

Public Defense Services Commission Budget Presentation Phase II

Agenda – PDSC Policy Option Packages

- Budget Background
- PDSC Contract Rates
- Priority POP Details

Background

2013 Legislative Session – Final Days

- Floor debate
- Protest votes
- Recurring question: “how much would it take to get public defense providers to parity?”

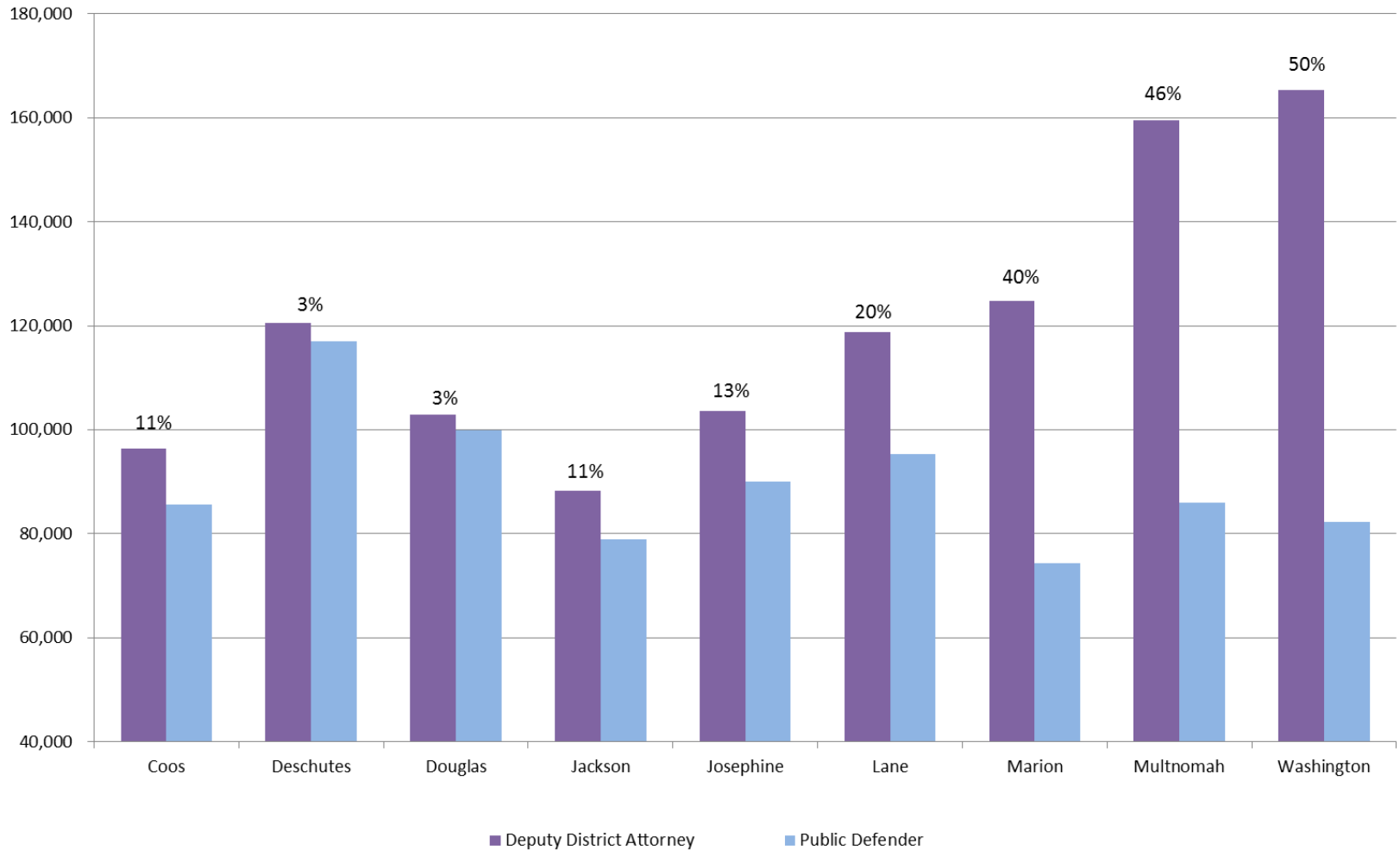
Background

2013 – Incremental Improvement

- \$3.0 million to improve compensation
 - \$2.3 million to fund compensation increases for lawyers at non-profit public defender offices
 - PSDC distributed according to level of disparity
 - Despite increases, 2014 attorney salaries for senior public defenders remain as much as 50% behind salaries for senior prosecution
 - \$0.7 million for hourly paid attorneys and investigators

