

# PUBLIC DEFENSE SERVICES COMMISSION

## The Executive Director's Biennial Report to the Oregon Legislative Assembly (July 1, 2005 – June 30, 2007)

### Introduction

**Mission:** In July of 2003 the Public Defense Services Commission (PDSC) assumed full responsibility for overseeing and administering Oregon's public defense system which delivers trial level and appellate legal services in criminal, juvenile and civil commitment cases across the state. In carrying out these responsibilities, PDSC's mission is to deliver quality, cost-efficient public defense services through skilled and accountable management, effective quality assurance oversight, and performance measurement.

**The Right to Counsel:** The legal services provided by PDSC represent an essential component of Oregon's public safety system. Under the United States Constitution, the Oregon Constitution and Oregon statutes, financially eligible individuals charged with crime, parents and children in abuse and neglect cases, and people facing involuntary commitment due to concerns regarding their mental health are entitled to representation by court-appointed counsel. Attorneys were appointed in more than 179,000 cases in Oregon in FYE 2006.

As all members of Oregon's public safety system realized after the cuts to Oregon's public defense budget in 2003 prevented timely prosecution in thousands of criminal cases, the State cannot prosecute crime and hold offenders accountable, cannot protect children and families, and cannot involuntarily commit those in need of commitment unless it provides constitutionally mandated public defense services to individuals facing such consequences.<sup>1</sup>

**Representation in Trial and Appellate Proceedings:** The PDSC must ensure the provision of effective assistance of court-appointed counsel in both the trial and appellate courts. PDSC delivers these services in most criminal appeals directly through state-employed lawyers in its appellate division (the Legal Services Division), and in all other cases through private contractors, whose contracts with PDSC are negotiated and managed by its Contract and Business Services Division, or through attorneys and other providers who are approved by PDSC and paid on an hourly basis.

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<sup>1</sup> In addition to providing constitutionally mandated services, Oregon's public defense attorneys also contribute directly to public safety by, for example, advocating for effective criminal sanctions that assist clients in addressing the issues which brought them to the attention of the criminal justice system, for family placements when possible in juvenile dependency cases, and for dispositions in juvenile delinquency cases that promote the reduction of crime and delinquency.

**PDSC Achievements: 2003-2005:** During the 2003-05 biennium, PDSC (1) led the public defense system through the aftermath of a fiscal and public safety crisis caused by the special session cuts in the public defense budget, (2) reorganized the structure of the state's public defense system, (3) developed new administrative operations with a new office and management team, and (4) implemented statewide initiatives to improve the quality and cost-efficiency of public defense services, including (a) new methods of selecting and training public defense attorneys in its Legal Services Division, (b) a comprehensive "service delivery planning process" for the evaluation and improvement or reorganization of local service delivery systems in counties throughout the state, and (c) a contractor site-visit process involving teams of volunteer public defense lawyers and managers to evaluate the operations and performance of PDSC's public defense contractors across the state and to identify best practices in public defense law office management.

**2005-2007:** Because of these earlier accomplishments and initiatives, 2005-07 was the biennium when PDSC fully realized its potential as an effective statewide administrator of an integrated state public defense system.

PDSC is now well along in its comprehensive review of the structure and operation of Oregon's public defense system and its evaluation of public defense providers. A significant portion of the state's public defense delivery system has been reviewed, evaluated and, in some instances, reorganized. PDSC will continue these processes in support of its effort to provide quality, cost-efficient legal services throughout the state.

PDSC's Contract and Business Services Division is a highly effective administrator of the contract system and manager of PDSC's internal operations.

PDSC's Legal Services Division has made significant strides in its effort to provide high quality legal representation to its appellate clients, to become a model law office and working partner with the appellate courts and the Department of Justice in the orderly administration of the appellate process, and to serve as a resource for other public defense providers in the state.

Through these efforts, the commission now has the knowledge and capacity to provide the Legislature with accurate and reliable information about the condition and needs of Oregon's public defense system and about the level of funding necessary to ensure the continued operation of a system that is essential to the state's justice system and to the safety of all Oregonians.

