

**OPDS's Report to the Public Defense Services Commission:
The Results of OPDS's Investigations in Service Delivery Region 4
(Benton, Lane, Lincoln & Linn Counties)**

**Part II: Benton, Lincoln & Linn Counties
(March 2004)**

Introduction

Since the completion of its Strategic Plan for 2003-05 late last year, the Public Defense Services Commission (PDSC) has focused on strategies and initiatives to accomplish its primary mission of ensuring the delivery of quality public defense services in the most cost-efficient manner possible. Recognizing that quality legal services promote cost-efficiency by reducing legal error and the resulting delays, appeals and other costly remedies, the Commission has concentrated on strategies that will improve the quality of the state's public defense delivery system and the legal services it delivers.

Foremost among those strategies is what the Commission refers to as its "service delivery planning process." This report represents an initial step in that process. It is the second part of a two-part report on the condition of the local public defense delivery systems in Service Delivery Region 4 of the state, which includes Benton, Lane, Lincoln and Linn Counties.

The Commission's last monthly meeting was held in Eugene on February 12, 2004. The Commission's next meeting will be held in Corvallis on March 11, 2004. Both meetings are being held for the purpose of hearing from all interested parties regarding the state of the public defense delivery system in the four counties in Region 4. This second part of OPDS's report on Region 4 focuses on staff findings and preliminary recommendations regarding the service delivery systems in Benton, Lincoln and Linn Counties.

PDSC's service delivery planning process has four steps. First, the Commission has identified seven Service Delivery Regions in the state for the purposes of reviewing local public defense delivery systems and the services they deliver in Oregon, and addressing significant issues of quality and cost-efficiency in those systems and services. (A map of these seven Service Delivery Regions is attached.) Second, starting with preliminary investigations by its staff at the Office of Public Defense Services (OPDS) and a report like this, which will be provided to public defense attorneys, contractors and other interested members of the criminal justice system in the region under review, the Commission will review the condition and operation of local public defense delivery systems and services in a region, including holding public meetings in the region to provide opportunities for all interested parties to present their perspectives and concerns to the Commission. Third, after considering OPDS's report, any responses to the report and input from its meetings in the region, PDSC will develop a Service Delivery Plan for the region. That plan may simply confirm the quality and cost-efficiency of the

public defense delivery system and services in that region. It may also take advantage of opportunities for change or for confronting specific challenges in the region in order to improve the quality and cost-efficiency of the region's public defense services. In any event, the Commission's Service Delivery Plans will (a) take into account local conditions, practices and resources unique to a region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, revise relevant terms and conditions in public defense form contracts. Finally, at the direction of PDSC, OPDS will implement the strategies or changes proposed in a plan on a specific timetable that will depend on the content of that plan.

Because critical steps in PDSC's service delivery planning process have yet to be completed, this report's findings and preliminary recommendations may be reconsidered or revised, depending upon new information presented to the Commission at its February and March meetings in Eugene and Corvallis, deliberations and decisions of PDSC following its meetings in Region 4, and any additional research and investigation that may be ordered by the Commission. Furthermore, any Service Delivery Plan that PDSC develops over the coming months in Region 4 will not be the "last word" on the service delivery systems in that region or on the quality and cost-efficiency of the region's public defense services. The state's current fiscal crisis and resulting limitations on PDSC's current budget, the existing personnel, level of resources and unique conditions in each county, the current contractual relationships between PDSC and public defense contractors, and the wisdom of not trying "to do everything at once," all place constraints on the scope of this first round of the planning process in Region 4, or in any other region of the state. Indeed, PDSC's planning process is an ongoing and dynamic one, calling for the Commission to return to each region of the state over time in order to develop new Service Delivery Plans or revise old ones. The Commission may also return to some regions of the state on an expedited basis in order to take advantage of unique opportunities or address acute problems in the region.

