criminal court system were brought to OPDS's attention during the course of meetings with local officials and providers. These included the time that is wasted by attorneys who appear at case assignment. The cases are scheduled in alphabetical order by client so lawyers with more than one client often have to spend much of each Friday morning waiting for their cases to be called. Some lawyers say that pretrial conferences are a waste of time, since the deputy district attorney who is present usually has no authority to settle the case for anything other than the terms of the written offer. In Measure 11 cases some attorneys reportedly fail to provide the state with information about the defendant that might persuade the district attorney to agree to a non-Measure 11 sentence. Attorneys are busy and sometimes cannot have their cases ready as soon as the court requires. One attorney suggested that the court create a special docket time for clients who have failed to appear so that they could come to court in lieu of turning themselves in to custody and waiting days for a court hearing. OPDS believes that all of these matters could be discussed and resolved at a meeting of stakeholders. Such meetings occur regularly in other counties. Judge Kohl indicated that he is willing to meet with anybody who has a suggestion for improving the system.

### Juvenile System

Washington County has both a judge and a referee assigned full time to its juvenile court. The district attorney's office has two deputies handling juvenile cases. In addition to handling delinquency cases they also participate in dependency cases<sup>8</sup> on behalf of the state until jurisdiction is established. Thereafter the Attorney General represents the Department of Human Services (DHS) and the State of Oregon in dependency and termination of parental rights cases.

Judge James Fun, a former deputy district attorney, was only recently assigned to the juvenile court. His predecessor, Judge Kirsten Thompson, worked with all of the involved parties to see that attorneys were present to represent parents and children at shelter hearings in dependency cases. In the past these parties had appeared without counsel at the initial hearing.

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<sup>8</sup> Deputy district attorneys are not always present for shelter and other hearings. DHS workers handle much of the legal work in the case, such as preparing the petition, creating and labeling exhibits, identifying witnesses and presenting the agency's position in court.

“Team decision meetings” are now being convened by DHS at the time of the initial shelter hearing in dependency cases in order to accelerate access to services for those parents who are willing to engage in them prior to adjudication.

Status conferences are set within thirty days of the shelter hearing and contested hearings are held approximately thirty days after that. There are no pretrial conferences in dependency cases so negotiations have to be conducted outside of the court process. The county generally achieves adjudication within the required sixty-day period.

Once disposition has occurred, the court may not review the case until the permanency hearing, nine months later. This practice may be changing, however with the court scheduling earlier reviews when needed.

The Citizen Review Board customarily reviews each case within 180 days of the date the child came into care.

Judge John Lewis has just started a new mediation program in termination cases.

There is a strong Court Appointed Special Advocate (CASA) program in Washington County, which is part of the joint Multnomah County/Washington County program. There are a hundred volunteers and three full-time supervisors in the program.<sup>9</sup> CASAs are currently appointed in approximately fifteen to eighteen percent of the cases. In Washington County all CASA appointments occur after jurisdiction has been established.

### System Issues in Juvenile Court

For a period of time members of the local juvenile court community were not meeting regularly. Judge Fun and Referee Michele Rini recently conducted the first of what are planned to be quarterly meetings of the bench and bar. This will be an appropriate forum for discussion of some of the issues that were brought to OPDS’s attention during interviews in preparation for the Commission’s review. They include the following.

There is a lack of adequate physical space for the parties to gather before court hearings and for attorneys to confer in confidence with their clients. The juvenile court area is very small and crowded. There are conference rooms in the Juvenile Department but these are not intended for attorney conferences and are not usually available. There is one large conference room that could accommodate a meeting between all of the parties in a case but it, too, is often in use by Juvenile Department staff. Attorneys find themselves discussing confidential matters with their clients in public areas. There is a need for a

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<sup>9</sup> This CASA program also has a training coordinator on staff. CASAs receive thirty hours of initial training with twelve hours of additional training required per year.

dedicated conference space. It was reported that the county is looking for additional space.

Lawyers are very busy and prefer to have cases set for specific times, if possible, to avoid the need to be in court waiting for a case to be called. Initial appearances in termination cases, for example, occur twice a month. All of them are set for the same time requiring all of the lawyers to be present. In addition court matters that are scheduled for a specific time are scheduled for only fifteen minutes. This is almost never enough time and, as a result, the court gets farther behind as the day progresses. People report spending hours of unnecessary time in court. When a case is delayed an attorney may be required to be in another court by the time the juvenile matter is finally called, further delaying that matter for the other parties and attorneys in the case. Although there are now two full-time judicial officers in the Washington County juvenile court, they are both very busy. Despite the press of other matters, it is reported that they devote as much time as needed to each case.

