

**Public Defense Services Commission  
Service Delivery Plan for Judicial District No. 6  
Umatilla and Morrow Counties  
(May 8, 2008)**

**Introduction**

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

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004 to 2007, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Washington, Wasco, Wheeler, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of Umatilla and Morrow Counties' public defense system undertaken in preparation for the PDSC's public meeting in Pendleton on November 7, 2007 and a summary of the testimony provided at that hearing. The final version of this report will contain PDSC's service delivery plan for Judicial District No. 6.

**PDSC's Service Delivery Planning Process**

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

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

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

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

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

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

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

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in

its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

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

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

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

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

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

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

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

#### “Structure” versus “Performance” in the Delivery of Public Defense Services

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

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

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

through the Commission's deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

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

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

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

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

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

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of

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

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

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

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

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and

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

supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

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

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

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

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<sup>3</sup> Id.

Consortia offer the advantage of access to experienced attorneys who prefer the independence and flexibility associated with practicing law in a consortium in which they still represent public defense clients under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms, but in which they no longer wish to practice law.

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

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

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

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the

internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

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

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

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

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

5. Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially

significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

### **OPDS's Preliminary Investigation in Judicial District No. 6**

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

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

On November 7, 2007 from 9:00 a.m. to 1:00 p.m., PDSC held a public meeting in Room 316 of the Umatilla County Courthouse in Pendleton, Oregon. The purpose of that meeting will be to (a) consider the results of OPDS's investigation in the district as reported in the preliminary draft report, (b) receive testimony and comments from judges, the Commission's local contractors, prosecutors and other justice officials and interested citizens regarding the quality of the county's public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Judicial District No. 6.

This draft report is intended to provide a framework to guide the Commission's discussions about the condition of the public defense system and services in the district, and the range of policy options available to the Commission – from concluding that no changes are needed to significantly restructuring the district's delivery system. The initial draft was intended to offer guidance to PDSC's invited guests at its November 7, 2007 meeting, as well as the Commission's contractors, public officials, justice professionals and other citizens who might be interested in this planning process, about the kind of information and comments that would assist the Commission in improving Judicial District No. 6's public defense delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in the justice systems in these two counties is the single most important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for Judicial District No. 6.

### **OPDS's Findings in Judicial District No. 6**

Judicial District No. 6 is comprised of Umatilla and Morrow Counties. There are three courthouses in the district, two in Umatilla County (Pendleton and Hermiston) and one in Morrow County (Heppner).

There are five judicial positions in the district, increased from four in 2006.<sup>4</sup> Judge Garry Reynolds is the presiding Judge. He and Judge Jeffrey Wallace are assigned to the courthouse in Hermiston.

Judge Daniel Hill and former District Attorney and now Judge Christopher Brauer are assigned to Pendleton, as is the family court judge, Judge Ronald Pahl, who also serves as the drug court judge in Pendleton. (Judge Reynolds serves as the drug court judge in Hermiston.)

The judges are assigned to cover the court in Heppner on a rotating basis.

Hermiston is approximately thirty miles from Pendleton and Heppner is approximately seventy. A map of the region is included as Exhibit A.

The Umatilla County Jail houses prisoners from both counties.

### **Umatilla County**

The population of Umatilla County in 2006 was 72,190. Funding for county services has been relatively stable in recent years. The county is served by twelve separate law enforcement agencies.

Since the completion of a new courthouse in Hermiston all categories of cases, including murder cases, are being assigned to the Hermiston court if they arise in the western area of the county. Because this is the area in which most of the growth in the county is occurring it is expected that the caseload handled by the Hermiston court will continue to grow.

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<sup>4</sup> In an effort to describe the workload in the district, it was reported by the Judicial Department that there were 1,516.8 cases of all types including violations filed per each judicial position during the period of January 1 to June 30, 2007. There were 697.8 cases per judicial position if violations are excluded. The statewide average without violations for this period was 1,008. During the same period one felony and 4 misdemeanors were tried in Morrow County and 27 felonies and 41 misdemeanors in Umatilla.)

## Procedure in criminal cases

In criminal cases, each judge maintains his own docket and whichever judge presides over the arraignment schedules all future appearances for his own courtroom. Attorneys are present for arraignments. (Both the attorney and the defendant are at the jail during in-custody arraignments, while the judge and the district attorney are in the courtroom; all are in the courtroom for out-of-custody arraignments.)

A pretrial conference is scheduled in every case for approximately six to eight weeks after arraignment in order to track progress in the case, determine whether discovery has been provided, schedule motions, etc. Except for custody cases, a trial date is set only if the attorneys indicate that the case will be going to trial. A trial readiness appearance is calendared three to five days before trial.

With respect to the quality of representation being provided in criminal matters by PDSC's two contractors in the area Judge Reynolds said that the attorneys for both contractors work hard at what they are doing and, despite having to cover cases in multiple courts, they are providing good services.

## The District Attorney

Dean Gushwa is the District Attorney of Umatilla County. He currently has five deputies but is recruiting for several more. His office must staff both the Hermiston and Pendleton Courts five days a week. Despite short staffing, this office continues to prosecute some types of offenses, such as failures to appear and drug residue cases, which some district attorneys have chosen not to pursue when resources are scarce. In addition, Mr. Gushwa said that his office pursues the death penalty in every case in which the grounds for charging aggravated murder are present and does not decide whether it will actually seek a death sentence until all the evidence has been presented in court.<sup>5</sup> As of October 30, 2007, there were 7 aggravated murder cases pending in Umatilla County (out of a total of 48 statewide).