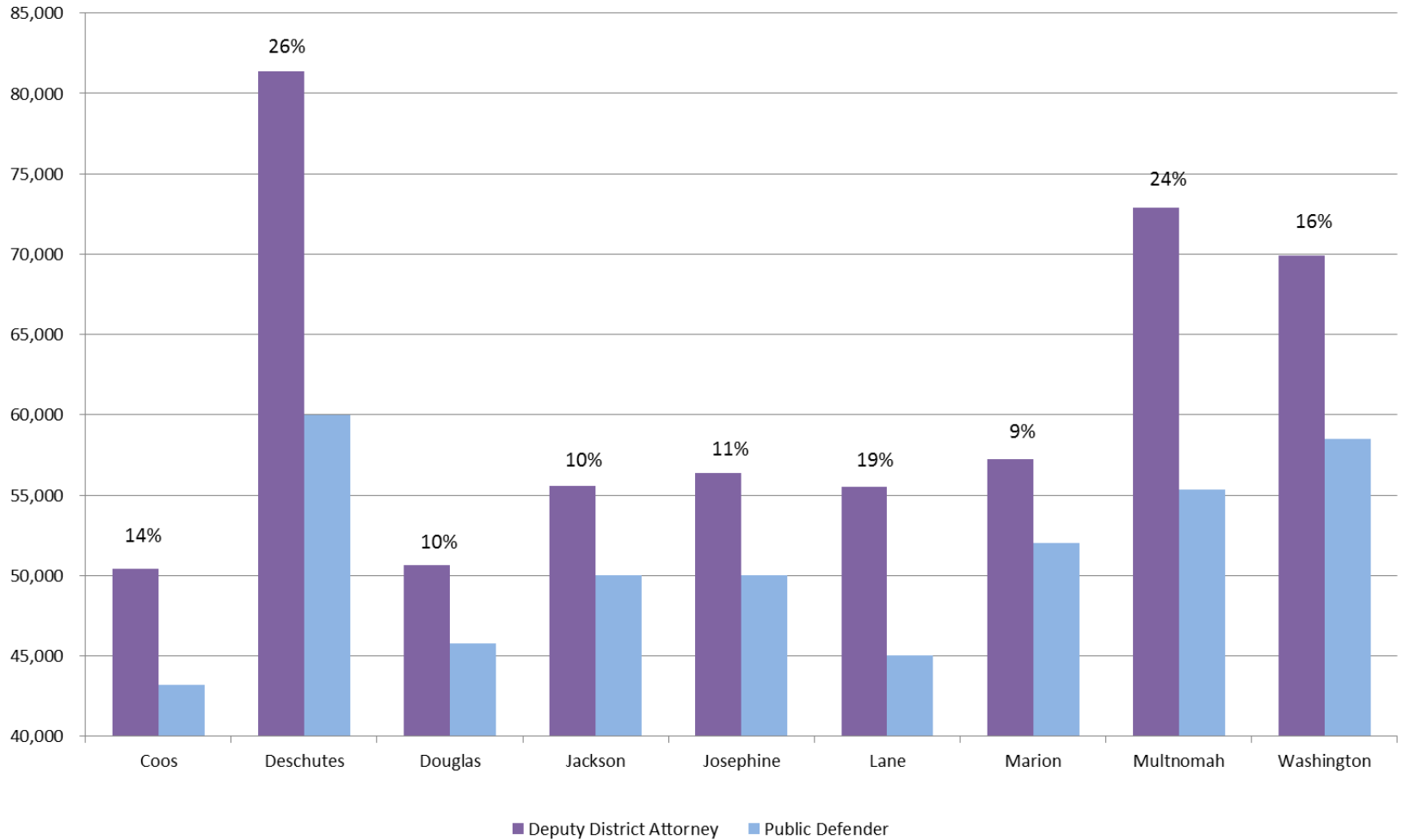
2014 DDA to PD Salary Comparison

Top Salary for DDA and PD including Percent of Disparity by County



2014 DDA to PD Salary Comparison

Entry Level Salary for DDA and PD including Percentage of Disparity by County



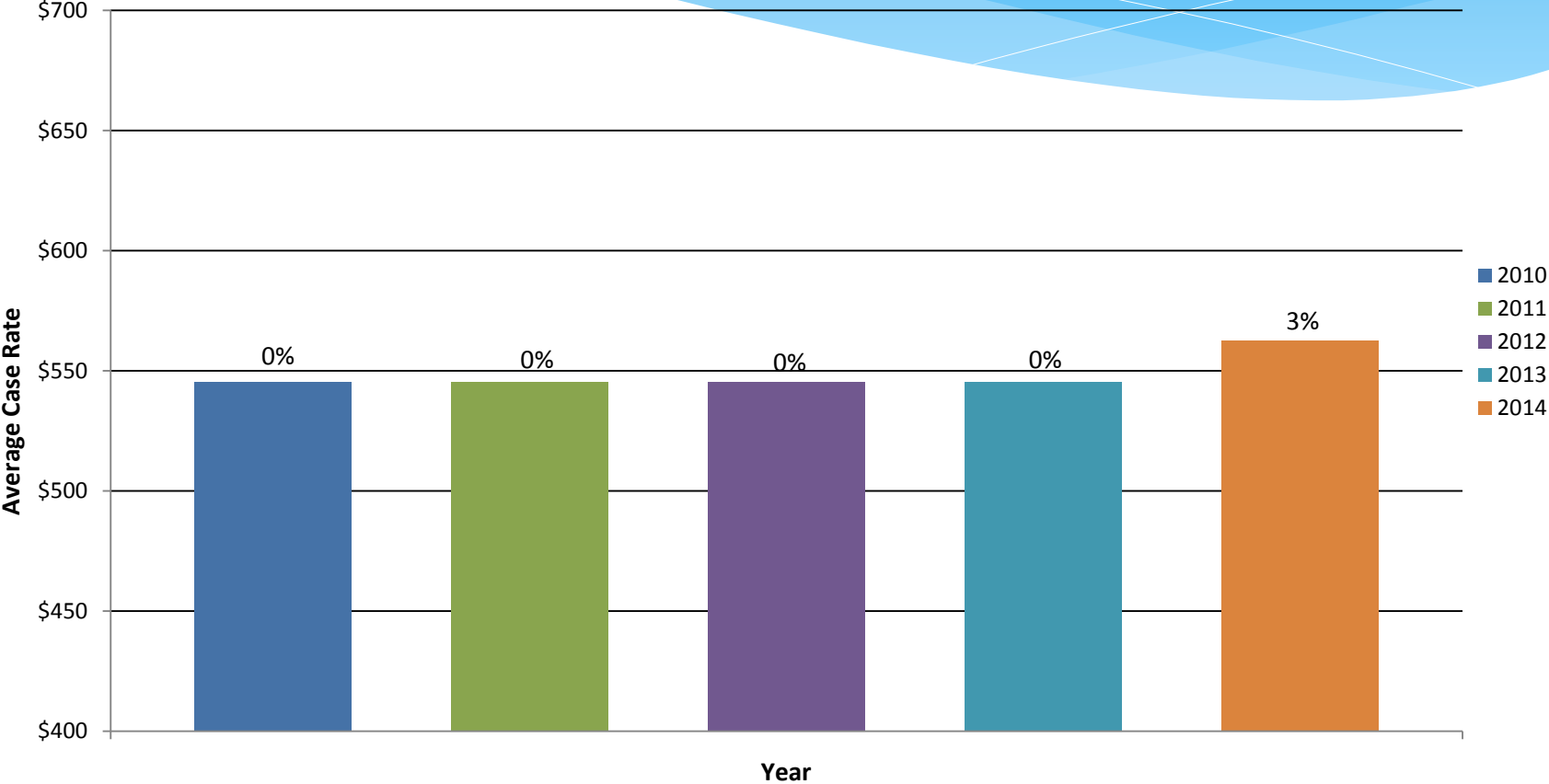
Larger Disparity

- If benefits were included, the gap would be significantly larger
 - no health benefits for employee family members
 - limited or no retirement

Background

- Consortium and law firm rates remain lower than rates at non-profit public defender offices
- Absent increased caseload sizes, the disparity for lawyers who are part of a consortium or law firm is greater than the disparity between non-profit public defenders and prosecutors

Consortium Case Rates 2010-2015



PDSC Case Rates

- Flat rate, not hourly
- From case rates, providers must procure:
 - Office space
 - Office equipment and supplies
 - Staff salaries (legal secretary, bookkeeper/office manager)
