



Oregon

Public Defense Services Commission

Office of Public Defense Services

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November 7, 2019

Rep. Jennifer Williamson, Chair
House Interim Committee on Judiciary
State Capitol
900 Court St. NE, Room 331
Salem, OR 97301

RE: Response to Letter Regarding OPDS access to SPA funds.

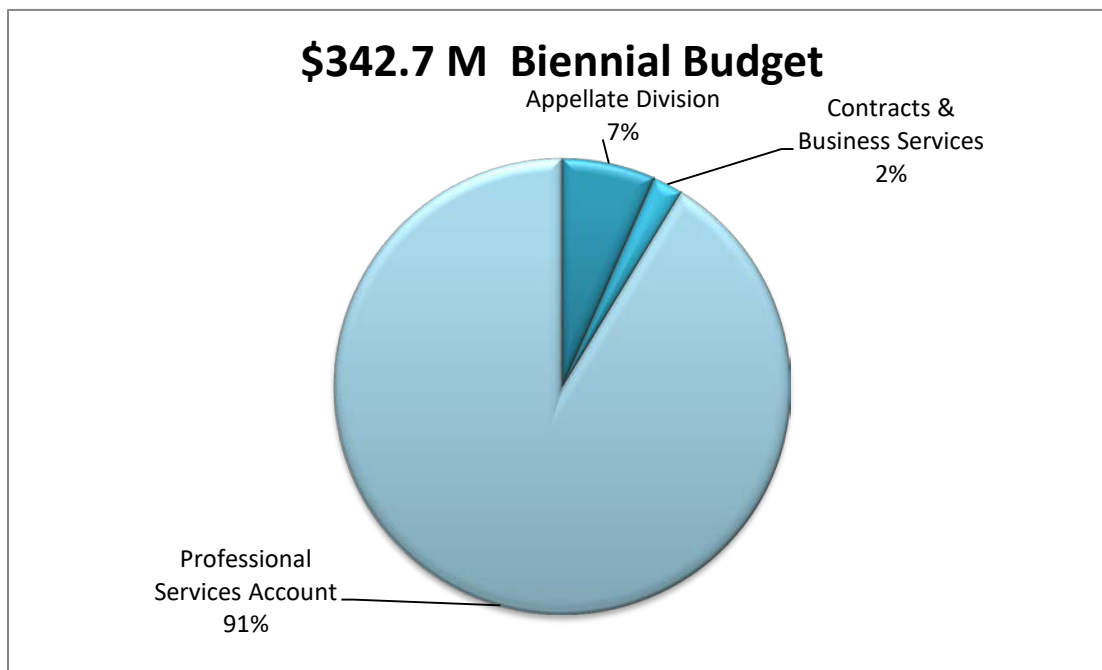
Dear Representative Williamson,

OPDS appreciates the opportunity to substantiate our need for the \$23.5 million appropriated to support the Office of Public Defense's (OPDS) work toward improving public defense representation for the state of Oregon.

Below we have listed the requests outlined in your letter sent to our office in September 2019, have provided responses to each, and have compiled supporting documentation attached in the appendices.

Current breakdown of the OPDS budget:

Below is a chart depicting the OPDS Biennial Budget breakdown for 2019-21 as approved in the 2019 Legislative Session.:



The Professional Services Account provides funds for all trial level and non-OPDS internal agency expenses. This includes all independent contractors, expert witnesses, or case related expenses.

The Appellate Division piece is for OPDS employees doing direct representation of appellate cases. This includes 54 FTE of the 78 FTE for the agency.

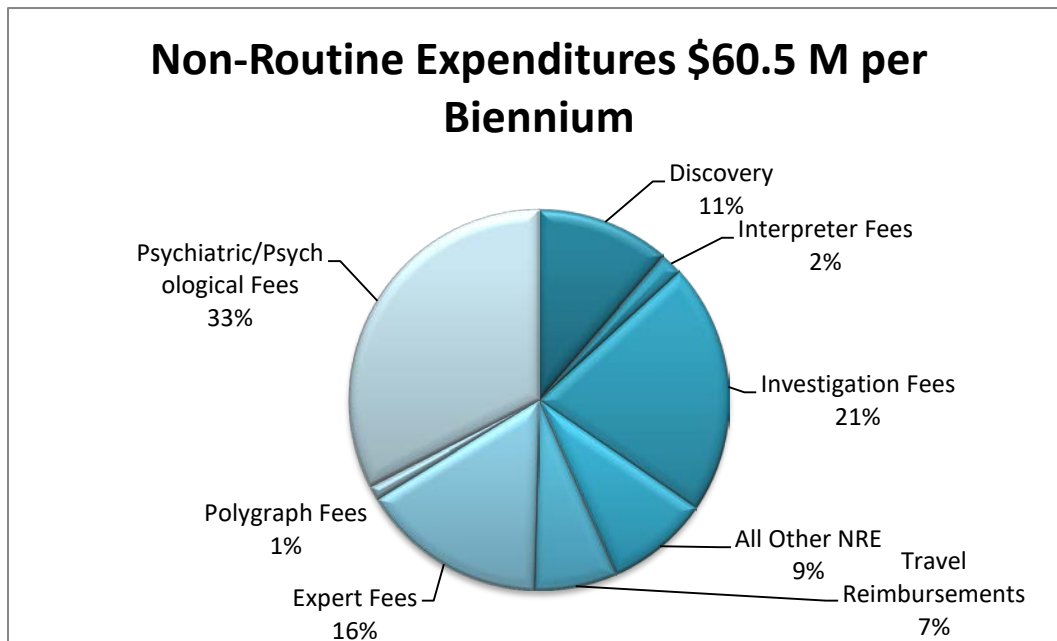
The Contract & Business Services piece represents the administrative and contract services staff of OPDS. This includes the accounting departments, general counsel, HR and contract analysts for the agency.

Standard OPDS contract for the provision of public defense services and/or child representation, current average case rates, and information on the current type and cost of common non-routine expense requests:

Attached in Appendix A are three contracts for your review – one for the provision of public defense services, one for the highly-successful Parent Child Representation Program, and another for Death Penalty providers.