## Drug court

Umatilla County operates a drug court in both Hermiston and Pendleton. Each meets once a week. The first graduation ceremony occurred in the late summer of 2007. As of September, 2007, the program had 44 participants, half of whom were women. The program has a maximum capacity of sixty. The program works with medium and high risk offenders, including those charged as repeat property offenders, and provides extensive support for participants, including

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<sup>5</sup> This approach can be very costly for PDSC since every client must be provided full ABA-compliant representation throughout the pretrial and trial proceedings even though the state may ultimately determine that it will not be asking for a death sentence.

anger management counseling and job skills training, as well as drug treatment. The drug court reportedly has very few Hispanic clients. Staff believes this is because many of the Hispanic defendants are one-time offenders and conditional discharge is often a better option for them.<sup>6</sup>

The program just received a Bureau of Justice Assistance grant to expand coverage to clients in the Milton Freewater area, to add an on site GED program and a mental health treatment component, and to fund research to assess the impact of the program.

The District Attorney believes the drug court is working and attributes the declining number of misdemeanor offenses to the intervention of the drug court.

Doug Fischer, the administrator of the Intermountain Public Defender Office, has been an active participant in the development and operation of the court and sits on its steering committee. One attorney is assigned to staff the court and represent all of the clients who participate.

Attached as Exhibit B is a document describing the court and its operation.

Some attorneys with the Blue Mountain Defender consortium are reported to discourage clients from participating in drug court. The consortium administrator, Craig Childress, explained that, although the program might be appropriate for some clients it is not appropriate for clients who are likely to fail since applicants are required to plead guilty to all outstanding charges as a condition for admission to the program,<sup>7</sup> and may not withdraw their pleas even if found ineligible for the program.

While program rules require applicants to waive indictment and stipulate to laboratory reports, clients are not required to plead guilty to any charges until they are accepted into the program. They are then required to plead to all counts in the information. Other pending charges may be brought into drug court, but if the client wants them included, he or she must also plead guilty to all charges in those cases. If the client successfully completes drug court, all of the charges are dismissed. If the client does not successfully complete the program, the court proceeds to sentencing on all counts. If an applicant is not accepted for drug court, he or she is still entitled to a trial on the charges alleged in the

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<sup>6</sup> For non-citizen clients, even a conditional discharge may be treated as a “conviction” of a drug offense by the federal government, which can lead to exclusion and/or deportation from the United States. District attorney diversions, on the other hand, may not be considered convictions for this purpose.

<sup>7</sup> The Umatilla County drug court model may be unusual in this regard. Attorneys in other counties report that plea discussion and negotiation is often part of the process of admission to drug court. If a guilty plea is required, in some counties it may be to a single charge. In counties that do not require guilty pleas, the defendant is instead generally required to stipulate to the admission of certain evidence.

information but is bound by the stipulation relating to the laboratory findings.<sup>8</sup> Program representatives say that they work hard to keep clients in the program, that relapses are understood to be a part of treatment and that if clients are honest with them, they will do everything they can to help them succeed.

### Juvenile cases

Judge Ronald Pahl is the family court judge. All juvenile proceedings in the county are held in the Pendleton courthouse.

The district attorney's office assigns a deputy full time to the juvenile department; this deputy files all the petitions in dependency cases and represents the state in delinquency proceedings as well. A secretary in the juvenile department prepares subpoenas, summonses, and other documents in dependency cases.

### Procedure in dependency cases

Initial appearances in juvenile matters occur in the afternoon, as needed, which is approximately one to two days per week. About a year ago, Judge Pahl, working with the contract firms and DHS, instituted the practice of having attorneys appear at shelter hearings.<sup>9</sup> A mediation session is scheduled in every case approximately forty-five days after the initial shelter hearing. The county was able to fund this program when support from the Juvenile Court Improvement Project ended in 2005. Approximately half of all dependency cases were formerly being resolved at mediation. One representative of the state indicated recently, however, that the program may be in jeopardy because some attorneys decline to participate.<sup>10</sup>

Occasionally, attorneys do not become aware of conflicts until the mediation session. Substitution of new counsel at this stage can significantly delay the proceedings.

The court conducts reviews in dependency cases annually. The Citizen Review Board reviews cases every six months.

The CASA coordinator reported that as of September there were eighteen active CASAs working with eighty children in foster care. CASAs are not appointed until in Umatilla County until approximately thirty days after shelter hearing.

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<sup>8</sup> During 2008 the Commission will review drug court operations around the state, focusing on the role of counsel in each county and will consider whether it should issue guidelines for participation of public defense attorneys in this specific type of early disposition program.

<sup>9</sup> This practice has largely resolved a problem brought to OPDS's attention in the past, of some attorneys not meeting with their clients prior to the mediation session.

<sup>10</sup> Two attorneys associated with the Blue Mountain Defender consortium were identified as being unwilling to permit their clients to participate.

### Comments on representation in juvenile dependency cases

One juvenile system participant said that she is concerned that many attorneys are not meeting with their child clients regularly, or sometimes at all. She could name only two attorneys who visit their child clients regularly, one at IPD and one at BMD. The attorney who represents children in most of the dependency cases does not appear to have contact with them, although it was reported that in the past month he has made efforts to do so.