It was reported that Washington County takes longer to finalize adoptions than other counties. There appears to be a lack of available adoptive homes and, as a result, adoption committees sometimes have to be rescheduled. The parties may need to ask the court to monitor this process more closely.

### Representation Issues in Juvenile Dependency Cases

Attorneys on all sides in juvenile proceedings in Washington County indicate that they enjoy good working relations with each other. While they may advocate forcefully for their clients in the courtroom, they reportedly maintain a professional relationship with each other and relate well to each other outside the courtroom. Some attorneys do not treat DHS workers with the same level of respect. In addition, there does not appear to be much collaboration between CASAs and some of the attorneys, even when their positions in a case are similar.

All of the attorneys are reported to work hard but some are considered less effective than others. The more experienced attorneys in all of the firms are described as good attorneys who know when to litigate. They raise appropriate issues and hold DHS accountable. For these attorneys the main concern is that they don't have enough time to meet with their clients.

Only a few lawyers are believed to meet with child clients regularly;<sup>10</sup> most meet with them rarely, and some never. Attorneys in this latter group acknowledge that their recommendations to the court are not based on first-hand information but on information provided by the DHS caseworker or the CASA. It was

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<sup>10</sup> MPD attorneys as a group, a small number of individual lawyers from other firms, and several non-contract attorneys are generally held out as the attorneys who always meet with their clients, return phone calls and collaborate with parties sharing similar interests.

reported that a number of attorneys for children decline to present a position on behalf of their child clients, sometimes advising the court that they will decide whether to take a position when all of the evidence has been presented by the other parties in the case. This does not appear to constitute “representation” as contemplated in PDSC’s contracts.<sup>11</sup>

A lot of attorneys also reportedly fail to meet with parent clients before court. (Of course some parent clients may not cooperate with their attorneys.) Many attorneys also fail to attend DHS team decision meetings with their clients and fail to attend Citizen Review Board hearings.

For newer attorneys in offices other than MPD, it was reported that there is a lack of adequate training. They don’t appear to have mentors or receive initial training. Their caseloads are also said to be high and their compensation inadequate.

Some attorneys are difficult to reach and do not return telephone calls.

### Representation Issues in Delinquency Cases

In delinquency practice the quality of representation appears to vary substantially from one attorney to another. Some attorneys are reported to do very good work, to communicate well with their clients and to prepare for hearings. Other attorneys are reported to be unprepared for hearings or even absent without having arranged for another attorney to cover for them, to fail to see their clients before court, and to fail to respond to calls regarding their clients. Recently the release of one youth had to be delayed because the attorney had asked to be consulted about the youth’s placement before he was moved and the attorney could not be reached. Sometimes law enforcement officers want to question a youth and juvenile department staff is unable to contact the youth’s attorney. Most attorneys don’t meet with the parents of their clients and this is particularly true of non-English speaking parents say they feel excluded from the process. Some attorneys provide their clients with reformation plans and police reports without deleting victim contact information. In the recent past there has been no forum in which the attorneys and juvenile court counselors could discuss issues of this nature. Judge Fun recently reinstated regular bench/bar meetings at which such issues might be discussed. Juvenile department staff members are not comfortable talking to supervisors in the attorneys’ offices for fear they might jeopardize the good will that does exist, and the efforts of a few in the past to raise performance issues was not well received by the attorneys.

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<sup>11</sup> One attorney reportedly advised the court that he would not take a position one way or another in a termination case for fear of liability if the outcome for which he successfully advocated resulted in injury to the child.

Representation is currently not provided at in-custody shelter hearings in delinquency cases. Such hearings are fairly uncommon since the county has very few detention beds and most youth are released.

One commentator said that the younger attorneys may be settling too many cases. They don't have the skills to make good decisions about which cases should be tried.

### Caseload Trends

As indicated in the table below, both the criminal and the juvenile caseloads in Washington County have remained relatively stable during the current biennium.