Background

The 2001 legislation creating the Commission was premised on a policy, supported by most judges and the defense community, that the public defense function should be separated from the judicial function. This approach, considered by most commentators and authorities across the country as a "best practice," is intended to avoid the inherent conflict in roles when a judge, who serves as the neutral arbiter of legal disputes, also selects and evaluates one side in an adversarial proceeding. Thus, under the 2001 legislation, the Commission, not the courts, has the primary responsibility for the provision of competent public defense counsel. As a result, the Commission is committed to undertaking strategies and initiatives to ensure the competency of legal counsel.

However, in the Commission's view, minimum competency of public defense counsel is not enough. As it declared in its mission statement, PDSC is dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

PDSC's range of strategies to promote quality and cost-efficiency. Service delivery planning is one of the most important strategies that PDSC has undertaken in recent months to promote quality and cost-efficiency in the delivery of public defense services. However, it is by no means the only strategy.

In December 2003, the Commission directed OPDS to form a Contractors Advisory Group, made up of the heads of public defense contractors from across the state. The group is advising OPDS on the development of standards and evaluation methods to ensure the ongoing quality and cost-efficiency of the services and operations of public defense contractors, and to improve those services and operations through peer review and technical assistance processes. The Contractors Advisory Group is also participating in the development of a new process for qualifying individual attorneys throughout the state who wish to provide public defense services.

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations, management practices and legal services of those offices.

Indigent defense task forces of the Oregon State Bar have repeatedly highlighted unacceptable variations across the state in the quality of public defense services in juvenile cases. As a result, PDSC has commenced a statewide initiative to improve juvenile law practice, in collaboration with the state courts. The Commission recruited an experienced juvenile defense attorney to serve as OPDS's General Counsel and to take the lead in this initiative.

OPDS, in accordance with PDSC's Strategic Plan, is examining options for a systematic process to address complaints about the performance of contractors and the legal representation of attorneys, as well as for a new organizational structure to deliver legal services in Post-Conviction Relief cases.

The Commission is also concerned about the "graying" of the public defense bar in Oregon. Due to the commitment of those engaged in this work and an increasingly competitive legal market over the past several decades, more and more lawyers are spending their entire careers in public defense law practice and in the private practice of criminal, juvenile and family law. In some areas of the state, most members of the defense bar are approaching retirement, with no process in place for finding replacements. As a result, PDSC is seeking ways throughout the state to attract and train younger lawyers in public defense practice.

"Structure" versus "performance" in the delivery of public defense services. OPDS submits that PDSC's service delivery planning process is aimed primarily at reviewing and improving the "structure" for delivering public defense services by selecting the most effective combination of organizations in a county to provide those services. On the other hand, most of the Commission's other quality assurance strategies and processes,

described above, focus primarily on “performance” in the delivery of legal services in order to ensure that lawyers and managers in public defense organizations are delivering those services efficiently and effectively. This distinction is not always easy to make, since the concepts obviously overlap and influence each other. For example, nearly everyone agrees that the quality and cost-efficiency of public defense services depend primarily on the skills and commitment of the attorneys and staff who perform those services, as well as on the provision of sufficient public resources to attract such talent. However, experienced public defense managers and practitioners and the research literature on “best practices” recognize that attention to the structure of service delivery systems contributes significantly to the quality and effectiveness of public defense services.¹

Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles and responsibilities of PDSC, OPDS and public defense service providers in this planning process—and in the overall management and operation of Oregon’s public defense system. A collegial, volunteer “board of directors” like PDSC, whose members are chosen for the variety and depth of their experience and sound judgment, and who conduct their business in public meetings with the support of professional staff, is best able to address systemic, “macro” policy issues, like the proper structure of state and local service delivery systems. OPDS, on the other hand, is frequently in the best position to address performance issues, under the direction of the Commission. Performance issues usually involve individual lawyers and contractors, specific management practices and unique circumstances that raise operational and management questions, rather than policy issues. Public defense providers have committed themselves to assisting OPDS and the Commission in the development and implementation of credible standards and processes to ensure performance. As independent contractors, they are in the best position to manage their offices’ specific methods of service delivery and ensure the quality of the legal services they provide.