One juvenile system representative said that although attorneys regularly attend CRB hearings or send representatives, most of them do not participate. They take notes but do not provide any information to the board. They appear not to have information about child clients, and, if they have it about parents, are not providing it. There are two attorneys, one from each contract provider, who are always prepared and make effective presentations on behalf of their clients. If they cannot attend they normally send detailed information in writing.

Judge Pahl said that in cases subject to the Indian Child Welfare Act it might be helpful to provide some training to the attorneys about how to use the act to their clients' advantage.

Additional comments regarding quality of representation are set forth below with respect to each of the contractors.

### Procedure in delinquency cases

Attorneys are present for shelter hearings in delinquency cases. They are appointed in only about half of the cases, however, with the other half waiving counsel and generally resolving their cases as proposed by the juvenile department at the initial hearing. The juvenile department reports that it diverts most first time offenders out of the court system.

The juvenile department in Umatilla County has six probation counselors, one assigned to intake and one to sex offender supervision. The other four are field officers. A representative of the department said that they maintain good working relationships with defense attorneys, although the district attorney's office does not permit them to talk directly to defense attorneys about their cases. There are few juvenile delinquency trials; the department representative indicated that only about five cases had been tried in the previous year.<sup>11</sup> Motions are filed only occasionally.

The local detention facility has 24 beds; only 15 are currently staffed and 11 or 12 of these are generally rented to other counties. The region recently received a Casey Foundation Juvenile Detention Alternative Initiative (JDAI) grant. Judge

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<sup>11</sup> OPDS received only three requests for non-routine expense approvals in juvenile delinquency cases from Umatilla County in the one year period beginning October 1, 2006.

Pahl and Chuck Belford, the director of the juvenile department, attend national JDAI meetings. Members of the defense bar have also been active participants. Umatilla County is also seeking to become a model court site through the National College of Juvenile and Family Court Judges. Judge Pahl noted that there are few local resources available for adjudicated youth. They often use resources in Spokane, Yakima and Bend. There is a multi-treatment center in Umatilla County but it is not appropriate for all.

With respect to minority youth in the county, one juvenile system representative said that one of the local police agencies sites minority youth in disproportionate numbers. It is hoped that this practice can be addressed through the JDAI.

There is a significant population of non English-speaking Hispanic youth, especially in the west end of the county. The juvenile department has one Spanish speaking juvenile court counselor but treatment resources are scarce for this population.

#### Comments on representation in delinquency cases

The director of the juvenile department said that there might be a need for more attorneys to handle delinquency cases. Attorneys sometimes come from Union County to take cases that cannot be handled by the local attorneys but this can result in delay due to scheduling issues and travel time for these lawyers. He also said that caseloads may be too high or lawyers may be devoting too much of their time to other cases. Some attorneys are not meeting with their clients in a timely way<sup>12</sup> and don't appear to be able to give priority to their juvenile cases.

Judge Pahl said that he would like to see attorneys do more research on dispositional alternatives and present a plan in each case.

#### Public Defense Providers

##### Intermountain Public Defender<sup>13</sup>

Intermountain Public Defender (IPD) is a private non-profit corporation that contracts with PDSC for 100% of its legal services. The IPD office is located in downtown Pendleton, two blocks from the courthouse. The office was founded in 1994 and currently has eight full time attorneys, including its Executive Director, Doug Fischer. The office employs both clerical and investigative staff. It contracts to handle all case types except for aggravated murder and post-conviction relief cases. Under the current contract IPD has agreed to handle

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<sup>12</sup> One local attorney said that the juvenile department needs to improve its communication with defense attorneys. Attorneys aren't always notified when their clients are taken into custody or when there are other important developments in the case.

<sup>13</sup> A copy of IPD's response to OPDS's questionnaire for public defense offices is attached as Exhibit C.

4,944 cases over the two-year period ending December 31, 2007. IPD is paid \$1,000 per month for representing clients in drug court and also receives a stipend for travel expenses. In the past IPD was paid \$357 per case, regardless of case type. A change to a rate structure based on the value of different types of cases resulted in a revenue increase under the 2005-2007 contract. In the past IPD has reported that 89% of contract funds were expended for salaries and benefits, and only 11% for overhead. The office provides health insurance and funds a pension program (10%) for all employees and pays bar dues and NACDL and OCDLA membership for the attorneys.

The office has a four-member board of directors, two of whom are attorneys in private practice, one is a retired judge and one is an accountant. The board's primary function has been to insure financial accountability. An auditor reviews monthly bank statements and performs an annual audit. The Board meets annually to review the audit results and at such other times as needed.

IPD adopted a written personnel policy manual in 2005. It has no formal performance evaluation process, however. IPD reports that performance evaluation is an on-going process at IPD. Management receives input from judges, court staff, the district attorney and others. Concerns are evaluated and discussed with the individual in question. On rare occasions employees have been encouraged to seek other employment.

Despite having hired a number of new employees over the last several years, IPD does not appear to have a formal orientation, training or mentoring program, other than its "open door" policy under which new staff are encouraged and expected to seek advice from more experienced staff. IPD does fund fifteen hours of CLE credits for each attorney every year. IPD also maintains a library and provides access to online legal research tools to its attorneys.

#### IPD case management

IPD attorneys appear at criminal arraignments. Discovery is not always available at this appearance. In most cases, an investigator makes initial contact with in-custody clients within 24 hours of appointment. Upon receipt of discovery, clerical staff reviews the police reports and checks for potential conflicts. The attorney then receives the file. If no conflict is found, a letter, including both an appointment time and the next court date is then sent to the client. If withdrawal is appropriate, a motion is filed immediately.

