

## Members

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



## Ex-Officio Member

Chief Justice Thomas Balmer

## Executive Director

Nancy Cozine

## PUBLIC DEFENSE SERVICES COMMISSION

Friday, October 27, 2017  
1:00-5:00 p.m.  
Hallmark Resort  
744 SW Elizabeth St.  
Newport, Oregon 97365  
Officer's Mess Conference Room

### MEETING AGENDA

- |  |                                      |
|--|--------------------------------------|
| 1. <b>Action Item:</b> Approval of minutes - PDSC meeting held on September 28, 2017 ( <i>Attachment 1</i> ) | Chair Ramfjord                       |
| 2. The Sixth Amendment Center - Public Defense Structures and Evaluations – A National Perspective           | David Carroll,<br>Executive Director |
| 3. Budget Update   | Nancy Cozine<br>Steve Bender         |
| 4. Final 2018 Contracting Update & Comments ( <i>Attachment 2</i> )  | Caroline Meyer<br>Providers          |
| 5. <b>Action Item:</b> Approval of 2018-19 Statewide Contracts ( <i>Attachment 3 &amp; 3A</i> )              | Caroline Meyer<br>Amy Miller         |
| 6. <b>Action Item:</b> Approval of 2018-19 Death Penalty Contracts ( <i>Attachment 4</i> )                   | Caroline Meyer<br>Billy Strehlow     |
| 7. <b>Action Item:</b> HB 2005 – Pay Equity Personnel Rule Updates ( <i>Attachment 5</i> )                   | Wendy Heckman                        |
| 8. Executive Director Recruitment Update ( <i>Handout</i> )  | Per Ramfjord<br>Wendy Heckman        |
| 9. Executive Director Selection - Provider and Staff Input   | Agency Staff<br>Providers            |
| 10. 2018 Meeting Schedule ( <i>Attachment 6</i> )  | Chair Ramfjord                       |
| 11. OPDS Monthly Report  | OPDS Staff                           |
| 12. Executive Session** - union contract negotiations  | Commission                           |

***\*The Executive Session will be held at approximately 1:45 p.m. pursuant to ORS 192.660(2)(d).***

***Please note: Lunch will be provided for Commission members at 12:00 p.m. The meeting location is accessible to persons with disabilities. Please make requests for accommodation at least 48 hours before the meeting, to Brooke Sturtevant at (503) 378-2677.***

***Next meeting: December 13th, 10 a.m. – 2 p.m., at the Tillamook County Library, Copeland Room, Tillamook, OR. Meeting dates, times, and locations are subject to change; future meeting dates are posted at:***

***<http://www.oregon.gov/OPDS/PDSCagendas.page>***

# Attachment 1

# PUBLIC DEFENSE SERVICES COMMISSION

## OFFICIAL MINUTES

Thursday, September 28, 2017  
10:00 a.m. – 2:00 p.m.  
Office of Public Defense Services  
1175 Court Street NE  
Salem, OR 97301

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

STAFF PRESENT: Nancy Cozine  
Eric Deitrick  
Amy Jackson  
Paul Levy  
Caroline Meyer  
Billy Strehlow  
Rachel Woods  
Stephanie Petersen  
Wendy Heckman  
Ernest Lannet  
Shannon Storey

The meeting was called to order at 10:00 am.

### **Agenda Item No. 1 Approval of minutes – PDSC meeting held on August 24, 2017**

Commission members unanimously approved minutes from the August 24, 2017 meeting.

### **Agenda Item No. 2 Overview of the Outreach Practices of the Criminal Appellate Section**

Marc Brown, Chief Deputy Defender, discussed the outreach efforts taken by the Appellate Division of OPDS to trial attorneys throughout the state, as well as the challenges. Mr. Brown discussed the importance of building relationships with the trial bar. Each day, one attorney in the Appellate Division is available for taking calls from trial attorneys. Attorneys from the Appellate Division present at conferences. And attorneys from the Appellate Division regularly

spend time at public defense offices, such as Metropolitan Public Defenders, Multnomah Defenders, and Public Defender Services of Lane County. He recently traveled to Roseburg and met with Umpqua Valley Public Defenders.

Mr. Brown discussed the podcasts on criminal law issues he has developed with OCDLA. Additionally, he noted the Appellate Division helps non-OPDS appellate attorneys prepare for arguments before the appellate courts.

### **Agenda Item No. 3 Annual Performance Progress Report**

Caroline Meyer, Contracts Manager, reported on Key Performance Measures (KPM) for the agency. Historically, there have been three performance measures, although now there are five. In 2016, the Appellate Division reached its KPM goal of filing initial briefs within 210 days of appointment. The new goal is 180 days, which the agency was not able to meet, particularly in light of turnover and vacancies in the Criminal Appellate Section. The second KPM is the client satisfaction survey, and Ms. Meyer clarified that “client” means those with whom OPDS conducts business and not those persons eligible for appointed counsel.

The third KPM measures whether the PDSC is compliant with the best practices for boards and commissions, which it was. The fourth KPM tracks the amount of annual CLE credits earned by the trial bar relating to their area of practice. A survey was done in 2016, and will be conducted again in 2018. The fifth KPM measures whether attorneys in the Parent Child Representation Program achieve the goal of spending one-third of their time with their clients. In 2016 that occurred in 54% of cases; this year, it increased to 63% of cases.

### **Agenda Item No. 4 Update Regarding Interpreter Services and Payment Policy Request**

Stephanie Peterson, Budget and Finance Manager, addressed concerns raised by interpreters regarding the new payment policy adopted in April. Previously, interpreters could bill at an hourly rate for interpretation and travel time. In April, the PDSC increased the hourly rate to match the rate of OJD. Additionally, the funding for travel time was changed. Rather than bill directly for travel time, interpreters are now funded at an hourly rate consisting of 1.2 minutes per mile traveled.

Adrian Arias, a certified court interpreter, thanked the PDSC for changing the rates in April. However, he discussed how the new travel policy was actually resulting in less compensation for travel time in urban areas, in light of congestion and slow traffic. Mr. Arias suggested a different rate for urban areas. Mr. Peterson noted that the agency currently lacked technology resources to separate out travel costs by region, but would continue to work with interpreters on this issue in the coming months.

### **Agenda Item No. 5 2018 Contracting Update**

Ms. Meyer informed the Commission that, since August, many public defense service providers have agreed to contracts. Some potential contractors had not yet accepted the offers made, and others yet had requested extensions. She noted that contractors and potential contractors were present and wanted to address the Commission.

Bruce Liebowitz, contract administrator for the Portland Defense Consortium, informed the Commission that he signed the contract proposal, with an addendum addressing options if preliminary hearings make the contract untenable. He noted that the PDC has always been fiscally conservative, and maintained a sizable amount of funds in reserves. He stated that he could not guarantee the same reserves this biennium, given the increase in costs and lack of additional funding.

Jon Weiner, contract administrator for Marion County Association of Defenders, also addressed the challenges in keeping sufficient reserves to pay attorneys handling more cases than expected under their contract. He questioned what additional steps could be taken to achieve sufficient funding, and noted that even the outdated "NAC" caseload standards are not obtainable with the current level of funding.

Tom Crabtree, Executive Director of Crabtree & Rahmsdorff, discussed the statutory obligation of the Commission to adopt policies, procedures, standards, and guidelines regarding the fair compensation of public defense counsel. He noted the discrepancies in compensation between OPDS appellate attorneys and contract-based trial attorneys. He also noted the increase in caseload over the years. In 1985, the average attorney in his office handled 181 cases per year; now, it's 326 cases. Additionally, he addressed the challenges of rising health care costs and providing step increases with a flat contract.

Joel Wertz, an attorney at Crabtree & Rahmsdorff, addressed the challenges of retention and turnover. He noted the difficulties of developing a quality public defense office when attorneys only stay two to four years before leaving.

Vice Chair Potter questioned Mr. Crabtree about whether the current caseload numbers for his office presented ethical challenges. Mr. Crabtree opined that the caseload numbers were approaching the ethical line, and if they continued to rise to the 330-350 range, would get there.

Lori Hellis, a member of the Bend Attorney Group, discussed her role as a juvenile dependency attorney, and stated that the contracting system is broken. She discussed inconsistencies in public defense funding for drug courts within the same county. Additionally, she questioned how attorneys can meet the expectations set by OPDS without additional funding. Ms. Hellis urged the Commission to be more proactive.

Brook Reinhard, Executive Director of Public Services of Lane County, said the contract proposal he received was not sustainable for his office. He discussed the disparity in compensation between attorneys in the OPDS Appellate Division, and those in his office. He suggested increasing case rates, and returning to the legislature requesting additional funds when the initial appropriation runs out. Additionally, he urged the PDSC to abandon the case rate model and move toward a caseload FTE model. He believed that OPDS declared victory too soon during the legislative session.

Commissioner Christ asked Mr. Reinhard whether his staff was willing to risk an office shutdown. Mr. Reinhard, Commissioner Christ, and other members of the Commission

discussed potential consequences of OPDS running out of money, and how that would affect criminal and juvenile case processing. Mr. Reinhard discussed the caseloads for attorneys at his office, and Commissioner De Muniz questioned whether the caseloads were ethical.

Jack Morris, a contract administrator from Hood River, acknowledged the lobbying approach taken by OPDS in recent years, and expressed frustration with the ability to achieve results. He felt less concerned with the funding model being used, and ultimately believed that the system needed additional funds.

Dan Bouck, Director of Umpqua Valley Public Defender, talked about high caseloads, and the length of time it takes to get a case to trial. He believes a crisis is necessary to get additional state funding for public defense.

OPDS Director Nancy Cozine addressed and clarified points made by contractors. She noted that the judicial branch of government is chronically underfunded. She noted that most state agencies have a legislative director, and recommended OPDS create a similar position going forward. Additionally, she noted that Oregon is in the queue for an ABA caseload study, and informed attendees that David Carroll would be presenting at the October PDSC meeting.

Judge Welch discussed the standard of living that public defense attorneys are required to accept, and sought direction from OPDS staff about how to provide public defense going forward.

The Commission discussed the potential consequences of taking various steps, such as increasing rates, or issuing one year contracts. Vice Chair Potter acknowledged the ethical concerns of having too many cases. Chair Ramfjord agreed, and noted the PDSC's obligation to ensure constitutionally adequate representation.

Commissioner Christ stated that, in his impression, the system is broken. Mr. Christ was more interested in a long-term, rather than short-term, solution. Commissioner De Muniz agreed, and discussed his positive impression of the Kentucky model, as relayed in a previous PDSC meeting, which is more of a statewide model. He also acknowledged the inadequate case rates being paid for felonies. Commissioner Stevens discussed the state budget issues as a whole, and questioned whether public defense would ever become a priority for the state.

The Commission continued discussing the various options, particularly for those potential contractors who had not yet signed a contract. Vice Chair Potter suggested the Commission give OPDS staff additional directives on how to proceed negotiating contracts going forward. Director Cozine noted that individual contract proposals are confidential, and Vice Chair Potter suggested the Commission discuss options during the executive session.

## **Agenda Item No. 6      OPDS Monthly Report**

Paul Levy, General Counsel, informed the Commission that he, Amy Miller, and Eric Deitrick were working on a memo regarding alternatives to the current public defense model. He also highlighted the potential ABA caseload study, as well as David Carroll's October presentation.

Director Cozine noted that the Parent Child Representation Program is a caseload, rather than a case rate, model.

Shannon Storey, Chief Defender of the Juvenile Appellate Section, informed the Commission that her group was currently litigating three cases before the Oregon Supreme Court, including a case regarding when juvenile court orders become moot. Ernie Lannet, Chief Defender of the Criminal Appellate Section, informed the Commission that his update could wait until the next meeting.

Director Cozine formally informed the Commission of her departure, and thanked the Commission for allowing her to serve. She had developed a template for recruiting the next executive director. The Commission discussed the timelines and processes for finding a new executive director.

### **Agenda Item No. 7 Executive Session – Continued Review of Contract Proposals; Other Matters**

The Commission then went into executive session for the purpose of continued review of contract proposals to provide public defense services. The chair read the statutorily prescribed notice stating the purposes for the executive session, citing the statutory provisions that allow it.

#### **Return to Public Meeting**

After the executive session, the Commission returned to its public meeting. Chair Ramfjord directed Director Cozine to continue negotiating with potential contractors, and to work with LFO in an attempt to reach reasonable accommodations in funding. He noted that the Commission considered the notion of raising rates for everyone, and entering into one year contracts, was too risky. He acknowledged that differences exist from county to county, and urged parties to negotiate in a realistic manner.

Mr. Reinhard suggested moving the timelines of the negotiations to better align with the legislative session. Chair Ramfjord noted the idea as a possibility, and acknowledged that the Commission was going to have to make systemic changes going forward.

**MOTION:** Vice Chair Potter moved to adjourn; Commissioner Welch seconded the motion; hearing no objection the motion carried: VOTE: 5-0 (Commissioner Christ no longer present)

**Meeting Adjourned.**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL UNEDITED TRANSCRIPT

Thursday, September 28, 2017  
10:00 a.m. – 2:00 p.m.  
Office of Public Defense Services  
1175 Court Street NE  
Salem, OR 97301

MEMBERS PRESENT: Per Ramfjord (Chair)  
John Potter (Vice Chair)  
Thomas Christ  
Elizabeth Welch  
Mike DeMuniz  
Janet Stevens

STAFF PRESENT: Nancy Cozine  
Eric Deitrick  
Amy Jackson  
Paul Levy  
Caroline Meyer  
Billy Strehlow  
Rachel Woods  
Stephanie Petersen  
Wendy Heckman  
Ernest Lannet  
Shannon Storey

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The meeting was called to order at 10:00 am.

**Agenda Item No. 1 Approval of minutes – PDSC meeting held on August 24, 2017**

0:00:05 C. Ramfjord: Everybody, welcome to the Public Defense Services Commission Meeting for Thursday, September 28<sup>th</sup>, 2017. We have a busy agenda today and one of our Commission members is going to have to leave a little early so we're going to try to move things along. Um, and another member is going to be here a few minutes late

so, but we'll just go ahead and get started. Um, so the first item on the agenda is the approval of the minutes of the meeting held on August 24<sup>th</sup>, 2017. Does anybody have any comments on those minutes, or corrections?

0:00:44 J. Stevens: Uh, you have a typo.

0:00:45 C. Ramfjord: OK

0:00:46 J. Stevens: On page 31, down at the bottom, where Nancy is talking about "proposals."

0:00:57 C. Ramfjord: Proposals...in the recording there, obviously.

0:01:00 J. Stevens: Yeah

0:01:01 C. Ramfjord: OK

0:01:02 P. Levy: That's the transcript

0:01:03 C. Ramfjord: Right

0:01:04 J. Stevens: Right, right.

0:01:11 C. Ramfjord: Any other corrections to the minutes?

0:01:13 T. Christ: No, I was going to move to approve the minutes

0:01:15 VC Potter: I'll second

0:01:17 C. Ramfjord: All in favor? **VOTE: 6-0**  
**MOTION:** Motion passes, thank you very much.

**Agenda Item No. Overview of the Outreach Practices of the Criminal Appellate Section**

0:01:23 C. Ramfjord: The second item on the agenda is an Overview of the Outreach Practices of the Criminal Appellate Section and we have Marc Brown from that section. Welcome

0:01:35 M. Brown: Good morning Chair Ramsfjord; Commissioners...I'm already losing my pen cap...um, I'm Marc Brown from the Appellate Division and thank you for having me back here. I had mentioned this at the, I believe it was the June meeting and didn't get to outreach, and so thank you for having me back for this. Um, it's something that we've been formulating how to do outreach and I will talk about some of these tricks that are involved with some of the tricky spots of that, but I wanted to start off by noting that the strategic plan goal number 1, strategy number 3 is to increase OPDS presence across the state to provide training, support and monitoring of contract providers to better coordinate services between trial and appellate practitioners and improve coordination with system stakeholders at local

levels. And that is sort of where our outreach comes from, so this is kind of what we're doing to meet that goal. We have a couple of challenges, one is, we have a bifurcated system where we are state employees and the trial level, they're contractors, so there is that, um, issue involved. Also, geography. We have a big state, and so, it is hard to get around to everyone. It is easy to do outreach in the valley here; much harder to do it out in Malheur County. Um, budget and resources being bodies and people, and also the fact that we are also the contracting arm, makes it a little tricky because, um, part of our office does, ensures quality of the trial practitioners and so when we go out there, and we do outreach, we want, um, the trial level folks to understand that we're kind of separated in that respect from the other part of the office, because we want the individuals to feel free to call us and not feel like when they call us with a question, we're not running across the hall and saying "hey, ya know, this trial practitioner doesn't know this answer," and so that is also an issue that we struggle with. But, um, so what are we doing? One thing we do, and we've done this for years, is the attorney of the day program, called OD, an old military term for Officer of the Day, I'm not sure exactly how it got that name, but the attorney of the day is assigned. Every day an attorney is the attorney of the day. They will field calls from attorneys, random questions, "I have this suppression hearing coming up, there's the issue, what do you think, has anyone looked at this, is anyone working on this?" Um, also, refers questions to other attorneys via email. So, maybe mail out to other attorneys and say, "hey, this is an issue that this person is interested in, is anyone working on it?" Um, provide copies of briefs that may have covered the issue, um but we also have to balance between providing an answer to questions and actually doing the research work for the attorneys. I actually had an attorney call the other day who, after discussing this issue, asked me, "so can you write the response to the state's motion for me?" and interestingly, he was a retained attorney, so we do have to balance, we don't want to be doing all the work for the trial attorneys. Um, another area where we do regular outreach are at conferences. We present at lots of conferences. The summer conference we regularly have one or two presentations at the summer conference. We always do the appellate update to attorneys going there, um, this year we also had a restitution presentation with Erin Severe and Morgen Daniels and then I did the appellate update with Sarah Warboff. At the winter conference we have usually presentation at the winter conference, usually one of our attorneys presents on a topic, um, we do the juvenile law conference. The juvenile section presents there, and also they help organize it, and also juvenile law academy. So, another area where we do reach out. And there is a criminal law section of the State Bar where we regularly do, at their annual meeting, we do an appellate update with DOJ attorneys, so we pair together, which is always very interesting, um, we have different perspectives. Um, but it works out well, and we have one coming up on October 13<sup>th</sup>, where I will be there as well as um, Ron Chadaneudech from our office will be there presenting. We also do other presentations as requested. Um, we've done a number of presentations at the Metropolitan Public Defenders Office specifically on preservation, that is always a popular topic - how can we preserve these issues? We also go to Multnomah Defenders in Portland. Every month they do an appellate update, um, where the attorneys all sit around and they discuss

