

# Public Defense Services Commission History of Public Defender Pay Disparity

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# Today's Presentation

- PDSC Responsibilities
- Recruitment and Retention Challenges, and Impact on Clients
- Appellate Defenders
  - Overview of structure
  - Salary disparities
  - PDSC efforts to address challenges
- Trial Defenders
  - Overview of structure
  - Salary disparities
  - PDSC efforts to address challenges

# Today's Presentation

- Benton County Perspective
  - Jennifer Nash
  - Josh Hunking
- Multnomah County Perspective
  - Mark McKechnie
  - Eric Deitrick
  - Valerie Rone
  - Grant Hartley

# 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.

# Public Defense Services Commission

- Trial level representation through contractual agreements and hourly providers
- Appellate representation through the Office of Public Defense Services

# Recruitment & Retention Challenges

- High Stress
  - Caseloads often exceed national standards (despite efforts to control caseload)
  - Case complexity is increasing
  - Significant collateral consequences of conviction/adjudication
    - Housing, family, immigration, driving, employment, incarceration, education, relocation

# Recruitment & Retention Challenges

- Economic Barriers
  - “In 2012, the average law graduate’s debt was \$140,000, 59 percent higher than eight years earlier.”\*
  - Compensation below that of system counterparts

\*See The New York Times, Sunday Review, Editorial - The Law School Debt Crisis: [http://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html?\\_r=0](http://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html?_r=0)

# Caseload, Complexity, Compensation

- Lawyers are increasingly unable afford public defender work
- There is a constant cycle of training new lawyers, moving trained lawyers into more complex caseloads, and departures
  - Each lawyer transition and departure requires reassignment of many cases (due to high caseloads), draining administrative resources and creating delays



# Impact on clients

- When lawyers leave the practice, clients must establish a relationship with the new lawyer, often triggering further continuances
- High caseloads impact lawyers' ability to
  - Spend appropriate amounts of time with clients
  - Adequately prepare each case by investigating the facts of each case and circumstances of each client, researching the law, and filing appropriate motions
  - Resolve cases without continuances

# Efforts to Reduce Disparities

- The PDSC has been working to address these issues, and to ensure quality representation, at both appellate and trial levels

# Appellate Level Defenders

- Office of Public Defense Services (OPDS)
  - Judicial branch, state employees
  - Office is located in Salem, Oregon

# OPDS Appellate Section

- OPDS Lawyers are the direct counterpart to Oregon DOJ lawyers
  - Criminal Appellate Section & Juvenile Appellate Section
  - Lawyers regularly brief and argue cases before the Oregon Court of Appeals, Oregon Supreme Court, and occasionally the US Supreme Court
  - The bulk of Oregon’s criminal justice and juvenile dependency law questions are resolved through the careful and thoughtful work of OPDS lawyers, DOJ lawyers, and Oregon’s appellate courts, providing statewide consistency in the application of state and federal laws

# OPDS Appellate Lawyers

- Experienced appellate lawyers are a valuable resource
  - Considerable time is spent training each new OPDS lawyer
  - Most lawyers become proficient in appellate practice within four or five years
  - Appellate caseloads exceed national standards; lawyers must be proficient and efficient

# OPDS Appellate Lawyers

- Historical data show that lawyers who leave the office for a reason other than retirement leave at approximately the four-year mark
  - Many leave in favor of increased compensation and reduced commuting costs
  - Each departure of an experienced lawyer requires case reassignments and reduces office efficiency

# Experienced Lawyers & PDSC KPM #1

- PDSC KPM #1: median days to filing opening brief
  - Target 180 days
    - Current median days to filing is 210 days
    - The agency expects to meet target as newer lawyers develop
    - Currently, 11 attorneys in the criminal section have less than five years of experience
    - This KPM was adopted to help ensure that cases do not languish in the appellate system, delaying justice for all parties in the case

# ORS 151.216(1)

- The Public Defense Services Commission shall:
  - (e) Adopt a compensation plan...for the office of public defense services that [is] commensurate with other state agencies.



# OPDS Public Defender Disparity

	<b>% of disparity</b>
2003-05 Agency Request Budget	10-21%
2005-07 Agency Request Budget	10-23%
2007-09 Agency Request Budget	Disparity was not tracked
2009-11 Agency Request Budget	Disparity was not tracked
2011-13 Agency Request Budget	10-22%
2013-15 Agency Request Budget	14-28%
2015-17 Budget*	3-7%**
January 2017	20-38%

\* Agency self-funded compensation increases to reduce disparity for non-management staff

\*\* Management classification disparity is above 7%

# Importance of Parity

- The PDSC self-funded compensation increases in the 2015-17 biennium with the following goals in mind
  - Compliance with ORS 151.216(1)(e)
  - Recruitment: compensation must be competitive
  - Retention
    - The office dedicates significant time to training lawyers, and feedback from system partners, as well as case outcomes, confirm that OPDS lawyers provide excellent representation
    - Turnover reduces office efficiency and negatively impacts clients and the justice system