Cases are assigned on a case-weighted basis in order to balance the workload among the attorneys and give each of them cases consistent with their experience.

IPD covers drug court in Pendleton and shares coverage of the Hermiston drug court with Blue Mountain Defenders.

## Comments on quality of representation by IPD

While many people interviewed for this report had very positive things to say about IPD's "turn around" and about the good work it does on many cases, about its training of new attorneys, about its preparation in criminal cases and aggressive representation of clients, and about the representation it provides in the special courts, it also appears that IPD may have some significant quality issues to address.

All of the following concerns were mentioned by one or more of the persons interviewed for this report: clients continue to complain that they are not able to reach their attorneys,<sup>14</sup> especially juvenile court clients;<sup>15</sup> juvenile system representatives say that most IPD attorneys appear but do not participate in Citizen Review Board hearings, and that some attorneys have no contact at all with child clients.<sup>16</sup> Another juvenile system representative said that one IPD attorney, who is not a bad attorney, can be very difficult to reach, even on urgent matters affecting his clients, and failed to see one of his clients for six months following his appointment.

Some of these commentators believed that quality problems were probably related to workload and that the attorneys often appear to be "swamped."

## Blue Mountain Defenders

The Blue Mountain Defender consortium (BMD) was founded in 2005, succeeding to a caseload previously assigned to the Umatilla/Morrow Defense Consortium. The administrator of the BMD consortium is Craig Childress. There are eight other attorneys identified in the 2005-2007 contract as being included in the consortium.

BMD contracted with PDSC for the two-year period ending December 31, 2007 to handle a mixed caseload of 2600 cases. The consortium's case mix is similar to that of IPD, except that BMD does not receive appointments in murder cases.

BMD did not provide a description of its current operating structure other than to say that for the last two years it has operated as a small public defense firm with

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<sup>14</sup> One former IPD attorneys said that the court requires clients to contact their attorneys regularly and, since IPD does not have voicemail, people may be trying to contact them after hours without success.

<sup>15</sup> One juvenile system representative suggested that IPD attorneys meet with their clients immediately after the shelter hearing to schedule an appointment with them rather than trying to contact them later by phone or letter.

<sup>16</sup> This has been a common concern in many parts of the state. OPDS recently sent to its contractors a statement outlining OPDS's expectation with respect to representation of children. A copy of this statement is attached as Exhibit D.

subcontracting lawyers taking a few selected case types according to individual members' needs and limitations. It appears that Mr. Childress and another consortium member, Dan Stephens, devote almost 100% of their time to public defense cases and consider themselves to be the sole members of BMD. Other attorneys associated with the consortium are considered "outside attorneys" and are reported to devote between 20 and 80% of their time to public defense cases. It is not clear whether this distribution is based on the preferences of all concerned. Mr. Childress has acted as the administrator of the consortium and OPDS's contact has been exclusively with him.

BMD has drafted a proposed set of bylaws that would become operative if it were awarded a contract beginning in 2008. Under the bylaws, there would be a board of three to seven directors, including five members of the consortium. A retired Oregon State Police officer and a community activist are being considered for appointment to the board as lay members. The consortium administrator would serve on the board for an initial three-year term although the bylaws also indicate that his term as an officer would be for five years and would permit him to be removed only for cause.<sup>17</sup> Other members would be subject to removal by a vote of two thirds of the directors then in office.

Currently, the consortium administrator and his staff person receive 5% of the total monthly payment to the consortium for their administrative duties.<sup>18</sup>

The administrator submitted written responses to questions regarding the structure and operation of the consortium. A copy of this document, along with the proposed bylaws is attached as Exhibit E.

OPDS received many positive comments about BMD. The judges praised the general level of representation provided by BMD attorneys and the level of experience they bring to their work. Court staff is appreciative of the consortium's management of its cases.

Two consortium attorneys were identified as being particularly skilled trial lawyers and two were noted to provide superior representation in juvenile court cases although neither of the latter appeared to be assigned many juvenile cases.

Concerns were expressed by a number of people about the practice of the consortium administrator and the other attorney who works in the same office<sup>19</sup>

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<sup>17</sup> Mr. Childress explained that because he gave up other employment to plan and organize the consortium, his role as executive director is preserved under the proposed bylaws for at least three years.

<sup>18</sup> It is not clear whether the 5% is in addition to or includes the \$7,500 line item for administration in the PDSC contract with BMD.

<sup>19</sup> A number of the justice system representatives who were interviewed expressed concern about at least the appearance of impropriety when attorneys representing co-defendants or other parties to a single proceeding share office space, and in some cases, have common law office staff. It is undoubtedly a struggle in small communities for lawyers to find affordable office space

appearing to take the same position on nearly all of the cases in which both are involved, even when their clients' interests appear to be very different.

Concern was also expressed by a number of juvenile system representatives about Mr. Childress assigning to himself most of the child clients in juvenile dependency cases. One child advocate said he did a "pretty good job," but others reported that he sometimes does not know the names or ages of the children he represents, generally sits through trials without making an opening or closing statement on behalf of his child client or asking any questions of the witnesses, and that until very recently he failed to meet with child clients, including adolescents who were capable of considered judgment.