 - Insurance – health, premises liability, professional liability
 - Oregon State Bar and professional membership dues

PDSC Case Rates

- Continuing legal education fees
- Legal resources (online or hard copy)
- Case management tools (electronic or other)
- Collect calls from jail
- Travel expenses within county
- Technology (computers, software, telephones, etc.)
- State fees and taxes
- Compensation

PDSC Case Rates

- Current Case Metro Region Rate*
 - Misdemeanor
 - Non-profit public defender: \$386
 - Consortium, law firm: \$340

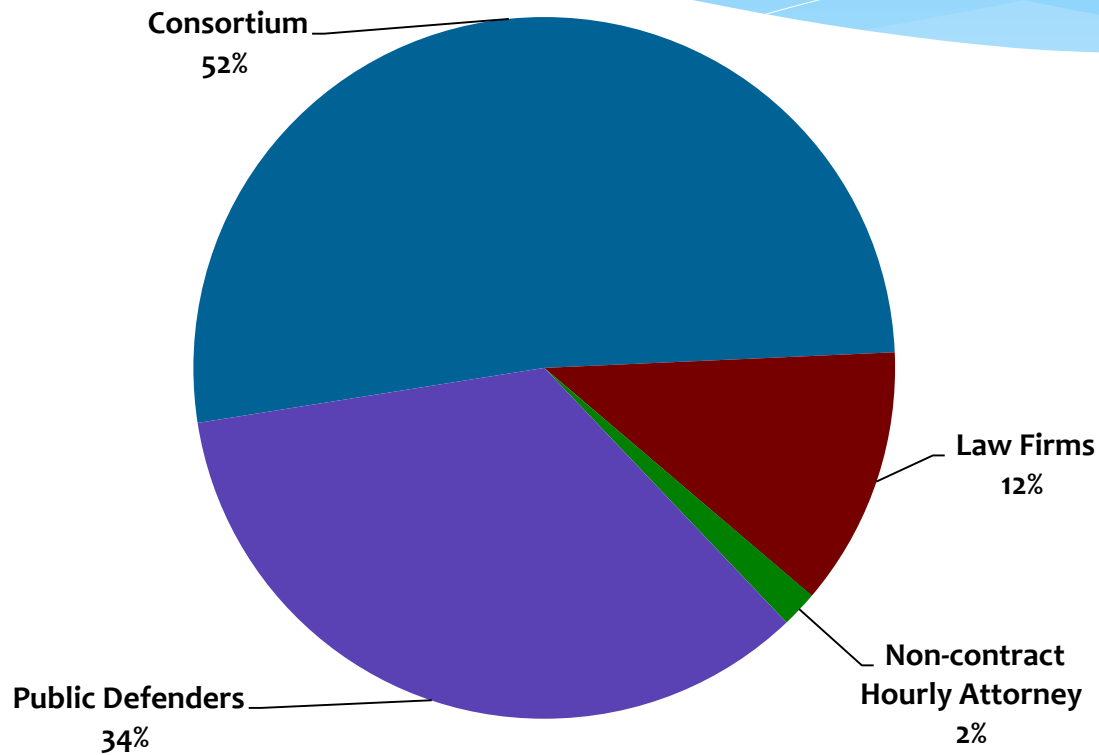
* Case rates vary from county to county; the rates listed here are higher rates paid in the metropolitan area. Non-profit public defender case rates typically include additional funding for investigation services provided by employees of the non-profit organization. This portion of the case rate has been removed for purposes of comparison.