### **I. A brief Description of PDSC's Organization and Operations**

The Public Defense Services Commission is a seven-member commission that serves as the board of directors for Oregon's public defense system, providing policy direction and oversight for the administration of the system.<sup>2</sup> Members of the commission are appointed by the Chief Justice, who serves as an ex officio, non-voting member. Two of the commission's seven members must be non-attorneys and one member must be a

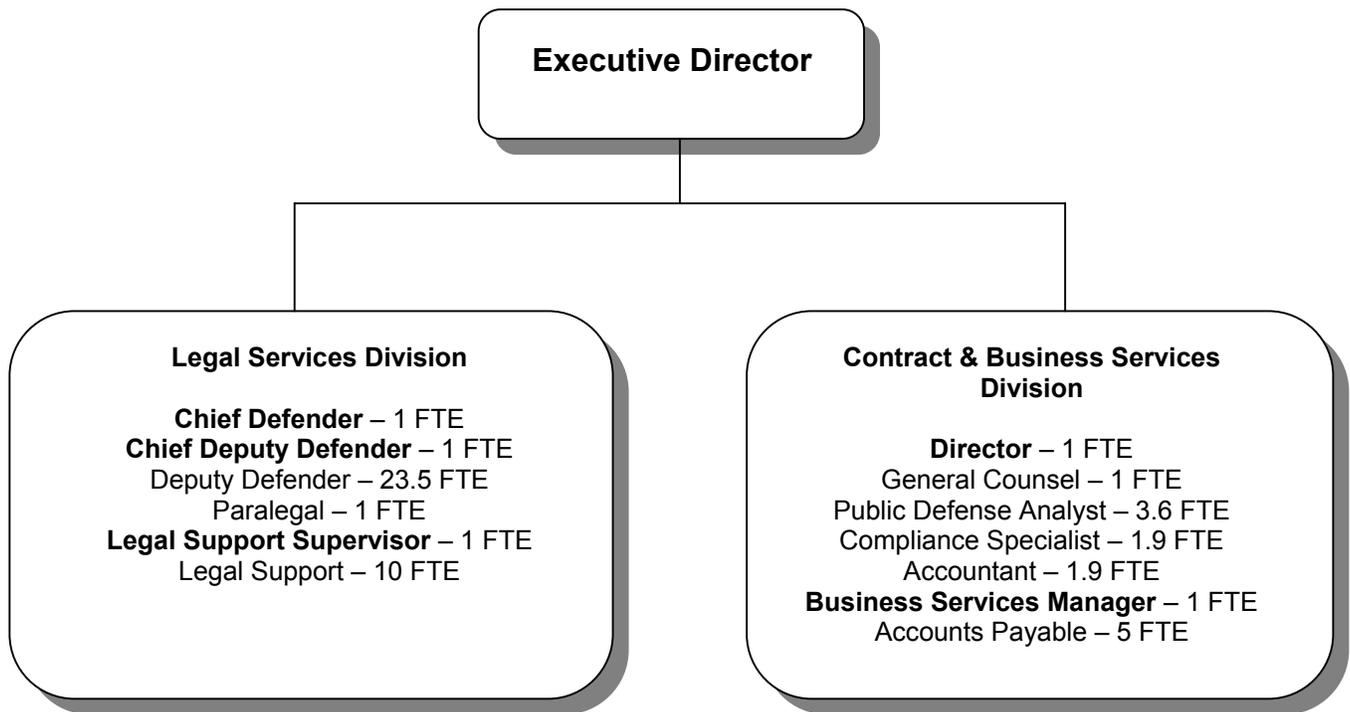
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<sup>2</sup> See generally ORS 151.216 et seq.

former prosecutor. Another member must be an attorney engaged in criminal defense practice who does not serve as a court-appointed attorney compensated by the state.<sup>3</sup>

The commission established the Office of Public Defense Services as its administrative agency and appointed an executive director. Ingrid Swenson is the current executive director of the agency.