The last part of Appendix A is a table from 2016 that lists the case credit per case type, plus the average NRE costs attributed to that case type. The case credit only increased slightly from the 2016 numbers in the current contract cycle, and the NRE expenses have been reasonably stable. Because a case may actually be worth more than one credit, it is difficult to determine the average case worth under the existing case credit model.

The chart below shows the breakdown of the most common non-routine expenses paid by our Financial Services Team.:



Description of how many providers OPDS contracts with in each county (and statewide), the type of work OPDS contracts with each provider to provide, and whether each provider also has a private practice caseload:

OPDS contracts with providers in each county throughout the state; the breakdown is included in Appendix B. Due to the nature of our current contracts, it is assumed that any provider other than non-profits with a designation for public defense work only, engage in private practice work. We do not currently have any information on the amount or scope of that other work.

Description of how OPDS responds to complaints about providers:

OPDS has a complaint policy regarding both (1) the quality of public defense providers and (2) payments regarding attorney fees and non-routine expense requests. ORS 151.216 implies that OPDS shall have a policy regarding the former, and directs OPDS to have a policy regarding the latter. The current OPDS complaint policy was adopted by the PDSC on October 22, 2004, and it has remained unchanged. However, OPDS staff has a new complaint policy that is schedule to be approved by the PDSC on November 14, 2019.

Complaints are handled by the General Counsel division, and they typically arrive by letters, emails, or phone calls, although on occasion people have shown up at the office. Complaints are typically from public defense clients, their families, or their friends. Complaints are rarely received from other attorneys or judges. It's been the agency's policy to require complaints to be in writing, and while the agency will listen to people over the phone, we require follow up in the form of a letter or email.

OPDS documents the complaint once submitted and assesses two factors – does the complaint address a current matter or a closed matter, and does the complaint contain a “facially reasonable issue regarding quality of services.” Those two variables dictate the agency response. OPDS notifies the attorney and that attorney's supervisor/contract administrator. Often times, the complaint is that there has been insufficient communication. Often times, the complaint spurs the attorney to provide that client with more detailed and frequent communication.

However, if the complaint is of more pressing concern, OPDS will ask for a response to the complaint. Additionally, OPDS may include its own investigation, which has included interviews with other attorneys, judges, court staff; observing court; listening to audio recordings of court; reviewing attorney's motion filings. This past year, OPDS has permanently suspended the qualifications of two public defense providers following such investigations.

Presently, there are several reasons to amend the complaint policy. And while the OPDS response to complaints won't change much, the standards and direction to the agency will. The current policy is unnecessarily long and complicated. It differentiates between current and former clients in a way that is not helpful. And the threshold of “facially reasonable

issue regarding quality of services,” is vague and provides uncertain guidance to the agency.

Additionally, there is no list of remedies for those who have received founded complaints. Historically, OPDS has fashioned remedies on a case-by-case basis. Previous general counsel noted the need to update this policy in a previous memo to the agency. Accordingly, OPDS has recommended to the PDSC to adopt a new complaint policy.

On a practical level, the proposed new policy is more clear and direct. It also eliminates the “facially reasonable issue regarding quality of services.” In its place, it requires OPDS to investigate complaints if the complaint “presents sufficient information to show that the public defense attorney may have failed to satisfy state and federal constitutional requirements for the provision of adequate and effective assistance of counsel.” This aligns the complaint policy with the contract terms and the level of services for which the client is entitled. This provides better direction to agency staff in assessing where to focus our limited resources responding to complaints. It also differentiates the responsibilities of OPDS from the Oregon State Bar.

The proposal continues to provide the agency with discretion when complaints do not meet that burden, but the agency believes investigation is warranted. Finally, the proposal includes a list of possible remedies for founded complaints. Going forward, the agency intends to conduct the same level of investigation with respect to complaints, but it believes the newer complaint policy will provide more clarity regarding the role of the agency.

Explanation of what current information and data OPDS collects from contractors, what information and data OPDS has recently requested of contractors, and what current oversight capabilities OPDS has over contractors:

As part of the transition away from the case credit contracting model, we engaged providers to, in most cases, extend their current contracts for six months in order to gain time to inform the creation of the next contracting model. As part of the extension and to gather information, we asked for information about how the contractors spent the funds paid to them by OPDS. Historically, we did not obtain this information, and only requested prospective plans on how funds would be used. In this process we asked contractors to provide a spread sheet of how they distributed cases and money to members or employees of the provider, and to provide, when applicable, the IRS 1099 forms evidencing money transfers between entities. The information served several purposes: to inform the agency how the money was distributed, to gage whether the internal report was consistent with the IRS reports, and finally, to compare it to our records of fund distribution and case credits reported. In each case, we found that the information was imperfect, and to better understand our system we need more clearly-defined, consistent data collection, along with internal resources to review and verify reports for transparency to assure equity in the system.

The data we have collected to date has been from the no-longer-applicable case credit contracting model, and will not be relevant moving forward. OPDS is working with an external contractor (a former analyst from CJC) to better understand what caseloads are.

Breakdown of the cost a) to stand up and run a state public defense office (including conflict attorneys) in each county (and where appropriate recommendations on where to stand up *regional* public defense offices and conflict attorneys and the corresponding cost), including appropriate staffing levels, and a the statewide management structure; b) to transition to an FTE contract model for public defense provision in each county, and the appropriate oversight structure; c) the cost to move to an hourly contract model for public defense provision and the appropriate oversight structure; and d) the county by county break down of any other model of contract or service provision that OPDS believes will address the concerns of the Sixth Amendment Report in a cost-efficient manner

After our discussions with you in October, it is clear that a statewide public defense system using state employee trial attorneys is not a viable plan for the immediate future. OPDS will continue to work with the legislature on how to develop and implement a strategy for a Statewide Public Defender office in the future. Appendix C, attached, demonstrates the FTE and cost assessment for each county based on NAC standards, in addition to 10%, 20%, and 30% above NAC standards for both the hourly and FTE contracting models. This chart includes presumed supervisor/manager roles based on a 10:1 ratio similar to the model used in Massachusetts.