Policy Option Package 100

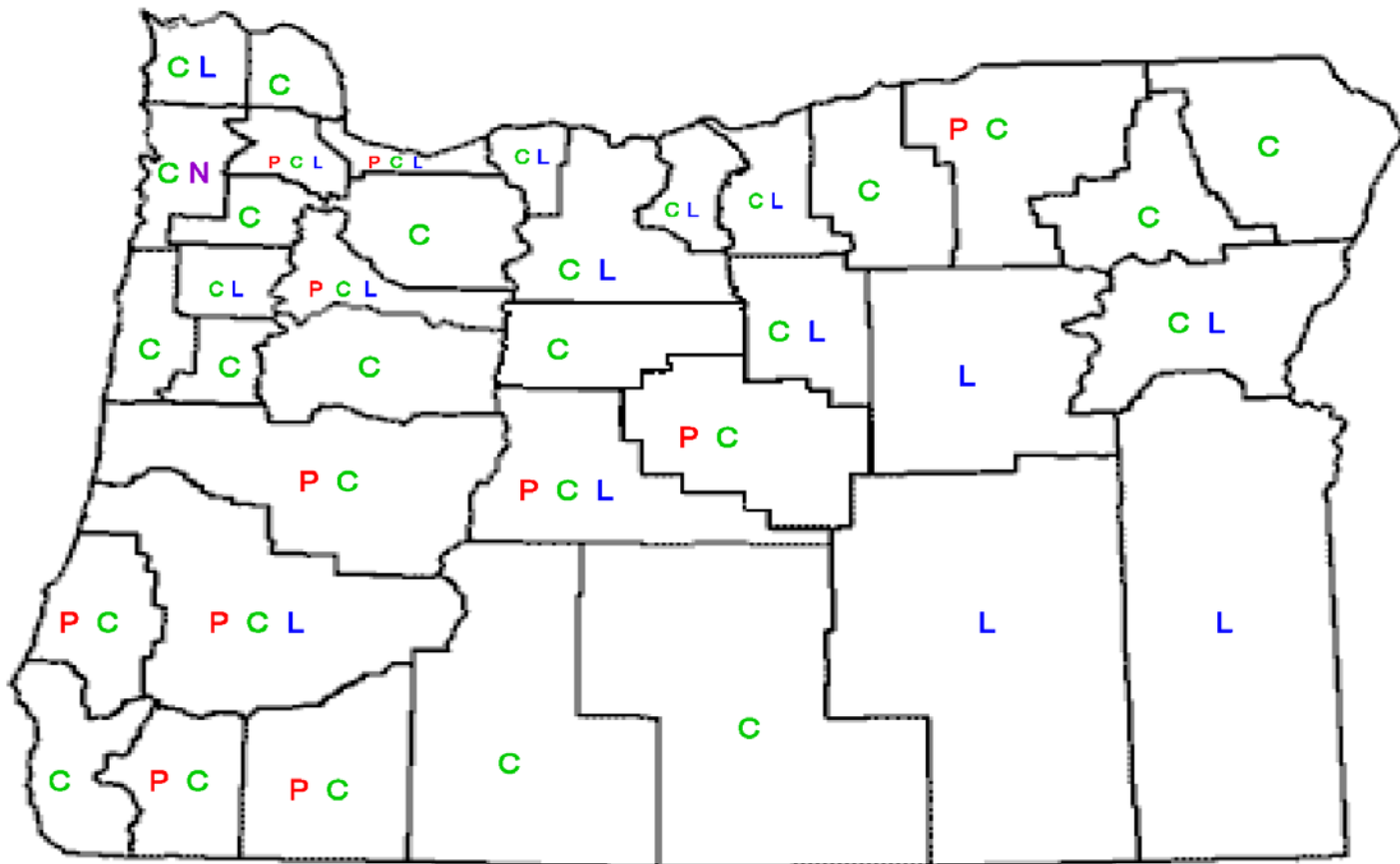
Consistent Rates & Mileage Reimbursement

- Provides funding necessary to:
 - Modest rate increases for law firm and consortium providers (consistent with non-profit public defenders)
 - Mileage reimbursement for the following regions: Eastern, North Coast, Central, Southern Oregon and the Willamette Valley.
- \$7,548,195 - General Fund

Trial-Level Non-Death Penalty Public Defense Caseload Breakdown by Provider Type



Provider Type by County



P = Public Defender C = Consortium L = Law Firm N = Non-Contract Hourly

Policy Option Package 100

Consistent Rates

- Current Case Metro Region Rate
 - Misdemeanor
 - Non-profit public defender: \$386
 - Consortium, law firm: \$340

Expenses and Case Rate

- Rate: \$340 per case
- Overhead and .5 Staff: \$43,600 per year (minimum)
 - Lawyer must take 129 cases just to cover overhead expenses

OR

- If the lawyer dedicates 45% of the contract rate to overhead and staff expenses, the lawyer must take at least 285 cases per year (\$153/case) to cover expenses.