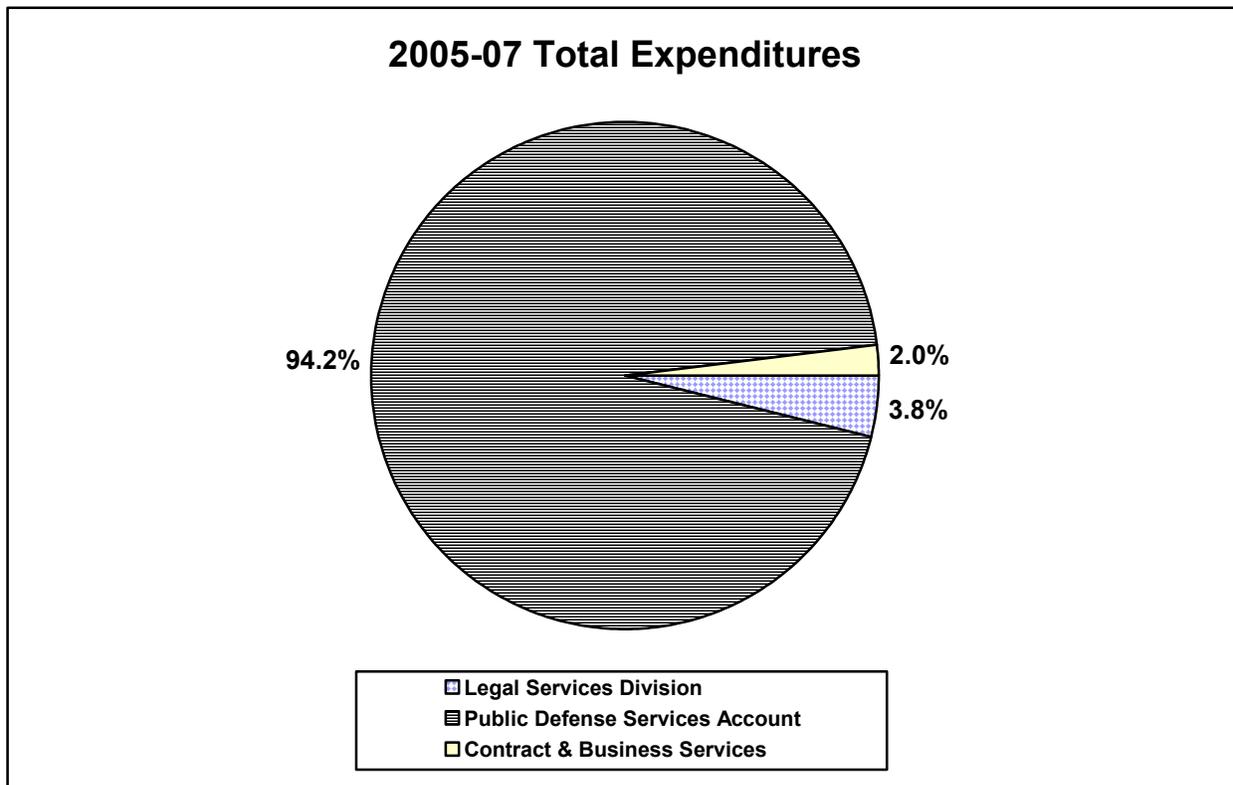
As the Organizational Chart for 2005-2007 below indicates, the Office of Public Defense Services is comprised of two divisions: the Legal Services Division (LSD), which provides direct legal representation in criminal appeals; and the Contract and Business Services Division (CBS), which administers the Public Defense Services Account which funds representation and related services in all criminal, juvenile, and civil commitment cases at the trial and appellate levels except for the criminal appeals assigned to the Legal Services Division. CBS negotiates with private contractors for these services and pays the bills. In addition, it manages the office and business functions of the two divisions.



Peter Gartlan is the Chief Defender and the manager of LSD, and Kathryn Aylward is the manager of the CBS division.

<sup>3</sup> The current members of PDSC are listed in Appendix A.

The chart below sets forth the 2005-2007 funding allocations for the two divisions and for the Public Defense Services Account which is the fund from which private contractors, hourly rate attorneys and other private service providers are paid.



## II. PDSC's Challenges and Accomplishments in 2005-2007

### ***A. Ensuring accountability through strategic planning and performance measurement.***

#### 1. PDSC's mission, plan, policies and performance measures

PDSC's mission is to ensure the cost-efficient delivery of quality public defense services in Oregon. To carry out that mission, the commission adopted a comprehensive Strategic Plan for 2005-2007<sup>4</sup> that articulates its long-term vision and values for the state's public defense system and commits PDSC to a set of specific goals and strategies. To ensure that all of the strategies in PDSC's Strategic Plan are fully implemented, the commission directed its management team to integrate the plan into the agency's day-to-day operations and use it as the basis for a performance-based employee evaluation system.

<sup>4</sup> Now revised for 2007-2009. A copy of the revised plan is attached as Appendix B.

PDSC's Strategic Plan recognizes the commission's need to hold itself accountable to the public and the Legislature through performance measures. PDSC is a results-based organization with employees and managers who establish performance standards and outcome-based benchmarks and who implement those measures and day-to-day best practices and hold themselves accountable through regular performance evaluations.