Description of those factors that OPDS suggests that the committee consider on a county by county basis to determine the “health” or needs of the public defense and/or criminal justice system, when developing a public defense modernization plan (e.g., disproportionate minority contact, charging decisions, length of stay in jail, length of time until trial, caseloads, attorney experience, etc.)

The fundamental goal is to have a Constitutional, functioning public defense system in each Judicial District. Beyond that, we should align public defense with other public safety systems to achieve maximum benefit for Oregonians. The basic tenet of public defense, or obligation of the state to have a constitutional system, is that eligible defendants or parties to a juvenile proceeding receive an un-conflicted counsel that we can be reasonably sure is qualified, fairly compensated and adequately resourced.

The Sixth Amendment Center (6AC) report identified two basic flaws in our public defense system; inadequate oversight by OPDS due to a lack of resources further hindered by a culture of adherence to third party (independent) contractors, and a concern that the flat fee funding model encouraged excessive caseloads. Oregon currently has two basic models of service delivery - Non-profit Public Defender offices that comprise about 31%, and Consortia (association of private attorneys and firms under common contract) that comprise about 63%. The balance is provided by firms and a few non-contracted attorneys that bill hourly.

Two areas of our work not covered by the 6AC report are appeals and juvenile dependency. For the most part, criminal and juvenile appeals are handled by the agency or a small number of conflict contractors, and that system, although deserving of increased compensation to meet statutory parity requirements, is not suffering from the same maladies identified in the report. Likewise, juvenile representation, 30% of the agency's work, is either in operation, implementation or preparation for PCRCP.

The 6AC report identifies problems that can be solved by stopping the case rate/credit model and using either an FTE model (like PCRCP) or an hourly model (like Death Penalty contracts). Both models should be evaluated on an ongoing basis for quality and adherence to standards of representation. Changing the model to stop using case credits can be achieved in the six month time line, what is less certain is what the caseloads are. While we wait for the ABA study funded by the legislature in 2018, we can use the NAC standards (also used in Washington State) and see how close we get to that level. However, under all models with current funding the caseload standards will be a work over time to make improvements.

Each model presents particular challenges for oversight. In the case of an hourly model, OPDS would need sufficient agency staff analysts to credibly review and audit billings. In the case of an FTE model, OPDS would need sufficient staff attorneys and analysts to conduct file review, site visits, court observation, and monitor caseloads.

Not all counties are in or near crisis. For the Frontier Counties in eastern Oregon, we have already changed the funding model to account for the inadequacy of the case rate or credit model. The challenge in the Frontier Counties is and will continue to be attracting and retaining qualified attorneys, so we will likely need to continue a strategy of stabilized rates and utilization of non-profits to allow newer lawyers to take advantage of loan forgiveness programs.

Two important factors to keep in mind when discussing public defender system health, is first that while this is absolutely the right direction to go, no other state in the country is there yet in a systematic way. There is no national standard for outcome-based evaluation of offices. Second, most state wide public defense systems and national advocacy organizations are keenly interested in developing a standard. We have an opportunity to not only improve our system, but in doing so attract both national attention and assistance such as the technical assistance grant currently available to OPDS from BJA.

That said, a further consideration for how we implement change should be whether the data we are already collecting or would likely request, is reasonably accurate and reliably deliverable. Undoubtedly we will have to rely on system partners for data such as case information from OJD, or charging information from Prosecutors. However, we should not start with an expectation that we will receive consistent data from system partners such as disproportionate minority contact or charging decision, because it is probable that we would not have an even picture across jurisdictions and could end up only finding problems in jurisdictions reporting, rather than where the objective greatest problems are.

One factor we should be measuring is current capacity of contractors. If caseloads are high, we will see factors like contractors cutting off pick up, lengthy time to resolution, disproportionately high number of pretrial jail inmates, and overall lack of apparent case activity such as motions filed and trial. Cutting off pick up is obvious, but the others factors, while not exclusively caused by high caseloads, are of concern. If providers have excessive caseload they tend to engage in strategies to manage this by setting cases over, not focusing on release hearing, and avoiding working individual cases with investigation and motion practice, and instead, preparing cases for plea bargaining.

While we ultimately should evaluate any public safety delivery plan for outcomes to clients and the community, we must recognize that to-date; there has been no real systematic data-informed process to measure program success. Therefore, we need to start with data points that are not overtly threatening or perceived as beyond a provider's control, and are simple and clear enough that we can verify for accuracy as well as evaluate for performance. This means we need some data points to be items that we can independently check, such as time to disposition, which can be cross checked against Court records and can also be used to verify activities such as motions filed. If we start with measuring activity, we can choose a limited number of items that will inform us about how various providers function. I propose we use:

- Time to disposition (entering open and closing dates on case reports would automate this)
- Time to first meeting with client.
- Number of overall face to face meetings with client.
- Disposition type (did the case resolve by a plea or litigation)
- Motions filed
- Non-routine Expenses requested / Number of investigation request (Nonprofit PDs have in house investigators and do not use NRE process for this)

Each of these activities are related to existing standards of defense function as articulated by the ABA and adopted by the Oregon State Bar. Additionally, we need case demographic information such as race/ethnicity, gender, charge, as well as others we may wish to add. It would be significant to determine how long cases take and how many times an attorney sees their client during the case. The measures of motions filed and investigations requested would help us gauge if these actions have any relationship to disposition.

The cost to pilot a holistic defense center (based on national standards of practice) in an urban, rural, and suburb county in Oregon:

It is difficult to provide a specific budget for a holistic defense model for Oregon. However, it is instructive to look at the Metropolitan Public Defender Community Law Program, which was funded by a host of public and private foundations to provide barrier reduction to criminally involved individuals in order to sustain or gain eligibility to housing and employment. In 2017, that budget was about 10% of MPD's overall budget and trending toward 15%.

Bronx Defenders, which is the recognized leader, if not creator, of holistic defense, has approximately 44% of its attorney staff dedicated to civil issues for client representation. I think it would easily increase current Public Defender budgets by 20-45% to provide holistic representation.