Because of the significance of the distinction between structure and performance, and the differing capacities of PDSC, OPDS and contractors to resolve questions involving the two concepts, this report will usually recommend assigning PDSC the task of addressing structural issues with policy implications and assigning OPDS the task of addressing performance issues with operational implications. The report will also identify the issues that call for the input and assistance of contractors and practitioners.

The organizations operating within the structure of local public defense delivery systems. The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for “public” defenders and the advocates for “private” defenders. PDSC has repeatedly emphasized that it has no interest in joining this debate. Instead, it wishes to concentrate on finding the most effective combination of organizations for each region of the state from among those types of organizations already established and tested in Oregon.

¹ Indeed, debates over the relative effectiveness of public defender offices and “private appointment” systems have gone on for years. See, e.g., Spangenberg and Beeman, “Indigent Defense Systems in the United States,” 58 Law and Contemporary Problems 31-49 (1995).

The Commission is also not interested in developing a “one size fits all” model for organizing the delivery of public defense services in Oregon. Instead, the Commission recognizes that the local organizations currently delivering services in Oregon’s counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has often been struck locally among the available options for delivering public defense services.

On the other hand, PDSC is responsible for the wise expenditure of scarce taxpayer dollars for public defense services. Therefore, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to proposals. As one of the largest purchasers and administrators of legal services in the state, the Commission is committed to ensuring that both PDSC and the taxpayer are getting competent legal services at a fair price. The Commission does not see its role as simply continuing to invest public funds in whatever local delivery system happens to exist.

Therefore, PDSC intends, first, to review the service delivery system in each county and develop its Service Delivery Plans with local conditions, resources, history and practices in mind. Second, in conducting these reviews and developing plans that might change local delivery systems, the Commission is prepared to recognize the efficacy of the local organizations that have emerged to deliver public defense services in a county and leave that county’s organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations may be. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in a county or region is necessary to advance the mission of Oregon public defense, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering potential changes in a local service delivery system.

The following discussion outlines the prominent features of each type of public defense organization in Oregon, along with some of the relative advantages and disadvantages. This discussion of the relative features of these organizations is by no means exhaustive. It is simply intended to highlight the kinds of factors that the Commission is likely to take into account in reviewing the structure of any local service delivery system.²

² Although OPDS solicited input regarding these descriptions of public defense organizations from our Contractors Advisory Group, we did not receive that input in time to include it in this report prior to the release of Part I of the report. OPDS expects that members of the Advisory Group and others in the defense community will have additions or amendments to these descriptions to propose, which can be included before the release of Part II of this report.

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys or the offices in which they work are independent contractors operating under contracts with PDSC, including the following types of public defense organizations:

- Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of its public defense services. The offices share many of the attributes one normally thinks of as a "Public Defender Office," especially the "defining characteristic" of a public defender office: an employment relationship between the attorneys and the office.³ The attorneys in these offices in Oregon are full-time specialists in public defense, who are dependent on this work and not allowed to engage in any other form of law practice. However, the state's public defender offices are not government agencies staffed by public employees. They are not-for-profit corporations overseen by boards of directors and managed by administrators who serve at the pleasure of their boards.

While some of Oregon's public defender offices operate in populous counties of the state, others are located in less populous counties. In either case, OPDS expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, and to administer specialized internal training and supervision programs for attorneys and staff and provide effective defense representation in each forum in which they practice, including specialized court programs such as Drug Courts and Early Disposition Programs. As a result of these expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations in their counties, including paralegals, investigators, automated office systems or personnel hiring and management processes.

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

Due to the frequency of cases in which public defender offices have conflicts of interest resulting from cases with multiple defendants, involving former clients or for other reasons, no county can operate with a public defender office alone.⁴ As

³ Spangenberg and Beeman, *supra* note 2, at 36.

⁴ *Id.*

a result, PDSC expects public defender offices to share their management and law practice expertise and appropriate internal resources, like training and office management systems, with other providers who must operate effectively in their counties.