<b>Date</b>	<b>Total Caseload</b>	<b>Juvenile</b>
July 2001- June 2002	16,037	2,444
July 2002 - June 2003	14,395 ( <i>BRAC period</i> )	3,124
July 2003 - June 2004	17,236	3,995
July 2004 - June 2005	18,012	4,718
July 2005 - June 2006	17,927	4,952

Although the population of Washington County is increasing, according to local law enforcement agencies the crime rate appears to have leveled off.

As more juvenile cases are going to contractors, there are fewer cases for the private bar attorneys to handle.

### **Public Defense Providers**

Most public defense services in Washington County are delivered under contract with PDSC. The principal providers are the Washington County office of Metropolitan Public Defender Services, Inc; the Oregon Defense Attorney Consortium; and four private law firms: Brindle, McCaslin & Lee; Garland, Burton & McCaffery; Karpstein & Verhulst; and Ridehalgh & Associates. Each of the contract offices is described briefly below. In addition there are non-contract attorneys who handle cases on an hourly basis.

#### Metropolitan Public Defender

MPD began operations in Multnomah County in 1971 and opened the Washington County office in 1973. MPD is a private, not-for-profit corporation that contracts with PDSC for one hundred percent of its professional services. MPD has a five-member Board of Trustees that oversees the affairs of the

corporation. One member of the board is appointed by the chair of the Washington County Commission.

The MPD-WCO is one of two offices of MPD, Inc. As such, the central administration of MPD contracts with PDSC, and manages accounting and payroll, hiring and human resources, information technology, capital acquisitions and other aspects of the administration of MPD. The managers of MPD-WCO are part of the administration and are active participants in administrative decision-making. MPD-WCO functions independently and the managers have a great deal of autonomy in the day-to-day operations of the office.

MPD-WCO has twenty attorneys including the director, six investigators, ten legal assistants, four secretaries, one data integrity specialist and one alternatives worker who also acts as a legal assistant. Many employees have worked in the office for a long time; two years ago the median length of stay was reported to be seven and a half years.

A "team" at MPD-WCO generally consists of a full-time attorney, a half-time legal assistant and a one-third time investigator. Each team is assigned to one of the following groups within the office: the Major Felony Group, the Misdemeanor/Minor Felony Team, the ECR Team, the Juvenile Team, the Civil Commitment Team or the Spanish Language Team.

MPD-WCO evaluates every employee after the first six months of employment and has a goal of evaluating every employee once a year thereafter. A series of questionnaires has been developed which seek information about an employee's performance. These questionnaires are distributed to the employee's co-workers including both attorneys and staff. According to the director, feedback from judges and district attorneys has been solicited in the past. MPD-WCO has developed a form for obtaining client feedback but implementation of the process is reported to be in its infancy. There is a written complaint policy in place that can be used by clients and others.

MPD provides a formal full-day orientation for all newly hired employees. Immediate supervisors are responsible for the training of new employees in their sections. All new attorneys at MPD participate in a multi-day trial skills training program offered twice a year that utilizes a mock criminal case and lectures to teach trial tactics, strategy, ethics and professionalism. In recent years attorneys from other public defense offices have been invited to participate in this program if all of the openings are not needed for new MPD lawyers. Periodically investigators, legal assistants and other members of the support staff have half-day or day-long training programs devoted to professional development and training. There are noon-hour brown bag sessions approximately every other week that focus primarily on legal issues. Occasionally there are after-hours trainings on specific topics. Limited reimbursement is available to other staff for training. MPD has an attorney trainer who plans brown bags, the trial skills

training program, and other trainings. MPD also maintains a law library at each office and electronic motion and memo banks. The attorney trainer is available to consult with other attorneys regarding legal issues in their cases.

MPD staff attorneys and other MPD employees are represented by the American Federation of State, County and Municipal Employees (AFSCME).

This office is described as “very good, very stable” by one judge, and “the Cadillac” by another. A third judge said that while there are issues with some attorneys,<sup>12</sup> the office is a solid, major player. One commentator said that the office does a good job but that the attorneys are “buried” by the number of cases they handle.

The Director of the office, Keith Rogers, is considered an important partner in all community justice initiatives in the county. MPD is listed as a “key stakeholder,” for example, in the Criminal Justice System Master Plan referred to above. MPD is involved in all three of the county’s specialty courts and its attorneys and staff participate in many criminal and juvenile justice work groups and task forces.

MPD’s contract includes all categories of cases except Non-Support, Post-Conviction Relief, and DUII Diversion.