PDSC has also adopted personnel policies and procedures that call for regular evaluations of every PDSC employee using standards developed by the agency's employees and linked to the commission's mission, goals, strategies and performance measures and to each employee's annual work plan. Performance and not simply seniority is the key to an employee's advancement and promotion at PDSC.

Finally, PDSC developed performance measures<sup>5</sup> that track the key outcomes and outputs of its two divisions. Its appellate division, which will ultimately include 39 appellate lawyers, has adopted performance measures that track its appellate caseload and measure its progress in ensuring the delivery of quality, cost-efficient public defense services in Oregon's appellate courts. The commission's Contract and Business Services Division has developed performance measures that track the extent to which the division's internal operations promote timely and accurate approval and payment of public defense costs and, thus, effectively support the cost-efficient delivery of legal services. Even the PDSC itself, as a board of directors for the agency, will measure its performance under a new measure adopted by the 2007 legislature.

## 2. Managing the appellate caseload

For a number of years both the Legal Services Division and the Department of Justice have had a backlog of cases awaiting briefing. The Legal Services Division considers a case to be in the backlog if the opening brief has not been filed within 210 days of the date that the transcript is final or "settled." After making significant progress on the elimination of its backlog from earlier biennia, as measured by Key Performance Measure 1, the Legal Services Division experienced a 27% increase in the number of criminal appeals in 2005-2007. This increase was attributable almost entirely to the United States Supreme Court decision in *Blakely v. Washington* which directly and dramatically affected Oregon's sentencing guideline system.

OPDS identified significant inefficiencies associated with untimely appeals, including the need to prepare and submit motions to the court to postpone the due date for opening briefs and the need to respond to an ever-increasing client base regarding client

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<sup>5</sup> Key Performance Measure 1 tracks the number of cases in the Legal Services Division's backlog; Key Performance Measure 2 tracks the percentage of fee statements reduced due to incorrect billing; Key Performance Measure 3 measures the percentage of fee statements processed within 10 business days; and Key Performance Measure 4 measures the percentage of non-routine expense requests reviewed within 5 business days. As reported to the 2007 Legislative Assembly targets were exceeded in the three latter categories, but there was a substantial increase in the appellate backlog tracked by Key Performance Measure 1.

inquiries about the status of their cases. The division estimated that it could eliminate the need to prepare approximately 3,500 separate documents (motions and correspondence) per year if briefs were filed in a timely manner.

In order to improve the quality of its work and make progress on its backlog, the appellate division created results-based attorney work plans and regular performance evaluations. Attorneys were working well beyond the limits recommended by national standards,<sup>6</sup> with a per attorney annual caseload of 48.5 cases. In 2007, the Legislative Assembly approved a new appellate mandated caseload adjustment and the addition of eight full-time equivalent positions that aligned the division with Department of Justice caseload growth projections.<sup>7</sup> This should permit the agency to eliminate its backlog by the end of the 2007-2009 biennium and begin to reduce the 210-day period to a more reasonable time period for filing the opening brief.

In addition, the Legislature approved funds for a four-attorney juvenile appellate section in the division to establish consistency and quality standards in juvenile appellate representation.

### 3. Efficiencies achieved by the Contract and Business Services Division

In addition to negotiating over 90 contracts for provision of legal services, the Contract and Business Services Division manages the non-routine expense authorization process that was formerly overseen by judges in the 27 individual judicial districts. The agency has created a peer-review process which has helped to clarify which expenses are truly “reasonable and necessary” as required by ORS 135.055. It is important to process these requests promptly so that necessary services, such as investigation, can be undertaken promptly before evidence dissipates or witnesses become unavailable. PDSC’s Key Performance Measure 4 measures the percentage of non-routine expense requests reviewed within 5 business days. In 2005-2007 the agency far exceeded its targets by processing 94-95% of the requests within the targeted 5-day period.

In 2004, CBS created and continues to administer a complaint system to address concerns regarding the quality of representation. The agency works closely with the Oregon State Bar to monitor the performance of attorneys handling court-appointed cases.

CBS has five accounts payable staff who process the operating bills for both LSD and CBS as well as all fee statements submitted for payment from the Public Defense Services Account. Over 20,000 payments are reviewed and processed per year. The

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<sup>6</sup> The American Council of Chief Defenders recently issued a Statement on Caseloads and Workloads that endorsed the 1980 National Legal Aid and Defender Association standard of 25 non-capital cases per year.