- Consortia. A “consortium” refers to a group of attorneys or law firms who agree to submit a proposal to OPDS in response to an RFP and to handle a public defense caseload together if they are awarded a contract with PDSC. The size of consortia in the state varies from a few lawyers or law firms to 30 lawyers or more. The organizational structure of these consortia also varies. Some are relatively unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with group practice, without the interdependence and conflicts of interest that arise from membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for membership, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs and (d) plans for “succession” in the event that some of the consortium’s lawyers retire or change law practices, such as provisional membership and apprenticeship programs for new attorneys.

Consortia offer the advantage of access to experienced attorneys, who prefer the independence and flexibility associated with practicing law in a consortium and wish to continue practicing criminal law under contract with PDSC. Many of them received their training and gained their experience in public defender or district attorney offices and larger law firms.

In addition to this access to experienced public defense lawyers, consortia offer OPDS and PDSC several administrative advantages. If the consortium is reasonably well-organized and managed, OPDS has fewer contractors or attorneys to deal with and, therefore, can more efficiently administer the many tasks associated with negotiating and administering contracts. Furthermore, because a consortium is not considered a law firm for the purpose of determining conflicts of interest under the State Bar’s “firm unit” rule, conflict cases can be efficiently distributed internally among consortium members by the consortium’s administrator. Otherwise, OPDS is required to conduct a search for individual attorneys in the county who can handle the cases. Finally, if a consortium has a board of directors, particularly with members who possess the independence and expertise of directors on public defender boards, then PDSC can realize the same benefits described above, including more opportunities to communicate with local communities and access to additional management expertise and quality assurance processes.

The participation of law firms in a consortium may make it more difficult for an administrator or members of a consortium to monitor and manage cases and the performance of lawyers in the consortium. This potential difficulty stems from the

fact that internal assignments of a portion of a consortium's workload among attorneys in a law firm may not be evident to the consortium or within its ability to influence. Finally, to the extent that a consortium lacks internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services a consortium delivers, such as (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) PDSC's certification process to qualify for court appointments.

- Law firms. In addition to participation in consortia, law firms handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defenders offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals to OPDS in response to an RFP. Furthermore, law firms generally lack features of public accountability, like a public defender office's board of directors or the more arms-length relationships between independent consortium members. Thus, PDSC may have to rely solely on its own assessments of the skills and experience of individual law firm members, along with the external methods of training, standards and certification mentioned above, because the management structures, organization and operations of law firms are relatively inaccessible to public scrutiny.

The foregoing observations are not meant to suggest that law firms cannot provide quality, cost-efficient public defense services under contract with PDSC. The observations simply suggest that PDSC may have less influence on the organization and structure of this type of provider for the purposes of ensuring quality and cost-efficiency as easily as with public defender offices and well-organized consortia.

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

- Individual attorneys under contract. Individual attorneys efficiently provide a variety of quality public defense services under contract with PDSC, including in specialty areas of practice like aggravated murder cases and in geographic areas of the state with limited supplies of qualified attorneys. Given the potential influence stemming from the power to evaluate and select attorneys individually, and the one-on-one relationship and direct lines of communications between the attorney and OPDS inherent in this contractual arrangement, the Commission can ensure meaningful administrative oversight and quality control over individual attorneys under contract. Those advantages obviously diminish as the number of attorneys under contract with PDSC increases.

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

- Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as “overflow” from other types of providers. However, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, closely monitored and administered qualification process for court appointments, which is capable of verifying the attorneys’ satisfaction of requirements for relevant training and experience.

OPDS’s General Observations in Region 4

During December 2003 and January and February 2004, OPDS visited all of the counties in Region 4 at least twice, Benton County three times and Lane County five times. Members of OPDS’s staff met with virtually all of the public defense contractors and other interested public defense attorneys in each county of the region. Since PDSC’s foremost obligation is to ensure the cost-efficient delivery of competent legal services to public defense clients, OPDS also sought relevant information in each county from as many other credible sources as possible, including judges of the Circuit Court, attorneys in District Attorney’s Offices, staff of local probation or community corrections offices and representatives of Citizens’ Review Boards.