Sample Case

- Misdemeanor Trial = 24 hours
 - Arraignment – 30 min.
 - Review discovery – 30 minutes
 - Initial Client Meeting – 1 hour
 - Investigation Request/Review – 1 hour
 - Legal research – 1 hour
 - 3 pretrial conferences – 3 hours
 - Second client meeting – 1 hour
 - Trial preparation – 4 hours
 - Trial, sentencing, closing letter – 12 hours

Earnings

- All expenses must be paid before the case rate can be used for compensation
 - If the attorney could use the entire case rate for compensation, the attorney would have earned \$14.17 per hour ($\$340/24$ hours)
 - Assuming 45% goes to cover overhead expenses, the attorney's earnings are closer to \$7.79 per hour ($\$187/24$)

Earnings, cont.

- 2011 Metro region misdemeanor trial rate: 5.13 %
 - Washington County
 - Felony: 8.3%
 - Misdemeanor: 6.5%
 - Multnomah
 - Felony: 1.7%
 - Misdemeanor: 2.9%
 - Clackamas
 - Felony: 6.1%
 - Misdemeanor: 6.0%

Earnings, cont.

- If plea type cases, on average, require only 5 hours, the earnings increase to \$37.40 per hour
- Using the metro misdemeanor trial rate, the attorney will earn \$18,699.80 (pretax) for every 100 cases
 - 5 misdemeanor trials: 24 hours @ \$7.79 per hour = \$934.80
 - 95 misdemeanor pleas: 5 hours @ \$37.40 per hour = \$17,765

Earnings, cont.

- If the lawyer takes 285 misdemeanor cases per year
 - Lawyer's gross annual income is \$53,294.43
 - 1,695.8 hours
- According to Home Forward (formerly known as the Housing Authority of Portland), if this lawyer has a spouse and two children, the lawyer qualifies for low-income housing assistance.

Low Income Housing Subsidies

Income Guidelines for the Portland Metropolitan Area (Revised 3/15)

Household Size	30% of Area Median Income	50% of Area Median Income	80% of Area Median Income
1	\$15,450	\$25,750	\$41,200
2	\$17,650	\$29,400	\$47,050
3	\$20,090	\$33,100	\$52,950
4	\$24,250	\$36,750	\$58,800
5	\$28,410	\$39,700	\$63,550
6	\$32,570	\$42,650	\$68,250
7	\$36,730	\$45,600	\$72,950
8	\$40,890	\$48,550	\$77,650

Oregon State Bar 2012 Economic Survey

2011 Compensation All Respondents

All Respondents	Oregon	Portland
Average	\$124,861	\$160,330
Median	\$94,743	\$120,000
25 th Percentile	\$60,000	\$79,000
75 th Percentile	\$150,000	\$200,000
95 th Percentile	\$336,250	\$416,000

Policy Option Package 100

Consistent Rates & Mileage Reimbursement

- Low case rates encourage excessive caseloads
- High caseloads compromise a lawyer's ability to dedicate adequate time to case preparation, client visits, and court appearances.

Quality & Caseloads

- 2015 Annual Survey – Providers do good work, but struggle with excessive caseloads
 - Over 40% of responding judges said juvenile dependency lawyers have excessive caseloads
 - Over 55% of responding Oregon judges said criminal caseloads are too high

ABA Guidelines on Public Defense Workloads – Guideline 1

The Public Defense Provider avoids excessive lawyer workloads and the adverse impact that such workloads have on providing quality legal representation to all clients. In determining whether these objectives are being achieved, the Provider considers whether the performance obligations of lawyers who represent indigent clients are being fulfilled, such as:

ABA Guidelines on Public Defense Workloads – Guideline 1, cont.

- Whether sufficient time is devoted to interviewing and counseling clients
- Whether prompt interviews are conducted of detained clients and of those who are released from custody
- Whether pretrial release of incarcerated clients is sought
- Whether representation is continuously provided by the same lawyer from initial court appearance through trial, sentencing, or dismissal

ABA Guidelines on Public Defense Workloads – Guideline 1, cont.