# Cost of Closing the Gap

Year	Disparity	Projected Cost to Correct at start of next biennium
2003-05	10-21%	\$161,168
2005-07	12-23%	\$223,801
2007-11	Not tracked	Not calculated
2011-13	10-22%	\$792,246
2013-15	10-28%	\$837,464
January 2015	Agency self-funded compensation plan changes to reduce disparity in non-management positions to 3-7%	Agency funded \$450,512; remaining disparity \$946,912 Total: \$1,397,424*
2017-19	20-38%	>\$2,503,563*

\* Disparity calculated for attorney and non-attorney classifications; this calculation assumes no additional COLA or other increases during the 2017-19 biennium. Any percentage increases provided (even if the same percent increase is provided to all agencies) will increase the dollar cost of reaching parity.

# Consequences of deferred action

- Decreased ability to attract qualified lawyers
- Loss of experienced lawyers
  - Extends time to case resolution
  - Harms agency's ability to meet KPM target and secure justice
  - Delays closure for victims, witnesses, and in-custody clients
- Damages agency's ability to engage in good faith bargaining and comply with ORS 151.219(1)(e)
- Waiting to close the gap will increase the total dollar amount required to reach parity at a later date

# Commitment to Closing the Gap

- Agency anticipates pressure to eliminate disparity this biennium
  - Commission dedicated significant resources to closing the gap in 2015
  - Union bargaining starts May 2016; current contract expires October 2016
- Cost of adopting changes in January 2017 (last quarter of the 2015-17 biennium)
  - \$612,452

# Trial Level Defenders

- Not state employees
- Four provider types across the state
  - Non-profit public defender offices (34.6% of caseload)
  - Private law firms (11.9% of caseload)
  - Consortia (51.8% of caseload)
  - Hourly (1.7% of caseload)
- Contracts
  - Begin in January of each even year
  - Two-year agreements

# Contract Rate

- Hourly rate is \$46 per hour
- Contract rate (not an hourly rate)
  - “One-time” or “flat” rate for lawyer services
  - Paid according to case type; most serious crime charged in criminal cases
  - Must be used to cover all of the lawyer’s overhead and business costs, including office, staff costs, health insurance, professional dues and training, retirement, compensation, etc.

# What is NOT covered by contract rate

- Investigation, expert witness, or other case expenses are paid by OPDS through a “non-routine expense” process



# Contract Rates

<b>Case Type</b>	<b>Most Common Contract Rate</b>
Murder	\$18,437
Measure 11 felony	\$1,908
Non-M11 A felony	\$1,146
Non-M11 B felony	\$955
C felony	\$604
Misdemeanor	\$368
Probation violation	\$230
Civil commitment	\$368
Juvenile felony	\$853
Juvenile misdemeanor	\$360
Juvenile dependency (jurisdiction)	\$830
Juvenile dependency (review)	\$342
Termination of parental rights	\$2,711

# State Contract Rates v. Federal Rates

- Federal Panel Lawyers are paid significantly more than Oregon providers

# Federal Rate

"At about \$130 per hour for my federal cases, I am also aided by the fact that investigators are paid significantly more so I can attract more experienced, qualified investigators and staff. I also encourage investigators to help me on the appointed cases by giving them retained work which pays about \$90 per hour for investigators."

– Federal Panel Attorney

# Contract Rates vs. Private Bar

- Privately retained lawyers in the Portland area charge \$300-\$450 per hour
- Many private attorneys will no longer accept PDSC cases. One attorney explained:
  - “Normally, a major sex case would cost around \$75,000 or more.”

# Oregon Contract Rates

- “If I were to only handle the same amount of cases that I handle now, but only for PDSC rates, after taking into account my overhead, I would make about 1/3 of what I did when I was a public defender. I also wouldn't have paid time off, insurance or retirement or the luxury of having someone cover for me if I were sick....” - Private Attorney, Portland