As a result of those visits, OPDS is able to offer the following general, though not particularly surprising, observations:

- Public defense caseloads, with increasing numbers of more serious felony cases, have become more demanding and complex over the past several years,⁵ making public defense practice an increasingly difficult way to support a law practice.
- Prosecutors’ charging and negotiation policies and practices vary widely from county to county, making the level and variations in public defense expenditures dependent on these policies and practices, as well as on crime and arrest rates.
- The nature and extent of the courts’ docket management practices vary from county to county, affecting the time and expense involved in handling public defense cases.
- Everyone we interviewed in the four counties of Region 4 expressed appreciation for the visits by OPDS and the special attention from the Commission that those visits represented, making this effort worthwhile for its own sake.

⁵ This trend, reported by most public defense attorneys in the region, is independent of a similar development caused by cuts to the 2001-03 indigent defense budget and the resulting actions by the Chief Justice and his Budget Reduction Advisory Committee during the last four months of the 2001-03 biennium.

A Demographic Snapshot of Benton County

With a 2001 population of 80,000, Benton County is the eleventh largest county in Oregon.⁶ As the home of Oregon State University and a site for the operations of several high technology firms, the county ranks first in the state in terms of the education level of its residents, with 26 percent possessing a bachelor's degree and 21 percent with professional or post-graduate degrees. Benton County also has a relatively low high school dropout rate of 4.1 percent, the 26th lowest of the state's 36 counties. As a result, the county has one of the lowest unemployment rates in Oregon, one of the highest proportions of professional, scientific and management positions in its workforce, and the fourth highest per capita income in the state.

Despite the presence of a university that draws students from around the world, Benton County's population is not particularly diverse. Non-white and Hispanic residents make up 13.2 percent of the county's population, compared to 16.5 percent for Oregon and 23.5 percent for Multnomah County. However, the county has a relatively high percentage of individual residents living in poverty at 14.6 percent (compared to 11.6 percent for Oregon and 12.4 percent for the United States).

With just over 21 percent of its population 18 years of age or younger, Benton County's "at risk" population, which tends to be more involved in criminal and juvenile offenses, is the second lowest in the state. The county's index crime rate in 2000 ranked tenth in the state at 42.5 per 1,000 residents (compared to the state's crime rate of 49.2 per 1,000 and Multnomah County's at 75 per 1,000). Its rate of juvenile arrests ranked 26th at 41.4 arrests per 1,000 (compared to Oregon's rate of 53 per 1,000).⁷

The public defense caseload in Benton County is approximately __ percent of the statewide total (compared, for example, to Lane County's 10 percent of the statewide total).

OPDS Findings in Benton County

A major challenge to the effective delivery of public defense services in Benton County is the county's unusually contentious "culture" of criminal law practice. Most of the individuals we spoke with in the county described a level of animosity between attorneys in the District Attorney's Office and attorneys in the Benton County Legal Defense Corporation, the Commission's consortium contractor, which far exceeds the normal bounds of vigorous advocacy in an adversarial process.

⁶ This demographic information was compiled by Southern Oregon University's Regional Services Institute and appears in the Institute's Oregon: A Statistical Overview (May 2002) and Oregon: A Demographic Profile (May 2003).

⁷ "Index crimes" are those crimes reported by the Oregon State Police in Oregon Uniform Crime Reports and include murder, rape and other sex offenses, robbery, aggravated assault, burglary, theft and arson. Oregon: A Statistical Overview at p. 122.

The animosity between Benton County’s prosecutors and defense attorneys, which has apparently existed for years, manifests itself most notably in emotional outbursts and unprofessional exchanges between counsel in the courtroom, filings of numerous bar complaints, breakdowns in communication between counsel, and refusals to fully cooperate with the Circuit Court in the administration of justice. Despite widespread disagreement among the region’s defense bar with some of the policies and practices of the District Attorney’s Office, criminal defense attorneys from outside Benton County, who handle cases in the county, do not seem to experience or become involved in such problems. On the other hand, observers of Benton County’s criminal justice process note that all the participants in the process—not just the county’s criminal defense bar—have contributed to these problems. Over the years, several judges in the county have attempted to mediate some of the disputes among the parties or exert some control over the behavior of attorneys on both sides, apparently without much success.