One observer said that Mr. Childress and the other attorney in the BMD office are extremely disrespectful to DHS representatives in the courtroom, at CRB reviews and during mediation sessions. This observer said that the behavior of these attorneys is not just unusually adversarial. In her opinion it is unprofessional and works to the detriment of some clients.

#### Hourly paid attorneys

Some attorneys in the area expressed an interest in handling public defense cases on an hourly basis but it is rare that there is a need to appoint a non-contract attorney. These attorneys do not want to participate in the current consortium, however. In addition, a court representative said that there are capable attorneys in the area who could do excellent work in public defense cases but they are not available to the court for appointment because they are not part of the consortium.

### **Morrow County**

The population of Morrow County in 2006 was 12,125. Funding for county services has been less stable in recent years in Morrow County than in Umatilla. There are some economic development projects underway that may improve the economy. Ground will soon be broken on a speedway in Boardman and a new ethanol plant has recently been completed.

There are two law enforcement agencies in the county, the Morrow County Sheriff's Office and the Boardman Police Department.

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and consortia members in a number of counties share space and often some office equipment. The sharing of staff creates the greatest risk for jeopardizing the confidentiality and secrets of public defense clients among attorneys who represent parties with opposing interests in the same or related proceedings. Ethics Opinion 2005-50 indicates that staff in such circumstances should not open mail, receive telephone calls or review client information in any case in which two attorneys represent parties with opposing interests. Mr. Childress provided OPDS with a detailed description of the staffing at his office and the steps that he and Mr. Stephens have taken to protect client confidences. As of January of 2008 Mr. Stephens plans to relocate his office to Hermiston.

Elizabeth Ballard is the district attorney. She has been in office for approximately a year and served as a deputy district attorney for three years before becoming the district attorney. She currently has no deputies.

Criminal cases<sup>20</sup> are scheduled in Morrow County every Thursday and sometimes on Friday although the court hears primarily civil matters when it is in session on Fridays. It can be difficult to conduct trials with so little court time available.

BMD attorneys handle almost all of the cases in Morrow County and have assigned a single attorney to cover most of these matters. This attorney appears in person for criminal arraignments and other matters on Thursdays. On other days she appears by video connections. The round trip distance between Pendleton and Heppner is 144 miles.

Both Judge Reynolds and District Attorney Ballard indicated that the BMD attorney who handles most of the cases in their county does a very competent job. She is generally prepared, is in good communication with the court and the state, and provides vigorous representation to her clients.

Juvenile matters are heard in the county court in Morrow County and, consequently, public defense providers are paid by the county, not OPDS.

### **Summary of Testimony at November 7, 2007 Meeting**

Judge Ronald Pahl's courtroom is located in the courthouse in Pendleton. He is the juvenile and family law judge. He also handles civil cases. He said that there is a "pretty good group" of attorneys handling juvenile cases. He recently implemented a policy requiring attorneys to be present for initial appearances in juvenile cases and believes the new process is working well. Occasionally it is difficult to find enough attorneys for all of the parties, especially on short notice. He encourages attorneys to meet with child clients and believes there has been some improvement in that regard. In some cases Judge Pahl has seen an attorney for a child appear to be intimidated by an attorney for a parent into not advocating the child's position. One area in which attorneys may need additional training is in the law applicable to Indian Child Welfare Act cases. In delinquency cases only about half of the youth who come before the court request court-appointed counsel. The others, sometimes with input from their parents, waive counsel. Umatilla County is one of the Casey foundation's juvenile detention alternative initiative sites. The defense lawyers have been skeptical about the benefits of the initiative for their clients but that may be because they have not yet received any training. There has not really be an overcrowding issue at the county detention facility but the records kept by the project will be useful in

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<sup>20</sup> A total of 350 credits were claimed by BMD for the period of January 1, 2006 through September 30, 2007.

identifying trends and whether there is minority overrepresentation. Judge Pahl is also the drug court judge. The Pendleton drug court had a graduation recently. It is a great program. It has a fifty percent success rate but that is good. The county also has conditional discharge and diversion options. With respect to the requirements for admission to the drug court program, Judge Pahl can understand that when an attorney believes that a case has been overcharged that they would be reluctant to recommend a guilty plea to their clients since the fifty percent that don't succeed end up with a conviction. The Hispanic population of the county is approximately fifteen percent although it is closer to fifty percent in some areas. Judge Pahl does not believe there are any Hispanic attorneys in the area. There are Native American attorneys who practice in the tribal court and occasionally appear in the county courts.

Umatilla County District Attorney Dean Gushwa was appointed by the governor in January of 2007. He was a deputy district attorney in the office for thirteen years and also worked briefly as a defense attorney in private practice. He has eight deputies who prosecute cases in four courtrooms in two separate courthouses. It takes forty-five minutes to travel from one courthouse to the other. The county did not provide any additional staff for the office when the new courthouse opened in Hermiston. He has tried to create uniform policies for both facilities and meets weekly with all of the deputies. There needs to be proportionality in negotiated pleas and the handling of cases. One deputy is assigned to juvenile court and is located at the juvenile department. She handles both dependency and delinquency cases. His office has experienced significant turnover this year, losing four of its deputies, but there have been more applicants for open positions lately. IPD is doing a very good job and maintains a very collegial atmosphere among its attorneys. The attorneys comport themselves professionally and have good working relationships with his office. In the past some non-IPD lawyers filed frivolous motions but IPD lawyers do not. They use whatever ethical legal mechanisms they can, however, to help their clients. In death penalty cases, Mr. Gushwa believes that if the conduct meets the elements for aggravated murder, the sentencing jury should be the body which decides whether a death sentence will be imposed, not the district attorney, unless there is a very unusual circumstance such as mental retardation. Mr. Gushwa said he believed that other district attorneys take an even stricter view. Since he took office he has made it his policy to provide discovery to the defense at the time of arraignment. He would like to be able to provide it electronically in the future.