- Whether necessary investigations are conducted
- Whether formal and informal discovery from the prosecution is pursued
- Whether sufficient legal research is undertaken
- Whether sufficient preparations are made for pretrial hearings and trials
- Whether sufficient preparations are made for hearings at which clients are sentenced

Oregon State Bar Formal Ethics Opinion 2007-178

Competence and Diligence: Excessive Workloads of Indigent Defense Providers

When a lawyer's excessive caseload interferes with obligations to meet basic obligations to each client, the lawyer runs afoul of Oregon Rules of Professional Conduct (RPC)

- RPC 1.1 Competence
- RPC 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer
- RPC 1.3 Diligence
- RPC 1.4 Communication

Recent Caseload Standard Studies

- Missouri: 178 misdemeanor cases per year
- Texas: 216 class A misdemeanor cases per year

Policy Option Package 100

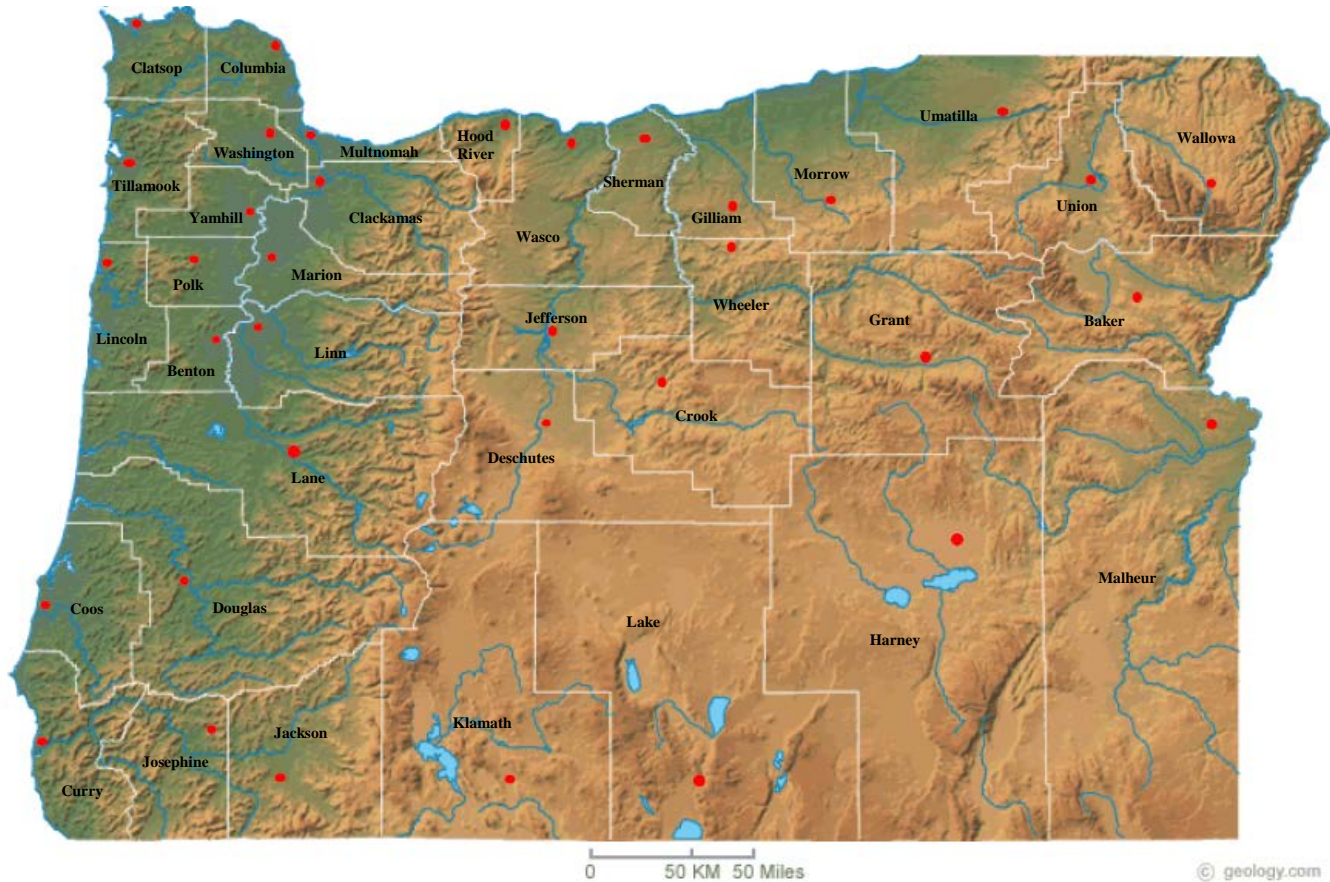
Mileage Reimbursement

- Mileage Reimbursement
 - Providers in more rural areas devote a disproportionate portion of the contract rate to cover travel expenses
 - Home visits to child clients, as well as detention and jail visits, are required by attorney performance standards
 - Some judicial districts have multiple courthouses

Policy Option Package 100

Mileage Reimbursement

County Courthouses



Policy Option Package 100

Consistent Rates & Mileage Reimbursement

- Risk Avoidance
 - Avoids risk of providers taking higher caseloads to cover expenses, which compromises the quality of representation
 - Reduces risk of
 - losing additional providers
 - post conviction relief
 - malpractice claims
 - wrongful incarceration, unnecessary removal of children from homes, and unnecessary termination of parental rights
 - procedural injustice created by lawyers with too many cases and too little time
 - legal action taken against the state for excessive caseloads compromising quality of representation

Policy Option Package 103

Provider Hourly Rate Increases

- Increase hourly rates for:
 - attorneys who provide hourly representation
 - from \$46 to \$70 per hour in non-capital cases
 - from \$61 to \$95 for lead counsel in capital cases
 - from \$46 to \$70 for co-counsel in capital cases
 - investigators paid on an hourly rate basis
 - from \$29 to \$35 in non-capital cases
 - from \$40 to \$45 in capital cases
- Like contract rates, lawyers working on an hourly basis must pay all expenses from the hourly rate
- \$6,650,386 - General Fund