Finally, it is very difficult to conceive of providing holistic defense in a consortia model unless direct indigent defense funding of private attorneys was accepted. The PD office model would allow for the representation to all fall under the umbrella of attorney-client privilege and representation responsibilities pursuant to the Rules of Professional Conduct.

Update on ABA caseload/workload study:

In 2018, the Oregon legislature appropriated funding for two studies – an assessment of Oregon’s public defense system by the Sixth Amendment Center and a caseload study by the American Bar Association. The Sixth Amendment Center assessment was completed and a report was released in January 2019.

The ABA caseload study is currently under way and should be completed in late 2020. The ABA has completed similar studies in Louisiana, Missouri, Colorado, and Rhode Island. In addition to Oregon, the ABA is currently working in Indiana and New Mexico. Here, the study includes participation from and coordination amongst several different entities:

- The American Bar Association
- Office of Public Defense Services
- Justice Works (software company that is making its timekeeping app available for free during study)
- Moss Adams
- Public Defense providers in Oregon

The purpose of the study is determine what a reasonable caseload is for public defense providers in Oregon, including adult criminal, juvenile dependency, juvenile delinquency, and appellate cases. The study relies upon the Delphi methodology, which was developed by the Rand Corporation and aims at obtaining consensus in areas not easily reducible to numbers. Three Delphi groups are selected. The first Delphi group was tasked with breaking down public defense cases into similar case types, as well as identifying tasks that should be completed for each of those case types – client contact, case preparation, etc. That group has already met and identified the case types and case tasks for the study.

The second Delphi group exists solely to select Delphi group 3, which is a group of expert attorneys throughout Oregon who will participate in a multi-round, iterative survey regarding how much time an attorney should spend per task per case to provide “reasonably effective assistance of counsel.” The study is premised on anonymity, controlled feedback, and statistical aggregation. Delphi Group 2 will meet in late winter/early spring, with the Delphi surveying to begin this spring.

At the same time the ABA is determining what a reasonable caseload should be, it is also measuring how public defense providers are currently spending their time. The Office of

Public Defense Services has been working with Justice Works to customize its application template for Oregon's specific needs. OPDS incentivized timekeeping by providing an additional 2% in contract funds for entities that participate. OPDS is working with Justice Works to create accounts for public defense providers and get them trained on those applications. Timekeeping begins January 1, 2020 and will last six months.

A final report is expected in late 2020.

Detailed plan for the use of the initial \$23.5M dollars appropriated to OPDS in 2019 for the purposes of public defense modernization. This plan should specifically address how OPDS will accomplish the priorities set forth in the corresponding budget notes and begin to address the concerns set out by the Sixth Amendment Center Study. This plan should clearly define those variables by which OPDS will begin to measure the quality of individual public defense providers and the public defense system as a whole and how those measures will be reported back to the legislature.

A detailed plan for the use of the initial \$20M dollars appropriated to OPDS in 2019 for the purposes of public defense modernization is included in Appendix D. The remaining \$3.5M has been allotted for expansion of the PCRCP in Multnomah County. OPDS has hired a PCRCP Manager to lead that implementation. She will be joining the agency November 18, 2019.

We believe our plan addresses the concerns outlined in the 6AC report, particularly in regards to agency infrastructure needed to provide meaningful oversight. OPDS is currently working on developing oversight measures, with input from the contractor community, for the proposed contracting models, which will be used to report efficacy and progress back to the legislature. The infrastructure costs presented in Appendix E are based on current staffing needs in order to implement any new model. Additional infrastructure will be needed after a final model has been established, but cannot be identified until we know what that looks like.

Thank you again for the opportunity to provide this information to you. It is our goal that with the \$23.5M designated to the agency, OPDS can work towards unyielding improvements to Oregon's Public Safety through constitutional and effective Public Defense practices.

Sincerely,



Lane Borg, Executive Director
Office of Public Defense Services

Appendix A
OPDS Contract Examples

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
GENERAL TERMS**

JANUARY 1, 2018 TO DECEMBER 31, 2019

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GENERAL TERMS

1 DEFINITIONS AND CASE CREDIT RULES

1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

1.4 Definitions

1.4.1 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

1.4.2 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

1.4.3 Public Defender

A "public defender" is a nonprofit organization employing attorneys and other staff established to provide contract services to persons qualifying for court-appointed legal representation.

1.4.4 Law Firm

A "law firm" is a sole practitioner, partnership, or professional corporation which provides contract services to persons qualifying for court-appointed legal representation and which may also engage in non-court-appointed legal representation.

1.4.5 Consortium

A "consortium" is a group of attorneys or law firms that is formed for the sole purpose of providing contract services to persons qualifying for court-appointed legal representation. In addition to participating jointly to provide contract services, Consortium members retain their separate identities and may engage in non-court-appointed legal representation.

1.4.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.7 Appointment

An "appointment" is the assignment of a contractor to represent or advise an eligible person on any matter under the terms of this contract.

1.4.8 Case

A "case" is any action in this state in which Contractor has been appointed to represent a client under the terms of this contract in a matter to which there is a right to appointed counsel at state expense. Specific definitions of case types are listed in Section 10.

1.4.9 Credit

A "credit" is an event or circumstance which counts toward Contractor's satisfaction of this contract.

1.4.10 Value

The "value" of a credit is the rate by type of credit as set forth in the Caseload and Case Value Matrix.

1.4.11 Complex Case

A "complex case" is an appointment on a case type valued at \$2,600 or more. Withdrawal or substitution for any reason from a complex case changes the credit type to "Other" (OTHR).

1.5 Rules for Counting Appointments

An appointment is credited, according to the following provisions:

1.5.1 Criminal Complex Case Credit

An appointment to a client indicted on a complex case is one credit. No extra credit may be taken for multiple incident dates or charges.