Judge Jeffrey Wallace is assigned to the Hermiston courthouse, which opened in March of 2006 after the previous structure was destroyed by fire. With more cases now being heard there the defense attorneys have to do more traveling. Because the western part of the county is growing more rapidly than the eastern portion it is expected that number of cases assigned to Hermiston will continue to grow. Blue Mountain Defenders also handles cases in Heppner, the county seat for Morrow County, which is located forty-eight miles south of Hermiston. Judge

Wallace has been very happy with both IPD and Blue Mountain Defenders. They are dedicated lawyers who do a good job. He is pleased with the quality of representation they provide. Post conviction relief cases filed by inmates at the two prisons in Umatilla County are generally heard by senior and *pro tem* judges in Salem.

Doug Fischer, the director of IPD, described the board of directors that oversees his office. He said that IPD continues to have difficulty recruiting and retaining attorneys. All of the members of the BMD consortium were initially recruited and trained by IPD. Three attorneys have fifteen years or more of experience. The others all graduated from law school within the last couple of years. Training is provided to new attorneys by Mr. Fischer and other experienced attorneys. He would like to see public defense providers pool their resources and create training programs for new attorneys. While attorneys in the past believed that when they represented children in dependency cases they could just adopt the position taken by DHS, that approach is changing. It is now becoming the expectation that counsel in these cases will make an independent decision about the interests of the child.

Toni Sloan and Nancy Paxton with the Citizen Review Board said that while attorney attendance at CRB hearings is very good, the attorneys often appear not to have met with their child clients prior to the hearing. They generally express what they believe to be in the child's best interest, although they may have no independent information upon which to base this belief. They do not generally inform the board what the child's wishes are. More children, especially those who are fourteen or older, should be encouraged to attend the reviews and express their own preferences. They are also concerned that attorneys for children may sometimes align themselves with the position taken by a parent's attorney even though it is not in the child's best interest. In most cases IPD is appointed for one of the parents and BMD is appointed for the child and any other parent.

Craig Childress, the administrator of the BMD said that he organized the consortium. It operates like a small firm with some "satellite" attorneys available in conflict cases. There are a total of eight members of the consortium. Mr. Childress and Dan Stephens share office space and handle most of the cases. In setting up the office they created the necessary safeguards to protect clients from conflicts and breaches of confidentiality. If they take similar positions on behalf of their individual clients it is because each of them has determined that such a position is in the client's best interest. Cases are assigned within the consortium according to criteria established by the members specifying the type and number of cases each of them wished to handle. The attorneys meet regularly and discuss their caseloads. The attorney handling a case receives the full amount of compensation that the consortium is paid by OPDS. BMD is proposing to create a board of directors in 2008. Mr. Childress also volunteered to respond to questions that Commissioner Welch had posed to Mr. Fischer.

Commissioner Welch said it might be appropriate for the larger juvenile court community to discuss the role of counsel for children. Mr. Childress agreed and said that he does visit with child clients and explores both the expressed wishes and the best interest of his client and conducts his own investigation. He said he went to law school to become a juvenile attorney and worked for seven years in Douglas County before coming to Umatilla County. He and all the members of the BMD consortium have passion for their work. Not all lay people understand the role of attorneys and the need to question witnesses and sometimes take an aggressive stance in a case.

Nina Kik is the Umatilla County Drug Court Coordinator. She described the creation of the drug court, the eligibility criteria, and the process for screening applications and admitting clients. While Mr. Fischer was involved in the planning committee for the drug court she would like to see other defense attorneys participating in the decisions that are being made about the policies of the court. Some attorneys discourage clients from entering the program. She acknowledged that some were likely to fail (twenty of the forty-four who had entered the program had been terminated from the program) but said that the program tries to meet the needs of the individual clients, including those who require in-patient treatment.

### **Summary of Developments since November 2008**

In Umatilla County there have been some changes in the court's processing of criminal cases since the November 2008 PDSC meeting in Pendleton. Instead of assigning cases to the judge who conducts the arraignment, the presiding judge, Judge Garry Reynolds, now hears all the arraignments at the Hermiston courthouse. Out of custody defendants whose cases arise in the western part of the county appear in Hermiston. Out of custody defendants whose cases arise in the eastern part of the county appear from Pendleton by video, as do all in-custody defendants, who participate by video from the jail. Under the current procedure, which is still in the experimental stage, Judge Reynolds also handles the initial pretrial hearings in criminal cases and then assigns them to the other judges for trial.

It was also reported that the court, the district attorney and the public defense providers are working on the development of an early case resolution program. Materials developed in Washington County to describe its successful program and a copy of PDSC's guidelines for these programs were provided to members of the planning group in Umatilla County.

Both public defense providers now have offices in Hermiston to facilitate the representation of clients whose cases are assigned to that court. Attorney Dan Stephens with the consortium now has his office in Hermiston and IPD has also opened a small office there and will be assigning attorneys to that office. Managing two offices will be an additional challenge for IPD.

There have also been some changes in the handling of juvenile cases. The Umatilla County District Attorney's office was awarded additional funds under an intergovernmental agreement with the Oregon Department of Justice to expand its participation in juvenile dependency cases.