Policy Option Package 104

Juvenile Dependency Improvement

Funds two permanent positions to ensure improved representation for children and parents

- \$313,870 - General Fund (2 FTE for 2 years)

Policy Option Package 104

Juvenile Dependency Improvement

- Deputy General Counsel – three primary functions
 - PCRP Managing Attorney
 - Statewide Quality Assurance
 - Back-up to General Counsel, who:
 - Provides general advice to, and represents, the agency and Commission
 - oversees quality assurance for criminal law providers
- Office Specialist 1
 - Data entry
 - Preliminary data audit

Policy Option Package 104

Juvenile Dependency Improvement

Managing Lawyer for Parent Child Representation Program (PCRCP) - Responsibilities

- Oversight of lawyers in the program, including review and analysis of attorney time logs, activity reports, and regular review of attorney compliance with OSB performance standards
- Coordination of partner meetings at the state and local level to gather feedback regarding attorney performance and implement additional improvements or communication when necessary
- Planning and facilitating multidisciplinary training in pilot counties

Policy Option Package 104

Juvenile Dependency Improvement

- Continued work toward PCRCP goals
 - Ensure that parents and children have meaningful representation at all states of the case, including shelter hearings
 - Provide competent, effective legal representation throughout the life of the case
 - Reduce the number of children in foster care
 - Reduce the time to achieve permanency for children
 - Increase the number of children who are safely reunified with parents.

Policy Option Package 104

Juvenile Dependency Improvement

- Statewide quality improvement responsibilities:
 - Develop and disseminate training and support guides for lawyers representing parents and children
 - Consult with trial attorneys - over 120 cases in first year
 - Plan Statewide juvenile law conferences – at least two per year, one of which is a multidisciplinary training including CASAs, district attorneys, assistant attorneys general, DHS caseworkers, CRB representatives, and lawyers for parents and children.

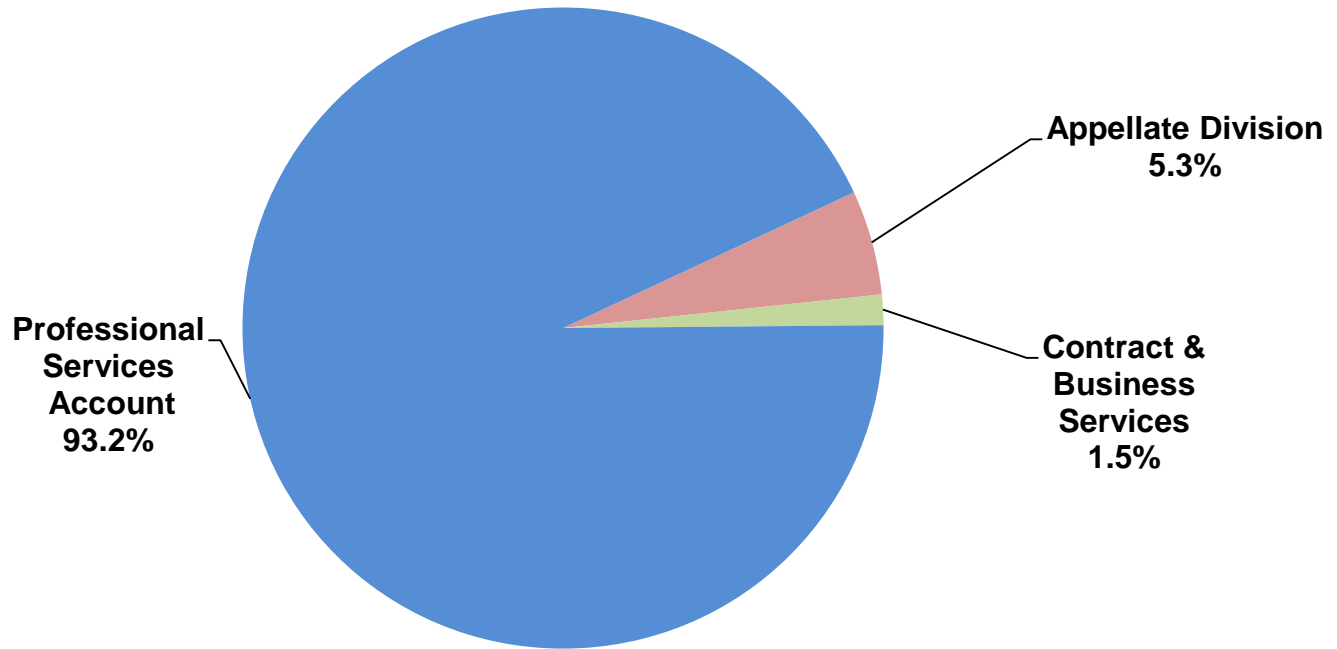
Policy Option Package 104

Juvenile Dependency Improvement

- Statewide quality improvement responsibilities, cont.:
 - Review of all juvenile case non-routine expense requests to ensure appropriate use of investigation and expert services
 - Investigate and resolve complaints regarding juvenile representation
 - System improvement efforts with state and local partners