# Oregon Contract Rates

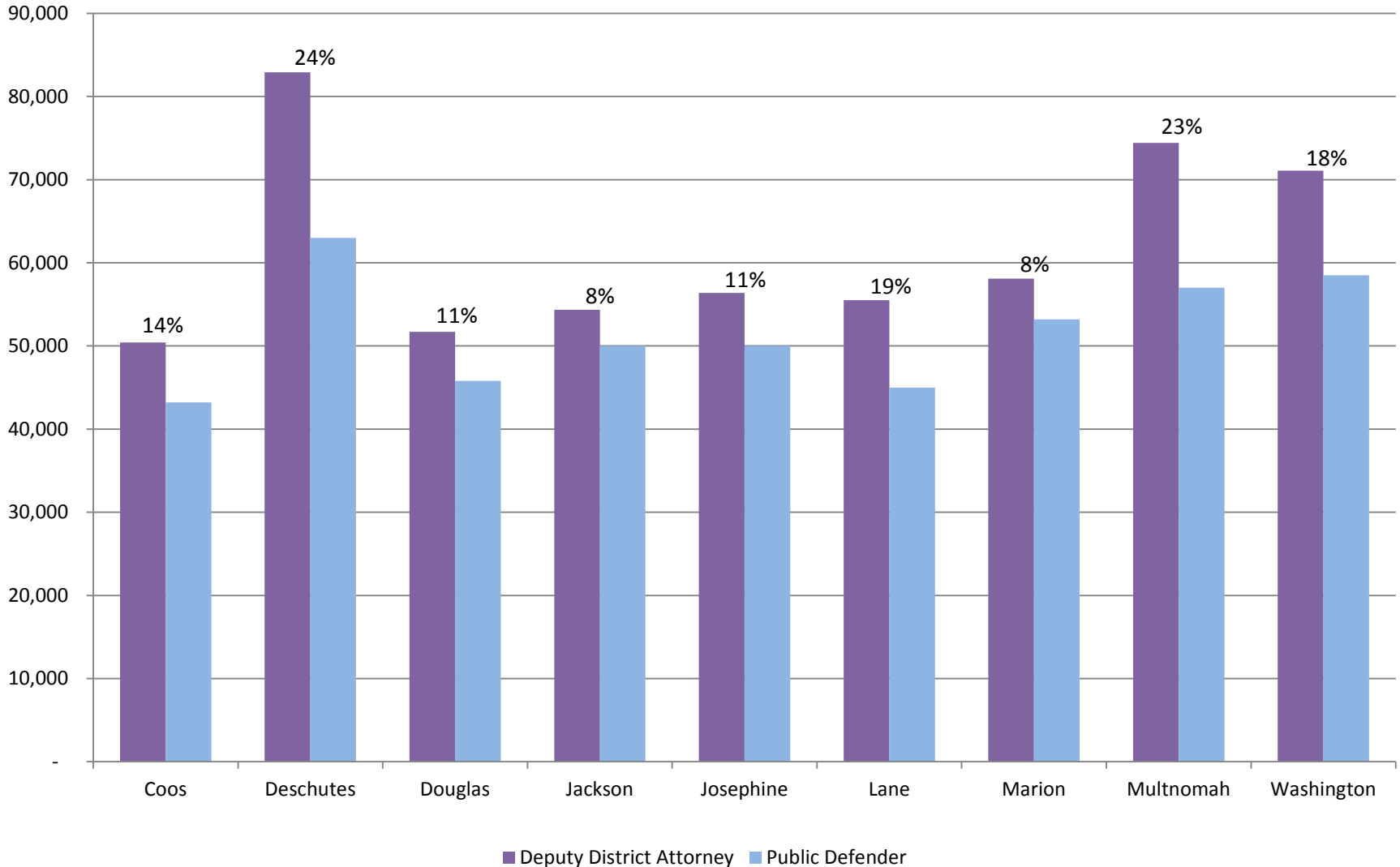
Case Type	Contract Rate	Hours at \$130/hour	Hours at \$150/hour	Hours at \$175/hour
Murder	\$18,437	141.8	122.9	105.4
M11 felony	\$1,908	14.7	12.7	10.9
C Felony	\$604	4.6	4.0	3.5
Misdemeanor	\$368	2.8	2.5	2.1
Juvenile Dependency Jurisdiction	\$830	6.4	5.5	4.7

# Contract Challenges

- Case rates increase by some percent each contract cycle, but are increasingly below market rates
- Providers experience a loss in amount available for compensation
- Caseloads increase