<sup>7</sup>The 2007 Legislative Assembly directed a number of agencies, including PDSC, to develop a process for determining mandated caseload adjustments in public safety-related agencies.

agency's guideline rates paid to public defense providers are well below the rates many service providers normally charge. By assuring prompt and reliable payment in accordance with the agency's Key Performance Measure 3, the agency finds that providers are more willing to work at the below market rates paid by PDSC. In late 2004, an agency employee developed a technological improvement that eliminated the need for duplicate data entry. Not only did this speed the processing of bills but it also eliminated the chance of error in the transfer of information between accounting systems. In addition, the agency uses three levels of review to ensure accuracy of fee statements. Key Performance Measure 2 tracks the percentage of fee statements reduced due to incorrect billing.

When CBS (formerly the Judicial Department's Indigent Defense Services Division) merged with LSD (formerly the State Public Defender's Office) in July 2003, CBS division staff brought with them a wealth of expertise in database development and document management. At the time of the merger, the Legal Services Division was using a custom database developed by an outside vendor. There was no in-house support and the database had not been updated or modified in years. In addition, both divisions have now reduced the costs associated with document production and postage through the use of email to transmit attorney correspondence and expense authorizations and the agency will continue to expand and automate these procedures. CBS also devised more efficient methods for printing the appellate division's briefs and developed protocols for electronic storage of billing and contract files.

Data compiled for key performance measures led the management team of PDSC to reassess how resources were being deployed between the two divisions. CBS was exceeding targets related to expense request and payment processing while LSD continued to battle its backlog of cases. In the fall of 2006 the agency began to centralize all administrative functions for the agency within CBS in order to allow the Legal Services Division staff to focus exclusively on case-related work. The agency expects to see a significant reduction in the appellate backlog as a result of this change and the addition of eight new staff positions.

***B. Improving the quality and cost-efficiency of PDSC's contract legal services.***

Although Oregon's non-death penalty trial level public defense caseload increased 47% since FYE 1995 requiring significant increases in appropriations to the Public Defense Services Account, real income for contractors and hourly rate attorneys continued to decline in 2005-2007<sup>8</sup> since funding for that biennium covered caseload increases but not an increase in the hourly rate (which had remained unchanged since 1991) or an

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<sup>8</sup> In past biennia the legislature funded mandated caseload costs using the standard Department of Administrative Services inflationary adjustment instead of the personal services adjustment. Those adjustments were not adequate to cover the increased cost of services, which are largely personal services, rendered by OPDS contractors. As a result contractors were forced to accept more cases in order to meet rising health care and other personnel costs that were beyond their ability to control until they reached a point at which caseloads on average exceeded national standards by approximately 30%.

increase in case rates for the great majority of PDSC's contractors),<sup>9</sup> PDSC's mission nevertheless required that it continue to pursue improvements in the quality of services provided.

### 1. PDSC's service delivery planning process

One of the agency's principal quality and cost-efficiency initiatives is the commission's service delivery planning process. This process which began in 2003 includes holding public meetings in every region of the state, gathering information from judges, prosecutors, other officials and citizens, evaluating the need for changes in the structure and delivery of local public defense services and directing the commission's management team to implement needed changes. There are three phases in the commission's service delivery review process. The Executive Director and other agency representatives perform an initial investigation. The commission then meets in the region to hear directly from the stakeholders in the local justice system. The commission then develops a service delivery plan, which is incorporated into a final report. This report serves as a blueprint for agency staff contracting with providers in the region. PDSC has completed investigations and evaluations of the local public defense systems in Benton, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Wasco, Gilliam, Sherman, Clatsop, Washington and Wheeler Counties. These counties represent 67 percent of Oregon's public defense caseload. As part of this process, the commission developed Service Delivery Plans in each of those counties to improve the structure and operation of their local public defense systems and the quality of the legal services provided by those systems.

In addition, in 2005-2007 the commission reviewed the delivery of services in juvenile cases and in death penalty cases.

As a result of its investigation in juvenile cases, as well as the findings of two previous task forces of the Oregon State Bar on indigent defense services, PDSC undertook a number of initiatives to improve the quality and consistency of juvenile defense services across the state. PDSC worked closely with a group of legislators<sup>10</sup> who introduced SB 411 in the 2007 session. This measure would have provided additional compensation and reduced caseloads for attorneys in juvenile dependency cases. Unfortunately, this measure was not successful. PDSC supports the work of the Juvenile Law Training Academy Workgroup which sponsors an annual comprehensive training for juvenile lawyers. The new juvenile appellate section at LSD is expected to become a resource center for juvenile lawyers at the trial level once its staff is selected and trained. PDSC

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<sup>9</sup> In the 2007 legislature, the Co-Chair's budget included an appropriate inflationary adjustment that will prevent contractors from continuing to fall further behind. This is a significant improvement over previous biennia.