1.5.2 Criminal Appointment Case Credit (Non-Complex Case Credit)

- (a) An appointment on criminal charges alleged to have occurred on specific calendar days is one credit for each count charged in the charging instrument alleged to have occurred on different specific calendar days, regardless of the number of victims involved, up to a maximum of five credits per case.
- (b) An appointment on criminal charges alleged to have occurred on indeterminate dates (e.g., "on or between January 1, 1996, and July 1, 1996") is a credit for each count charged in the charging instrument which can be determined to allege different calendar days, up to a maximum of five credits per case.
- (c) Separate counts in a charging instrument that allege alternative theories of criminal liability on the same date are only one credit.
- (d) One additional OTHR credit may be claimed when Contractor is appointed on a criminal matter that includes one or more counts of criminal forfeiture.
- (e) No additional credit may be taken due to the following circumstances:
 - (i) more than one charging instrument (including Uniform Traffic Citation) is filed; or
 - (ii) more than one case number is assigned.

1.5.3 Case Type Credit

Unless Section 1.4.11 applies, the case type credited is for the most serious offense alleged to have occurred on a specific calendar day, even if the charge is later changed to a different case type. For cases in which the most serious charge is a Class C felony, the most serious offense is assault IV domestic violence, DUII felony, or Class C felony, in this order.

1.5.4 Credit for Recommended Representation

Except for complex cases, if a contract case proceeding has been interrupted for the following reasons and time intervals, Contractor receives a new credit if:

- (a) **365 Days After Aid and Assist Delay**
More than 365 days have passed since the client was originally found unable to aid and assist and the client is brought before the court for a rehearing on the issue or trial; or
- (b) **180 Days After Bench Warrant**
More than 180 days have passed since a bench warrant was issued; or
- (c) **18 Months with Repeated Bench Warrants**

More than 18 months have passed since Contractor was originally appointed and the case is recommenced and no additional credit has been received because of Section 1.5.4(b); or

(d) **180 Days After Dismissal**

More than 180 days have passed since a dismissal of a case; or

(e) **After Appeal or Post-Conviction Relief**

A new trial or sentencing follows an appeal or post-conviction relief; or

(f) **After Interlocutory Appeal**

A case resumes at the trial level, following an interlocutory appeal by the state; or

(g) **After Mistrial or Hung Jury**

A new trial is scheduled after a mistrial or hung jury.

1.5.5 Probation Violation Credit

An appointment on a probation violation proceeding arising out of a criminal or civil contempt sentencing(s) is one probation violation credit for each court case number to which Contractor is appointed. Provided, however, that if Contractor is appointed to more than one case number, additional credit is received only for those case numbers in which the convictions involve different incident dates. Contractor receives no additional credit for appointments on new alleged probation violations if the original probation violation matter on which Contractor was appointed has not been adjudicated.

1.5.6 Show Cause Hearing for Diversion or Conditional Discharge Agreement

An appointment for a show cause hearing to address non-compliance issues related to a diversion agreement, conditional discharge agreement or any other type of deferred or delayed adjudication agreement is an SCDV credit if:

- (a) Contractor did not receive a credit for the underlying charge; or
- (b) more than 180 days have passed since Contractor represented the eligible person at a previous court appearance.

1.5.7 Juvenile Case Credit

1.5.7.1 General Provisions

A petition which is amended from or to a delinquency or dependency petition or the dismissal of one type of petition and refiled of another type of petition is not a new credit.

1.5.7.2 Prepetition Matters

The prepetition appointment to represent a youth in a delinquency matter or a child in a dependency matter continues through disposition on any petition that is later filed on the prepetition allegations and no additional case credit is received.

1.5.7.3 Delinquency Petitions

An appointment on a delinquency case is credited under the provisions set out in Sections 1.5.2 - 1.5.4.

1.5.7.4 Dependency and Termination Petitions

An appointment to represent children, parents, or legal guardians on a dependency petition is one credit regardless of the number of petitions filed (see Section 1.5.7.4.1 for exceptions). Case credit in a dependency proceeding covers representation from appointment to the court's entry of the dispositional order required under ORS 419B.325, or as otherwise authorized by PDSC. An appointment to represent children, parents, or legal guardians on a termination of parental rights petition is always one credit.

1.5.7.4.1 Representation of Multiple Children

An appointment to represent two or more related children in a dependency proceeding is a maximum of two credits if:

- (a) the petition names as parents different mothers of different children; or
- (b) the petition names as parents different fathers of different children, not including any putative father unless the putative father also appears in the case; or
- (c) the children are living in more than one location.

1.5.7.4.2 Maximum Credit for Representing Parents

The maximum number of credits that may be counted when a Contractor attorney represents more than one parent or legal guardian in a dependency proceeding is one.

1.5.7.5 Postdispositional Juvenile Hearings

A postdispositional juvenile hearing is limited to a hearing before the court or Citizen Review Board (CRB) that is held after the juvenile court enters the dispositional order required under ORS 419B.325 or ORS 419C.440, or as otherwise authorized by PDSC. Postdispositional juvenile matters are a new credit for each hearing attended by Contractor. A single postdispositional hearing, even if it involves matters relating to more than one original juvenile petition, counts as only one postdispositional credit. Postdispositional hearings do not include probation violation hearings.

1.5.7.6 Juvenile Probation Violation Hearings

Juvenile probation violation hearings are governed by Section 1.5.5.

1.5.7.7 Waiver Proceedings

Contractor shall receive one additional "Juvenile Other" (JUDO) credit beyond that assigned for the original appointment for each waiver proceeding under ORS 419C.349.

1.5.8 Mental Health Case Credit

An appointment to represent an allegedly mentally ill, pursuant to ORS 426.070, or a person alleged to have an intellectual disability, pursuant to ORS 427.235, is one credit. The appointment ends at the original disposition of that matter.

1.5.9 Contempt Case Credit

An appointment to represent a client on a contempt case is one credit. Contractor receives no additional credit for appointments on new allegations of contempt if the original contempt allegation on which Contractor was appointed has not been adjudicated.

1.5.10 Post-Conviction Relief Case Credit

An appointment to represent a client on petitions filed at the same time or petitions with sequential numbers counts as one credit for each separate prosecution that is challenged by the petitions, with a maximum of five credits. The appointment ends at the original disposition of that matter, unless otherwise authorized by PDSC.