As a result of its discussions with the defense consortium’s attorneys and others in Benton County, OPDS also identified some apparent problems in the administration of the consortium and the performance of its attorneys. Based upon the experiences of the Indigent Defense Services Division (IDSD) in the past and reports from some of the people who OPDS interviewed, the consortium apparently does not have a reliable process for responding to or resolving complaints regarding the performance of its members. Our discussions with the consortium also raised some quality assurance issues. For example, OPDS received reliable complaints that members of the consortium have failed to contact their clients prior to the commencement of juvenile proceedings. During OPDS’s meeting with the consortium in December, its members defended this practice despite the ethical obligation to communicate with a client in preparation of the defense in a juvenile case.

There also appears to be an absence of explicit safeguards against breaches of confidentiality and conflicts of interest in one of the consortium’s law offices. That office is shared by five members of the consortium, who apparently discuss their cases, case strategies and potential dispositions among themselves on a regular basis, notwithstanding their representation of clients with adverse interests.

OPDS’s Preliminary Recommendations regarding Benton County

Obviously, neither the Commission nor the defense consortium can or should assume the entire responsibility for changing the culture of criminal law practice in Benton County. And the responsibility for the problems of animosity and contentiousness among the criminal law practitioners in the county does not rest entirely with the county’s defense attorneys. Nevertheless, members of the Benton County Legal Defense Corporation appear to have contributed significantly to these problems in the course of their dealings with prosecutors and the court. PDSC should put the consortium on notice that unprofessional conduct directed toward the court or the consortium’s courtroom adversaries will no longer be tolerated.

The Commission should direct OPDS to meet and confer with the members of the consortium regarding these issues of professionalism and the administrative problems and quality assurance issues noted above. OPDS should attempt to collaborate with the consortium to develop remedial strategies to address all of these problems and issues. The remedial strategies should include outside technical assistance through a consulting relationship with an experienced consortium administrator from another county. OPDS should be directed to report back to the Commission on the consortium's progress in addressing these problems and issues at PDSC's regular meetings in June and September 2004. In the event OPDS reports that members of the consortium are unwilling or unable to cooperate in this process, the Commission should authorize OPDS to begin the formal process of identifying and recruiting other attorneys to handle public defense cases in Benton County under contract with PDSC.

A Demographic Snapshot of Lincoln County

Lincoln County's population of 44,500 makes it Oregon's 17th largest county. With 12.4 percent of its adult population possessing a bachelor's degree and 8.4 percent with post-graduate and professional degrees, the county falls somewhat below that state's higher education levels (which is 16.4 percent for B.A. degrees and 8.7 percent for post-graduate degrees). On the other hand, the proportion of high school graduates in its population is above average at 29 percent (compared to a state average of 26.3 percent). But the county also has the fourth highest high school dropout rate in the state at 8.4 percent (compared to the state average of 6.7 percent).

Though Lincoln County's unemployment rate generally falls below at least ten other Oregon counties, that rate has averaged two percentage points above the state average in recent years. The county has a relatively low proportion of professional and management workers in its labor force at 6.2 percent (compared to a state average of 8.9 percent). It ranks 13th in per capita income among Oregon's counties at \$18,700 (compared to the state average of \$21,000).

Lincoln County's percentage of non-white and Hispanic residents at 12 percent makes it the tenth most diverse Oregon county, but still places it below the statewide average of 16.5 percent. With 14 percent of its residents living in poverty, the county has an above-average poverty rate (compared to the statewide average of 11.6 percent).

The county's "at risk" population of residents 18 years old or younger is 21.4 percent, the third lowest in the state, just ahead of Benton County. However, its index crime rate of 53 per 1,000 residents is the fifth highest in the state (compared to the statewide average of 49 per 1,000). On the other hand, the county's juvenile arrest rate is only the 5th highest at 67.6 per 1,000 residents (compared to a state average of 53 per 1,000).