appellate cases and we have had, for about a year and a half now, an attorney who goes there and gives our perspective on it as a way to reach out to them – and part of this is that people get to know us, so having face contact with people, so they are more comfortable calling. Um, and we um also do some traveling. So, I went down to Roseburg um, to the Umpqua Valley Public Defenders, back in April I think it was. It was really nice, I drove down there, had dinner with a few of the attorneys and drinks, and then the next morning I worked in their office in the morning, and then gave a lunchtime presentation. It worked out really well, because it was just again, that face time, getting to know people there, so we are not this kind of obscure office. Um, we also have attorneys who work on site at various offices, specifically at the Metropolitan Public Defenders Office in Portland. We usually have an attorney working there every day, um, the attorneys can work there twice a month and we also have an attorney, me, goes out to Washington County PD office and works there. Again, being available for fielding questions and just discussing issues, and then one of our attorneys works at the Lane County Office twice a month, and again, a way to be, on the ground more. We also provide Oregon Supreme Court Assistance, um, for non OPDS attorneys, with mootings of Supreme Court cases; we also help with editing briefs. Um, recently we did a case with Youth Rights Justice; we helped them on a case that had to do with search and seizure, so, a case that involved stuff that we do. Um, Multnomah Defenders had a civil commitment Supreme Court case that we helped with mootings and the brief, again, it touched on preservation which is an issue that is important to us so we wanted to make sure that it was briefed well. And recently, on a death penalty case, State v. Langley, we did help moot that case. Some of our death penalty folks when up there. Um, we also have started emailing out all decisions to trial attorneys, something that wasn't done consistently, so if a trial attorney has a case that was appealed and gets a decision, we'll send that to that attorney; kind of close the loop. Um, recently, in the past year and a half or so, we started doing podcasts, Commissioner, Vice Chair Potter knows about that because he worked with me on it. Um, and we've done about 11 or 12 episodes now. What we do is, and I host it, and I have another attorney who comes with me, and we discuss a case, maybe a case that they won at the Supreme Court, maybe just an interesting issue, um, they're usually about 20 minutes. My most recent one was a two part one on the non-unanimous jury provision in Oregon and some issues around that. I haven't actually done one since around May last, um, earlier this year because I've had a lot of other things going on, but I'm diving back into it. Um, they are distributed by the Oregon Criminal Defense Lawyers Association as part of a member benefit, and we're tracking about 50-60 downloads. It's a way that we can reach out to the whole state with limited resources, um, or with expending limited resources, um, so I would like to pursue that more, finding more time to do that. Some things looking forward that we can do, that we've talked about, is traveling more, around the state, doing more like I did in Roseburg, um, again, making in-person connections again, that's pretty resource intensive and budget intensive, but we might be able to tie that in when the court of appeals Supreme Court argues outside of the valley, you know, tying in, if someone goes out there with cases and then outreach as part of that. Um, technology. Ya know, podcasts are a start, but, we've kicked around the idea of

maybe getting webinar technology here, and maybe we can have a monthly webinar, just appellate update anyone from the state can tune into, um, just thoughts about that. Another area that we've pondered is pre-assigning cases, important cases, big cases, that have big issues, the trial attorneys can contact our office and say, "we have this big case and we can have a discussion on whether it's one that we want to help out, and just be a resource for that attorney, so, the attorney in our office would know the case and the trial attorney can call and say, "this is coming up," and then if it's appealed, it comes to that attorney. Um, we did that on a case, I was on a case like that, um, State v. ??? Vasquez which was a 13 year old who was tried as an adult in Washington County for aggravated murder, and it worked out really well, ultimately they prevailed on the juvenile level, so it all worked out well. So, ultimately, what we like to see, is we like to see trial attorneys, and offices, contact us and say, "this is what we want, this is what we are looking for," so it's not us saying, "this is what we're giving you, but this is what we want, how can we as an office help you with that outreach?" So that is ultimately what we want to see more of. But that's what we're doing, and if you have any questions, I'm happy to entertain them.

0:12:13 C. Ramfjord: Well, I think it's great that you are doing as much as you are doing. I think that um, I have noted that some of the federal defender websites for localities have some pretty good stuff on preservation too (M. Brown: mmhmm); that might be one thing to consider, um, is actually having a website with links to materials on preservation in particular or any issue (M. Brown: mmhmm); that's interesting. I also find it very encouraging that you are actually working with some trial level attorneys on larger cases during the time of trial (M. Brown: mmhmm); I think it can be very, very helpful. I don't know if other Commissioners have questions or comments or thoughts...impressive.

0:12:49 M. Brown: Thank you.

0:12:50 C. Ramfjord: Thanks Marc.

### **Agenda Item No. 3 Annual Performance Progress Report**

0:12:55 C. Ramfjord: Ok, Annual Performance Progress Report

0:12:58: C. Meyer: Exciting stuff. So good morning, Chair, Members of the Commission. So the Annual Key Performance Measures is something we are required to report to the Legislature every year. We currently have five measures, we historically had three measures. The appellate case processing, customer service satisfaction survey and the best practices for Boards and Commissions, and this Attachment 2 in your materials. Um, the last full biennium, we added two more related to representation, uh, one is the number of attorneys who obtain at least 12 CLE areas in their areas of public defense practice, and the other was related to PCRCP representation, and the amount of time attorneys spend with their clients. So, I'll just go through the five briefly, and feel free to ask any questions, um, as we go through or at the end. So,

hopefully, I think you got a color copy, um, I'm going to try not to cover up the recorder here. So, appellate case processing, you will see we lost a little bit of ground on this particular KPM, um, in 2016 we finally broke the 210 day mark which was our original KPM target, and we began the march toward 180 day target, that we adopted in the last full legislative session. Um, however, due to turnover in the appellate section of experienced lawyers, we fell to 222 days. And, Ernie explains in the narrative, that it was essentially due to two things; the increase in new cases, which outpaced the gains that they were able to make, because of experience, having lost some experienced lawyers and having to hire new lawyers with less than five years' experience.

And then secondly, the appellate section held an attorney vacancy open for about five months, so those two things sort of created, but I think that he is feeling pretty confident that they're on track to make progress again in this next year. Number two is the customer service survey, and there's nothing new to report there, because we do the survey every two years. Commissioner Stevens...

0:14:59 J. Stevens: Would you remind me who our customers are for this survey?

0:15:04 C Meyer: They are, yes, so they are everyone that we do business with, so contract attorneys investigators who we pay for investigation...

0:15:12 J. Stevens: But not clients?

0:15:13 C Meyer: But not clients.

0:15:14 J. Stevens: Ok, great.

0:15:15 C. Meyer: Yes, it's the people who's bills we process (J. Stevens: ok), um, who we provide payments to.

Um, and then number three is the, so, sorry, I'm sorry, did I skip over? So, customer service, nothing new to report there. It's the details there from 2016, which we had already reported on last year.

Um, number three is the best practices for Boards and Commissions, and you may recall at the August meeting you reviewed that and determined that you met that, and so, that's always a nice visual, we hit that one at 100%. It's nice to have one that's pretty consistent. And so we can continue to do well there.

Number four as the SA says, one of the newer ones, trial level representation, and 2016 was the first time that we've sent out the survey measuring the CLE's completed by our trial level providers. Um, so the information that's here, that's reported here was really from last year. We didn't do a survey this year, we've determined that it's going to be best to do that one every two years as well to sort of track when they report their credits to the Bar. Um, and also to ease the burden on

them of doing another survey every year. So, the next survey will be in 2018, so we'll have new information to report then.

Um, and then the last one is the Parent/Child Representation Program, and we did make some nice progress on this one, um, last year we'd reported 54% of the lawyers were meeting with their clients 1/3 of the time, and this year that increased to 63%. Amy Miller, who is not able to be here today, but she had previously pointed out that while this number seems low in comparison to the target, it's good to keep in mind that the case workers who are assigned in roughly 12% of the cases, they're required to spend 80% of their time with clients, so if you add in the time that the case workers spend, with the clients, it's really more, closer to that 50% mark between lawyer and case worker time. So, um, and I think that was... and I think last year um, there was some discussion about whether this measurement accurately reflects the practice, (clears throat), excuse me, that the PCRCP seeks to create, and so as a result of that, we changed the language slightly to say "approximately." Refer to the approximate amount of time that's spent, knowing that some will spend more, some will spend less, but on the average, um, they're spending...and Amy seems to be pleased with the progress that's been made.

So I think that's all that I have on that if you, unless you have questions...we will submit that to the legislature.

0:18:07 C. Ramfjord: Thank you very much.

**Agenda Item No. 4 Update Regarding Interpreter Services and Payment Policy Request**

0:18:12 C. Ramfjord: Next up is the Update on Interpreter Services...(inaudible/shuffling)

0:18:26 S. Petersen: Good Morning. I just wanted to give you an update. We have received additional information from the interpreters since we've implemented the policy that was adopted in April, and there is concern about the number of minutes per mile that we're reimbursing for the urban areas. The interpreters did a very good job, from those areas, of compiling travel information to justify the need for a higher mileage rate, and but, we've run into is that we have some technical barriers to allow us to implement a potential split rate at this point in time. Um, but we are committed to continue to evaluate our technology and work with the interpreters to try and come up with a solution that will help rectify this problem in the coming months. And I know Adrian is here today...did you want to???

0:19:21 A. ????: Adrian ???, Oregon Certified Court Interpreter. I have a statement if time allows. (shuffling). I had the privilege of speaking and appearing before the Commission in March. My statement is the following:

Ladies and Gentlemen of the Commission, good morning and thank you for allowing me this opportunity to address you on behalf of Certified and Registered Interpreters of our state. As you are aware on March 11<sup>th</sup> of this year, I and 57 of my colleagues submitted a letter to Stephanie Petersen, OPDS Budget and Finance Manager, in which we outlined our concerns over the negative financial impacts that we have experienced as a result of the most recent changes to OPDS travel time policy. In response to this, a group of highly-motivated linguists compiled data over a one month period, which was then synthesized to establish a proposal which we believe would remedy our current situation. Out of respect for your full agenda and because Ms. Petersen has so kindly included our letter of request in the meeting addendum, I will be brief in my explanation of the basis of our request and the merits of our proposal, while I do strongly encourage you to review the attached documents at your convenience.

By way of historical context, it is important to acknowledge that OPDS has maintained a policy for compensating interpreters for time spent in transit for the purpose of providing services for public defense work, for the past 15-20 years. Given OPDS's historic one hour minimum for interpretation work, as contrasted with the Oregon Judicial Department's 2 hour minimum, coupled with the diversity of settings in which interpretation occurs, this policy has long been an integral part of ensuring that the rate of compensation for interpreters was competitive with OJD's rates. With the April 2017 updates to the interpreter billing policy, we were initially encouraged to learn that OPDS had agreed to increase our hourly rate of pay to mirror the rate increase already in effect for interpretation work with the State Courts since the first of the year. The same policy update also established a different method of calculating travel time for public defense work, based not on actual time on the ground, travel time as historically, but rather on a static equation centered around the number of miles traveled. Over time, I and other colleagues who regularly provide interpretation in the state's metropolitan areas began to notice a marked decrease in the total compensation amount. In spite of the hourly rate increase, we were actually making less money for assignments performed in the same settings, and under similar circumstances as assignments we had covered prior to the policy updates. We undertook an initiative to systematically compile data as to the actual travel times between the home offices of several interpreters and a number of frequent destinations for interpretation work. Over the course of a one month period, we were able to determine that the average rate of speed, during business hours, in urban settings, is a mere 24 miles per hour. The current OPDS travel time policy provides an hourly compensation of \$21.75 per hour, or half the current hourly interpretation rate. The travel time equation is based on distance traveled, rather than on time spent in transit. In order for the established hourly compensation amount to correspond to a distance that can actually be covered in one hour's time, an interpreter must maintain an average speed of 50 miles per hour. Given the average travel speeds in the state's metropolitan areas, which is less than half of this, as evidenced by our inventory, the reason for the decrease in our compensation amount becomes readily apparent.

We articulated our observations and concerns in the August 10 letter to the Budget and Finance Department and we reiterate our thanks to Stephanie and OPDS for the attention given to this matter. In a conference call on September 15, Stephanie informed me and another colleague that the data currently at the disposal of OPDS does not correlate with our findings. We discussed the likelihood that the global data had been skewed by the inclusion of travel times in both rural and urban areas, and agreed that in order to fully appreciate the impact of the policy change in the metropolitan area, these data would need to be isolated and analyzed separately from statewide data. Stephanie indicated that the OPDS is actively exploring options for adopting new data analysis technologies that would allow for this, and anticipates that upon doing so, they will be better equipped to analyze travel times and compensation amounts pre and post-policy change. She indicated that this will likely occur sometime at the beginning of 2018.

We are cognizant of the fact that the commission is currently in the process of reviewing contract proposals. So, I appreciate the opportunity to address you personally in this forum to outline our proposal and lay out the anticipated next steps. We are confident that as new technologies become available to your office, your finding will reflect our experiences, and we thank you in advance for your collaboration and look forward to continued dialogue on this matter. Thank you very much.

0:25:10 C. Ramfjord: Thank you.

0:25:15 T. Christ: Did your study include uh, travel by public transit, or was it all automobile?

0:25:23 A. ???: It was all automobile.

0:25:26 T. Christ: Thanks.

0:25:29 A. ???: Thank you.

0:25:31 S. Petersen: Are there any additional questions?

0:25:32 VC Potter: So, do I understand that early in 2018, Stephanie, you'll be coming back and giving us findings from research that you're doing?

0:25:41 S. Petersen: That is the target. Um, what I am facing right now is the way data is collected, it's very broad, and to be able to isolate that it's a very labor-intensive process that will take a large portion of my time while I continue to run the rest of my department. And then we're aggressively looking at new technology to help us be able to do that faster moving forward.

0:26:07 VC Potter: Let's say that we took the numbers that were prepared by the interpreters, and it basically doubles the time, we pay on a time basis rather than distance-based, do we have any sense of what that budget impact would be?

0:26:11 S. Petersen: At this point, no. My limitation is I cannot, um, do location-specific information. And if we were to adopt a policy, it would be urban rates vs. non-urban rates, and I don't have a way to isolate that at this point in time. Um, we'll continue to work towards that, and I also don't have the technology to be able to process the payments for that at this time, either.

0:26:46 VC Potter: It sounds like you're in communication on a regular basis...?

0:26:50 A. ????: We have been...

0:26:54 E. Welch: I don't expect this to be a helpful question, but I'm going to ask it anyway; is, does OJD have a policy on this subject? How does the state do this?

0:27:03 S. Petersen: Uh, their policy is a little bit different because they do do the two hour minimum, and so their travel portion of it is, correct me if I'm wrong, last addendum, was they only get reimbursed for mileage if it's over 60 miles one way.

0:27:18 A. ????: May I?

0:27:18 S. Petersen: Yeah, correct me if I'm wrong

0:27:19 A. ????: Yes, I will. Um, when that usually enters into play, is when, say for example, Wasco County needs an interpreter from Multnomah County. Mileage is substantial, and we can get an average speed of 50 miles an hour, so they will pay us for that travel time, after 40 miles round trip. But, we're talking about here, in much limited and more common transits from your home office to the local jail, or to the attorney's offices, in traffic that does not average 50 miles an hour.

0:28:02 J. Stevens: But in places like Bend, if you went 50 miles an hour anywhere, you'd be breaking the law. So, you know, you just automatically can't get there at 50 miles an hour. There's no, until you get out of town, there's no place where you can go that fast.

0:28:24 A. ????: Maybe I'm missing your point

0:28:26 C. Ramfjord: She's confirming your position (laughter).

0:28:31 J. Stevens: I just don't understand how that can be a problem for this office, if it's not, if it's a matter that the way that streets and the laws are written. I mean, I can see what your point is, but I just don't see how you can throw out a number that's not attainable under the best of circumstances, as the goal, as the ideal. You see what I'm saying?

0:28:52 S. Petersen: Mmm...

0:28:53 J. Stevens: No...

0:28:55 A. ???: We are proposing that the rate, instead of 1.2 minutes...

0:29:00 J. Stevens: I understand that...

0:29:02 A. ???: ...per mile be increased to 2.5.

0:29:05 J. Stevens: No, I understand that, I do understand that.

0:29:08 S. Petersen: If I may, I think the point that you're trying to articulate; the difference for them for the local trips, is they do get a two hour minimum, regardless of the interpretation...

0:29:15 J. Stevens: Right, I do understand that.

0:29:16 S. Petersen: ...which offsets the mileage that they are not reimbursed for.

0:29:26 N. Cozine: If I may, I think that there are other dynamics that differentiate the OJD policies from ours, and that is largely hinging upon the fact that OJD has a centralized interpretation services program, and so, when multiple cases are scheduled in one court facility, they get those requests all centralized, and so one interpreter can go and provide interpretation services on all of them. Our system is structured really differently. Attorneys arrange to have an interpreter, and they pick whatever interpreter they want, and so we can end up with many different interpreters, traveling to the same building at the same time, for different matters. And so, I think one of the things that we're struggling with, and obviously that's very expensive...you know, one of the things we're struggling with is, are there ways that we can make our system more efficient so that we aren't sending multiple interpreters to the same location and paying for all of that travel time for multiple individuals. Um, that's hard, because attorneys like to have flexibility in who they select. They may have relationships with interpreters, um, so, we're working through some of those issues too. I do think it's a work in progress and we need to be able to come back to you with some proposed solutions so that we strike the right balance.

0:30:48 C. Ramfjord: Thank you very much. (inaudible)...work, so we're looking forward to hearing those solutions.

0:30:50 A. ???: Thank you.

**Agenda Item No. 5      2018 Contracting Update**

0:31:04 C. Ramfjord: Ok, 2018 Contracting Update

0:31:06 C. Meyer: So, contracting update, wanted to give you a quick update. So, since August, since we, um, discussed contracts in Exec Session in August, we went back and we made phone calls, um, and spoke to all of the proponents, excuse me (throat clearing), and

so we have now contacted everyone that's submitted a proposal. Um, whether they were receiving, you know, we'll suggesting a contract with them or not. All specific terms have been created and provided to the potential contractors; many have been signed and returned to us, um, we've had several contractors ask for extensions of time in which to respond, some because they needed to get their boards together, some their people were gone on vacations. Um, a few contractors mentioned that they would like an extension beyond today so that they can speak to the commission. Uh, we've reminded those contractors that they exclusive authority to negotiate contracts is vested with OPDS Executive Director and her designees pursuant to ORS 151.219. And the role of the commission is to review and approve any contracts negotiated by the Executive Director before those contracts can become effective. And that review is scheduled to occur at the October PDSC meeting. Um, contractors responded; they understood this, um, they understood the roles, but would still like an opportunity to address the commission today, and so that's really what this opportunity is for, and I see that we have many in the room. So, with that, I'm happy to turn it over to contractors.

0:32:45 B. Liebowitz: Ok – Good morning Commission; Chair Ramsfjord, thanks for this opportunity. I'll be very brief. We, Portland Defense Consortium has signed the RFP with a little addendum language in terms of the merger clause that just has to do with ethics and what may be coming up in Multnomah County. Uh, but I wanted to say was, for our entire history we've been very conservative fiscally, and have always had lots of reserves, and when the state's called, they've known that we've had reserves if there was a shortfall to pay back. I just wanted to put on the record uh, that we can't say that this time. Uh, I know my firm just received a 3 plus percent rent increase; we're going to get that again in a year, and I just want it out there that there is nothing to put aside in this budget. And, I think Mr. Weiner is here and wanted me to say the same thing for MCAD, is that correct Mr. Weiner?