<sup>10</sup> The "gang of four" legislators who proposed a series of measures to address issues related to children in foster care was comprised of Senator Kate Brown, Senator Jeff Kruse, Representative Wayne Krieger and Representative Mike Schaufler.

is considering other measures to improve the quality of representation in juvenile cases, including possible certification of attorneys specializing in the practice of juvenile law.

After its review of the delivery of services in death penalty cases,<sup>11</sup> PDSC approved implementation of the American Bar Association's Guidelines for Appointment and Performance of Defense Counsel in Death Penalty Cases, which impose exacting standards on both the agency and its contractors in death penalty cases.

## 2. PDSC's Contractor Advisory Group

PDSC established a Contractor Advisory Group in 2003 to provide input and assistance to the commission's executive director on a wide range of matters, including attorney qualification standards, early disposition programs, reform of post-conviction relief, regional training, improving the contracting system and legal developments affecting public defense. PDSC recognizes the importance of close collaboration with its contractors to ensure that Oregon's public defense contracting system delivers quality legal services cost-efficiently. While the commission must maintain an arm's-length relationship with its public defense contractors in the course of negotiating and administering their contracts, the commission must also take into account the day-to-day professional demands and business needs facing contractors across the state.

## 3. PDSC's contractor site visit process

A subcommittee of the Contractor Advisory Group, the Quality Assurance Task Force, assisted PDSC in developing a systematic process to review the organization, management and quality of services delivered by the commission's contractors. This contractor site visit process, apparently unique to Oregon, engages volunteer attorneys from across the state with expertise in public defense practice and management in a comprehensive statewide evaluation process.

Teams of volunteer attorneys visit and evaluate the offices of the state's public defense contractors, administer questionnaires and interview all relevant stakeholders in a contractor's county, including the contractor's staff, prosecutors, judges, other defense attorneys, court staff, corrections staff, and other criminal and juvenile justice officials regarding the contractor's performance and operations. After a site visit and deliberations among the site visit team's members, the team prepares a report to the contractor's director and PDSC's executive director outlining its observations and recommendations.

In addition to improving operations of the contractors subject to the site visits, the process is designed to improve the operations of other public defense contractors in Oregon by identifying best practices for managing and delivering public defense services and by sharing that information with other contractors across the state.<sup>12</sup>

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<sup>11</sup> The PDSC's report and plan for the Delivery of Services in Death Penalty Cases are on the agency's website: [www.opds.state.or.us](http://www.opds.state.or.us).

<sup>12</sup> The list of those best practices is attached as Appendix C.

Examples of best practices include regular and systematic evaluations of the contractors' attorneys and managers, independent boards of directors with relevant business and management expertise, and financial management practices that conform to applicable accounting standards. The site visit process provides the basis for the agency's Key Performance Measure 5 which measures the percentage of contractors that have implemented best practices and resolved problems relating to the quality and cost-efficiency of their service, which are identified by PDSC's site visit process.

As a result of PDSC's contractor site visit process, experienced public defense lawyers and managers as of the end of the 2005-2007 biennium had evaluated the operations and services of public defense contractors in Deschutes, Douglas, Clackamas, Lane, Linn, Lincoln, Jackson, Morrow, Multnomah, Umatilla, and Washington Counties. These contractors represent 54 percent of Oregon's public defense caseload.

### ***C. Funding Issues and the Development of Accurate, Reliable Caseload Projections.***

The 2005 Legislative Assembly approved a total budget of \$176,246,017 for PDSC in 2005-2007. As the biennium progressed, it became obvious that certain types of expenses (for criminal appeals, death penalty cases and certain categories of cost) were increasing at rates that would not permit the agency to meet its obligations without additional resources. Based on actual expenditures during the first 12 months of the 2005-07 biennium, projected expenditures for the biennium exceeded the funds in the commission's budget by \$7.9 million. As a result PDSC sought and received additional funds from the Emergency Board and the 2007 Legislative Assembly for the 2005-2007 biennium

Although some cost factors will continue to be beyond the agency's ability to predict, PDSC has developed the capacity to provide the Legislative Assembly with more accurate and reliable information about the demand for and cost of public defense services in Oregon. With the benefit of this information the Legislative Assembly will be better able in the future to avoid the kind of shortfall in public defense funding that led to the public safety crisis in 2003 and the need for a supplemental appropriation in 2007.<sup>13</sup>

PDSC determined that the caseload model, that had been used for decades to project future public defense expenditures and develop the state's public defense budget, was deeply flawed and had to be replaced.<sup>14</sup> PDSC has always had the capacity to project caseloads with a high degree of accuracy; however the traditional caseload model for

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<sup>13</sup> As noted above, that crisis, which resulted from special session legislative cuts in the state's public defense budget, caused interruptions in the delivery of public defense services and the prosecution of thousands of criminal cases throughout the state and created a threat to the public safety of all Oregonians.