### Oregon Defense Attorney Consortium

The Oregon Defense Attorney Consortium (the consortium) was formed in 2005 for the purpose of contracting with PDSC on behalf of its member attorneys. It is organized as a private non-profit corporation. There are three members of its board of directors, all of whom are members of the consortium. The consortium plans to recruit two additional board members from outside the consortium. Rob Harris was instrumental in organizing the consortium and serves as its executive director. The consortium includes approximately eighteen attorneys. Of the contractors, only MPD and the consortium handle Measure 11 cases and major felonies. The consortium also handles minor felonies and misdemeanors and participates in the ECR court. The consortium administrator receives information about any bar complaints against consortium members and actions taken by member firms in response. The administrator also inquires of the court periodically about member performance. The administrator receives complaints directly from clients and works with the attorney and client to resolve them. The consortium is seen as providing very good representation<sup>13</sup> and creating an opportunity for some of the best and most experienced lawyers in the county to handle public defense cases. The Harris firm has added new attorneys who are now being trained and other consortium members may also be adding new

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<sup>12</sup> OPDS was advised that the Director does not seem able to “ease out” unsatisfactory lawyers. On the other hand, Sheriff Rob Gordon said that if there is a problem with a public defender his office just calls MPD and it is taken care of.

<sup>13</sup> Two judges rated the consortium as the best provider in the county.

lawyers in the future. Rob Harris is described as a great asset - he is knowledgeable, provides good advice, has good skills, and gets along with everyone.

Mr. Harris is not satisfied with the rates the consortium is receiving under its current contract because they are lower than the rates received by providers in some areas of the state. As he has informed OPDS staff, he believes that there should be a presumption that contractors will receive equal rates and if any contractor receives more OPDS should be able to articulate the reasons for the difference.<sup>14</sup>

The consortium handles all categories of felony cases, misdemeanors, probation violations and a small number of post-conviction cases.

#### Washington County Indigent Defenders, P.C.

This firm is also known as Garland, Burton and McCaffery. Marvin Garland is the contract administrator. His firm has contracted with OPDS since 1994. The firm has a board of directors comprised of its shareholders. There are currently eight associates. The firm handles C felonies, misdemeanors and probation violation cases, and participates in the ECR program. It also began taking juvenile cases in January of 2007. Its monthly quota for 2006 was 212 cases. The actual number of cases it received per month was 182.

The Garland firm has been identified in the past, prior to the addition of two new partners, as experiencing the most difficulty with performance. Under current management the firm appears to be operating more effectively. It was reported that it seems more settled and the lawyers appear to be happier.<sup>15</sup>

A number of interviewees expressed concern about the lack of training for new lawyers at this firm. It was considered a significant improvement that one of the partners was present in the courtroom to observe a new attorney in a recent jury trial. The firm has no formal training program but indicates that it is developing one. The firm reports that it performs regular evaluations of attorneys and staff. It also uses "team leaders" for the criminal and juvenile caseloads who communicate regularly with their team members by email. The lawyers also meet for lunch occasionally.

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<sup>14</sup> At its August, 2007 retreat the Commission directed the Office of Public Defense Services to work towards mitigating rate disparities in any markets in which the disparity would jeopardize OPDS's ability to retain desired contractors. It noted that non-profit public defender offices provide services that consortia do not and rate disparities between public defender offices and other types of contractors may, therefore, remain. It directed that rate disparities between public defender offices within the same market providing similar services be mitigated, however.

<sup>15</sup> One interviewee said that significant improvement is still needed. Attorneys continue to come to court without having met their clients. It was reported that two attorneys have just left the firm.

The distribution of funds within the firm was reported by observers outside the firm to be a problem. New attorneys were said to receive very poor salaries. Two interviewees recommended that PDSC review salaries in this firm (as well as in others) as part of the contracting process and require that adequate funds be distributed to the attorneys doing the work. The firm has now provided information regarding salaries that indicates that it pays competitive salaries.

#### Karpstein & Verhulst

This firm has been contracting with PDSC since 1994. It does not have a board of directors. Steven Verhulst is the contract administrator.

The partners in this firm are well respected in the legal community. The bulk of their contract is for juvenile work. The firm has six attorneys, three of whom are new. The firm has no formal training program but has a “hands on practice,” assigning a supervisor who is available for consultation on a daily basis to each new attorney. Supervisors accompany new attorneys to their first trials. They are encouraged to ask questions and once or twice a month the attorneys get together to discuss cases over lunch.