0:33:50 Weiner: Yes, we have the, we try to maintain a prudent reserve to deal with...unanticipated, uh, events as well as sort of fronting the cost of cases...

0:34:00 N. Cozine: Sorry, can you come up, because we need it on the record.

0:34:10 C. Ramsfjord: Just for the record, will you restate your name so we have it recorded?

0:34:13 B. Liebowitz: Bruce Liebowitz, Portland Defense Consortium, thank you Chairman.

0:34:18 J. Weiner: John Weiner, Marion County Association of Defenders. Um, as I was saying, we have, we try to maintain, as I'm sure all the organizations do, prudent reserve to deal with things that are unanticipated as well as things that, well, primarily case loads that exceed what's contemplated under the contract, so maybe, we get x amount over uh, each month, and maybe we do 2x or 3x cases in certain months, we have to have a prudent reserve to pay our attorneys, and we are already finding it hard to do that, but it's going to be obviously even more difficult given the budgetary constraints. However, I was reluctant to come up, because it seems to me,

it strikes me, that this is probably the wrong venue, in other words, I think that the Commission does what the Commission can do with what the Commission has, and I'm also starting to wonder if the consortia and private providers are somewhat dropping the ball by not pushing back somewhere else, because you've done what you can do, and you just can't create, I don't think it's legal for you to print money, and so, um, maybe this isn't the place for me to voice that, and maybe we need to think more about going somewhere, you know, to another level. Not as to go over your head or criticize, but I don't know what you can do, right? I know what the numbers are, and I feel bad this ??? is even going to come up, but we have serious concern. Also, I guess I'll put in, with respect to the case caps, as I said it at meetings before, I'll say it again, trying to get the case caps with the current funding is just meet those 400 misdemeanors, 150 felonies, just isn't possible. We're getting as close as we can, and OPDS is doing really good working with us and applying pressure where appropriate um, to get us to conform as much as possible. But, um, I know you're doing what you can, but there are obvious problems and I'm not voicing these concerns to you for the first time, I know you've already, you're already well aware of them.

0:36:24 B. Liebowitz: That's all, thank you for your time.

0:36:26 VC Potter: Quick question Bruce – when you opened, you talked about ethical concerns and addendum and some ethical concerns. Can you elaborate a bit?

0:36:44 B. Liebowitz: Uh, just a uh, one sentence of language for the merger clause. The merger clause, uh, it just states that, I don't know the exact language there, but it's a few words, 10-12 words saying that we, we're doing this, assigning the subject to the ethical considerations if there's a change in certain circumstance. That's specific to Multnomah County preliminary hearings. Uh, the merger clause basically says that, we've talked about nothing else, these are all the agreements, and yet the Commission probably is aware that we're going to be doing timekeeping, um, cases, uh, civil style, to see what the impact is of ???????? and preliminary hearings for Ms. Cozine to later try to get more money. So that's all that replies to. And that was on advice of civil counsel on our board.

0:37:40 VC Potter: Thank you very much.

0:37:41 B. Liebowitz: So if we can't ethically provide, given what our resources are, we can't. That's all. Thank you.

0:37:50 N. Cozine: I'm still confused about what the ethical concerns are, specifically.

0:37:56 B. Liebowitz: Well, if it turns out that these cases are going to take a huge amount more time, we don't know yet.

0:38:02 N. Cozine: You mean, "these cases?"

0:38:03 B. Liebowitz: The preliminary hearing cases, (N. Cozine: ok) that we have to have the ability to say this is not what was contemplated, because it's a significant change. I think Miss ??? gets that...it's not, hopefully, I think you do. It was civil counsel's advice, and I guess it's an ? that if we can save...we just can't do this because it is so different, it takes that much more time. That's all.

0:38:29 N. Cozine: So what you're saying is that in the event that the cases take more time than you had anticipated, and a rate change is not accommodated, that you would be...

0:38:39 B. Liebowitz: I'm saying we can't do it.

0:38:40 N. Cozine: ...declining that portion (B. Liebowitz: right, yeah) of the caseload and it could be reassigned to someone else.

0:38:45 B. Liebowitz: Yep. That's right. And congratulations.

0:38:48 N. Cozine: Thank you.

*(shuffling, inaudible mumbling)*

0:39:11 ? Crabtree: Chair Ramsfjord, Vice Chair Potter, other Commissioners, thank you for the opportunity to address you again today. Um, Ms. Meyer pointed out the role of the commission, uh, in contracting, but she left out a major role, uh, statutorily, and that's ORS 151.216 that gives you the authority and obligation to adopt policies, procedures, standards, and guidelines, regarding various aspects of indigent defense including the fair compensation of counsel. When I was here last time, I suggested that as part of that obligation, you could establish as a policy, that parity with the DAs, uh, was a goal, that you were adopting a policy to set us at a certain percentage of that. Um, after leaving here I thought of something else, and that's going to be difficult to do, it varies from county to county, um, but you've already done that with the appellate division. You adopted a policy last year, um, changing, well, the pay scales that now start as somewhere around \$74,000. You could adopt that statewide, say that that's our policy for the whole state. We have adopted this, um, and that is fair compensation, if it's fair compensation for the appellate division, it's fair compensation for trial counsel. Uh, since we were here last time, we've received our contract proposal which calls essentially for a flat rate, an extra \$1400.00 for the biennium. Um, I've handed you a chart, which I prepared, the top line on that is what our rate was in 1985, \$365.70, um, and what that rate is adjusted for inflation across the board. The second line, the red line, is what we have actually received, and we are at \$604.37 under the proposal, which would be 71.2 percent of what the original rate adjusted for inflation would be. But back in 1985, we were doing 181 cases per attorney, now under this, we're required to do 326 cases per attorney, so the effective rate, adjusted for workload, is 327.98, 38.7 percent of what we were working for in 1985, essentially. We can't do this. We can't go on without any increases. The appellate division is going to get their 5 percent merit increase, or step increase, their gonna get their COLA, their gonna get health

insurance paid, and their gonna get PERS, but we're not gonna talk about that. We won't get any of those. Joel Wertz, who is in my office, and will be part of the team taking over when I ride off into the sunset, like uh, Vice Chair Potter has, um, and he'll have some comments about that. My appearance today demonstrates why we need good health insurance. That, um, right now, our policy is a \$5000 deductible policy. We can't do um, any less. My insurance broker told me we're looking at a 20-24% increase in health insurance costs, this year alone, not talking about the second year of the contract. My rent goes up at the rate of the Consumer Price Index. We have other costs that go up that in Bend, the median price of a home this last month hit \$400,000. \$413,000. They haven't said, "we will freeze those rates for the next two years so your attorneys aren't any worse off..." We cannot survive on a flat rate contract. A flat rate contract is a cut contract. This last year we lost five attorneys, three of them due to financial reasons. We're gonna lose even more. We're gonna have to lay off people in the second year in the contract if this stays. What I'm asking this Commission to do is using your policies, say "we are drawing a line in the sand, and as part of that fair compensation policy, our contracts have to guarantee step increases. They have to guarantee that health insurance is going to be provided." I'm not gonna talk about PERS. Wish we could. But, uh, we need to ensure a living wage for people. We need to ensure that we're going to be able to continue to provide quality representation. We can't on cut rate contracts. What makes more sense is for the Commission to direct OPDS and say, "enter into one year contracts with these people for what they need. Not pie in the sky, not parity with the DAs, but to guarantee that they can continue their step increases, they can guarantee to continue to pay their health insurance, they can guarantee to pay their people a living wage, and say, OK, that's what it costs for the first year. Get reports on what it's gonna cost for the second year." Because I've had such large amount of turnover this last year, my step increases the first year are going to cost us less – we can fund them somewhat internally, but the second year, that isn't gonna be the case, and so the rate is gonna go up in the second year. We don't know what's gonna happen with health insurance. But we can't go for two years on \$1429.00. Have the new Executive Director, unfortunately, go back to the emergency board and say, "this is what it's gonna cost. We've entered into first, to one year contracts with a number of people for what they can do. They cannot afford to do it on what's there. We need this amount to continue or there won't be, the money won't last until the end of the biennium, it'll last 'til March or April, or February, whatever that figure is..." but give them a date and say, "that's how long it's gonna last, it's your choice." But otherwise, we are not going to be able to make it. The next time I come here for a contract, which will be my last time, I'm glad Mr. Potter didn't say, "thank goodness," but, um, I'll be here saying, "I've got a whole bunch of new attorneys, and they need more training, and they need lower caseloads, because the people that we have are not going to be able to make it on what is being offered." And while you can't negotiate the contract with me, you can adopt policies that relate to that, and it's my opinion that that is your obligation to do so. To make sure that the standards that you have adopted remain and that we don't significantly lower the quality of indigent defense. Thank you so much.

*(clapping)*

0:49:01 J. Wertz: Hi, I'm Joel Wertz, and I am doing some of the management roles as we transition, uh, from Mr. Crabtree running the firm, and when I look out, um, and I think after seeing the contract, my question is, what kind of firm, what kind of public defenders office is Bend going to have in two years' time. And what we've already seen is with a strong economy and what salaries currently are, is we've been hemorrhaging those experienced and quality attorneys that really make our firm what it is. Um, uh, and I wonder uh, what that is going to be in two years' time, because what I foresee happening, is our experienced attorneys aren't dumb, and they're gonna see, if we don't pay compensation adequately, uh, they're gonna leave, they're gonna say, "you don't have our back," and I'm talking about everybody here in the room. "You don't have our back, we love our job, we're doing good service to the community, but I've got family, I've got husbands and wives..." and what I have seen, just a brief story, is um, we lose really quality attorneys. One we really miss, for compensation reasons, and I walk in with a young attorney, extremely, extremely talented attorney, but he's got a case that, uh, a significant drug case, and there's a search warrant, and I'm talking to him, and he doesn't have experience, and we're going through, and he goes, "Oh, I looked through this search warrant, there's nothing, there's nothing there." Uh, and I take a look at it, um, and see multiple issues uh that need to be addressed, that there needs to be a motion to suppress, er, and, I realize I'm glad I talked to him today, I'm glad we're doing training, uh, but I wonder, uh, when we increase caseloads, am I going to have the time to do it? I can't run his caseload and my caseload. Am I going to look through every police report and every search warrant? Um, and that's what we're going to run into in the next ten years. With the current budget proposals, we are going to lose more talent, and that is gonna result in Bend citizens, instead of being at home, and reading to their kids, um, or if their innocent, getting that not guilty verdict, we're gonna have a shell of young attorneys who are gonna get their little 2-4 year trial experience and their gonna go off to greener pastures. We've gotta have the experience to develop a culture and a firm of high quality public defense. Thank you.

*(clapping)*

0:52:23 C. Ramsfjord: Thank you very much.

0:52:26 VC Potter: Mr. Crabtree?

0:52:27 ? Crabtree: Yes?

0:52:29 VC Potter: I want to make sure I understand the chart and your statement. Back in 1985, you're saying that there was 181 cases per lawyer.

0:52:37 ? Crabtree: Yes.

0:52:38 VC Potter: Is that both felonies and misdemeanors, a mix...

0:52:40 ? Crabtree: Yes.

0:52:41 VC Potter: And then, under this contract, there would be about 326.

0:52:45 ? Crabtree: Yes.

0:52:46 VC Potter: Do you have some projection, that if you were to accept the proposal, and in the second year, you say you're gonna have to lay somebody off in order to make the dollars, meet, what the cases per lawyer would be then? Do you understand what I'm getting at?

0:53:02 ? Crabtree: Yeah. Right, it would be dividing our caseload, um, I can give you that figure in just a second, what that would be. Unfortunately, you know, due to this (*gestures to head*), I can't do it in my head anymore, but uh...

0:53:26 N. Cozine: I do hope it wasn't a work-related injury...  
*(laughter)*

0:53:39 ? Crabtree: 361.5.

0:53:45 VC Potter: What I'm interested in is when does that caseload per lawyer stretch the ethical bounds, in your mind that would have the Bar on your case?

0:53:58 ? Crabtree: I think at that rate, if we lose more experience people, that we will be there. That, you know. We've lost, uh, three attorneys due to um, financial reasons this last year, um, two of them had just reached the point where they had been trained, were felony qualified, boom, they go off into uh, private practice. The third was someone who had just reached Measure 11 qualified status, then he goes off. When they are replaced by entry level people, um, when I can't get them from Jessica anymore, that uh, um, the younger attorneys can't handle as many cases as experienced people can. And, I think if you get in around the 330-340 range, you're treading awfully, um, ya know, thin water, thin ice there, and uh, ya know at 350, you're below water level. And, ya know, I'm sure that several attorneys would be coming to me and saying I can't do anymore. We already have that in some instances, that we have to reassign, to, ya know, somebody gets overloaded, and I tell our management person, ya know, lay off of this person for the next month, and we monitor their cases and ya know, talk to them. Um, so ya know, it's not smooth going all the time now anyway, and at those levels, we're in bad shape.

0:56:02 VC Potter: Thank you.

0:56:05 C. Ramsfjord: Are there any questions?

0:56:08 ? Crabtree: Thank you very much.

*(movement in room)*

0:56:19 L. Hellis: My name is Laura Hellis, and I belong to the Bend attorney group consortium. I think you've all gotten a letter from me. I just wanted to say that I have been in practice for 25 years. I make \$61,000 a year, and every day, I tell children that I represent, I'm your lawyer now, and I'm always going to be your lawyer. So when they come back to me and they need their sex offense registration ???, or they have, or they can't get their driver's license because of some ancient thing that was on their record when they were 12...that's the work I do for them that I don't get paid for. But that's my level of commitment to what we're doing. Uh, I don't know how we can keep doing it. I have children who I have represented who are now adults and have children, and who friend me on Facebook, and want me to see their babies, and this is important work that we're doing. We're doing this for children, who sometimes, I'm the only person in their life. Ten years later, they've had 15 case workers, as many social workers, as many therapists. But their lawyer, their lawyer is the person who is still there for them. And every day, when I watch one of my colleagues walk up and down the hall, and I wonder, how's she gonna get paid next contract cycle? Why, why is she worth less than the Assistant Attorney General, who doesn't give their cell phone out to their kids, and say, "call me anytime, night or day." This process is broken. The contracting process is broken, OPDS, doesn't want us to talk to one another, so, every time, the Bend contractors talk to one another, we get these little hints about how, and I trust legislation, and anti-trust issues should keep us from negotiating as a block, or even discussing our contracts with each other. So, they play us against each other. Uh, one perfect explanation, one perfect example of this... We have a family drug court, and family drug court, asks for attorneys to be assigned to family drug court. That means drug court staffings, that means, being there every Monday afternoon, all day. That means working with parents and clients that are in drug court. It's a lot of time and it's a big commitment. During the last contract cycle, one of the other contractors in our area, who provided exactly the same service, got paid twice as much. We didn't know that, until we started looking at last year's contract. There's no equity among the contractors, because OPDS wants us to play against one another. You all, you all are letting us down, and we all are letting our clients down. We get voluminous new discussions and new documents about what best practices are for juvenile lawyers. But this organization doesn't give us any more money to meet those criteria. It would have been great if we had gotten the parent/child representation, it would have been easy for us to do that. But we didn't get that, even though last legislative session we were told it was going to be phased in over three biennium. And here we are, our contract, I got involved in the contract process, because I wanted to know what was going on, I wanted to be sure that the younger lawyers in our consortium were getting what they needed. But they're not getting what they need. They can't pay their healthcare costs, they have to pay their PLF. They can't put money aside for retirement. They can't do any of those things. And we can't effectively represent our clients because we can't do it. We can't physically be all

the places we need to be. So 25 years later, I can't give my assistant a raise unless I take a few more cases. And maybe, I'm just getting old, but I can't take any more, and responsibly represent my clients who need me. For whom I'm the only constant in their life. I'm asking you, help us! We all want to be good lawyers. We all want to be ethical, responsible, passionate lawyers for our clients. But we can't do it without your help. And every time we come here and we ask, we smack against the same ceiling. Where are our advocates? Where are they? This legislative session, we spent billions on roads, and \$100 million buying trees back. But we have no BRS beds for children...I just had a kid placed in Iowa. A child that has no connection to Iowa, who doesn't know anyone in Iowa, and the only connection he has to Oregon right now is to pick up the phone and talk to his lawyer. Because there's no beds here. It's not just our problem, but you're our voice. I'm begging you...take a stand, be proactive about this. If it means that you have to say, "we're gonna compensate these lawyers for what they're worth, what they should be getting," and if that means we sign one year contracts, and you go all back to the board and say, "we need more money," then maybe that's what has to happen. Maybe it's an emergency that has to happen, to make this happen. But I came here today, I drove over from Bend, to beg you...take a stand people! Because the three year old I represent needs you, needs me. The mom that I represent who is struggling to be a mother for her children – she needs me. The one who stumbles; who has a, has a, step back, and who we go to court and we move forward. And she stays clean and sober for five years and she shows up on my office with a cup of coffee and puts her arms around me, and says, "I love your face." That's why I do this. But I can't do it forever at these caseloads. They're crippling. I mean, the only reason, to be honest, that I can do this right now, is because my husband and I are both military retirees, and we both get our healthcare, thanks to our service. That's the only reason I can do this. Because at 61 years old, that I could not afford healthcare. That's the bottom line. So people who are experienced lawyers are leaving you, because they can't afford it anymore. Not because it's not righteous work, and not because we're passionate about it, because obviously, we are! You've got a full room here today of people who are saying, "we just want to be able to do our jobs." So, I'm asking you – help us do our jobs. Thanks.

*(Clapping)*

1:06:32 B. Reinhard: I feel like I should stand now, but I guess I'll sit, since you all are sitting...my name is Brook Reinhard; I'm the Executive Director of the Public Defender Services office in Eugene; Public Defense Services of Lane County. Eventually we'll just change it to Lane County Public Defender. Um, I have five of my staff members here as well. Um, this process is so...it's broken, what she [L. Hellis] said. It's also demoralizing. I mean, you put together a 30-40 page Request for Proposal with all the things you want to do, and you get a contract that is flat lined for it's been, the last two years. There's no difference, and uh...it's not sustainable to do it the way you're doing it. Um, I know you're the commission, I know that you're not tasked with going out to the legislature and asking for more money. Your Executive Director is - at least I believe that's part of her role, and I don't understand why

you declare victory, when you, for getting \$10 million more for Public Defense, when you then don't spend it on more money per case. It's the exact same amount of money that it was before. And, (sigh), it's pretty hard to see the appellate office, which is a state run agency, being funded well, and it should be funded well, I have so much respect for the appellate lawyers here, they do an amazing job, they're always available, I can call them, I can ask questions about what's going on, but, most of them earn twice as much money as people in my office. My most senior attorney makes, I don't know, it's not even \$90 [thousand], the most senior appellate attorneys make, I think around \$140 [thousand], I suppose you can whisper to Nancy, and Paul, do you think that's bullshit, like you did with the previous person that talked, that seemed pretty out of line...but, whatever. Um...