Since the Commission's visit to Pendleton, there appears to have been an increase in the number of delinquency cases in which attorneys are appointed<sup>21</sup>. The practices that have resulted a high percentage of unrepresented youth, however, continue. The juvenile department resolves many cases informally. In addition, youth against whom petitions are filed are asked to come to the juvenile department before the court hearing. They are generally accompanied by their parents. At this meeting the juvenile counselor goes over the allegations and the police reports with the youth and asks the youth to comment on them. Unless the youth denies the allegations, the counselor generally proposes a plea agreement. They discuss the right to counsel with the youth, and most youth, in consultation with their parents, waive counsel and agree to accept the plea offer. While juvenile department staff acknowledge that youth who had the benefit of counsel from the outset might choose to proceed differently, they don't believe that attorneys available to the youth in Umatilla County are able to provide meaningful representation. In their view if an attorney is appointed it usually takes three to six months to get the case to court, by which time the youth might have as many as four or five new sets of charges. They also indicated that delinquency cases "mean nothing to these lawyers." They said that in the cases in which attorneys have been appointed they don't meet with their clients until they see them in the courtroom; they don't know juvenile law and they don't assign any importance to juvenile cases. There are no lawyers who are exceptions to this rule. One consortium attorney is better than the others but he, too, is swamped with criminal cases. They believe that the county needs attorneys who specialize in this area of practice if things are going to improve. In addition, the defense attorneys have been feuding with the district attorney's office and so cases are being set for hearings in August because very few of the contested cases are settled.<sup>22</sup> Acknowledging that caseloads are a major problem for lawyers, juvenile department staff nevertheless believe that too much of the attorneys' time and energy goes into adult cases and not enough into juvenile cases. OPDS encouraged juvenile department staff and the OPDS

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<sup>21</sup> During the '06-'07 contract period there was an average of 4.13 appointments per month for new juvenile delinquency felony and misdemeanor cases. In January of 2008 there were 48 new appointments. In February there were 21 new cases.

<sup>22</sup> Staff did acknowledge that a large part of the scheduling problem is the fact that the juvenile court judge has only three hours per week to hear juvenile delinquency cases. In addition, staff claimed that when lawyers come to court not ready to proceed the court permits them more time. Craig Childress said that the court permits only one contested case to be set per week. If a hearing is required, the next opening might well be three months away. He suggested that the court consider a pretrial conference in any cases that are being set for adjudicatory hearings since many of them ultimately settle while waiting for the court date. Another option for accelerating hearings might be to use a referee to hear some of the juvenile matters.

contractors to seek a meeting with the other interested parties, including the court and the district attorney, in an effort to improve the handling of juvenile delinquency cases. OPDS offered to attend and participate if requested to do so.

### Increased Compensation for Contractors

IPD received a 13.96% funding increase, which represents a 17.86% increase in rates. Despite an increase in salaries, IPD continues to struggle with turnover of attorneys. Four of the last five attorneys hired have left. Most of them have gone to other public defense offices that can pay them more. An experienced attorney was recently rehired, however, to staff the Hermiston office.

It was recommended to the Commission at its March 21, 2008 meeting that a contract be approved with Blue Mountain Defenders (BMD). OPDS staff advised the commission that during the three month period for which the Commission had extended the '06-'07 contract with BMD it became clear that the consortium needed to know what the rates would be for cases under the contract and if there was in fact going to be a new contract. Staff had interviewed all of the consortium members and determined that they were satisfied with the manner in which cases were being distributed under the contract. Others reported that the consortium administrator was more approachable and that he appeared to be more engaged in dependency cases in which he represented children.<sup>23</sup> Finally, the office sharing issue which was brought to OPDS's attention by a number of concerned individuals was resolved when Mr. Stephens moved his office to Hermiston. The Commission approved the proposed contract. In the new contract, the consortium received a 29.58% increase in values.

### Access to Needed Expertise

Testimony provided to the Commission at its meeting in November indicated that, particularly in Judicial District No. 10 (Union and Wallowa Counties) there is very limited access to interpreters, investigators and mental health evaluators. To some extent, the same limitations should apply in Judicial District 6 although OPDS has not been advised that the attorneys in Judicial District 6 are experiencing similar difficulties obtaining appropriate services as reported by their colleagues in Judicial District 10.

Karla Young is a certified Spanish interpreter. She provides interpreter services in multiple eastern Oregon counties, including Umatilla and Morrow. She is the court interpreter but also works for other clients, including public defense attorneys<sup>24</sup>. She reports that there are very few interpreters available in the area.

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<sup>23</sup> Mr. Childress responds that he has not made any dramatic changes in his manner of interacting with others and does not believe he was ever disrespectful but does appreciate the need to be sensitive to how others perceive him.

<sup>24</sup> As indicated in the testimony in November 2007 she is the only interpreter currently being used by public defense providers in Umatilla, Morrow and Wallowa Counties, except for a death

There is one other court certified interpreter but she works principally in Washington where the compensation is better. She said that court interpretation is more complex than interpretation in other types of proceedings and the certification examination is very difficult. She knows a number of highly educated bi-lingual individuals who have not been able to pass the exam. There is a larger pool of interpreters in Baker City and Ontario but many of them work principally in Idaho. Kelly Mills is the head of interpreter services for the Oregon Judicial Department. She reported that in the past the department had offered regional testing and that it may go back to that approach in an effort to develop larger pools of applicants. The state rate of \$32.50 per hour for certified interpreters has not been increased in ten years. The “master” interpreters in the state often end up working in the federal court where the compensation is significantly higher.