The firm handles misdemeanors, probation violations and juvenile cases.

#### Brindle, McCaslin & Lee, P.C.

The Brindle, McCaslin & Lee firm has seven associates. Under its previous name of McKeown & Brindle it has been providing public defense services in Multnomah County since 1988 and in Washington County since 1995. It does not have a board of directors. The firm is reported to have undergone a lot of changes lately. The fact that Ted Brindle, the senior partner in the firm, is now working in Washington County is considered a positive development. This firm does not have a formal training program for its new attorneys although senior attorneys review cases with newer attorneys. Lack of adequate training was reported to be a problem for this firm in the past. Recently, however, they have added some new but very experienced attorneys including a former deputy district attorney from Multnomah County.

The firm handles misdemeanors, probation violations and juvenile cases.

#### Ridehalgh & Associates, LLC

The Ridehalgh firm has been contracting with PDSC since 2000. It has seven attorneys, including Ronald Ridehalgh, who represent clients in C felony, misdemeanor, ECR, DUII Diversion, Domestic Violence Deferred Sentencing and juvenile cases. The firm does not have a board of directors. It has an employee manual and written job descriptions. Employee performance issues are generally addressed in one-on-one discussions. A number of creative awards

have been devised to recognize attorney achievements. The firm has a formal complaint procedure for clients and others. It also has a sophisticated case tracking system. Little direct comment was received about the firm from interviewees although one judge said the firm did good work and had good staff continuity. In juvenile cases a single interviewee reported that Ridehalgh attorneys often fail to return calls and fail to attend treatment reviews. Mr. Ridehalgh addressed this allegation in a letter of May 17, 2007.

The firm handles C felonies, misdemeanors, probation violations, contempts, and juvenile cases.

### Private Bar

In addition to the contractors there are attorneys who handle cases from the court appointment list on an hourly basis. The attorneys who handle juvenile cases on an hourly basis are considered important participants in the juvenile court system.

### **OPDS's Recommendations for Further Inquiry at PDSC's May 10, 2007 Meeting in Hillsboro**

In light of the information which came to its attention during interviews with representatives of the Washington County juvenile and criminal justice systems, OPDS recommended that the Commission focus its inquiries and discussion at the Commission's May 10 meeting in Hillsboro on the following topics:

1. Structural issues. Washington County has significant structural variety among its providers – a strong public defender office, a consortium with both experienced and new attorneys, and a number of firms and individual providers. It would appear to be a system that permits more experienced lawyers to continue to participate in public defense while maintaining their private practices but that also provides new attorneys with a variety of options for becoming involved in public defense representation. The Commission may well determine that this is at least one appropriate service delivery model. If caseloads decline there may be a need for fewer providers. One component of this system that may be especially vulnerable if caseloads decline is the hourly rate attorneys since OPDS must see that its contractors' quotas are met before authorizing appointment of hourly rate attorneys.
2. Quality improvement. Most of the issues raised by county officials in discussions with OPDS staff related to the quality of representation by, and the adequacy of training for, newer public defense attorneys, rather than the structure of these organizations.

Of course increased funding would be an important factor in the effort to improve quality. Despite the Commission's effort in the last contracting cycle to direct limited new funds to contractors with the lowest case rates, Washington County contractor compensation (except for MPD) remains below average.<sup>16</sup>

Whether or not additional funds are available, there are steps that contractors should be encouraged to take to improve representation. The consensus of opinion among those who see new lawyers in the courtroom on a regular basis is that there needs to be a basic training course for these lawyers. They need an opportunity to learn the essentials of courtroom practice before appearing in the courtroom with their first clients. Training should focus on the "how tos" of courtroom practice such as how the jury selection process works, when and how to make a motion for judgment of acquittal, which motions should be made outside of the presence of the jury, that adjudication needs to occur before the attorney addresses disposition, etc. The judges are willing to help but say they are rarely asked. Contractors who do not have in-house training like MPD should confer with MPD, the county bar association, OCDLA, the state bar and others about how to create an appropriate training plan for new attorneys. In lieu of such a training program an effective mentoring plan for each new attorney could be an effective option. One interviewee proposed that PDSC include in its contract a requirement that all attorneys with less than 18 months' experience be required to attend a practical skills training on the essentials of courtroom practice.