1:08:42 P. Levy: Excuse me...

1:08:43 B. Reinhard: I heard you whisper, and so did the Commission; anyway...

1:08:47 P. Levy: I was, I said, that what she was saying was not true

1:08:50 B. Reinhard: Yeah, ok, anyway...

1:08:52 P. Levy: I wanted to make sure that she [Nancy] understood that those conversations had never occurred.

1:08:55 B. Reinhard: OK. I don't understand why this needs to be an Us vs. Them sort of thing. I have so much respect for the appellate office here, and the work they do, but they are compensated at almost the rate of the Department of Justice. We're not compensated near the rate of any of our local District Attorney's offices, remotely. And, so, I ask, in this Request for Proposal, with detailed data for parity and caseload reduction, and instead, I get a flat contract. And I'm not talking specifically about mine, because mine's kind of immaterial, in talking with other public defense providers, it's the same across the state. I'm not saying, "give me more money and somebody else less money," I'm saying that you need to reconsider what you're doing and how you're asking the legislature for money. I think there needs to be a drastic change that basically says, "look, we need a 10% mo...increase in each of these case types, and when the money runs out, we tell the legislature, we can't defend any more cases for this biennium. It'd be a lot more honest we to approach the process, and tell, uh, Salem, "look, ya know, we're gonna have to have something similar to the BRAC in 2004, 2003, where we can't do anymore cases for the amount of money provided, so sorry, we're gonna close up shop for a few months." That would be a highly preferable way of doing it, than me to tell my attorneys, "look, I'm implementing these standards, I want to increase our quality, I don't want bad performance reviews from site visits, I don't want bad surveys that say we're not doing as well as we should, I want to increase that quality, but I'm not sure I can do it when I get the same amount of money as we got last time around." And again, this is not about the Lane County contract, it's about how we're funding public defense in this state. So, what I would ask, is for

movement away from a per-case funding model, to really think about how much money it would take to put in the correct amount of full time equivalent staffers, and say, “ok, you can do this many cases, you can do your 150 felonies, your 400 misdemeanors a year, and once you do that, then that office is not going to take any more cases.” It’s funding it in that sort of way. I would ask that you give the Executive Director the discretion and she’s very good at communicating with us, uh, to be able to negotiate 12 or 18 month contracts with the existing contractors to say, “ok, we’ll give you a 5% increase for this year,” knowing that we’re going to have to go back to Salem in 2018 and ask for more money the following year. That seems to me an appropriate and wise use of a Commission directing their Director in how to proceed. I realize, as Mr. Crabtree mentioned, that we’re not trying to say that you would be able to nickel and dime the contracts yourself, that is the role of your Executive Director, and I appreciate and understand that, but giving her the ability to say, “ok, we’ll accept shorter contracts, and we’ll tell the legislature that the money will run out if we don’t give them more money.” I mean, I don’t know of any other way to do it. Um, my health insurance premiums are going up for next year, my analyst said it may be as low as 14 or 16%, which would be welcome news from a 20 or 25% increase, but it’s still more money. I committed this year to do step increases for my employees, and I don’t know if I’ll be able to do that. Um, (sigh), there are so many things that make it harder to represent people in a quality fashion now, than even a few years ago. We just got body cams for most of the Eugene police department officers. That means more video discovery for every case, so our costs, if anything, are going up, or it means that my attorneys are saying, “you know, I think this client wants to plead out, which is good, because now I don’t have to watch the six hours of video...” My attorneys generally aren’t telling me that, but it certainly is a temptation when you have this sort of contract where you don’t have the time to look in detail about what’s happening with cases. We can spend the money now or we can spend it later, you can tell the legislature, and you can tell your Director to tell the legislature, we can spend more money now, on quality defense, or we can spend the money later, on more people in prison, or more post-conviction relief cases. It is a trade off, and I guess I would just ask for a little more honesty in how it’s gonna work. If the direction is, a public defender’s office is the first place people go to learn how to be a lawyer, but that’s not where really the money is at, and you do that for five or ten years and then you go hang out a shingle and do it as a private contractor, ok. I mean, if that’s the way you want to do it, that’s fine, but what I perceive from the Commission, and from OPDS, is that you all want high quality work from the lawyers there. And if you want us to do this as a career, where we’re actually able to make ends meet, that means regular, predictable contract increases, and a shift away from the per case model. Instead of asking for so much details in Requests for Proposals and ignoring every single thing we ask for in those RFPs. I’m sure you all have read some of them, I mean, we’re asking to be able to do amazing things, and we’re asking, we’re telling you why that’s necessary, and when we get a flat contract, it doesn’t give us the ability to do what we want to do, and I couldn’t echo enough what Mr. Crabtree said about how we should be doing this, and let’s try a 12 month contract to see what happens, and for that to happen, I believe that you would need to give the

Executive Director the ability that we can negotiate shorter contracts, and I also echo what Mr. Crabtree said that you have the ability to really set the tone for what sort of quality is needed, and set the goal being for parity. My next step, if we don't get a contract increase, means telling all of my lawyers, to make sure we make a lot better friends with our local legislators and show them why more money is needed, and we'll do that lobbying, and it's clear we need to do more than we're doing. But you can do more as a board in setting the direction, and I appreciate the time you spent listening to people this morning, and the time you will spend listening, and it's clear to me from reading the minutes, and going to these meetings, and listening to you deliberate, that you care about public defense. I think to do so effectively though, that means a change in direction, in what you're authorizing, and directing your director to do, and it's also something you could obviously be mindful of as you choose the next person to lead OPDS. Thank you very much.

*(clapping)*

- 1:15:36 T. Christ: Is it your impression that the Director and the rest of the staff here are not lobbying hard enough to get more money into this system?
- 1:15:46 B. Reinhard: It is my impression that Nancy is a tireless advocate...a tireless advocate for the appellate division itself, and she fights very hard to make sure they get their money, and I believe she declared victory too soon in settling for what the rest of us got, yes.
- 1:16:05 T. Christ: OK. Is that a shared impression?
- 1:16:08 B. Reinhard: Yes. And there was an email she sent out about the amount of money we are likely to get that, huh, I was Mr. Crabtree's first reaction that said, "well, this looks like she's declaring victory, when we're only half way there." It's, it's...so yes, that impression was definitely conveyed among all of the large public defenders offices, for sure. I don't talk so much to the um, to the consortiums, because we definitely have a different business model, but definitely among the public defenders Directors, it was definitely the impression that victory was declared before we even had tried.
- 1:16:44 T. Christ: OK. And, you suggested going to a one year contract, and raising the compensation, one way or another...
- 1:16:50 B. Reinhard: Yes, that's right.
- 1:16:51 T. Christ: And then, when the money runs out...
- 1:16:52 B. Reinhard: Yes...
- 1:16:53 T. Christ: ...going back to the legislature and, it seemed to me your assumption is "ok, here's some more money," but what if they don't? Are you and your staff prepared to have

no contract or compensation at all, because they're not going to give us anymore money? Is that a risk that everybody's willing to take?

1:17:15 B. Reinhard: I talked in detail to my staff and my board about this, and, um, my staff, especially support staff, would like to have jobs, and it's pretty hard to be a secretary for 20 years and find it somewhere else if we were to close up shop, so I want to relay that feedback. I'm going to answer your question though...um, basically what I'm saying, is, let's say it was a one year contract, and it was a 7% increase, I'm just throwing out a number because I'm not trying to talk about my particular contract...in year two...

1:17:44 T. Christ: Without a two year contract or any particular numbers, the risk you play, is they call your bluff, and say, "there's no more money," or something happens that there is no more money, then what's the consequence for you, and not just you, your clients. And is that a risk that you, and figuratively, all of you, are willing to take, and do you think it's one that the clients are willing to take, too? Because no one's here speaking for them...

1:18:15 B. Reinhard: Uh, actually, I think we are speaking for our clients, we are certainly trying to speak for our clients, and I have clients, even though I'm a manager now, and I don't want to leave my clients in the cold, for sure, I really don't. What I'm proposing is we get an increase in a one year contract, we go back, and if there's not enough money to do that increase in the second year contract, then it's to say, "ok, well we only have this much money to fund the second year of the contract," and everybody in my office is going to get paycuts and some are going to get layoffs, to do that. I don't envision there will be \$0 left, because we're not asking for a double contract in year one, but I agree there might not be as much money, and I think the answer to that is to say that we don't take any more cases if we can't do it for that price. So, let's, for instance, let's say our office contracts to do 2000 cases in a period of time...what I'm saying is once that money runs out for the 2000 cases, we need more money to continue operating, or those defendants don't have lawyers, and they don't get prosecuted until the money is there. That's what I'm saying.

1:19:19 T. Christ: What I recall from when that happened before, is uh, it's not that they didn't get prosecuted, it's that they sat in jail

*(many moans, declarations of "not true" from the audience...)*

1:19:34 ????: The cases got deferred.

1:19:36 ????: Right. (mumbling)

1:19:41 ????: And then July 1, the new biennium, the money reappeared and we were appointed to all those cases that prosecutioners deferred during that interim 3-4 months.

1:19:56 B. Reinhard: Obviously I may not be the best person to answer from a historical perspective; there certainly are people here who are able answer that.

1:20:01 J. Stevens: So if they had been arrested and had not posted bail, they were just turned loose from jail for months?

1:20:07 ???: Yes, they were given arraignment dates after July 1.

1:20:13 ???: That happened on a bunch of misdemeanors and yeah, I was there...

1:20:18 J. Stevens: Yeah, I can believe misdemeanors but...

1:20:19 ???: Um, lesser felonies also...

1:20:23 ???: Right.

1:20:26 ???: I think if you ask or poll the crowd here, I think there would be great sentiment, better to be paid honestly for 16, 18 months and have a BRAC again. What do people here think?

*(many replies of "Yes" and "absolutely")*

1:20:38 ???: And in 2003 there are a bunch of us who worked for no compensation at all for several months, so...it's not that we don't care about our clients.

1:20:46 ???: I have my, I still have the check I did not cash for \$29.00 for a two-week pay period.

1:20:54 B. Reinhard: and Chris is one of the ones in my office that says that "yes, we should definitely do a shorter contract and take our lumps and do what we can to try to be fairly compensated so we can continue to do excellent work." I hope I answered your question, Commissioner.

1:21:07 T. Christ: You did, and so did a lot of other people.

1:21:09 B. Reinhard: OK.

1:21:10 ???: If I can just provide one specification without expressing any opinion on the plan or sentiment that's being expressed – the key difference between now and 2003 as far as the BRAC plan is concerned, which was to not, uh, process these low-level cases, misdemeanors and lesser felonies, is that uh, public defense, was still at that time, being managed by the Judicial Department and the Chief Justice was the one who directed the courts that we will not process these cases. Um, and it was the, also the, the, technically they had public defense still at that time. So, it, there's no particular guarantee that the courts would, uh, would take that same position that the cases would not be processed.

1:22:05 B. Reinhard: Isn't the Chief Justice an Ex-Officio member of this Commission, though?

1:22:08 T. Christ: Yes, he is.

1:22:11 N. Cozine: But he doesn't have voting rights.

1:22:12 ???: But at that time, um, the Judicial Department was still responsible for, uh, the trial level representation.

1:22:21 ???: The advantage we have this time is a State Court Administrator who understands indigent defense.

1:22:26 B. Reinhard: That's very true.

1:22:28 ???: Well, we thought we had a governor who understood it too.

1:22:31 VC Potter: Brook, I have a question...

1:22:33 B. Reinhard: Yes?

1:22:34 VC Potter: I'm trying to get my head around the ethics issue. Um, I'm not the one qualified to talk about it, but I'm trying to learn about it. Does your board give you direction, after hearing whatever presentation you might make to them about this, any concern about you signing a contract that you would be in violation of some ethical obligations to your clients? When do you not sign?

1:23:07 B. Reinhard: That's an excellent question, and I confess I haven't talked to my attorneys as much about that as I should. Much like in other offices, when we have an individual attorney who says, "I'm swamped and I can't do the work," we give it to a different attorney or a manager takes it; we figure out something short-term. Right now our solution has been that we pay our attorneys a rate that we simply can afford to hire more attorneys at that lower pay and I'm not thinking that's sustainable anymore, especially compared to what other sectors are making. So, (sigh), I don't know if it's this contract that I say that or a future one, John, I really don't. But, we're certainly getting to that point, and I guess that's kind of the frustrating thing when I put in a request for proposal, I analyze all the case load of all my attorneys and said, this is what it would take to make sure that we have no more than 150 felonies or 400 misdemeanors or a mix, depending on what people are doing, and my conclusion in that, is that we're going to need to hire about seven more attorneys; I don't have my RFP right in front of me; just to be able to do case load. So to get back a number that says, "no you have to do with what you have," is extremely demoralizing. As a manager, I'm just waiting and seeing if my attorneys collectively rebel, and if that happens, we take it to the bar, and see what we can do, and I mean, maybe the answer is this has to be some sort of lawsuit, and his has to be something that goes that direction, and I don't want it to go that direction. But,

you're completely right that at some level, enough is enough, and I don't know where that is.

- 1:24:37 L. Hellis: I have a question for the board...do you ever see our proposals? Do you see what we submit?
- 1:24:46 N. Cozine: I just give an overlay.
- 1:24:48 L. Hellis: So you don't have a procedure – it's a procedural question.
- 1:24:51 N. Cozine: Brook, are you done?
- 1:24:52 B. Reinhard: I'm done.
- 1:24:53 M. DeMuniz: I've got a quick question for Brook...
- 1:24:54 B. Reinhard: Yes?
- 1:24:56 M. DeMuniz: Uh, for a new attorney that you hire, how many cases per, like, in a given month, how many active, open cases do you think that person would have?
- 1:25:05 B. Reinhard: For a new attorney, once we've put a couple months of training into them, and they're up to a decent amount of speed, we give them 25-30 cases a month. And, how many cases they carry depends on how quickly they resolve those. But, in Lane County, it's a very quick turnaround, so I would say most of my attorneys on average have about 15-25 in-custody cases and another 40-60 out-of-custody. Is that about right ???.
- 1:25:32 ???: Pretty close.
- 1:25:33 B. Reinhard: Ok, Bob, so that's kind of what we do. In Douglas County, where I was previously, the, it would take six months or a year to go to trial, and at one point, I counted, and I had 139 active, open cases and most were felonies, and a fair amount were Measure 11. So, it just really depends on the county and how quick the turnover is.
- 1:25:57 M. DeMuniz: I don't understand how, we were asking Mr. Crabtree, I mean, I don't know how you can ethically represent that many people right now. I'm, uh...I mean, I have my own small private practice, and I don't...I couldn't handle 15 in-custody's at one time period, whether I had any other...I mean, how...is there a concern that you guys can't do that as it is right now, let alone...
- 1:26:25 B. Reinhard: Yes, and it's an ongoing concern, and it's a concern of ok, what do we triage to make this happen? It's hoping that you're trial for next week won't go so you have time to see six people in custody that day, and there is a constant conflict between whether you want to go to trial in the best interest of your client, and whether your client, thank god, at the last minute, he decided to settle so I can see my other

clients. So yes, it is definitely a constant struggle, and we deal with it the best we can, case by case. Um, I think my ratio if I were to think about it in terms of this is I have 20 lawyers, roughly, and one is part time, and with the contracts we've been asked, would work out to something like, oh, I don't know, 300, 250-300 per lawyer, and that's a wide range of stuff including murder cases. So...yeah.

- 1:27:24 T. Christ: I'm sorry, I have one more follow up question to this scenario where we spend all the money in the first year and it runs out...
- 1:27:30 B. Reinhard: I didn't mean spend all the money, sir, I never meant to say that, I'm sorry...but, go ahead.
- 1:27:33 T. Christ: Pay more...
- 1:27:34 B. Reinhard: Yes...
- 1:27:35 T. Christ: It runs out. The legislature doesn't replenish it...
- 1:27:37 B. Reinhard: Yes...
- 1:27:38 T. Christ: Someone's charged with a crime, they're indigent, I understand...I thought from the audience, that they wouldn't be prosecuted...
- 1:27:46 B. Reinhard: Right...
- 1:27:47 T. Christ: Ok, but don't they want to be prosecuted quickly?
- 1:27:50 B. Reinhard: Yes.
- 1:27:51 T. Christ: They don't want it deferred...
- 1:27:53 B. Reinhard: Right...
- 1:27:54 T. Christ: So...that's to their disadvantage.
- 1:27:58 B. Reinhard: It's to their disadvantage for sure, and there are many clients, who all they want to do is have a resolution to their case and go on with their life, that is certainly true, and to the extent of what I'm asking for, is detrimental to that client, that's true, but long term, it's going to benefit clients by having more competent lawyers who are experience, who don't leave right away, so they can do a great job of representing.
- 1:28:24 J. Stevens: But you don't have a problem with the notion that you are going to in effect, sacrifice this guy, so that guy, five years from now, won't have to go through this?
- 1:28:32 B. Reinhard: I do that right now with the funding you all give me...on so many cases. It's client vs. client with the amount that we are funded, absolutely...

1:28:49 T. Christ: Thank you.

1:28:50 B. Reinhard: You're welcome.

1:28:56 N. Cozine: So we do have...

1:28:57 ????: Nancy, may I, real quickly?

1:28:59 N. Cozine: I could answer some of the questions and give ???

1:29:02 J. Morris: So once again, I hadn't planned on saying anything, I'm Jack Morris from Central Oregon, but I kind of need to. I can see things a little bit differently, I think. Um, the Commission has always had our best interest at heart; I know OPDS has. When Billy was my analyst, Billy used to say, when we talked about a contract, you know, "Jack, my job isn't to defund indigent defense, it's to fund it." The basic problem is there simply isn't enough money and I don't think we should (clears throat), as a result of that, sort of eat our own young. I also don't think we should play this game where we get caught up and talk about how, what type of, um, how we organize the contracts. I don't care if it's per case, or if it's hourly, or whatever. It doesn't make any difference if you still have the same amount of money. The problem that we have, is that they just don't want to pay us because of what we do, and that's the way it is in every single state. I think we've participated in a very well-intentioned experiment the last few years, and that experiment is, if we lobby the legislature, if we try to improve the work we do, if we try to take care of kids and dependency cases, I think the feeling has been for the last ??? that we're gonna be rewarded. Well, that's been successful in the sense that we now have a lot more friends in the legislature and in the Governor's office, but that's where the success ends. It didn't get us any more money. It didn't make any difference. And so, while I think everybody in this room works hard for us, Nancy, and all of her staff, it hasn't work. And the only thing that's worked was the BRAC reductions back in '93. I was here for that too, and um, it's too bad that we've lost some of that institutional memory, but that paid off for us. And, as far as, uh, I understand your question, it's a good one, ya know, do the clients want to have their cases resolved? You know, my experience has been with my clients, if their case doesn't get prosecuted for a few years, they're just happy as clams, so I think, in theory that's a good idea, but in practice it's not. The BRAC reduction worked, and I think that's, that's what's gonna have to happen again. I think OPDS and the Commission is just going to have to say to the legislature, "you know what, this is how much money we need for two years, or a year, or whatever..." and when they give us 75%, the answer is ok, we can do it for 18 months for that cost. But, um, I think this Commission tries real hard; I know that OPDS does, um...there's just not enough money and that's gotta change. I'm a simple guy and I see things in a simple way.