# 2015 DDA to PD Salary Comparison

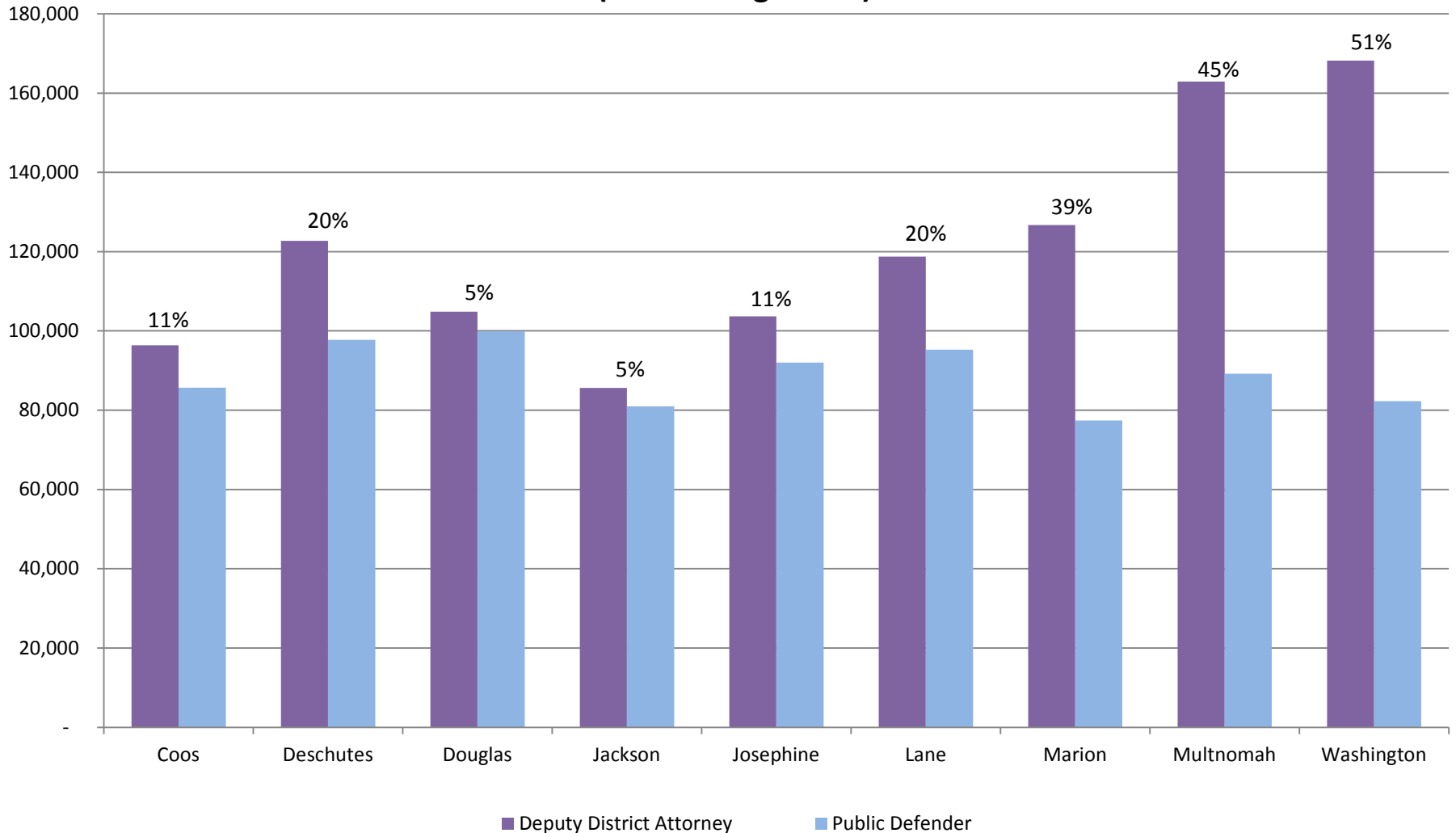
## Entry Level Salary for DDA & PD - Disparity by County (non-management)





# 2015 DDA to PD Salary Comparison

## Top Salary for DDA & PD - Disparity by County (non-management)



# PDSC Efforts to Improve Trial Level Disparities

- Requested and received partial funding
  - To improve non-profit public defender case rates and hourly rates during the 2013-15 biennium (\$3 million)
  - To improve other contract provider rates during the 2015-17 biennium (\$5.2 million)

# PDSC Efforts to Improve Trial Level Disparities

- Requested \$21 million to address trial-level pay disparity during 2015-17 biennium
  - This request was not funded

# PDSC Efforts to Improve Trial Level Disparities

- Parent Child Representation Program (PCRP) Pilot Program
  - Launched August 2014 in Linn and Yamhill counties: Improved compensation, reduced caseload, enhanced monitoring of time dedicated to client contact and case preparation, case managers

# PCRCP - One year review of data

- Improved client contact
- Reduced continuance requests

Reduced use of foster care beds in pilot counties

County	2014	2015 (June)	% change
Linn	255	216	-15%
Yamhill	118	105	-11%
Statewide	7539	7572	+0.44%

# Investing in Quality Yields Results

- PDSC is using all available resources to ensure quality representation across the state, but needs the Legislature's help to address growing disparities, and to ensure the continuation of quality representation
- Investing in representation yields savings in other parts of the system (e.g. fewer changes of attorney, reduced delays, reduced use of foster care beds)

# Parity

- Parity is part of creating a balanced public safety system
- Funding necessary to address parity during last quarter of this biennium
  - \$5.25 million for trial level (roll-up cost - \$21M)
  - \$612,452 for OPDS (roll-up cost - \$2.5M)

# Contract Provider Perspectives

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- Multnomah County
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  - Valerie Rone
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