<sup>14</sup> PDSC's "Attachment to Emergency Board Letter" dated August 18, 2006, which describes the flaws in the "caseload model" in more detail, is attached in Appendix D.

projecting the demand for and cost of public defense services underestimated necessary funding levels because (a) contrary to the assumption underlying the caseload model, the number of criminal appeals funded from PDSC's budget did not remain proportional to the trial-level criminal caseload, (b) protracted litigation and appeals in death penalty cases from previous biennia continued to require funding from the current biennium; and (c) some categories of costs, such as increases in professional fees for necessary forensic experts and mileage expenses, as well as a rapidly increasing need for interpreters, increased well beyond the state's standard 2.4% inflationary adjustment provided in PDSC's 2005-2007 budget.

By replacing the caseload model with a projection system that accounts for these dynamics, the commission was able to present the Legislative Assembly with a more accurate and reliable budget proposal for the 2007-2009 biennium.

PDSC can also now provide the Legislative Assembly with accurate estimates of the demand for and cost of public defense services that will arise as a result of laws creating new crimes or increasing criminal penalties. For example, House Bill 3511 or Jessica's Law, which was enacted during a Special Session of the legislature in 2006, increases the mandatory minimum sentence from 100 months to 300 months (the equivalent of a murder sentence) for adult offenders sentenced for certain sex and kidnapping offenses involving a victim under the age of 12. PDSC heard testimony at its public meetings that Jessica's Law cases are much more complex than murder cases due to the fact that these cases often include allegations of multiple incidents or multiple victims; that defendants are more likely to go to trial; that there will be a greater reliance on psychological evidence; and that they are more difficult to settle before trial even when settlement may be the most appropriate option for a defendant under the circumstances of the case. The commission submitted a fiscal impact statement indicating that the cost of defense representation in these cases would likely fall between the cost of murder cases and three times the cost of other Measure 11 cases.

Based on its investigations and evaluations across the state, PDSC advised the Legislative Assembly during its budget hearings in the 2007 session that the supply of qualified attorneys willing to deliver public defense services in Oregon was no longer sufficient to meet the state's demand for those services – at least at the rates of compensation the commission was able to pay during the 2005-2007 biennium. For example, since 1991, PDSC's guideline rate for hourly paid attorneys in non-death penalty cases had been \$40 per hour. As a result, it had become increasingly difficult to find qualified attorneys willing to handle public defense cases. In counties where there are a limited number of qualified attorneys, PDSC had been forced to approve rates in excess of the \$40 per hour guideline rate for Measure 11 and murder cases. Without such rate increases, the commission would have been increasingly unable to provide qualified counsel for serious criminal cases and, without defense counsel, these cases cannot be prosecuted.

In the course of its investigations, evaluations and administration of contracts during the 2005-07 biennium, PDSC found that increasing numbers of qualified attorneys were

unwilling to handle any public defense cases at prevailing rates of compensation. Without additional funds in PDSC's budget to increase these rates, the commission expected to face critical shortfalls in the supply of public defense attorneys during the 2007-09 biennium, particularly in less populous areas of the state where the supply of lawyers is already limited.

During the 2007 legislative session, PDSC was partially successful in its effort to obtain additional funding for public defense for the 2007-2009 biennium.