1:31:45 ????: ???, I'm the public defender for Douglas County, just a few points that Brook made about cases, at least in Douglas County – what has happened in my now, almost 28

years, is cases are slower. It used to be I could get a case on day 1 and I would have it in trial in six months from start to finish. Now, I rarely, on an out of custody case, get to trial in less than a year, and if my case load increases, the way we handle that higher volume in cases, is we just won't do it farther out. Sorry, judge, we're not gonna touch that trial until June now. And so it slows down...our jail population is sorta fixed – we can't fit any more people, so that never really changes, so the out-of-custody's are just getting slower and slower as it goes by. I'm in the same situation as the rest; I'm losing my Measure 11 attorneys, and so I'm getting new attorneys that are inexperienced. They're slow, and it takes to learn things that we already now, and it frustrates the judges, frustrates all the players. That you've heard. What I wanted to address though, is I encourage the board to reject the contracts. Um, I met with the legislature, I met with um, my representative, I went to the um, testify in front of ways and means. Reality is, my legislator is not going to get any votes when he goes up for re-election, campaigning that he got more money for criminal defense. We, by rejecting the contracts, whether it be, ok, come back with a one year, or an 18 month or something, we have to have some type of crisis. We need to give him a position, when he goes up for re-election, that he can say, "hey, I saved the court system. It was gonna shut down, but I stepped up and found the money and kept the courts from shutting down, I kept the rapists from being released, because now they've got attorneys..." You've got to give them something they can use, and us just saying "I need more money," they are sympathetic, they feel sorry for us, that isn't gonna get us the votes. So sadly, I think creating the crisis, um, will give me, will give Nancy Cozine some oomph in the legislature for them to fix the problem to some degree.

1:33:56 J. Morris: When everything's said and done, the only card we have is they can't prosecute people without us. That's it, that's all we've got. Thanks.

*(clapping)*

1:34:22 C. Ramfjord: Alright, Nancy, did you want to make comments on the...

1:34:24 N. Cozine: I did just want to make a few comments, particularly because we have commission members that are newer, and so some of this process is new, indeed. I think this is the first time we've had requests from contractors to present to the Commission between the August and October meeting, and so this is a little unusual. Um, I, I do want to be clear though on a few things, because I just, I want the record to be accurate, um...

In terms of um, playing contractors against each other, I think that's something we've been really clear in our office that we do not do. It is a confidential process; people submit proposals, some people don't want others to know that they've submitted a proposal. We adopted, with the commission's support, a regionalized rate structure. There are differences between contracts, people negotiate differently, these are independent contracts. We can't treat them similarly, or excuse me, we can't treat everything the same as if they were a state agency. We have to look at

the entity, what it's providing, and what we can provide to them. Uh, I think there was a reference to um, concerns about anti-trust...that did come up historically, and I think, you know, the people who have been on the Commission have heard these discussions, um, and Paul could provide a little bit more information about that. I think that was a historical concern that initially arose back in the, maybe late '90s?

1:35:48 P. Levy: Long ago...and it has not been spoken of, or expressed as a concern in years...

1:35:56 N. Cozine: Um, and then, I also just wanted to talk a little bit about, you know...you've heard from contractors; there have been some requests made about directions that this Commission ought to give to me and to this agency. Um, and to the extent that this Commission wanted to entertain those types of considerations, it is a discussion that needs to happen on the public record. It is something that would need to be decided on the public record. Um, certainly, with regard to individual contract proposals, that's an Executive Session matter, not a public record matter, because these still are proposals that are confidential in nature. Uh, and I certainly do not want to sound defensive in the least, but I hope that everyone in this room understands how hard that everyone in this office works to try and get funding, and um, I am leaving this organization, not because, um, not because I am done with the fight; I think there's a lot of really good work to do across the Judicial Branch. Um, the Judicial Branch is chronically underfunded, if we look at judicial salaries, we have a really similar problem. Um, the contracting model makes it very difficult. There is almost no connection between the current service level funding amount that's created through the formula that was initially constructed many years ago, and the contracting needs and um, I certainly think that this office was very careful not to declare victory. In fact, I think that my messages, um, were celebratory only in the fact that when the Governor's budget came out, and the co-chair's budget came out, we were actually significantly below current service level, and we had to fight very hard just to get to current service levels that we didn't actually have to give rate cuts. Um, and in my messaging out, I was clear, I think, um, that what it meant was that there would be, and I can pull up the email, I think my words were that we would be able to continue consistent...continue current rates and that we would have very limited ability to address the – only the highest needs. And, it's incredibly unfortunate, it was a very difficult budget cycle as this Commission knows, and I, I certainly hope that everyone in this room understands that it is by no means a reflection of any devaluing of the work on the part of this office. I'm leaving it, but I can tell you that everyone in this office is incredibly dedicated to trying to, um, make sure that the contracting function remains healthy. Uh, and I say that in spite of the fact that I understand you've told us it is not healthy. Um, I will also just put a bug in everyone's year, that in other state agencies, there is a legislative director. Now that there are annual sessions, there is not a state agency, a large state agency, that does not have at least one legislative liaison. Most, like the Department of Justice, during session, have three. They have one who works all year long, dedicated solely to communication with the legislature, and building support for their priorities in the coming session. As a departing ED, I would recommend that this organization consider the addition of that role. I think it's very

difficult to keep pace with the Executive Branch efforts without that piece. Uh, I think we are fighting an uphill battle. I don't think that Mr. Morris is incorrect in saying that, you know, public defense is going to be an uphill battle always. Um, so. In October, we've talked about, we have David **Carroll** coming. He is a national expert on public defense structures, public defense funding. I think he can provide information that could be helpful to this Commission; that's why we've asked him here. We've talked about – we're in the queue for a caseload study, trying to get very concrete, accurate numbers on what an appropriate caseload would be for an Oregon lawyer so we don't have to rely on old outdated national standards. Uh, and this office is trying to dedicate resources to make sure that happens. And so, you know, my, it's not yet time for me to give a parting wish; we'll have a December meeting, but I, I feel incredibly strongly that um, one of the key elements to future success is making sure that we all band together from a public defense standpoint. That appellate and trial appreciates each other's strengths and understand the nuances between the funding structures. They are very different funding structures. Um, and then I would also further end with this office, and OCDLA, have consistently encouraged contractors to engage with legislators to help build understanding and support for public defense and I see that as continuing to be a critical step. Um, and all of this I say without detr..I don't say this in an attempt to detract from what you're being requested to do, simply, um, because I think it's important to the conversation. So. Thank you.

1:41:34 C. Ramfjord: Thank you. Um, I want to thank everybody who has presented today. Um, the information and the testimony you've given is incredibly compelling. I do want you all to know, you know, that many of the Commission members have actually sat in the legislative sessions, watching the presentations that are given to try to get more funding. We participate in those efforts, and support them very strongly. And, we support the mission that all of you are attempting to accomplish, and um, you know, we will talk further about this, but um, as a preliminary matter, I just want to make that clear to all of you. So. Other comments or questions at the moment now? We're getting close to the time that it would be good to take a break as well, but...um, why don't we take a break, and then we'll talk further. Thank you.

*(break)*

1:43:04 C. Ramfjord: Alright, why don't we get started again everybody, thank you. Um, before we move on, I do feel like we heard um, a lot this morning, and I think it would be appropriate to, to let, I'm not sure we're in a position to make decisions on things at this point in time, but I do think it's appropriate to let other people, Commission members comment, on issues, um, as they see appropriate at this point in time.

1:43:54 E. Welch Me first, huh? Um, I think this moment in time has been a long time coming. It is not new, I think the level of anxiety among contractors is probably at a record level based on the presentations today, but the issues have always been there and um, I

feel that it's time for this Commission to do what we can, and that, that is an attempt to acknowledge that we can't fix it, uh, but that we do what we can to um, address the issues here. Um, the, the uh, fact, without regard to parity, in a way, parity is the easy way of ??? the issue because, you know, fair is fair kind of thing, but the issue that you folks made today, so beautifully, and so fully, and I think we're all beside ourselves about it, is the standard of living that lawyers are having to accept. Uh, and then to look across the courtroom and see somebody who makes, um, twice as much or more than you do, and has more resources available to them than you do, and I'm a former prosecutor, and I know that's always been the case – the State has more resources, it's just the way things work, it's reality. But um, I don't know what we can do, but I don't want to talk about it very much, I want us to do something. I want us to speak up, take a position. I think there are some ideas in this room that are worth considering. What I don't know is how we get there and, the Commission has to... I don't know that it's the office's function to sort of provide us with staff services. In other words, what are our options, what can we do here, um, and uh, obviously we're going to have to make a decision about whether we do anything or what we're going to do, but how do we get to a fairly quick position, first position, first step, whatever, however you want to describe it. The idea that we just say, well we'll just want and see what the guy from Missouri or wherever he's from has to say, and so forth, I mean, that may be helpful, but hopefully it's helpful to, to uh, take what we are maybe begun thinking about to another, to a proper, further step. So, I'm just hoping, I don't know that there's unanimity, I'm sure everybody here's that something, that these issues are real and important and serious, um, and while people can get carried away when they're upset, uh, um, uh, to me, the issue is not whether there's a problem, it's what to do about it, and to do it now, to start. So there.

1:47:21 C. Ramfjord: Others?

1:47:26 VC Potter: Well, I agree that we should talk about the various options that are on the table, and maybe ones that we haven't thought of yet. We've heard of options that suggest extending contracts for just one year, or 18 months. We've heard the option of saying we're gonna fund this number of cases, and when we run out of the cases, when the money runs out, the cases run out, um we can't provide the service anymore. It also begs the question, um, are we going to be forced to do that? That is, um, contractors play a big role in this. If in fact, contractors are not signing contracts because their boards are telling them you can't enter into this contract; it will get us into ethical problems, it will get us into problems managing our cases effectively, we'll be in violation of statute... whatever the reason may be, contractors have some obligation, and their boards have some obligation. If in fact, there are contractors that don't sign contracts, and we're left as the Commission, and OPDS is left looking at the number of cases that are out there that aren't being covered, we have to, in my judgement, come up with some plan. We've got to do something, and maybe that's one of the options that's already been presented. Maybe it's some other option. But, taking one at a time, at least, um, a one year, if I understand the argument on the one year contract, is that the Commission would be

giving direction to OPDS staff to go back and say, um, the legislature gave us this block of money, \$280 million, whatever the number is, of which, x was going to go to the contractors...give me some number...\$250 million is for contractors, and the rest is for something else. The notion is that, well \$125 million, that would be half of that, we know, by the testimony at least, that that's not going to be enough money to make contractors whole. Or we believe that there are contractors that won't sign contracts for just half of that amount of money, so we're going to have to dip in another \$10 million, now it's \$135 million to get us through the first year. After that first year, we're now \$10 million short for the second year, because they've taken money out of that second year, and we have to let the legislature know that that's the case, and we had to agree to that because we couldn't get the services provided at current service level. It wasn't going to work. The risk of course, and it's been pointed out, what happens if the legislature says, "well, too bad?" and once again, our backs are up against the wall, and the contractors' backs are up against the wall, saying, we'll work until we run out of money, and then we stop working. And for those who are running contracts that have multiple employees, big public defenders offices, small public defenders offices, consortiums, that have secretaries and legal assistants, um, that's a tough nut...it's a tough leap to say, "I'm willing to put all that in jeopardy, and the livelihood of all these employees, all these people that depend on me, in the hopes that the legislature will see it our way." On the other hand, I also happen to agree, and I've seen it a few times, in, back in the 2003, certainly is the major example, legislature does respond to crisis. Um, and if we are in a crisis, and it's a demonstrable crisis, the legislature will respond to it, and I think that there will be some grating by a number of legislatures, they're not gonna like it, and it better not be presented as a threat, because that does not work, but if they understand that it is a true crisis born out of, not parity, because that's not working, you're not buying parity, but it's survival, and if, as was suggested, that a legislator in Douglas County can say, "I helped save public defense," that's a nice, that's a different strategy, that's a different approach. Um, so having said all that, I want to hear more, I want to hear if there's more ideas out there. I want to hear if contractors and their boards are really saying, "this is it, this is where we are today."

- 1:52:48 **E. Welch:** Can we ask that question? Ya know, through the grapevine or any other way? Uh, how do we get a read on that?
- 1:53:02 **C. Ramfjord:** Well I would assume, you know, that we will, prior to the next session have some sense of who has signed or who has not signed our contracts, and um, that will be um, an issue. I think that there are certainly some entities that have not signed, and that was the reason why there was a desire to have this testimony here today. Um, so, but I don't know if we can get detailed information on that or not.
- 1:53:34 **E. Welch:** The problem with that is that, if I remember correctly, at least one of the speakers today said they'd signed and then proceeded to advocate for us to do something...

1:53:42 C. Ramfjord: Well, they had signed with the caveat...

1:53:44 E. Welch: Well, ok, maybe there was more than that, I don't know. I think there was...

1:53:48 C. Ramfjord: But, I would echo Commissioner Potter's position, I think also that um, one of the things that was most disturbing to me is really, um, the sense that um, people are already, um, on the line, if not past the line of whether or not they are able to provide ethical representation of their clients and it is part of our mission, our statutory mission to not only ensure that we provide low-cost service, um, but that it is adequate, constitutionally adequate, and um, that is a serious concern, um, for me, it's a serious concern I know for the other commission members. Um, we are in a somewhat constrained position – we don't negotiate the contracts, we um, aren't the ones who advocate to the legislature, although we certainly participate in that process, and as I said earlier, I think we've been doing that effectively. Um, but, you know, this is a situation in which, um, as Commissioner Potter is saying, if people are signing the contracts, it's difficult for us to reject those contracts. Um, I do think that I would also, I guess, add, that um, the legislative input from contractors would be, you know, greatly appreciated, now and in the future. I mean, there's not, it would be difficult for any legislature not to be moved by the kind of testimony that was presented here today. Um, and my own sense, is that I think we should, I agree that we're getting to a point of crisis, I agree that my tenure's more limited than Judge Welch's, but certainly I've never heard the level of anxiety, um, at this level before. Um, and I do think that we need to think further as a Commission about what we can do, I think that um, this is what we heard today, and try to make a decision on this is more than we can do in one session, I think that we should think about it further.

1:55:55 T. Christ: Well, I'm still new to this process, and I'm not a Criminal Defense Lawyer, as you know, but uh, it's come, my impression is that the system is broke. Um, we're not adequately paying the lawyers who provide indigent defense, and of course that's a disservice to the indigents themselves. Um, but I, I'm hopeful that we don't focus entirely on some sort of short-term solution, uh, which would probably be just kind of palliative and not adequate and have to be repeated in a few years' time, and then maybe we take this opportunity to look at, um, systemic changes to how we deliver services to um, indigents and um, we may need an entirely different model, so that in the long term we would have, we just wouldn't be going from crisis to crisis, you know, and trying to put a band-aid on things. Um, you know, adding \$10 million in the first half of the biennium, and then hoping it gets replenished in the second, seems to me to be just really an inadequate solution to something that needs more care and attention. So, I think we should take this opportunity to look, not only about how we get through this cycle, but um, is there a better model of providing services, and um, I'd like to look into that. Um, 'cause I know other states do it in different ways, and maybe the way we're doing it, isn't the right way, and there's, and we may have to change, it seems to me, in order to get to any of the long term goals. For example, parity, which I think is essential between the people who defend the people charged with the crime and those who prosecute them. Um, I

don't see we're ever going to proximate parity, uh, as long as we stick to this model. Um, I mean, that's just a pipe dream, is my initial impression of this thing, so I want to focus on a long-term solution and not just a um, short-term, temporary way to bridge the gap.

1:58:28 M. DeMuniz: You stole my thunder. (laughter) I mean, I have the least experience of anybody here, but one of the first Commission meetings we had, was uh, the Director from Kentucky who came to speak. To me, that's a no-brainer, and maybe we need more study, but I was compelled by what he said in terms of how they run it there. To me it would resolve a lot of issues in terms of advocating for more money. If you have a big agency speaking with one voice and not fractured, uh, entities underneath, essentially, whether it is real or perceived fighting over the same money, um, if there is an Executive Director who is uh, top down, everybody is reporting, and actual uh, you know, public defender, Marion County Public Defender who has got the same office staffing as the DA in that county, it seems to me it's a lot easier to talk about parity than if you have it fractured amongst different firms competing for different contracts, and um, it seems like that model to me, when we heard from the Kentucky Executive Director, made a lot of sense. Um, and it seems like you'd have a lot more power to get the necessary funding and be able to go to the legislature and say, I have, I don't know how many it would be, 300 attorneys who work for me, and these are the different areas we cover. Um, I don't have the institutional knowledge to know why that wasn't done originally, when all of this was set up, and I know some of you on the Commission do, but um, it seems like it is hard to convince the legislature, uh, that more money is needed because perhaps there's not adequate timekeeping to know how much work is done on the cases, uh, if there is more of a top-down model in my opinion, it would uh, make it easier to implement some of those um, especially the time-keeping, of how much effort is going into these cases, because I think legislators would be shocked to know how much time is put in on these cases, and when you're paying someone 500 bucks for a felony or something, um, how inadequate that is.

2:00:47 J. Stevens: I hate to be the voice of gloom over here, but I don't think the legislature really cares, frankly, um, we, we had not, not me, because I'm not a lawyer, (clears throat) but we defend people that they don't care to think about. Uh, we defend people that the public thinks, "put 'em in jail, I don't ever want to hear from them again," and persuading the public and the legislature to change the funding that it's done, particularly in a year, this year was a year when they're facing something like \$185 million hole in their OHP budget, and god knows how much in their PERS unfunded liability, uh, that we deserve more money, is gonna be really, really difficult, and anything that looks like it's a, I think anything that looks like a threat is going to just backfire really badly. And I know that's gloomy, I don't...I...we've been hearing, since I first came on this, before this was even a Commission, we were hearing this and, about parity and money and it's a terrible problem. I don't see an answer, frankly. I'm not sure what the answer is. One answer that we just kind of talked about...one of the things that could happen, and they tried to do it during the BRAC, I think, was to decriminalize a bunch of misdemeanors, so that

you don't have to do so many misdemeanors. That's not a great solution, but it's a part, but it's a part of a solution. And...I don't think we'll come up with a single one "this fits, this works," because for one thing, public defending in Morrow County is a big mile away from public defending in Deschutes County, and so I don't think it's gonna, a one-size-fits-all solution is going to actually fit all, and so, when we can find a piece that we can break off and take care of, I think that's a good way to start. And I, it's the, I think it's the one we've got a realistic chance of achieving, frankly.