From OPDS’s non-routine expense request data base, staff was able to identify a number of investigators and mental health evaluators who have been approved for work on public defense cases in both Judicial District 6 and 10. OPDS has also advised contractors that it is prepared to pay the expenses, when necessary, to bring experts and investigators from other parts of the state to assist in their cases.

### **Service Delivery Plan for Judicial District 6**

PDSC expresses its sincere appreciation to all the members of the criminal and juvenile justice communities in Judicial District 6 for their assistance in informing the commission and helping to guide the creation of this service delivery plan for the district.

In light of all of the information received, PDSC approves the following service delivery plan for Judicial District 6.

The number and types of providers in Judicial District No. 6 appear to appropriate ones. The public defender’s office is the principal provider in Umatilla County and does much of the training of new defenders in the area. It offers leadership in other areas, including participating in the planning and operation of special courts such as the drug courts. Doug Fischer serves on the Local Public Safety Coordinating Council and meets regularly with judges and the district attorney to keep abreast of developments and to monitor the quality of the work IPD lawyers are doing.

A well-managed consortium is often the best alternative provider in an area the size of Judicial District 6. It can add members as needed and provide members with flexibility in terms of the amount of time they are able to devote to public defense representation. While the Commission was advised of some concerns regarding the management of Blue Mountain Defenders, as of March 21, 2008 it

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penalty case in which five interpreters from the Willamette Valley were used over the course of the proceedings.

was satisfied that the consortium was functioning adequately and approved a contract for the period ending December 31, 2009 to handle all of the public defense caseload in Morrow County and a portion of the caseload in Umatilla County.

While the structure of the public defense system in Judicial District 6 appears to be sound, there are a number of areas of concern which PDSC commends to further study and effort by its providers and others in the local juvenile and criminal court systems. OPDS should offer to participate actively in the discussion of these issues and explore ways in which it can aid in resolving them. In approximately six months OPDS will provide a report to PDSC on the outcome of these efforts.

### Challenges for PDSC's Contractors

Although IPD fulfills many of the functions of a good public defender office it continues to struggle with several significant challenges. The need to serve a second courthouse on a regular basis will be a strain on resources, and the continuing turnover of professional staff means that senior attorneys are required to spend a significant amount of their time training new attorneys. Other types of training are needed to supplement what is available within the office and from CLE offerings. Mr. Fischer has inquired whether some of his newer criminal attorneys might participate in the trial skills training at Metropolitan Public Defender, Inc. (MPD). MPD has previously invited attorneys from other offices to participate when space is available. OPDS has requested that MPD facilitate access to its training by IPD's lawyers. In addition to a need for additional training resources for its criminal attorneys, it appears that IPD needs to significantly improve the training for attorneys in juvenile cases. (See further discussion below.) The office has at least one attorney who previously specialized in juvenile law and is highly regarded in the local juvenile court community, but who is currently handling exclusively criminal matters. Whether the office has the resources to train attorneys in more than one area of practice is not clear. OPDS's General Counsel will work with IPD to apprise them of training options to supplement what is available within the office.

BMD appears to be managing the consortium's workload to the court's satisfaction. In addition it appears to have addressed some of the concerns regarding its management that were brought to OPDS's attention. Comments about representation provided by BMD attorneys indicate that some of its lawyers excel in trial work, others in juvenile representation. The consortium should explore ways in which highly skilled consortium members can share their expertise with others either through formal CLE sessions or by providing training, coaching, mentoring as needed by its members.

## Representation in Juvenile Cases

In both delinquency and dependency cases, juvenile system representatives noted significant deficits in the representation provided by attorneys at both IPD and BMD, although as noted in the draft report there are attorneys in both groups who do excellent work in dependency cases. OPDS believes the training tools are available in Oregon for lawyers in all parts of the state who seek to provide high quality representation in juvenile cases. There are frequent CLE events, some offered without cost, that focus on juvenile representation. There are websites and list serves. A bi-monthly newsletter is sent to all OPDS contractors that is devoted exclusively to developments in juvenile law and practice. OPDS's general counsel is available to work with providers to help them identify their particular training needs and possible training options. At least some in the local juvenile court community recommend that there be a change in the culture in juvenile delinquency cases. Juvenile department staff has suggested a meeting among interested groups to discuss how to improve the handling of these cases, both in terms of the timely scheduling of cases and in terms of the quality of representation being provided. OPDS staff are available to participate in such a meeting and would hope that the group would also explore ways of providing counsel to youth much earlier in the process so that youth in Umatilla County are accorded the same constitutional protections as youth in other counties and that are recommended by national models of juvenile representation. It is hoped that if lawyers receive adequate training and fulfill their professional duties to clients in delinquency cases, their involvement will no longer be seen as an obstacle to justice but as a critical component of a well functioning juvenile justice system.

## Drug Courts

In Umatilla County it appears that at least some members of the defense bar believe that most clients eligible for the drug court would not be well served by participation in the program. In 2008 the Commission is scheduled to review drug court models from around the state and the role of defense counsel in those courts. Based on its review, the Commission may wish to establish guidelines for counsel in these cases. It is hoped that Umatilla County officials are open to considering revisions to any parts of its program that unnecessarily deter potential clients in need of drug court services from participating.