Only a portion of PDSC's policy packages were approved but, in recognition of the important need to address some structural issues in the PDSC budget, the Co-Chairs of Ways and Means amended the essential budget level to include an inflationary factor more accurately predictive of the increased costs of providing legal services and aligned PDSC's appellate division budget with that of the Department of Justice by adding an essential budget level adjustment for appellate caseload growth. In addition the Co-Chairs approved an additional \$0.8 million to raise the hourly rate for the first time in sixteen years from \$40 to \$45 for non death penalty cases and from \$55 to \$60 for death penalty cases. At the conclusion of the PDSC budget presentation many members of the Public Safety Subcommittee expressed concern about the underfunding of public defense and the challenges that PDSC will face in the next biennium in trying to retain an adequate supply of contractors and hourly rate attorneys. Subcommittee members committed a total of \$1.9 million in subcommittee discretionary funds to supplement the PDSC budget. PDSC was directed to use half of the supplemental appropriation to establish a four-attorney juvenile appellate section within the Legal Services Division. PDSC has directed that the balance of those funds be used to maintain essential services throughout the state. In some areas of the state that will mean compensating attorneys for mileage when they are needed to provide services in other parts of the state. In other parts of the state it will mean increasing compensation for attorneys in some offices in order to permit them to retain a sufficient supply of experienced lawyers to manage the caseload and, in still others it will mean paying for the use of paralegals to perform functions that lawyers would otherwise need to perform. such as attending some Citizen Review Board hearings in juvenile dependency cases.

Despite the increase, as PDSC reported to the Public Safety Subcommittee in its budget hearings, a budget shortfall may occur during the 2007-2009 biennium. PDSC believes that it will have to increase its hourly rates beyond \$45 and \$60 to attract an adequate number of attorneys to handle cases in some areas of the state and for some categories of cases. In addition, it anticipates difficulty negotiating contracts for certain case-types, such as death penalty post conviction relief cases, without significant increases in rates. While PDSC sought funding that would have allowed it to increase compensation to full-time public defenders in an amount that would have given them parity with district attorneys in their counties, the PDSC budget provided funding to get them only one sixth of the way to parity, assuming that the commission determined that funds should be allocated for that purpose.

PDSC met in August to identify budget priorities for the 2007-2009 biennium and approved an increase in the hourly rates for attorneys and investigators.<sup>15</sup> It also approved a 3.1% inflationary adjustment for all of its contractors and directed the Contract and Business Services Division to use the balance of the additional funds allocated by the 2007 Legislature to maintain the capacity of the public defense system and improve the quality of the services provided.<sup>16</sup> The strategies needed to maintain the system's capacity will involve careful analysis of the individual needs of contractors struggling with an inability to attract and retain qualified attorneys. In some areas rate disparities with prosecutor offices may account for the drain in attorneys, in others overwhelming caseloads may be causing experienced attorneys to seek other opportunities. CBS will work with its providers to identify and address these issues in its contract negotiations for contracts beginning in January 2008.

PDSC will of course take all cost-saving measures possible and will seek to fulfill its statutory obligations within its approved budget. But, if all external factors remain the same and the demand for and cost of public defense services increase as anticipated, PDSC will need to request additional funds either from the Emergency Board or from the 2008 Legislative Assembly.

### **Conclusion**

Building on PDSC's accomplishments and initiatives since assuming full responsibility for administering Oregon's public defense system, and using its Key Performance Measures as a guide,<sup>17</sup> 2005-2007 was the biennium when the commission realized its potential as the effective statewide administrator of an integrated public defense system. PDSC can now assure the Legislature that the structure and operation of Oregon's public defense system continues to be reviewed, evaluated and, when necessary, reorganized, and that the system will be continuously subject to the commission's quality assurance processes in order to ensure the quality and cost-efficiency of public defense services in the state. In addition, the commission now has the knowledge and capacity to provide the Legislative Assembly with reliable information about the demand for and cost of public defense services and about the level of funding necessary to ensure the continuing operation of a state public defense system, which is essential to the effectiveness of Oregon's justice system and the safety of all Oregonians.

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<sup>15</sup> Attorney hourly rates were increased from \$40 and \$55 to \$45 and \$60 as indicated. Rates for investigators were increased from \$25 and \$34 to \$28 and \$39 per hour. The commission became aware during its hearings on death penalty representation that there is an inadequate supply of mitigation investigators in Oregon since these investigators are able to work in the federal system or in other states at rates nearly double those paid in Oregon. The additional \$5 per hour may or may not be adequate to address this shortage.

<sup>16</sup> PDSC was directed by the 2007 Legislative Assembly to review its key performance measures. Maintaining the capacity of the system and improving the quality of representation are critical functions of the agency that must be addressed in any meaningful measures.

<sup>17</sup> PDSC will be adding to and amending its performance measures during the legislative interim.

The PDSC looks forward to meeting the challenges and providing the leadership and direction essential to a healthy, effective, cost-efficient public defense system in Oregon.

## **PUBLIC DEFENSE SERVICES COMMISSION**

### **MEMBERS**

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