2:03:00 C. Ramfjord: Well, thank you everybody. Thank you for the testimony, um, I can assure you that um, people um, took it to heart, and we'll continue thinking about these issues. Um, it's time to press forward, so...

2:03:17 VC Potter: My concern is, Mr. Chair, at the moment, is the deadlines that are sort of looming for people. Uh, we've got contracts that are in process, um some of which are signed, and some of which, we've been told that people have asked for extensions, that those extensions will expire here soon, and certainly will expire before the next Commission meeting. Is that fair? ...by doing nothing, we are then saying to commi – to contractors, those of you who signed, you've got a contract, and if we go forward, and we'll hear about it in October, um, and those who haven't signed, um, we will hear about that in October as well, and we'll be saying, "huh. There's some glaring holes here. How are we gonna fix it now?"

2:04:13 C. Ramfjord: Well, that, I agree with that, what you're saying, I think that, you know, um, a couple of points I guess that's in response, one is um, ...it would still be within our power to reject those contracts because they're not providing adequate service, that's the one avenue that I think is potentially available. Um, and, that rejection could depend in part on how many contracts ended up actually being signed. Um, and whether or not there's a perception that, you know, the current funding levels are even sufficient to actually get um, um, organizations to provide the services that we're looking for. And I'm not saying that because I'm inviting people not to sign, it's obviously up to each provider to make a determination about whether they want to sign or can sign and actually can provide ethically responsible service at that level or can actually retain people to provide that service. That's, that's their individual determination to make. But certainly that would be a factor that would come into play. Um, in, in our decisions, and, I certainly think that all of the information that we've gotten today, is something that will come into play in our decision at that point in time.

2:05:25 T. Christ: Have, have you had that before? Where somebody, that wasn't...no, we don't have a contract to provide services in some specific area...so we haven't dealt with that situation.

2:05:36 VC Potter: I think it's accurate to say that's true. We've not had a situation where um, people have not signed a contract and therefore left a void in a particular area.

2:05:49 T. Christ: And, how would we deal with that? Any ideas?

2:05:56 J. Stevens: We'd punt...

2:05:58 VC Potter: It would scramble, at the very last, as it's deadline gets closer and closer, and the contract ends in January, most of these contracts end in January, their current service levels are gonna wind down, they're gonna start winding down right away. If...the longer we put it off, um, the worst position everybody's in, so let's say a big contractor, and a county, a populous county, doesn't sign, and we have this glaring hole, you can put out an RFP...go try to backfill that service on fairly short notice. Um, I think that would be a disaster. I can't imagine that a major hole could be filled by qualified people that meet our standards that we keep raising. Um, so you'd be in, you'd be in a position that we're in today, except with a shorter time frame, I mean, to be saying, what you were arguing against, we gotta have a stop gap here, we gotta fix this little bend. We've gotta put a band-aid on this process until we can come up with a better process, and you're gonna end up, we, not we...OPDS is gonna end up negotiating with direction from us that says go ahead and negotiate to something that's gonna make it work for a certain amount of time. It's gonna make it work for one year or 18 months, or six months, because I think we have a responsibility as well, not to let the system fall apart.

2:07:30 T. Christ: Some are arguing to let it fall apart, because then the legislature will come in and give us more money...so could you let it fall apart in one county?

2:07:39 J. Stevens: How do you do that?

2:07:40 T. Christ: Well, I mean if a contractor in one county says we don't get one, and we can't figure out a band-aid, and don't they just, uh, suspend prosecutions there in that county? And whoever's the legislator...

2:07:53 J. Stevens: What if the court says "no?" They're not obligated to, to bail us out.

2:08:00 T. Christ: Well how are they gonna find defense counsel?

2:08:02 J. Stevens: I don't know.

2:08:04 T. Christ: Appointment?

2:08:07 VC Potter: Strategically, politically strategically, I wouldn't wanna see that happen, um, on a short-term basis, that's why I think the band-aid's important. You have to negotiate at least a one year extension...then everybody's on notice that we've had to spend this money, we know we're gonna be short. Legislature, we know we're gonna be short. Courts, we know we're gonna be short. Prosecution, we know we're gonna be short. But we are out of money on April 19<sup>th</sup> of 2019 if we don't get any more

money, but meanwhile, we've kept the system up by spending more money than we thought we were gonna have to spend in that first year.

- 2:08:50 E. Welch: This...the...I'm thinking back to something that uh, Commissioner Christ said – um – there's money involved here, and there's structure. And, I don't think there's a lot of connection between the two. In other words, there's a, you need dollars to run a system. The structure come...can come along, but if you don't have enough money to pay people a reasonable sum so that they can properly represent and ethically represent their clients, etc., etc., etc., not to repeat all that, again, uh, you're not doing it. It doesn't make a difference what structure you have, that's a detail. An important...it's money. That's the issue. And having been involved in some other efforts in the legislature this last session, it was horrid. Horrid. And, uh, Laura Hellis raised some interesting examples of what does get funded, and what doesn't get funded, and we're not gonna change that. It's money.
- 2:10:16 VC Potter: So, I don't have a clear, clean answer, um, and maybe, maybe in Executive Session we're gonna hear more detail about individual contracts...but I would be concerned not doing anything at this meeting.
- 2:10:24 E. Welch: Mmmhmm.
- 2:10:25 VC Potter: I think we, we have to give some direction at some point to OPDS staff to do something. I mean it's either gonna be renegotiate, um, negotiate broader with now a different set of parameters...we're giving you staff permission not just to look at this pile of money as a two-year entity, but to look at it as a one-year block that we know we're gonna have to back fill in the second year. That is fraught with risk.
- 2:11:04 N. Cozine: Chair – if I might suggest – I mean I do think, you know, the Executive Session is for the purpose of discussing individual proposals that are not subject to disclosure...it may be helpful to have some of those conversations, and then come back into public session. Um, so I just want to throw that out there as an option picking up on what Vice Chair Potter suggested. The thing is, we are still in the middle of negotiations. I mean I need to see what the reality is...we're still negotiating contracts, and, it makes it difficult, um...
- 2:11:51 VC Potter: You're negotiating contracts based on the principle of here is this block of money for two years...is that right? I mean, when you're negotiating a contract, and talking to their...they're submitting to you a two year proposal, and you're saying, "yes, I'll listen to your proposal and here's the total amount of money that was allocated in the legislature, and this is how we're parsing it out..."
- 2:12:16 N. Cozine: I would say there's more nuance to it than that, but, um, but generally speaking yes.
- 2:12:22 VC Potter: It's a crude...

- 2:12:24 N. Cozine: Right, I mean...
- 2:12:25 VC Potter: But, but if, what, does it make a difference to you if a Commission says, um, however nuanced it was...that the negotiation was, we want to add another potential layer to it. We wanna give you some more options to consider.
- 2:12:41 N. Cozine: So, I think that um, every county is different, and so, a blanket direction is, at some point may be helpful, but I think we have to have more granular conversations regarding specific proposals. Again, not subject yet to public disclosure. To help the commission understand where the pressure points are, because they're just not the same across the state. Because, you know, you wouldn't want to issue a blanket order to this agency that turns it didn't fit all the needs across the state...um, if, if the Commission were inclined to do such a thing. I understand that there is still discussion happening about whether that's appropriate or not, but, um...
- 2:13:36 VC Potter: Well I guess I would, I would then suggest that we go into Executive Session and get the information about contracts and we come back, to a public session, and um, discuss it a bit more in public session. And maybe we come to some resolution today, and maybe we don't, but, I know these folks, they will go away for a little while, and we tend to come back, and everybody's gone – they might want to come back.
- 2:14:06 N. Cozine: And if that's the structure we may want to do the OPDS monthly report while we're still in public session, because I know Commissioner Christ, I mean, uh, you...
- 2:14:18 P. Levy: There's one element to that uh, staff update that I think is pertinent to your discussion that I would provide that I, I think would be helpful before the Executive Session...
- 2:14:33 C. Ramfjord: Alright, well, why don't we go ahead with that?

**Agenda Item No. 6 OPDS Monthly Report**

- 2:14:37 P. Levy: ...and this is, this is, the staff update, and really all I wanted to tell you is that after the last meeting, where you heard much of what you're hearing today, but not as much of it, um, largely, at the instigation of Amy Miller, uh, the Generals, as we call ourselves; myself, Amy Miller, and Eric Dietrick, have begun a project to present to the commission, uh, exactly what Commissioner Christ is wanting and some others alluded to, which is, uh, really, what are the, what are the systemic alternatives to what we're doing now? And it will be a document that'll appoint discussion which sets out some of the history of how we ended up where we are today, and spoiler alert on that: we are operating today, very little differently, from where we began as a Commission and agency, and very little from where the Judicial Department took over public defense, uh, now decades ago. And the system

was designed, and was responsive to, the wish that it be built and operated on the cheap. And, that's where we are, and that's where we are today. And so, our um, our memo and, and the framework for the discussion will be to show you how we've ended up where we have today, and to present to you, without advocating for any of them, the options, uh, for delivering public defense, uh, services in Oregon. Uh, and, and then, the Commission will direct us how to proceed from there. That's, that's one thing I wanted to say.

The other thing is I just wanted to emphasize, uh, for the folks here, and the Commission as well, David Carroll will be talking at the Public Defense uh management seminar to the group, and then also to the Commission, and he, is an expert, not only on evaluating and making recommendations for reform of public defense services, but also in navigating to achieve those reforms. Sean McCrae sent out a link to an article from this week in Politico that featured his work in red states, uh, where, uh, some significant, um reforms have been achieved, and the article is entitled, "How Conservatives Learn to Love Free Lawyers for the **Core**," and I don't think it's true any longer that, that legislators hate us and hate the work we do. Um, I, I think increasingly, they see prosecution and the prison industrial complex as a failed government program, and that we are the bulwark against, uh, that system. And he has worked with that concept with these legislators – legislatures to achieve some significant changes. So I just wanted to have another plug for his appearance both at conference and to the Commission.

2:18:08 N. Cozine: Will you say the ABA caseload update, too?

2:18:09 P. Levy: Oh, yeah, and um, as you know, we've committed ourselves to establishing, uh, Oregon-specific defensible, uh, empirically-based caseload standards, so that we no longer have to rely on what are mislabeled the old ABA standards, uh, which have been alluded to – the 150 felonies, 400 misdemeanors – um, it, you've heard about that a number of times, including from Steve Hamlin, who is largely leading the effort of the ABA to do these caseload studies in individual states. Uh, we communicated with him earlier this week, and uh, the ABA has put in a funding proposal to do another round of these studies, and Oregon is included now in their plan for studies. Uh, we were, we were told and we are in fact now in the queue, they're waiting to get funding before they know how they'll be able to proceed, but, um, what we – it – what we want, and this could be part of a significant scene change in public defense in Oregon, is to have caseload standards that are relevant and enforceable, uh...if we get those, really the case per case model of funding of public defense isn't going to be viable. People will have, should have far fewer cases than they have now, and to pay on that per-case basis, with that kind of system, it just...it doesn't work. There has to be a better way to do it.

2:20:03 C. Ramfjord: Thank you.

2:20:05 N. Cozine: Uh, one other quick update – Amy Miller would give this update if she were here, but um, I just want to let the Commission know that the uh, Parent Child

Representation Program is still in the running for a potential national study. Um, the concern expressed by the, um, governing agency was that we may not have enough counties involved at this point in time for it to be large enough to evaluate, but they are still considering it and uh, hopefully we will know before the end of the year what comes of that.

And just as background, I wanted to remind people that part of how we got the PCRCP was in response to contractor requests for a workload model – the PCRCP is a workload model, is our pilot, it's been successful, and so as we continue to see successes in those counties, it does build additional support for that type of structure.

Um, a very quick and fun update is that uh, the Office of Public Defense Services had a Hood to Coast team this year that was put together by Shannon Flowers and it was a really great experience for our office and uh, we also had trial level providers participate. It was really quite wonderful. So, there's one note of cheer in this otherwise very somber meeting. Um, and Ernie and Shannon – I don't know if you want to give a quick appellate update?

2:21:38 S. Storey:

Um, so, on the 18<sup>th</sup> we had oral argument and the Supreme Court and the Department of Human Services v SJM, and the issue in that case was whether the permanency statute contains a presumption of adoption is in every child's best interest. The Department has established that the child can safely return home. Uh, Valerie Colas argued that case, and I think, by, as a respondent, and she did a wonderful job, we are very proud of her. Um, we're preparing for argument in the Supreme Court in AB, which is Sarah Peterson's case, um, the issue is whether a juvenile court to order terminating ??? renders presumptively moot; parents appeal from original jurisdictional judgement. Um, and we have Supreme Court has allowed us to review another case which is Department of Human Services v TJDJ, um, Shannon Flowers will be litigating an issue. In that case, it's whether the court's ruling and a review judgement that the department's reunification efforts have been active; adversely affects the parent of award for purposes of ORS 4198 205 1D which is the statute that talks about appealability ... juvenile cases. Um, other than that, I've been working with uh, General Counsel, Paul and Amy, to formulate policies and procedures to facilitate trial-level investigation and um, appointment of counsel for parents to be litigating in effective assistance of counsel claims in the trial court in the first instance, um, in a court, The Supreme Court's instruction to this office is to do that in TL. Uh, we have the Dependency Bar Book which everyone in my unit has worked on and I was on the editorial board – is off to the publishers, as of I think, yesterday – um, the delinquency bar books are undergoing a major revision; I'll be on the editorial board for that revision will beginning in October. Um, and finally, we are preparing for the juvenile training academy, I'll be presenting an appellate update with ??? from the Attorney General's office and Shannon Flowers will be presenting as well.

2:23:55 C. Ramfjord: Great, thank you.

2:23:56 E. Lannet: Mr. Ramfjord, members of the Commission, I'm Ernie Lannet. Uh, most of my update can wait until next month. I'll just note that we do have a new attorney joining us, filling that vacancy that we held open. Uh, that is at the beginning of November, Mark Kimbrall, and um, right now we do have a vacant Legal Assistant position we're filling, so we're having some change over in staff, but everything else is going fine.

2:24:22 C. Ramfjord: Great, thank you very much.

2:24:31 N. Cozine: Alright, so the other – uh, the other matter of business is the recruitment for the Executive Director position. Uh, we have, uh, a template ready, based on uh, the qualifications and desired attributes that were included in 2011, and my proposal is that I work with the Chair to finalize that, and determine what supplemental materials need to be submitted. Uh, I think as long as that's ok with the Commission, the uh, other things we ought to discuss are whether or not you would like this to be a national recruitment, which I would suggest that it ought to be, and that we talk a little bit about timing, and I provided to the Chair, a proposed, uh, set of dates for the timing. It would require the Commission to have a November meeting, uh, which I recognize is not, not on the books right now. We'd need to find a date that could work for people. And I think the other thing that is important to touch on is the posting duration. This time schedule contemplates a five-week period of time for the position to be posted.

And, I'd feel a little remiss in not just saying on the public record, um, what an honor it has been to have this position and how grateful I am to all of you for letting me hold this position for the last six years, and how grateful I am too, to our contractors and our staff here at OPDS. Um, public defense is not the easiest career path. I have been in and around public defense for the majority of my career, both as a trial level public defender and with this office, and it takes an extraordinary dedication to stick with it for an entire career, and there are people who have done that, and you've heard from many of them. So, thank you to all of you, and thank you to everyone here for sticking with it, and with that I would ask for your input on next steps.

2:26:46 C. Ramfjord: Well, thank you, and we'll thank you further at a future date, but um, be assured that your service has been deeply appreciated, um, by this Commission. In terms of the specific issues, um, I wanted to let the other Commission members... I have reviewed some of the materials that were put together; I think they were quite thoughtfully done at the time of the last search, um, and I think that um, you know, I agree with um Nancy that I think that working with her to try to finalize those materials would be appropriate. I think that, um, that shouldn't be that difficult. I also feel like one of the most important jobs that this Commission does is to appoint the Executive Director, and I think that um, we should, as we have in the past, make that a national search. I would advocate in favor of that, um, and um, to my mind, the five week or so opening is typical of positions like this, so I would hope that that would be sufficient. It is something that we could revisit if we didn't get the

number of applicants that we want; that would require obviously, a change in how we move forward. Um, but, assuming, um, that we did, I think this schedule is a good one, um, and um, assuming that we get a meeting together in November, I think it would be appropriate to try to make this transition as smooth as possible without having to have somebody serve in an interim capacity while we're finalizing the process. Go ahead, Janet...

2:28:32 J. Stevens: Well, I wanted to ask John a question – do you remember – did we have someone pre-screen the applications when we hired Nancy?

2:28:42 VC Potter: On...no...I don't think on Nancy's, but when we were hiring Peter – yes.

2:28:46 J. Stevens: Peter, we did...did you find that helpful? I can't remember what I thought of that.

2:28:51 VC Potter: I found it helpful – it takes a fair amount of time...

2:28:55 J. Stevens: That's why we had someone do it...

2:28:57 N. Cozine: And if I might on that – I should have mentioned – Wendy Heckman is standing right outside our door here, but she is our Human Resources Manager, and I think now that OPDS has Human Resources, it would be appropriate...the way that uh, public postings typically happen now is through a system called Neogov; everything is submitted electronically, and Wendy could manage that recruitment, and I think it would take a lot of stress off of um, the Commission, really. The Neogov system features pre-screening functions that would also be really useful, so um, my suggestion, really, is that the Chair work with myself and with Wendy to complete the process. And certainly any qualified candidate could be reviewed by the Commission and I would be happy to refer to the Chair on designating what that means.

2:29:49 J. Stevens: 'Cause I think without that, doing this in the next two and a half months is just not doable.

2:29:55 C. Ramfjord: ...and I guess I should apologize too; I had assumed that there would be some pre-screening function in this, because I can't imagine the Commission is going to review each and every application, much less interview that many candidates. So, um, the notion would be that there would be some, uh, pre-screening and then identification of um a relatively limited number of candidates for further interview discussion.

2:30:22 J. Stevens: OK.

2:30:25 VC Potter: Um, it strikes me, I know you've sent out a notice to the Commission, as to your new position, and you sent out to contractors, but I don't think it's on the public record – it might be good just to announce where you're going and when you're gonna go...

2:30:40 J. Stevens: Well, you sent at least one member of the press all that information...

2:30:47 N. Cozine: Chair Ramfjord, Vice Chair Potter, members of the Commission, I have accepted an appointment as State Court Administrator with the Oregon Judicial Department effective January 1, 2018. And I believe the Chief Justice issued a press release today. There may be other members of the press who have received the information, and they may or may not choose to do anything with it...