It was reported that defense attorneys are missing an opportunity to be more effective in presenting their cases to juries. The prosecution makes frequent use of new technologies such as Power Point to better outline and present their cases. Defense attorneys say they simply don't have the equipment but others say they don't appear to be making any effort to get it. The trial court administrator's office may have some equipment it could make available. Local commentators believe it is more of a training issue than a funding issue.

In the area of juvenile representation, the issues identified in Washington County are similar to those identified in other counties – failure by some attorneys to visit with child clients and to advocate effectively for them, failure to meet with adult clients prior to court hearings and to advocate forcefully on their behalf for needed services from DHS and appropriate findings by the court, failure to attend Citizen Review Board hearings and planning meetings convened by DHS. All of these issues are addressed in the Qualification Standards for Court Appointed Counsel, PDSC's model contract, the Oregon Rules of Professional Conduct and the

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<sup>16</sup> True "averages" are difficult to calculate in view of the number of variables that must be considered. By "average" this report means the approximate average among similar providers.

Oregon State Bar's Performance Standards. Heavy caseloads and insufficient training appear to be the principal causes of unsatisfactory performance, although some lawyers manage to do excellent work despite their caseloads.

3. Although attorneys are now present for shelter hearings in juvenile dependency cases and for the initial hearing in ECR cases, defendants who are not eligible for ECR and in-custody youth still appear without counsel at their arraignments. It is hoped that arrangements can be made in the near future for attorneys to be present at all initial hearings.
4. A number of interviewees noted the increasing need for bi-lingual and bi-cultural attorneys and office staff. The district attorney's office has ten employees who are Spanish speaking, including all of the receptionists, two victims' assistants, and two attorneys. MPD has a Spanish Language team to serve its Spanish speaking clientele. The consortium includes three member attorneys who speak Spanish. The Ridehalgh firm has successfully recruited a number of native Spanish speaking staff members, as has the Garland firm. But more Spanish speaking lawyers and staff are needed in both juvenile and criminal cases.
5. Because of its interest in the success of appropriately structured early disposition programs, the commission may want to closely monitor Washington County's ECR program and, if it proves successful, consider its use as a model in other jurisdictions.

#### PDSC's Public Meeting in Washington County

The Commission received comments on May 10 from the following guests, in order of appearance: Cal Downey, Susan Mandiberg, Hon. Thomas Kohl, Hon. Marco Hernandez, Susan Isaacs, Hon. Kirsten Thompson, Robert Hermann, Rob Harris, Hon Donald Letourneau, Susan Kopplin, Grant Burton, Ron Ridehalgh, Warren Bruhn, Jim Hennings, and Keith Rogers. An edited transcript of their comments and discussions with the Commission's members was included in Attachment 2 to the June 2007 Commission agenda.

#### PDSC Discussion of Washington County Service Delivery

At its June 14, 2007 meeting, PDSC members discussed the information provided at the May 10 public hearing. Areas of discussion included the functioning of the MPD "satellite" office in Washington County, the relatively large number of providers in the county, caseload trends, rate disparities between providers in Washington County and other parts of the state, the role of the

private bar in the public defense system in the county<sup>17</sup>, and the need for additional training opportunities for public defense lawyers.

At its October 12, 2007 meeting, PDSC members discussed the need to adequately compensate attorneys representing clients in early disposition programs so that they have an incentive to continue to participate in such programs; the important role played by private bar attorneys in juvenile cases in Washington County and the need for these attorneys to continue to be available for appointment in cases that require expertise in areas outside of juvenile and criminal law; the need for contractor offices to address training issues for new attorneys and some strategies for providing such training; and the high quality of services provided by MPD-WCO in the county as reported by local justice system representatives.

### PDSC's Service Delivery Plan for Washington County

On the whole, PDSC found that the public defense delivery system in Washington County is working effectively.

Although there is a relatively large number of providers in Washington County, there does not appear to be a need for significant change in that regard. The system includes representatives of each type of provider - a well-established public defender office, a new but strong consortium, a number of private firms - and it also includes some private bar attorneys who work on an hourly rate basis. Each of these entities has found its own niche in the county. Only MPD seemed to indicate that it would like to receive a larger share of the caseload<sup>18</sup>. Except for some concerns regarding juvenile representation and the training of new lawyers that are discussed below, each of the providers appears to be covering its caseload adequately. No reports were received that attorneys were not appearing for court hearings or could not be reached by the court or clients. Each office also appears to deal with conflicts effectively since no concerns about conflict management were brought to the Commission's attention. With the number and diversity of providers in Washington County, OPDS has some added flexibility. If any contractor were to cease providing adequate representation there are alternative providers to whom additional cases could be directed.