1.5.11 Habeas Corpus Case Credit

An appointment to represent a client on a petition for a writ of habeas corpus is one credit if Contractor does not represent the petitioner on the charge to which the habeas corpus case is related. Petitions filed at the same time or petitions with sequential numbers count as one credit. The appointment ends at the original disposition of that matter, unless otherwise authorized by PDSC.

1.6 Appointments That Do Not Qualify for Credit

1.6.1 Verification Removal

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case credit where:

(a) **Finding of Ineligibility**

The court finds, after screening or verification, that the client is not financially eligible for appointed counsel at state expense; or

(b) **Withdrawal of Application for Counsel**

The court withdraws counsel because the client withdraws the application for appointed counsel before the court completes verification.

1.6.2 Reassignment Within Consortium

If a case is reassigned within a consortium for any reason, no new credit may be claimed.

2 MUTUAL RIGHTS

2.1 Waiver

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

2.3 Termination

The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts

Except as to agreements between a consortium and its member attorneys, Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

3.3 PDSC Rights for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
 - i. for repeated instances of failure to comply; or
 - ii. for failure to comply within 30 days after PDSC suspends this contract.

3.4 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document.
(See Section 6.1)

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of any duty or obligation under this contract;
- (b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services; provided, however, that good faith actions of counsel undertaken to advance or preserve a constitutional or statutory right of a client shall not be deemed cause for termination;

- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate legal services under this contract or fulfill the obligations of this contract.

3.5.2 No Appointments After Notice

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

3.6 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

3.7 Increasing Workload: Renegotiation at PDSC Option

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the probable number of available cases increases substantially;
- (b) Contractor demonstrates that it has a sufficient number of attorneys and other persons providing services under the contract to manage the additional workload; and
- (c) PDSC determines that renegotiation is in the state's interest.

PDSC is not required to pay Contractor for credits in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor's assignment to such excess cases.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval. PDSC and its agents will comply with the American Bar Association's "Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor" (2002) when conducting any fiscal or performance audit or review.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

3.8.3 Other Information

Upon the PDSC's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.4, 4.5 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the question or concern identified.

3.8.4 Timely Reports by PDSC

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

3.9 Use of Equipment Purchased with Contract Funds

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract.

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

4.2 Court Appointments Outside Contract

Contractor may accept additional court appointments to cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional appointments do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "representation", set forth in Section 7.1, for cases assigned under this contract.

4.3 Request for Additional Credit

Contractor may make a written request for additional credit for cases Contractor believes required an extraordinary amount of time, effort, or expense, on cases closed since the preceding periodic review (see Section 5.7). Only PDSC may approve additional credit for cases assigned under this contract. Contractors shall not make requests of the court or court staff to approve additional credit.

4.3.1 In General

Contractor shall submit in writing any materials needed to show extra services beyond the contract and the amount of additional credit proposed.

4.3.2 Complex Cases in Which Contractor Withdraws

Contractor shall submit any materials needed to show extra services performed prior to a withdrawal for any reason on a complex case and the amount of additional credit proposed beyond one OTHR credit.

4.4 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe attorney/client consultations or to review information in case files that is:

- (a) privileged because of the attorney/client relationship; or
- (b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.5 Personnel Records

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.2 Compliance with Applicable Law

5.2.1 In General

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status.

5.2.2 Laws Incorporated by Reference

The provisions of ORS 279B.220, 279B.230, and 279B.235 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

5.3 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall:

- (a) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;
- (b) become effective for willful breach not less than 14 days from delivery; and
- (c) become effective not less than 60 days from delivery for non-willful breach.

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Caseload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

5.6 Renegotiation Shall Minimize Reductions in Persons Providing Services Under the Contract

PDSC shall renegotiate with all Contractors affected by case decreases to apportion decreases in a manner that minimizes reductions in persons providing services under the contract. Such renegotiations shall:

- (a) reduce the total number of cases for the contract period and adjust the monthly payments to Contractor accordingly; or
- (b) have Contractor refund or otherwise repay to the State any moneys saved.

5.7 Periodic Review

At the request of either party, PDSC and Contractor will periodically review case assignment trends, requests for additional credit and any other matters needed to determine contract compliance or any necessary contract modifications.

5.7.1 Review of Assignments to Multiple Contractors and Mixture of Cases

In counties where more than one Contractor provides legal services, periodic review shall include a review by PDSC of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates and the rates contemplated under the contracts, PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected, to the extent total cases are available. Similarly, if the periodic review discloses a substantial disparity between the case mix under the contract and the case mix actually assigned to Contractor, PDSC shall notify the court and Contractors that appointment case mix must be adjusted and corrected, to the extent total cases are available. (See Section 7.8.2.5)

5.7.2 Fungibility

The parties agree that PDSC is contracting for the provision of legal representation by Contractor, as measured by value, and that the estimated workload, by case type, is the parties' expectation as to the distribution of the cases which may be available during the contract period. The parties expressly agree that Contractor may substitute one type of case for another, for the purposes of contract performance, with cases being fungible, except as specifically provided to the contrary in this contract.

5.8 Other Contractors and Vendors

PDSC may undertake or award other contracts for additional or related work. Contractor shall cooperate with PDSC and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for public defense services. Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

6 OBLIGATIONS OF PDSC

6.1 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers, including the private bar. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the requirement to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

6.2 Contract Payment

Payment under this contract shall be based on the Payment Schedule included in the Specific Terms.

6.3 Payments in Addition to Contract Price

PDSC shall pay for the following case expenses from funds available for the purpose:

- (a) Discovery
Discovery expenses include material provided by DHS or a county juvenile department for representation in a juvenile case. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, district attorney or court files pertaining to the underlying case;
- (b) Preauthorized Non-Routine Expenses
Non-routine case expenses requested by Contractor and preauthorized by PDSC or other authority designated to approve non-routine expenses in compliance with the requirements of ORS 151.216 and ORS 135.055(3). Preauthorization of non-routine expenses shall be sought in compliance with the *PDSC Public Defense Payment Policies and Procedures*;
- (c) Lay Witness Fees
Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;
- (d) Copying Clients' Files
The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;
- (e) Copying Direct Appeal Transcripts for PCR Trial-Level Representation
The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;
- (f) Records
Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and
- (g) Process Service
The cost for the service of a subpoena as long as the rate per location does not exceed the guideline amount as shown in the payment policy.