*(laughter)*

2:31:11 C. Ramfjord: Further comments on um, the proposal in terms of how to develop the position posting and do the pre-screening and set things up for the schedule? If not, I will work with Nancy and um others to make it happen.

Ok, thank you.

2:31:36 N. Cozine: So, I will send out a doodle poll to try and identify some November dates that could work.

2:31:43 C. Ramfjord: ...the easy month to schedule things – November...

2:31:45 N. Cozine: I know, I am so sorry, and if we need, and I will also work with the Chair, I should have said this too – I will be putting in place some interim provisions to ensure that we have structural pieces in place, in the event that we do have to live in an interim structure for a period of time. I'll have that all solidified so that we don't lose any threads along the way, so I have some ideas, uh, and I am committed to putting those in place very quickly, just to ensure that we really have transfer of knowledge.

2:32:04 C. Ramfjord: And we'll blame our ex-officio Chief Justice member for the timing...

*(laughter)*

...alright.

*(shuffling, mumbling...)*

The Public Defense Services Commission will now meet in executive session for the purpose of considering information or records that are exempt by law from public inspection under ORS 192.502(4). This executive session is being held pursuant to ORS 192.660(2)(f) which permits the Commission to meet in executive session for the purposes just stated. In this particular meeting, PDSC will also meet in executive session for the purpose of receiving information from OPDS General Counsel pursuant to ORS 192.660 (2)(h). For purposes of the initial part of the discussion, not the legal analysis, representatives of the news media and designated staff shall be allowed to attend the executive session. All

other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session except to state the general subject of this session as previously announced. No decisions may be made in executive session. At the end of executive session we will return to open session and welcome the public, or the audience back into the room.

All right – with that, um, we'd ask those um, member of the audience to depart for the time being.

**(Executive Session)**

**Audio File # 2**

The meeting was called back to order at 1:55 p.m.

00:01:11 C. Ramfjord: Alright – we are back on public record. Um, I wanted to say a couple of things. Again, thank you everybody for coming here and providing information. This raises very difficult issues for us as a Commission, I think, um, you know, the...we are aware um, I mean this is relatively late in the game here, we are aware of course that some people have already signed contracts, other people we understand have not signed contracts. We also know, based on prior meetings, uh, of the Commission, that the situations in different counties are significantly different. There is a much wider pay differential in some counties than there is in other counties. Um, so, those are factors that I think are important to keep in mind. Um, nonetheless, we know that some people have not reached agreement, and we would encourage them to continue to try to negotiate to a point where you can actually reach an agreement. And to that end, we would direct the Executive Director to work with LFO in an attempt to reach a reasonable accommodation in situations where there may be some difference between the funding that we were given and the funding necessary to accommodate, um, certain contracts that have been proposed to um, to the Commission, or to the agency. So, to that end, um, you know, we think that um, you know, we would you know, we would specifically direct that that action take place in an effort to ensure that agreements can be reached.

From our perspective, um, we, the notion of uh, simply raising rates across the board and doing one year contracts or renegotiating one year contracts poses enormous amount of risk for both this organization, for providers, and for the clients who, these indigent clients who we're directed to provide representation for. Um, we, we think it is far better to try to reach agreements on two-year contracts, um, and to try to make sure that we are providing representation throughout that time period, to make sure that people aren't having to shut their doors at any given point in time. So with all that said, um, as I indicated, we

would ask that those individuals, or those organizations, that have not reached agreement, um, work to try to do that, um, and, um, to the extent that that ends up causing some differences in certain counties, and with organizations that have already signed contracts, we also direct the Executive Director to try to attempt to make whatever reasonable accommodations can be made to resolve that, recognizing that those situations are going to vary in different counties and in different situations. I would add, obviously, that in any situation like this, you know, we are late in the game, uh, we did give it the best fight we could give it in terms of getting money from the legislature, and this isn't a situation, where I think anyone can expect miracles to be worked. So, um, I would um, you know, negotiate in a realistic manner. Um, with that, any further comments by other Commission members? Any further questions from members of the audience? Yes?

0:05:08 B. Reinhard: One question – it's a little different from what I...do you want me up there Nancy?

0:05:11 N. Cozine: Yeah, thank you.

0:05:14 B. Reinhard: Brook Reinhard again, jacketless this time; my apologies. Um, I was wondering, would it be possible for the Commission to consider on an ongoing basis, about, if we're going to do two year contracts, to at least consider moving up, or talk in the future for this next two year cycle about moving the RFP process up...and maybe you already talked about this...to a point where OPDS is collecting bids from people in a timeframe more like February or March so by the time the legislature is finalizing budget numbers, you know what your contractors are actually needing...

0:05:47 C. Ramfjord: I would be happy to entertain that among other alternatives. I think the discussion today, if it has done nothing else, has underscored the gravity of the situation, and we need to make some sort of systemic changes that are going to help make this less of a recurring problem, and I can ensure you we will be considering those types of changes in the future. The issue here is one that requires immediate response. We recognize that the deadlines for these contracts have passed in some instances, or, you know, even with extensions, are rapidly approaching, and you know, we need to deal with the situation immediately, and then try to figure out how we can address the bigger problems in the longer term.

0:06:38 B. Reinhard: Thank you, I appreciate that, and to your comment earlier, Mr. DeMuniz, I would happily give up the autonomy of a private, non-profit public defenders office for a statewide system that compensates my employees fairly. So, thank you.

*(clapping)*

0:06:54 N. Cozine: May I have one more moment, Chair, uh, I just...there was a question posed by Ms. Hellis that I neglected to answer and had intended to. She asked whether the

Commission ever sees proposals, and typically we receive well over 100 proposals; they vary in length from five to over 100 pages each, and it is really not the Commission's role, and it's not feasible for the Commission to be able to review all of those, and so, while we do discuss them, um, with some specificity, with all of you in Executive Session, I just want to make sure that I put it on the record that the Commission typically does not review individual proposals.

0:07:27 C. Ramfjord: That said, it's also worth noting that we do, um look at financial information relating to specific counties, to specific proposals, to um, to, we do consider issues in terms of proposed adjustments to specific counties to reflect differences in different counties and to divide up the funds in the most appropriate fashion possible...so it's not as if we don't review um, with some care, uh, the recommendations that are made by Commission staff. So...

0:08:04 N. Cozine: Thank you.

0:08:06 C. Ramfjord: Anything further? Well thank you very much then, do I have a motion to adjourn?

**MOTION:** Vice Chair Potter moved to adjourn; Judge Welch seconded the motion; hearing no objection the motion carried: **VOTE: 5-0** (Commissioner Christ left the meeting early)

Thank you very much everyone.

**Meeting Adjourned.**

# Attachment 2

# **Attachment 2**

**Letter from Rob Harris of Harris Law Firm and  
Oregon Defense Attorney Consortium, Hillsboro, Oregon**

# HARRIS LAW FIRM, P.C.

## Attorneys at Law

October 18, 2017

Oregon Public Defense Services Commission  
Office of Public Defense Services  
1175 Court Street NE  
Salem, Oregon 97301

Dear Commissioners:

I received a summary of all the contracts due for approval at your October 27, 2017 meeting. I would like to bring something to your attention.

Sometimes, in order to “check my homework” I apply different metrics to how I do business. I decided to take that approach in reviewing the Indigent Defense Contracts up for approval.

I divided the total contract spent by county, by the county population (population data from Portland State University Population Research Center). I didn't include counties of under 100,000 and I excluded the PSRB contract in Marion County in dollars allocated for that county. Following shows state indigent defense funds allocated per capita by county.

County	Per Capita Spending
Multnomah	\$50.79
Washington	\$29.36
Clackamas	\$32.70
Lane	\$44.78
Marion	\$47.07
Jackson	\$61.91
Deschutes	\$62.14
Linn	\$59.99
Douglas	\$64.24
Yamhill	\$35.60

I wouldn't argue that all counties should be exactly the same, since some have higher needs based on different socio economics, charging decisions, court policies or other factors. And I suspect that OPDS staff has some valid adjustments to make to these numbers since this is a “back of the envelope” analysis. But I was frankly shocked at the discrepancy between counties. That must be further investigated, even if it is slightly off, it's still shocking. If there is more than a 20% difference in county allocations without a rational objective basis, I'd suggest that there is a problem.

### ATTORNEYS

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*Amy N. Velázquez*

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**Hillsboro**

**NE Portland**

I was disappointed that Washington County is still at the bottom of the allocation scale. I'd note that Douglas County receives 218% of what Washington County receives based on this per capita basis. And Deschutes County, which is more like Washington County socio economically, receives 211% of what Washington County receives.

Washington County was historically at the low end of compensation per case. I thought we'd made progress, but I am concerned that the current contracting model may still perpetuate some of the inequities that have existed in the indigent defense system for decades now.

I'm also concerned that if we can't grow the pie – the first choice for all of us – then we need to at least be fair in how it's cut.

I suggest that the Commission form a task force that includes a majority made up of non-indigent defense attorneys, judicial officers, and possibly State elected officials to address disparity in allocation of indigent defense funds. Particularly we should include elected officials from Counties that could stand to lose if the Commission were to allocate this pie more in line with a per capita formula.

Thank you for your consideration.

Very truly yours,

HARRIS LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read "RJH", followed by a horizontal line extending to the right.

Robert J. Harris  
Attorney at Law

RJH:jah

# Attachment 3

Public Defense Contracts Recommended for Approval by the Public Defense Services Commission at its  
October 27, 2017 Meeting

COUNTY	PROPOSED CONTRACTOR	CASE TYPES	VALUE
Baker	Eagle Cap Defenders, Inc.	civil commitment, criminal, juvenile	\$1,300,398
Benton	Benton County Legal Defense Corporation	civil commitment, criminal, juvenile, specialty courts	\$2,411,330
Clackamas	Clackamas Indigent Defense Corporation**	criminal, specialty courts	\$3,514,764
	Independent Defenders, Inc.	civil commitment, juvenile, specialty courts	\$883,780
	Juvenile Advocates of Clackamas, LLC	juvenile	\$2,223,854
Clatsop	Clatsop County Defenders Association	civil commitment, criminal, juvenile, specialty courts	\$1,884,230
	Mary Ann Murk	civil commitment, criminal, juvenile	\$400,808
Columbia	Columbia County Indigent Defense Corporation**	civil commitment, criminal, PCRCP, specialty courts	\$474,716
	Justice Alliance of Columbia County*	civil commitment, criminal, PCRCP, specialty courts	\$2,531,262
Coos	Coos County Indigent Defense Consortium	civil commitment, criminal, juvenile	\$1,627,064
	Southwestern Oregon Public Defender Services	civil commitment, criminal, juvenile, specialty courts	\$3,768,284
Crook/Jefferson	22 <sup>nd</sup> Circuit Defenders, LLC	civil commitment, criminal, juvenile, specialty courts	\$2,669,286
	Madras Indigent Defense Consortium	civil commitment, criminal, juvenile	\$828,312
Curry	Curry County Public Defense LLC	civil commitment, criminal, juvenile	\$1,033,528
Deschutes	Bend Attorney Group	civil commitment, criminal, juvenile, specialty courts	\$3,531,142
	Crabtree & Rahmsdorff Defense Services, Inc.	civil commitment, criminal, juvenile, specialty courts	\$5,708,332
	Kollie Law Group, PC	civil commitment, criminal	\$1,737,334
Douglas	Arneson and Stewart, P.C.	civil commitment, criminal, juvenile	\$1,113,862
	Richard A. Cremer, PC	civil commitment, criminal, juvenile	\$551,320
	Roseburg Defense Consortium	civil commitment, criminal, juvenile	\$1,174,480
	Umpqua Valley Public Defender	civil commitment, criminal, juvenile, specialty courts	\$4,252,124
Grant/Harney	John B. Lamborn, Attorney at Law, PC	civil commitment, criminal, juvenile	\$758,966
	Law Office of Robert S. Raschio, PC	civil commitment, criminal, juvenile	\$758,966
Hood River/Wasco	7 <sup>th</sup> District Consortium	civil commitment, criminal, juvenile	\$1,575,260
	Morris, Starns & Sullivan, PC	civil commitment, criminal, juvenile, specialty courts	\$2,605,616
Jackson	Jackson Juvenile Consortium	juvenile	\$2,863,216
	Los Abogados, LLC	civil commitment, criminal	\$1,921,566
	Rogue Valley Defenders, Inc*	criminal	\$1,847,046
	Southern Oregon Public Defender	criminal, juvenile, specialty courts	\$6,601,810
Josephine	Josephine County Defense Lawyers, Inc	civil commitment, criminal, juvenile	\$2,694,614
	Southern Oregon Public Defender	criminal, specialty courts	\$2,700,482
Klamath/Lake	Klamath Defender Services, Inc	civil commitment, criminal, juvenile, specialty courts	\$6,877,470
Lane	Lane County Defense Consortium	criminal	\$2,106,032
	Lane County Juvenile Lawyers Association	juvenile	\$6,560,460
	Public Defender Services of Lane County Inc	civil commitment, criminal, juvenile, specialty courts	\$7,719,574
Lincoln	Lincoln Defenders & Juvenile Advocates	civil commitment, criminal, juvenile, specialty courts	\$3,276,238
Linn	Linn Defenders Inc	civil commitment, criminal, specialty courts	\$4,159,898
	Linn County Juvenile Defense Corporation	PCRCP	\$3,225,750
Malheur	David R. Carlson	civil commitment, criminal, juvenile	\$396,536
	Douglas J. Rock, PC	civil commitment, criminal, juvenile	\$380,550
	Stoddard & Denison Law, PC	civil commitment, criminal, juvenile, specialty courts	\$1,033,214
	Stunz Fonda Kiyuna & Horton, LLP	civil commitment, criminal, juvenile	\$408,998

<b>Marion</b>	Harris S. Matarazzo	PSRB	\$430,344
	Juvenile Advocacy Consortium	juvenile, specialty courts	\$5,138,494
	Marion County Assoc. of Defenders, Limited	criminal, specialty courts	\$6,460,812
	Public Defender of Marion County	civil commitment, criminal, specialty courts	\$4,121,192
<b>Multnomah</b>	Metropolitan Public Defender Services, Inc.	civil commitment, criminal, juvenile, specialty courts	\$14,986,814
	Multnomah Defenders, Inc.	appeals, criminal, juvenile, specialty courts	\$9,402,670
	Portland Juvenile Defenders, Inc.	juvenile	\$4,027,764
	Sage Legal Center	juvenile	\$850,946
	Portland Defense Consortium	criminal	\$4,968,360
	Troy & Rosenberg PC	juvenile	\$1,079,846
	Youth, Rights & Justice	appeals, juvenile	\$4,841,624
<b>Polk</b>	Polk County Conflicts Consortium, LLC	civil commitment, criminal, juvenile, specialty courts	\$1,219,800
	Vidrio Park & Jarvis, LLC	civil commitment, criminal, juvenile, specialty courts	\$1,514,572
<b>Tillamook</b>	Tillamook County Defense Consortium	civil commitment, criminal, juvenile	\$1,049,944
<b>Umatilla/Morrow</b>	Blue Mountain Defenders	civil commitment, criminal, juvenile	\$1,681,784
	Intermountain Public Defender, Inc.	civil commitment, criminal, juvenile, specialty courts	\$2,993,152
<b>Union/Wallowa</b>	Grande Ronde Defenders LLC	civil commitment, criminal, juvenile, specialty courts	\$1,289,544
<b>Washington</b>	Hillsboro Law Group PC	criminal, juvenile	\$1,192,284
	Karpstein & Verhulst, P.C.	criminal, juvenile	\$1,485,224
	Metropolitan Public Defender Services, Inc.	civil commitment, criminal, juvenile, specialty courts	\$8,418,074
	Oregon Defense Attorney Consortium, Inc.	criminal, juvenile, specialty courts	\$4,460,600
	Ridehalgh & Associates, LLC	criminal, juvenile, specialty courts	\$1,561,288
<b>Yamhill</b>	Justice Alliance Center	criminal, juvenile, PCRCP, specialty courts	\$4,053,346
<b>Statewide</b>	O'Connor Weber LLC	appeals	\$1,191,542
	Oregon Justice Resource Center*	immigration consultation	\$400,000
	OPC Inc	post-conviction & habeas corpus	\$2,530,778
		<b>Total</b>	<b>\$195,443,270</b>

\*New contracts

\*\*one-year contracts

Attachment 3a

Public Defense Contracts (Parent Child Representation Program Case Manager) Recommended  
for Approval by the Public Defense Services Commission at its  
October 27, 2017 Meeting

<b>First</b>	<b>Last</b>	<b>Contract expires</b>	<b>Total (up to)</b>
Debbie	Agee	12.31.2019	\$78,336.00
Bethany	Ball	12.31.2019	\$57,772.80
Dana	Brandon	12.31.2019	\$186,048.00
Stephanie	Gonias	12.31.2019	\$78,336.00
Jillian	Rivas-Davila	12.31.2019	\$125,337.60
Chiho	Sakamoto-Gunton	12.31.2019	\$156,672.00
Micki	Steele-Blair	12.31.2019	\$156,672.00
Nicole	Thomas	12.31.2019	\$156,672.00
Jessie	Wilcox	12.31.2019	\$39,168.00
<b>TOTAL</b>			<b>\$1,035,014.40</b>

# Attachment 4

Public Defense Contracts Recommended for Approval by the Public Defense Services Commission at its  
October 27, 2017 Meeting

LEGAL SERVICES CONTRACTS	RATE	HOURS	VALUE
Andy Simrin, PC	\$100	1,800	\$180,000
Benjamin Kim	\$100	3,680	\$368,000
Bert Dupre, Attorney at Law, LLC*	\$100	3,200	\$320,000
Christopher Edward Burris	\$100	2,400	\$240,000
Christopher M. Clayhold	\$100	3,680	\$368,000
Daniel J. Casey	\$100	3,600	\$360,000
Deborah Burdzik	\$100	3,680	\$368,000
Dianna J. Gentry, LLC	\$100	3,680	\$368,000
Elizabeth JC Baker*	\$100	3,680	\$368,000
Geoffrey J. Gokey	\$100	3,680	\$368,000
Gordon Mallon	\$100	3,680	\$368,000
Jeffrey Erwin Ellis	\$100	3,680	\$417,800**
Katherine O. Berger, PC	\$100	3,680	\$368,000
Kathleen M. Correll	\$100	3,680	\$368,000
Laura Graser	\$100	1,800	\$180,000
Laurie Bender	\$100	3,680	\$368,000
Lynne B. Morgan	\$100	3,680	\$368,000
Mark Sabitt	\$100	2,000	\$200,000
Michael B. Charlton	\$100	3,680	\$368,000
Patrick John Sweeney, PC	\$100	3,680	\$368,000
Richard L. Wolf, P.C.	\$100	3,680	\$369,800**
Russell S. Barnett, III, PC	\$100	3,680	\$368,000
Sara D. Snyder*	\$100	1,840	\$184,000
Steve M. Lindsey*	\$100	3,680	\$368,000
Steven H. Gorham	\$100	3,680	\$368,000
Steven L. Krasik	\$100	3,680	\$368,000
Wm. David Falls	\$100	3,680	\$368,000
W. Keith Goody	\$100	2,700	\$270,000