Lincoln County's public defense caseload represents ___ percent of the state's total caseload.

OPDS's Findings in Lincoln County

PDSC's public defense contractors in Lincoln County regard themselves as members of a consortium and, in significant respects, operate that way (such as dividing up their total caseloads and reallocating their workloads and revenue). However, they submit separate bids to PDSC as independent contractors, and apparently lack any formal structure or rules that legally obligate themselves to each other. In the face of ongoing difficulties in obtaining compliance with administrative requirements among these contractors, IDSD contracted with and compensated one of its contractors in the county to perform administrative duties for the others, thereby perpetuating the sense that the group operates as a consortium.

Despite their independent status and sometimes competing bid proposals, Lincoln County's public defense contractors appear to have successfully worked out the reallocations of their caseloads and revenue among themselves. During OPDS's meeting with the contractors in December, they expressed overall satisfaction with their public defense practices and their relationships with "Salem" and each other.

The one area of uncertainty appeared to be the group's commitment or capacity to recruit and train new attorneys in the practice of criminal defense law. The members of the "consortium" voiced concerns over losing misdemeanor and other less serious cases to new attorneys, making their caseloads "heavier" with more serious felonies and, as a result, less manageable and cost-effective. They did offer somewhat vague assurances that new attorneys would be brought into their separate law firms in the normal course of their ongoing operations.

The judges who OPDS met with and the District Attorney in Lincoln County expressed satisfaction with the quality of public defense representation in the county and their working relationships with PDSC's contractors. They also emphasized the depth of skill and experience of those attorneys, which obviously represents a valuable asset to the county, but which also confirms the trend of a "graying" of the criminal defense bar that Lincoln County, as well as the entire state, is now facing.

OPDS's Preliminary Recommendations regarding Lincoln County

There appear to be no reasons for PDSC to make any changes in Lincoln County's public defense delivery system during this planning cycle. The county has a close-knit legal community and an effective criminal justice system in which all of the participants appear satisfied with how public defense services are currently delivered in the county. Furthermore, the current service delivery system appears to have served the interests of the state in providing quality, cost-effective public defense services.

However, one aspect of the county's service delivery system calls for the Commission to begin a process of planning for the future. Lincoln County, like many counties in the state, has a criminal defense bar of advancing age with no systematic "succession plan" for encouraging of new attorneys to enter the practice of criminal defense law in the county. As in many less populated areas of the state, the addition of new contractors can obviously impact the caseloads and the revenue of existing contractors in Lincoln County, which must be taken into account. Nevertheless, PDSC has an interest in ensuring the availability of public defense attorneys in the future by promoting opportunities for new lawyers to practice criminal defense law in less populous areas like Lincoln County.⁸

The Commission should request the current public defense contractors in Lincoln County to develop a succession plan, collectively and in collaboration with OPDS, to promote the entry of new lawyers into the practice of criminal defense law through the county's existing service delivery structure. During the next contracting cycle, and subject to the review and approval of the Commission, the contractors' succession plan should be incorporated, or otherwise account for, in the terms of their contracts. In the event that the plan does not meet with PDSC's approval, the Commission should consider options for changing the organization or structure of Lincoln County's service delivery system during the next service delivery planning cycle in order to promote the entry of new lawyers into criminal defense practice in the county.

A Demographic Snapshot of Linn County

Linn County is the eighth largest county in Oregon with a population of over 103,000. The county ranks 31st in the number of residents with college degrees at 9.1 percent and 28th in the number of residents with post-graduate and professional degrees at 4.3 percent. The county does have an above-average proportion of high school graduates at 33 percent (compared to the state's average of 26 percent), though its high school dropout rate is the seventh highest in the state at 7.6 percent.

The county has a relatively small proportion of professionals and managers in its population, ranking 23rd in the state with 5 percent (compared to a state average of 9 percent). It also has below average per capita income of \$17,600 (compared to the state's \$21,000).