If the caseload in the county remains flat or declines it is possible that fewer providers may be needed in the future. At its August 2007 retreat the Commission discussion included the following comments on potential caseload changes:

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<sup>17</sup> In addition to the testimony received on this issue at the June 14 meeting, a letter was also submitted to the Commission by Howard Moran.

<sup>18</sup> In addition, MPD Board Member Susan Mandiberg testified that in order to retain attorneys for more than a few years, MPD needs to receive a sufficient number of "high end" cases

It is not PDSC's role to try to maintain a particular number of attorneys if the caseload declines. If the number of cases declines, however, it could well be appropriate for contractors to maintain their current staff with lower caseloads or reduce staff and increase compensation. With early disposition programs resolving many of the less complicated cases in some jurisdictions, the cases that remain for adjudication are more complex and difficult and the rates for these cases may need to be increased. In the past public defense providers have been told that they needed to take more cases if they wanted more money. That will not be the case in this contract cycle. There may not be additional cases to be taken and the commission needs to establish case rates that accurately reflect the cost of doing business.

The delivery system in Washington County should continue to include a role for private bar attorneys. These attorneys, who prefer not to be under contract with PDSC, appear to be serving an essential function in the juvenile system in the county. As both the hourly rate attorneys and representatives of the court and the juvenile system noted, they bring to their work on behalf of juvenile clients broad knowledge and experience in related areas of law that many full time public defense attorneys may not possess. Their participation in the system can benefit not only their clients but the entire legal community by expanding the cumulative knowledge and experience of that community. While their participation may mean that fewer cases are assigned to some contract offices, in view of the relative quality of representation provided by these attorneys it is important to preserve a role for them.

### Recommendations for Improving Quality of Representation

#### Training for lawyers

As noted above, there was broad consensus among those who see new lawyers in the courtroom that there needs to be a basic training course for these lawyers about the essentials of courtroom practice. Each provider needs to determine how best to provide this training for its own attorneys. The initial draft of this report recommended that these firms confer with MPD about its trial skills training program, and with the county bar association, OCDLA, the state bar and others about how to create an appropriate training or mentoring plan for new attorneys. One interviewee proposed that PDSC include in its contract a requirement that all attorneys with less than 18 months' experience be required to attend a practical skills training on the essentials of courtroom practice.<sup>19</sup> Currently, there are limited trainings of this type available and new lawyers must generally start handling cases shortly after they are hired. The draft report recommended that, at the very least, each firm establish a mentoring plan for each new attorney that included a comprehensive list of the topics to be covered by the mentor before

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<sup>19</sup> If PDSC wished to impose such a requirement it would be more appropriate to include it in the Qualification Standards than in the contract.

the new attorney could appear in court without the mentor being present. It was suggested that MPD, OCDLA, the Oregon State Bar, the Washington County Bar Association and others could assist in the development of the checklist. Such a checklist could be part of a training manual developed by the law firm.

After the draft report was issued, OPDS staff<sup>20</sup> and the Executive Director of OCDLA met with all of the Washington County contractors on July 24, 2007 to discuss training options. Each firm identified its current method of training, which for most involves having the new attorney shadow an experienced attorney for as long as the workload allows, which generally is not very long. One firm created a manual for its attorneys. Existing training resources discussed at the meeting include the county bar association, Metropolitan Public Defender, Inc.'s trial skills training program, and OCDLA's new lawyer manual and annual seminar. It was reported that the National Institute for Trial Advocacy will be offering a "train the trainer" seminar in Oregon in the near future and that public defenders will be the first group invited to participate. The group agreed that additional training options need to be developed. Suggestions included asking the county bar association to schedule lunch hour trainings at the courthouse, asking the court to offer a one-hour new lawyer training by the judges every three or four months and/or a full day training once a year, and increasing the number of MPD trial skills programs offered annually. OPDS's General Counsel offered to assist contractors in designing training programs and OPDS staff indicated that requests could be made for funds to cover expenses related to attending trainings outside the metropolitan area. OPDS will discuss plans for improving training options with each of its Washington County contractors during the course of contract negotiations.