MITIGATION INVESTIGATION SERVICES CONTRACTS	RATE
Alice D. Ellis Gaut	\$62
Andrea Titus	\$62
Bernard A. Brown*	\$62
Carin Connell	\$62
Christine L. Inglis, Investigation and Mitigation Services, Inc	\$62
Joyce Ann Naffziger	\$62
Julia Burton Demorest	\$62
Keeley McCallum	\$62
Laura Rittall Investigations Inc.	\$62
Mary Goody Mitigation Specialists, LLC	\$62
Meghan Planchon	\$62
Michael S. Maunder*	\$62
Miriam Widman	\$62
Mitigation Services, Inc	\$62
Pacific Mitigation Specialists, LLC	\$62
Pamela Lundberg Rogers	\$62
Rhonda L. Coats	\$62
Rita R. Lapp	\$62
Roger Keith Harris	\$62
Teresa A. McMahill, MSW, Inc	\$62
Tiffany Cunningham*	\$62

\*New contracts      \*\*includes staff and/or expenses for Capital Resource Center

# Attachment 5

## SECTION IX: Pay Practices

The following are state-wide pay practices:

1. **Bilingual Differential.** An employee who, as assigned in writing by the Administrative Authority, uses bilingual skill(s), including American Sign Language, in the performance of assigned duties and who passes the bilingual skill proficiency test(s), shall receive a monthly pay differential equal to an additional step for the duration of the assignment as determined by the Administrative Authority.
2. **Demotion.**
  - a. **Voluntary.**
    - i. When a regular status employee, or limited duration employee, who has been employed by OPDS for one or more calendar years, requests and is granted demotion, the employee's base rate of pay and salary eligibility date shall not be affected unless the employee's base rate of pay is above the maximum rate for the lower salary range. In this instance, the employee's base rate of pay shall be decreased to the maximum rate of the lower salary range, and the salary eligibility date shall be maintained.
    - ii. When a promotional trial service employee requests and is granted demotion, the Appointing Authority shall adjust the employee's base rate of pay to the lower salary range and may:
      - A. Continue the employee's current base rate of pay (provided the employee's base rate of pay is within the lower salary range),
      - B. Reduce the employee's base rate of pay to the step in the lower salary range equaling the employee's base rate of pay prior to promotion, or
      - C. Reduce the employee's base rate of pay to any step in the lower salary range that is between the rates described above.
      - D. The employee's prior salary eligibility date shall be restored and the employee shall receive the annual increase the employee would have otherwise received (if any) but for the promotion.
  - b. **Involuntary.** When an Administrative Authority demotes an employee the Administrative Authority shall adjust the employee's base rate of pay to the lower

salary range and may adjust the employee's base rate of pay to any step within the salary range. The employee's salary eligibility date shall not be affected provided the employee's base rate of pay does not equal the maximum rate of the lower salary range.

- c. Removal from promotional trial service. When the Administrative Authority removes an employee from promotional trial service, the employee's base rate of pay shall be reduced to the step in the salary range prior to the promotion and the employee shall receive the annual increase the employee would have otherwise received (if any) but for the promotion. The employee's prior salary eligibility date shall be restored.

3. General wage adjustment.

- a. When a general increase (cost of living adjustment) is approved by the PDSC and the Executive Director, employees are retained at the same step of the position in the salary range and retain the same salary eligibility date.
- b. The Executive Director and the PDSC may adjust the compensation plans, subject to the availability of resources, as they deem appropriate.
- c. Compensation plans will be updated to include the adjustment.

4. Initial hire.

- a. An employee's base rate of pay (not including differential) shall be at a step within the salary range for the class in which employed. When an employee's salary is above the maximum of the salary range assigned to the classification, the employee's salary is y-rated.
- b. ~~An employee new to OPDS will normally be appointed at the minimum rate for a class~~In compliance with state pay equity law, a pay analysis for the classification shall be conducted to determine appropriate placement within the salary range.
- e. ~~If the applicant brings education or experience to the job that will substantially enhance the employee's immediate contribution, or when unusual or difficult recruitment conditions exist, the Executive Director or Appointing Authority may hire an applicant up to the top step of the salary range for a class.~~

5. Lead differential.

- a. An employee shall receive a one-step lead differential when the Appointing Authority assigns leadwork or team leader duties to an employee for a period of 10 or more consecutive work days.

- b. Leadwork or team leader duties shall include duties where, on a recurring or daily basis, the employee has been assigned the responsibility to perform substantially all of the following functions:
    - i. Training or orienting new employees;
    - ii. Assigning and reassigning tasks to other employees;
    - iii. Giving direction to other employees concerning day-to-day work procedures;
    - iv. Communicating established standards of performance to affected employees;
    - v. Reviewing the work of other employee to assure conformance to established standards; and
    - vi. Providing informal assessment of an employee's performance to the supervisor.
  - c. Lead differential shall not apply to employees whose classification normally include leadwork or team leader duties, or to voluntary training or developmental assignments.
  - d. Payment of lead differential shall be five percent of the employee's base salary.
6. Overtime.
- a. OPDS shall determine the status under FLSA of each of its employees as either exempt or non-exempt from the Act, using the guidelines set forth in FLSA. OPDS shall keep accurate records of the status of its employees under FLSA and any overtime accrued by its non-exempt employees.
  - b. Employees covered by FLSA as non-exempt employees are eligible for overtime compensation.
  - c. An employee who is eligible for overtime compensation shall not work overtime without advance approval by the Executive Director or the Administrative Authority. The Executive Director or the Administrative Authority may require an employee to work overtime if the operations or mission of OPDS necessitate it.
  - d. All overtime worked shall be recorded on an employee's time sheet. Overtime work shall be compensated at the rate of one and one-half (1.5) times the employee's current hourly rate of pay.

- e. OPDS may elect to compensate an employee by cash payment or by compensatory time. A maximum of 240 hours compensatory time may be accrued. An employee who has accrued 240 hours compensatory time must receive cash payment for additional further overtime work.
- f. Compensatory time may be requested by the employee or required by the Executive Director or the Appointing Authority. The use of compensatory time shall be scheduled in advance with the employee's supervisor. The supervisor shall grant an employee's request to use accrued compensatory time unless doing so would unduly disrupt OPDS operations.
- g. An employee shall be allowed to use accrued compensatory time for qualifying family leave purposes. The amount of compensatory time taken shall not be deducted from an employee's family leave entitlements under FMLA and/or OFLA.
- h. An employee who separates employment with OPDS shall be paid for accrued compensatory time at the employee's regular hourly rate at the time of separation.

7. Promotion.

- a. Upon promotion, the employee shall be placed at the next higher a step in the new salary range or receive five percent increase, whichever is greater based on a pay equity, analysis to determine appropriate placement within the range. The employee will receive no less than a full step increase.
- b. ~~A greater increase may be offered at the Executive Director's discretion, due to recruitment and retention issues, exceptional qualifications or other appropriate circumstances.~~
- be. A new salary eligibility date is set for six months from the date of the promotion, unless otherwise outlined by the Administrative Authority or Collective Bargaining Agreement.

8. Reclassification. An employee may request a review of their position classification. The agency may initiate a review of a classification at any time. The agency shall respond to an affected employee no later than 90 days from the date of the request of the employee or the date the agency initiated the review.

- a. The effective date of an approved reclassification normally is the first day of the month following the day the request is approved by the PDSC.
- b. The Executive Director may authorize a later effective date to reflect budgetary actions and reorganizations.

- c. Upon reclassification, an employee shall meet the minimum qualifications of the new classification.
- d. Reclassification to a higher salary range.
  - i. An employee will be provided a salary increase to an established rate of pay (step) within the salary range of the new classification after completion of a pay equity analysis.
  - ii. The current salary eligibility date is retained.
  - iii. If the employee's salary eligibility date is no longer available because the employee was at the maximum rate in the previous classification, the last salary eligibility date in the previous classification will be used.
- e. Reclassification to a lower salary range.
  - i. The employee's salary rate from the previous higher classification is retained when the position is reclassified to a lower classification.
  - ii. If the employee's current salary rate is within the salary range of the new salary range, the employee will be placed at the corresponding step in the new classification.
  - iii. If the new salary range places the employee off-step, the employee's salary rate shall be increased only to the next full step on the salary eligibility date.
  - iv. If the employee's current salary rate is above the maximum rate of the lower classification, the employee's current salary rate is retained and y-rated.
  - v. The current salary eligibility date is retained.
  - vi. If the employee's salary eligibility date is no longer available because the employee was at the maximum rate in the previous classification, the last salary eligibility date in the previous classification will be used.
- 9. Reemployment. Upon reemployment, an employee's base rate of pay shall be determined by the Administrative Authority in accordance with section 4.
- 10. Special Salary Adjustment.
  - a. The Executive Director may at such times he/she deems appropriate and subject to availability of resources, adjust the compensation plan. Adjustment will be made in each step of each salary range and will not result in employee movement

from one step to another. Employees who are y-rated are eligible for these adjustments.

- b. After successful completion of trial service, the Administrative Authority may grant a ~~one-step~~ salary increase within an employee's salary range if the increase would not cause the employee's salary to exceed the maximum rate of the range. The increase shall be effective the day following successful completion of trial service.
  - c. A salary adjustment to any non-temporary employee who has completed six months of non-temporary employment may be granted at the discretion of the Executive Director or the PDSC for exemplary performance or for uniquely compelling circumstances.
    - i. An employee may receive no more than one recognition adjustment in any 12 month period.
    - ii. This does not affect the employee's salary eligibility date.
11. Transfer. When an employee transfers from one position to another position in the same classification or classification having the same salary range, the employee's base rate of pay shall remain the same. The employee's salary eligibility date shall not be affected.
12. Underfill. When OPDS fills a position in a higher classification as an underfill, OPDS shall reclassify the employee when the employee meets the minimum qualifications of the higher classification or as outlined in the employment agreement. The salary eligibility date will be set to annually thereafter.
13. Work-out-of-class.
  - a. Exempt as described below, an employee assigned in writing to perform duties of an existing, higher-level classification for a period of 10 or more consecutively scheduled work days shall be compensated for the performance of such duties. Generally:
    - i. Temporary five percent increase for the period during which the duties are performed; or
    - ii. The difference between the employee's base rate of pay and the first step of the higher classification salary range, whichever is greater.
    - iii. The pay rate shall not exceed the top step of the higher level classification.
  - b. Duties should be assigned for a specific period not to exceed one year, unless extended by the Executive Director or Administrative Authority.

## SECTION X: Recruiting and Hiring

### Policy

- I. OPDS shall ensure that equal employment opportunities are afforded to all applicants and employees as defined by statute<sup>1</sup>.
- II. OPDS's recruitment and hiring process shall be fair, impartial, and designed to ensure that positions are filled by the most qualified job applicants available and by individuals well-suited to perform the work required of the position.
- III. Hiring for vacant positions shall be based on merit as determined by a comparison of a job applicant's qualification with the requirement and duties of the vacant position. All individuals selected to fill a vacant position at OPDS must meet the minimum and special qualification defined for that position.
- IV. OPDS shall establish procedures for the recruitment, screening, selection, and hiring of job applicants and for the transfer and advancement of current OPDS employees in accordance with this policy.
- V. All employees serve a six-month trial service period following the date of hire or promotion during which they are expected to demonstrate, by conduct and actual performance of duties, the qualifications and fitness for the position.
- VI. Recruitment methods.
  - A. Competitive.
    - i. Open competitive recruitment. Any OPDS employee or member of the public may apply for the vacant position.
    - ii. Limited recruitment. Only permanent OPDS employees may apply for a promotional only vacant position.
  - B. Non-competitive.
    - i. Transfer. Any qualified OPDS employee may request a transfer, or be transferred, to a vacant position.
    - ii. Voluntary demotion. Any qualified OPDS employee may request a voluntary demotion to a vacant position.

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<sup>1</sup> ORS Chapter 659A

- iii. Involuntary demotion. The Executive Director or the Administrative Authority may, for disciplinary reasons, demote an employee to a position with a lower salary range provided the employee is qualified to fill the lower range position.

C. Reemployment.

- i. A former OPDS employee may request to be reemployed in a position for which the employee is qualified ~~with a salary range equal to or lower than the salary range for the position the employee last held~~. Reemployment shall be subject to the discretion of the Executive Director.
- ii. Reemployment following retirement. An employee who wishes to retire may request to be reemployed in a position for which the employee is qualified ~~with a salary range equal to or lower than the salary range for the position the employee last held~~.<sup>2</sup> Reemployment following retirement shall be at the discretion of the PDSC upon recommendation of the Executive Director, but shall be authorized only when there is a documented business need for the employment, or reemployment is necessary to ensure adequate transfer of knowledge.
- iii. An OPDS employee may be reemployed only once within the one-year period following resignation, voluntary demotion, layoff, downward reclassification or retirement.

D. Vacant management positions. At the discretion of the Executive Director, vacancies in the Administrative Authority and other vacant positions with management or supervisory responsibilities may be filled without resort to any of the foregoing recruitment methods.

E. Underfill.

- i. Employee development. Subject to approval of the Executive Director, a position may be under-filled for the purposes of providing an employee with the opportunity to develop the skills and qualification necessary to fill the position on a permanent basis. Recruitment for such an opportunity shall be conducted in accordance with the foregoing policy.
- ii. The length of the underfill and requirements to satisfactorily complete the developmental experience shall be documented prior to the appointment, but shall not exceed 24 months from the date of appointment.

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<sup>2</sup> ORS 238.082

- iii. Upon satisfactorily meeting the underfill conditions, the employee shall be reclassified up to the level of the position.
- iv. Subject to approval of the Executive Director, a position may be under-filled if, due to organizational changes, the budgeted level of a position is higher than OPDS's needs require. Recruitment for such an underfill appointment shall be conducted in accordance with the foregoing policy.

VII. Announcements.

- A. Announcements of job vacancies shall be posted on the State of Oregon jobs page and an email sent to all OPDS employees.
- B. Announcements of job vacancies to be filled shall be posted at least 10 calendar days before job applications are due.
- C. Announcements shall specify the class title, salary range, location, type of recruitment, nature of the assigned work qualifications, manner of making application, and notification that a criminal history check may be required. Other pertinent information about the position, such as work hours and special working conditions, may be included in job announcements.
- D. Notice of job transfer opportunities.
  - i. Notices of internal transfer opportunities shall be sent via email to all OPDS employees and issued at least seven calendar days before applications for job transfers are due.
  - ii. Such notices shall specify the class title, salary range, location, type of transfer, nature of the assigned work, qualifications, manner of making application, and notification that a criminal history check will be conducted (if applicable). Other pertinent information about the position, such as work hours and special working conditions, shall be included in the notice.

VIII. Application forms.

- A. Applications for open competitive recruitments shall be submitted electronically as outlined in the job announcement.
- B. Applications for internal recruitment or job transfer shall be submitted in the form prescribed by the hiring manager and as detailed in the email announcing the job opening.

- C. Subject to the discretion of the Executive Director, all applications received in response to a job announcement or notice of job transfer opportunity may remain in effect for up to six months after the closing date in the announcement or notice. Application received in response to job announcements may be used to fill future vacancies in the same or lower class.
- IX. Requests for job transfers or voluntary demotions.
- A. Job Transfers. An employee may submit a written request to the Administrative Authority to transfer from the current position to a vacant position with the same class or salary range as the employee's current position. The requesting employee must meet the minimum qualifications and the established screening criteria to be interviewed for the vacancy. Requests for job transfers must be approved by the supervisor and Executive Director.
  - B. Voluntary Demotions. An employee qualified to fill a vacant position with a lower classification or salary range may submit a written request to the Administrative Authority for voluntary demotion. Requests for voluntary demotions must be approved by the supervisor and Executive Director.
- X. Screening of job applications.
- A. The process of screening applications for a vacant position shall be fair and impartial and shall relate to the duties and requirements of the vacant position.
  - B. Screening methods shall objectively measure the qualifications of applicants and may include skills testing, employment or personal reference, and internal or external evaluations of applicants' job qualifications, education, and employment history, and comply with controlling law regarding public employers. Refer to Interview Selection Process in Appendix B.
- XI. Interview of job applicants.
- A. The Executive Director, Administrative Authority, shall select qualified job applicants for an interview based upon the results of the foregoing screening process.
  - B. The Executive Director, Administrative Authority, and/or a panel of other OPDS employees may conduct the interviews of the qualified job applicants.
  - C. At the discretion of the Executive Director or Administrative Authority, a qualified applicant may be selected to fill a vacant position without an interview.
- XII. Selection and notification of job applicants.

- A. The final selection of a job applicant to fill a vacant position shall be approved by the Executive Director or designated Administrative Authority. OPDS shall notify in writing all job applicants who are not selected to fill a vacant position. In the event OPDS decides not to fill a vacant position, OPDS shall notify all applicants in writing of that decision.
  - B. OPDS shall document its job recruitment, screening, and evaluation of applicants.
  - C. OPDS shall confirm its offer of employment to selected job applicants in writing and require those applicants to accept the terms and conditions of the offer of employment in writing. Selected applicants who fail to accept the offer of employment in writing shall be deemed to have declined the offer.
- XIII. Criminal records check. At the discretion of the Executive Director, OPDS may require criminal history checks of final applicants for positions. OPDS shall notify all applicants of this requirement in the job announcement for the position.
- A. A felony or misdemeanor conviction may prohibit an applicant from qualifying for a position with OPDS.
  - B. In determining if a criminal conviction prohibits an applicant's employment with OPDS, the Executive Director shall consider the following factors:
    - i. the nature and gravity of the offense or offenses;
    - ii. the time that has passed since the conviction(s) or completion of the sentence; and
    - iii. the nature of the position sought.
  - C. Arrests in the absence of subsequent convictions shall not prohibit an applicant's employment with OPDS.
  - D. OPDS shall keep confidential all records of a job applicant's arrests or convictions.

# Attachment 6

# Public Defense Services Commission

## Draft 2018 Meeting Schedule

<b>Date</b>	<b>Day</b>	<b>Location</b>	<b>Notes</b>
January 25, 2018	Thurs	Salem, OR	ED's 2017 annual report
March 15, 2018	Thurs	Salem, OR	POP Package Discussions
April 19, 2018	Thurs	TBD	Contractor Comments and Commission Review of 2019-2021 Draft Policy Option Packages
May 17, 2018	Thurs	TBD	PDSC Review of 2019-2021 Agency Request Budget
June 14, 2018	Thurs	Bend, OR	Held in conjunction with OCDLA Annual Conference Deschutes SDR
September 20, 2018	Thurs	Salem, OR	PDSC final approval of 2017-19 budget request
October 26, 2018	Friday	Sunriver, OR	Held in conjunction with OCDLA Public Defense Management Conference
December 13, 2018	Thurs	Salem, OR	Budget & Legislative Priorities