7 OBLIGATIONS OF CONTRACTOR

7.1 Performance Obligations of Appointed Counsel

7.1.1 Standard of Representation

Appointed counsel shall fulfill applicable state and national standards of performance, including those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center and National Legal Aid and Defender Association. Counsel shall also satisfy applicable state and federal constitutional requirements for the provision of adequate and effective assistance of counsel, and meet state and federal statutory requirements for counsel in the applicable proceedings. And counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

7.1.2 Representation at all Stages of a Proceeding

Contractor shall provide representation in all proceedings related to the legal matter that is the subject of the representation, including but not limited to proceedings below. Representation under this contract does not include related Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations and probate proceedings, and other civil proceedings not otherwise provided for under this contract.

7.1.2.1 Pre-appointment representation

Subject to the express prior approval of PDSC, where an individual would be eligible for appointed counsel at state expense if charged with a crime or served with a petition in juvenile court but exigent circumstances preclude an appointment order, contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of a client.

7.1.2.2 Appearance at first proceedings

- (a) Contractor shall provide representation at all scheduled arraignments, shelter hearings and other initial appearances in criminal and juvenile cases.
- (b) Notwithstanding subsection (a), Where PDSC has approved in writing other arrangements for representation at first proceedings, contractor is not required to provide representation.
- (c) Contractor shall establish and follow procedures to ensure prompt notification to the court and client of the specific attorney assigned to each case.

7.1.2.3 Representation following the commencement of proceedings

Contractor shall provide representation, meeting the standard of representation set forth in Section 7.1.1 of the contract, during the pendency of a case through judgment or other final order of the court on the case, including but not limited to:

- (a) Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions; and,
- (b) Filing a petition for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,

To the extent ethically permitted, representing a client at a show cause hearing to determine the client's financial eligibility for appointed counsel.

7.1.2.4 Post-judgment proceedings

Following the entry of judgment or other final order in a case, counsel shall:

- (a) Seek modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- (b) Complete questionnaires, forms or other process necessary to obtain appellate counsel for clients requesting an appeal;
- (c) Seek court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- (d) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705;

- (e) Consult with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and
- (f) Upon request, provide copies of the entire file to appellate or post-conviction relief counsel.

7.1.3 Client Contact

7.1.3.1 In-custody Initial Contacts

Contractor shall, whenever possible, speak to and conduct initial interviews in person with in-custody clients:

- (a) Within 24 hours of appointment; or
- (b) By the next working day if the court appoints Contractor on a Friday, or if the day following the appointment is a holiday.

7.1.3.2 Out-of-Custody Contacts

Within 72 hours of the appointment, Contractor shall arrange for contact with out-of-custody clients, including notification of a scheduled interview time or what the client must do to schedule an interview time.

7.1.4 Contractor Responsibilities Regarding Financially Ineligible Clients

Contractor shall consult Oregon State Bar Formal Ethics Opinion 2005-34, in conjunction with state and federal constitutional provisions, in determining what course to follow if Contractor learns that a client is ineligible for state-funded legal services under this contract.

7.1.5 Withdrawal From Case Only on Court Approval

Contractor may withdraw from representation following appointment by the court only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course. Contractor shall ensure continuous representation of a client until withdrawal is approved and then assist in the prompt establishment of a new attorney/client relationship.

7.2 Quality Assurance Obligations of Contract Administrator

7.2.1 Quality Assurance Procedures

Contractor shall ensure that persons providing client representation under this contract meet the standards of representation set forth in Section 7.1.1 of this contract. In doing so, Contractor should establish and implement, as appropriate for contractor's entity structure, quality assurance procedures consistent with the practices recommended in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010).

7.2.2 Case Assignment and Workload

Contractor shall ensure that the attorney assigned to represent a client under this contract:

- (a) Possesses the qualifications for representation of the case-type involved, as set forth in the PDSC's Qualification Standards for Court-Appointed Counsel, and has been approved for appointment to the applicable case type by PDSC. Contractor shall provide to PDSC the name and current qualifications, including a Certificate of Attorney Qualification and Supplemental Questionnaire, of any attorney providing representation under this contract, including attorneys who begin providing representation during the term of the contract.
- (b) Has a current workload, including private practice cases not covered by this contract, that will not interfere with competent and diligent representation that fulfills the Standard of Representation set forth in Section 7.1.1 of this Contract.
- (c) Will provide continuous representation by the same attorney, when possible, from the commencement of proceedings continuously until the final disposition of the case.

7.2.3 Continuing Legal Education Requirements

Contractor shall ensure that all contract attorneys providing representation under this contract:

- (a) Obtain 12 hours of continuing legal education credits related to the practice of juvenile law during each year of this contract, if the attorney is handling juvenile court cases;

- (b) Obtain 12 hours of continuing legal education credits related to the practice of criminal law during each year of this contract, if the attorney is handling criminal court cases; and
- (c) For attorneys with mixed caseloads including both juvenile and criminal cases, obtain 12 hours of continuing legal education credits during each year of this contract, apportioning those credits between programs related to juvenile and criminal law according to the percentage of the attorney's cases assigned under this contract in each of those practice areas.

7.2.4 Report to PDSC

Upon request, Contract shall provide to PDSC a description of its quality assurance procedures, including documentation demonstrating current compliance with those procedures; provided, however, that PDSC shall not have access to client information that is privileged because of the attorney/client relationship, or confidential personnel information, unless the client or Contractor personnel expressly, knowingly, and voluntarily provides such access in writing or unless such permission is not legally required.

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its subcontractors, employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its subcontractors, employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor, Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 656 and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor and each law firm or sole practitioner member of a consortium shall procure and keep in effect during the contract term comprehensive general liability

insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

7.3.6 Malpractice Insurance

During the entire contract period, and at the Contractor's own expense in whole or in part from contract funds, Contractor shall ensure that each of its attorneys has malpractice insurance coverage in the minimum amount required by the Oregon State Bar. Contractor shall provide proof of such insurance to PDSC on request.