#### Use of courtroom technology

If lawyers believe, as reported by the court, that the effectiveness of their presentations could be improved by the use of new technologies, they should explore means of obtaining and learning how to use such technologies. The county bar association or OCDLA might be available to identify potential trainers. Much of the necessary equipment appears to be available through the court.

#### Standards for Juvenile Representation

The Oregon Rules of Professional Conduct (ORPC), the Commission's Qualification Standards, the state bar's Performance Standards for representation in delinquency and dependency cases, and the Commission's model contract all require attorneys to meet with their clients in a timely way and to provide them with competent representation. The ORPC and the performance standards also require that attorneys keep their clients informed about the status of the client's case; explain the case sufficiently to allow the client to make

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<sup>20</sup> The agency's executive director, general counsel, director of the Contract and Business Services Division and contract analyst for the region all attended and participated.

informed decisions in the case; and, with child clients, determine whether the child is capable of considered judgment about the decisions which are the child's to make and proceed either to represent the child's best interest or the child's expressed wishes, as appropriate. These requirements are not met by those attorneys who fail to visit with child clients and to advocate effectively for them, who fail to meet with adult clients prior to court hearings and to advocate forcefully on their behalf for needed services from DHS and appropriate findings by the court, or who fail to attend Citizen Review Board hearings and planning meetings convened by DHS when such attendance is required for competent representation in the particular case.

It is recommended that each firm that handles juvenile cases consider whether its attorneys are providing representation that complies with the applicable standards and, if not, immediately create a plan for improving representation to the appropriate levels. In approximately six months the Quality Assurance Task Force will be asked to contact each of the firms to learn about steps that have been taken to improve representation and to contact interviewees who reported concerns about representation to see if any improvement has been observed. In the course of its contract negotiations with these providers, OPDS should allocate juvenile cases only to those providers who comply with applicable standards.

### Representation at initial hearings

Although attorneys are now present for shelter hearings in juvenile dependency cases and for the initial hearing in ECR cases, defendants who are not eligible for ECR and in-custody youth still appear without counsel at their arraignments. It is recommended that contractors work with the court, the district attorney's office and juvenile department staff to arrange for attorneys to be present at all initial hearings as required by the model contract.

### Compensation issues

A number of witnesses expressed concern about attorneys not being compensated at all, or not being compensated adequately for the work they do in special courts such as the drug court, the mental health court, and ECR.<sup>21</sup> In drug court and mental health court, it may not be adequate to award a single credit under the provider's contract for each of these cases some of which might involve as many as fifty court appearances. On the other hand, contractors receive a full case credit for each case that is processed through the ECR program even though the case may take only a few minutes of the attorney's time. The district attorney and the judges expressed support for not discounting these cases since, on balance, those that remain will be more complex and

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<sup>21</sup> Cal Downey also raised a concern that attorneys participating in formal accountability agreements might not be eligible for compensation. ORS 419C.245 clearly provides, however, for counsel at state expense in these matters.

difficult. Contractors should work with OPDS to address any issues they have about the rates of compensation for special court cases.

Rob Harris and witnesses at the May 10 meeting noted that MPD and contractors in some parts of the state receive higher rates of compensation than some Washington County contractors. In 2005 the Commission approved modest increases for contractors receiving the lowest rates. At its August 2007 retreat the Commission established its budget priorities for contracts beginning in January of 2008. Pursuant to the Commission's priorities, each contractor should seek the level of funding necessary to allow it to provide quality legal representation under all the circumstances that affect the cost of attracting and retaining qualified attorneys and staff in the contractor's area of the state.

#### Representation of non English-speaking clients.

Employers in Washington County, like those in some other Oregon counties, need to attract more bilingual and bi-cultural attorneys and office staff. The district attorney's office, MPD-WCO, the Ridehalgh firm, and the Garland firm have all had some success in attracting employees with Spanish language skills. Having these skills within the contract office benefits clients and requires less reliance on outside interpreters. OPDS should provide additional compensation, in the form of a stipend or a higher case rate, to contractors who employ bi-lingual attorneys and staff.

#### Monitoring of ECR Program

Because of its interest in the success of appropriately structured early disposition programs, the Commission should closely monitor Washington County's ECR program and, if it proves successful, consider its use as a model in other jurisdictions.