Linn County has had unemployment rates higher than the state's average over recent years by about two percentage points, but below at least a dozen other Oregon counties. On the other hand, it has the eight lowest poverty rate in the state, with 11.4 percent of

⁸ PDSC has already adopted strategies to expand these opportunities in its 2003-05 Strategic Plan. See Goal #4 at page 9 of the Plan: "Create incentives for the provision of public defense services in areas of the state experiencing a shortage of such services," and the strategies that follow. Although Lincoln County does not appear to be facing an immediate shortage of public defense services, as members of its criminal defense bar begin to retire or move into other practice areas as their careers progress, the county's officials and local bar may need to consider the kinds of strategies the Commission has identified in its Strategic Plan.

individual residents living in poverty (compared to Coos and Josephine Counties, for example, with 15 percent).

Linn County's non-white and Hispanic population is relatively small at 8.8 percent (compared to the state's average of 16.5 percent). However, with 26 percent of its population 18 years of age or younger, the county has the 13th highest at risk population in the state. It also has the fourth highest index crime rate (at 53.2 per 1,000) and the sixth highest juvenile arrest rate (at 83 per 1,000).

The public defense caseload in Linn County is approximately __ percent of the statewide total.

OPDS's Findings in Linn County

Linn County's criminal defense consortium, the Linn County Legal Defense Corporation, and its juvenile defense consortium, the Linn County Juvenile Defense Consortium, have apparently had a long and productive relationship with IDSD. With the exception of recent increases in the complexity of cases along with decreases in available funding, the consortium members OPDS met with in December expressed satisfaction with their practices and a continuing willingness to "go the extra mile" for their clients and the state's public defense system.

The judges and the District Attorney in Linn County consistently expressed satisfaction with the quality of public defense representation in the county. All of the participants in the county justice system seem to feel that everyone is doing their jobs and performing their respective roles in the system effectively.

However, attempts to establish and maintain an Early Disposition Program (EDP) in Linn County have apparently been unsuccessful. Reasons offered for the program's failure in the county varied from prevailing judicial policies and practices to prevailing prosecutorial policies and practices. In any event, the process of designing EDPs in the county has apparently not involved defense attorneys or acknowledged a formal role for them, which might explain why these programs could not operate effectively in resolving criminal cases.

Linn County's juvenile judge informed OPDS that the juvenile court's workload had nearly doubled in the past 18 months. At the rate the Department of Human Services is currently filing petitions in dependency cases, the court estimates that over 300 will be filed in 2004, compared to 162 in 2002. While recognizing the limited funds in PDSC's current budget, the court is concerned that the five attorneys in the juvenile defense consortium will be unable to continue handling all of the juvenile hearings, trials and Citizen Review Board appearances in the county effectively.

OPDS's Preliminary Recommendations regarding Linn County

In general, Linn County's public defense delivery system appears to be providing quality services cost-efficiently. Certainly, the public officials and attorneys with whom OPDS spoke consistently expressed satisfaction with those services, as well as the performance of PDSC's contractors in the county. Therefore, the Commission should not consider any significant changes in Linn County's public defense system at this time.

However, in the event that public officials in Linn County decide to establish and maintain another EDP, the Commission should direct OPDS to work with the Circuit Court, the District Attorney's office and the county's criminal defense consortium to develop a new EDP in Linn County that includes formal participation by public defense attorneys.⁹

The Commission should also direct OPDS to review the current juvenile caseload and its caseload projections in Linn County and report back to PDSC in June 2004 with an assessment of the need for additional support for the juvenile defense consortium and, if such a need exists, a plan for the necessary reallocation of existing public defense resources.

⁹ OPDS understands that the Oregon Criminal Defense Association has agreed to develop statewide standards for the proper role and participation of defense attorneys in EDPs. Subject to the Commission's approval of those standards, OPDS's efforts to help in the development of an EDP in Linn County or any other county of the state should ensure the program's compliance with those standards.