Policy Option Package 104

Juvenile Dependency Improvement



POP Building Process

- Series of conversations with providers
 - October 2013: Management Conference
 - December 2013 – March 2014: 8 Regional Meetings
- PDSC Evaluation
 - Public testimony and PDSC discussion in January, March, April, May, and June 2014
 - Eight policy option package requests approved with final budget in September 2014

2015-17 Policy Option Packages

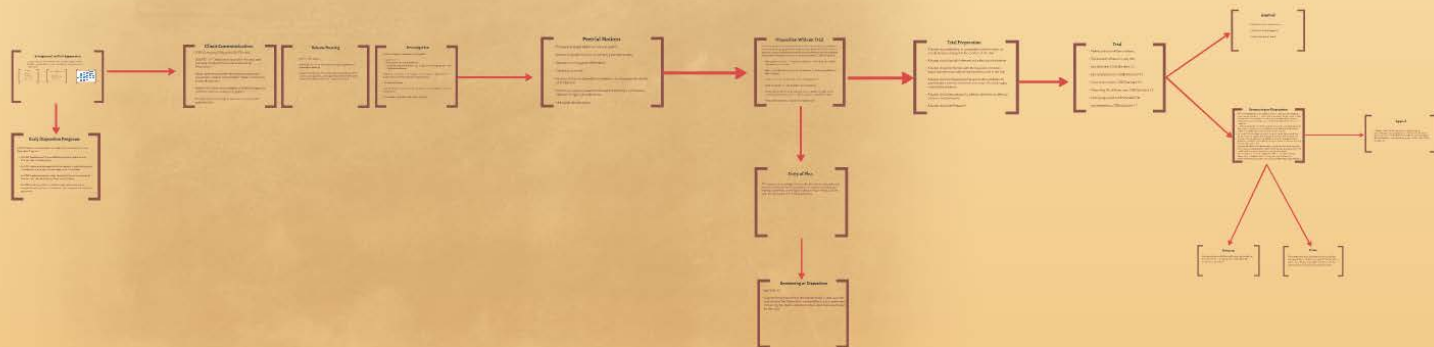
All Fund Types

POP100: Consistent Rates & Mileage for Public Defense Contract Providers	\$7.5 million
POP101: Public Defense Contractor Parity	\$21.5 million
POP102: Contractor Quality Assurance	\$4.6 million
POP103: Providers Hourly Rate Increases	\$9.5 million
POP104: Juvenile Dependency Improvement	\$5.9 million
POP105: Employee Compensation ORS151.216(1)(e)	\$0.78 million
POP106: Office Space	\$0.4 million
POP107: ACP Revenue Shortfall	\$1.2 million
Policy Option Package Total	\$52.1 million

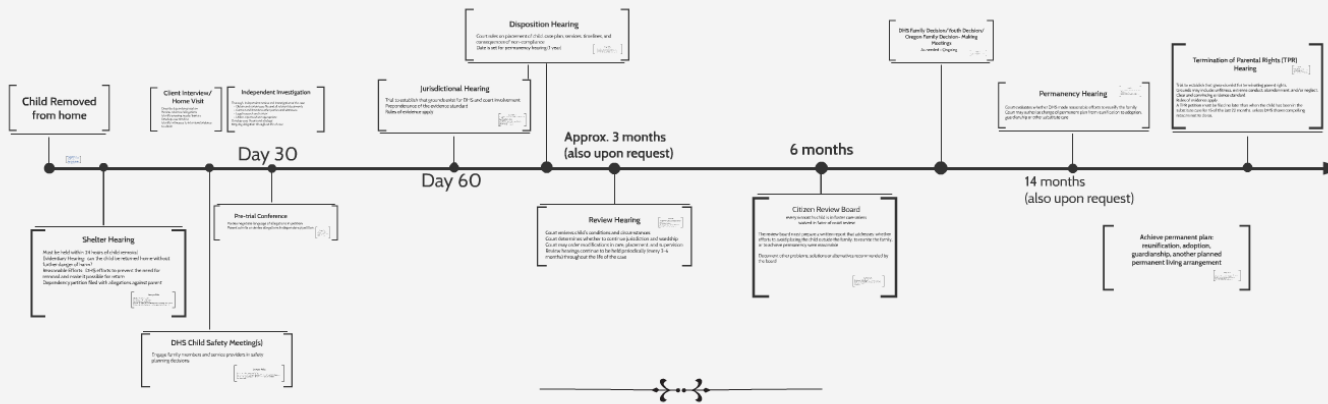
POP Prioritization

- PDSC heard additional public testimony in December 2014 and established three POP components as top priorities:
 - POP 100 – consistent case rates (\$7,548,195 - General Fund)
 - Part of POP 103 – improved hourly rates (\$6,650,386 - General Fund)
 - Part of POP 104 – dependency improvement (\$313,870 - General Fund)
- \$14,512,451 – General Fund

Client Representation in Criminal and Delinquency Cases



The Lawyer's Role in Oregon Juvenile Dependency Proceedings



PDSC Obligations

- ORS 151.216 (1) The Public Defense Services Commission shall: (a) Establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.

PDSC POP Priorities

The Requested POP funding helps ensure a sustainable statewide public defense system that provides each client with representation that fulfills the requirements of ABA and OSB performance standards, the OSB Rules of Professional Conduct, and the requirements of the state and federal constitutions.