7.3.7 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly received, expended, and accounted for.

7.3.8 Oregon Judicial Case Information Network (OJCIN)

For juvenile cases, Contractor shall limit use of OJCIN, including the Oregon Judicial Information Network (OJIN) and the Oregon eCourt Case Information Network (OECI) to access only those cases that involve parties Contractor represents.

7.3.9 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Capacity and Equipment

7.4.1 Number of Persons Providing Services

Contractor shall secure, at its own expense in whole or in part from contract funds, all subcontractors, members, personnel or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support services to perform its contract obligations.

7.4.2 Certification to PDSC

Contractor shall provide a certification from any attorney added during the contract that the attorney has read this contract, including the payment schedules and other specific terms, and understands the obligations of attorneys providing services under the contract and the duties and responsibilities of the contract administrator.

7.4.3 Interpreters

For out-of-court attorney/client communications, Contractor may use staff who are either qualified, as defined by ORS 45.275(9)(c), or who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. For in-court interpretation, Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor comply with all certification requirements established by OSCA and the Code of Professional Responsibility for Interpreters in Oregon.

7.5 Record Keeping

7.5.1 Case Records

Contractor shall preserve all case documents, notes, files, physical evidence or any other items created or received in the course of the representation of a client in an orderly and organized manner such that it can readily be made available to successor counsel, if one is appointed or retained. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection by PDSC, or PDSC's designee or agent.

7.5.2 Financial Records

Contractor shall maintain financial records on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

7.5.3 Retention Period

For purposes of this contract only, Contractor agrees to preserve all appointment, service and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to preserve all case files a minimum of ten (10) years from the date the case is closed for all cases except aggravated murder and Measure 11 cases. Case files in aggravated murder and Measure 11 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to PDSC

7.6.1 Case Inventory

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly case inventory report for the preceding month. Contractor may submit amended case inventory reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly case inventory report to be amended.

7.6.2 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by PDSC, to track the disposition of, or withdrawal from, all cases reported under the contract. Contractor shall maintain data on other case activity upon the request of PDSC. Contractor shall make the data available for PDSC review upon request.

7.6.3 Caseload Reports

Contractor shall maintain data, at the request of PDSC and in a format authorized by PDSC, on the current number and type of open cases of each contract attorney, including any private practice noncontract cases. Contractor shall make the data available for PDSC review upon request.

7.6.4 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment until PDSC receives the report and supporting documentation.

7.6.5 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

7.7 Costs, Expenses and Client Clothing

7.7.1 Costs and Expenses

Except for the expense items listed in Section 6.3, Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial; and
- (c) staff services, including routine travel expenses, if Contractor has staff investigators, interpreters, or polygraphers.

7.7.2 Client Clothing

Prior to requesting preauthorization to purchase clothing for a client's court appearance, Contractor agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is available. (Contact PDSC for a current list.) If Contractor receives preauthorization to purchase clothing for a client, that clothing shall be provided to a "clothing room" upon completion of the case.

7.8 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

- (a) Contractor's ability to carry out this contract, including changes in names and number of attorneys providing services under this contract, number of non-attorneys providing services under the contract, and office location;
- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

7.8.2 Specific Notices and Responses Required

7.8.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 - 7.3.6 and immediate notice of the cancellation of any such policies.

7.8.2.2 Persons Providing Services Under the Contract

Contractor shall provide, to PDSC and the affected court, notice of the names of attorneys providing services under this contract and any other substantial changes in the number of persons providing services under this contract. Upon request by PDSC, Contractor shall provide a current list of attorneys and non-attorneys providing services under this contract, and provide timely responses to PDSC surveys or other inquiries concerning the diversity of attorneys and others performing services for Contractor.

7.8.2.3 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall demonstrate to PDSC its continued ability to meet contract requirements or shall propose reductions in caseload and/or value if Contractor is unable to meet contract requirements because of such organizational change.

7.8.2.4 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

- (a) **Criminal Charges**
An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been charged with a crime.
- (b) **Criminal Conviction**
An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been convicted of a crime.
- (c) **Formal Bar Complaint**
A formal accusation of misconduct has been filed by the Oregon State Bar against an attorney performing services for Contractor.
- (d) **Bar Discipline**
Disciplinary action is taken by the Oregon State Bar against an attorney performing services for Contractor.
- (e) **Uninsured Practice of Law**
An attorney performing services for Contractor has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

7.8.2.5 Nonassignment of Available Cases or Early Quota

Contractor shall notify PDSC immediately upon determining that:

- (a) the court is not assigning Contractor to cases available for appointment; or
- (b) Contractor will reach its total contract quota before the expiration of the contract.

Within forty-five (45) days of notification to PDSC that the court is not assigning Contractor to cases available for appointment, PDSC shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

7.9 No Dual Payments for Contract Work

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract without PDSC authorization;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) solicit or accept payment from a client for legal services on a matter on which Contractor has been appointed by the court.

7.10 Independent Audit Required

Contractor shall, from contract funds, be subject to an annual independent audit by a CPA firm and shall provide a copy to PDSC.

7.11 Limits on Full Time Public Defender Attorneys

Attorneys employed full time by nonprofit public defender offices shall not accept employment for legal services on a retained basis and shall not accept appointment to a public defense case outside this contract without the authorization of PDSC.

7.12 Limits on Pro Bono Work

Nonprofit public defenders may provide pro bono representation only for:

- (a) cases covered by contractor's or another's malpractice insurance; and
- (b) cases that are:
 - (i) related to cases to which contractor's attorneys have been appointed; or
 - (ii) unrelated to contract cases, provided the pro bono services are rendered outside of the contract.

Key: Public Defender

Consortium or Law Firm

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

9 RISKS OF CONTRACTOR

9.1 Refund for Shortage

If Contractor's actual caseload value, at the expiration or termination of the contract, is less than the workload value set forth in this contract, Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

9.2 Wind-Down Procedures

Unless PDSC agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall complete timely and adequate legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination.

9.2.1 Negotiations

If the contract expires or terminates, PDSC and Contractor shall negotiate wind-down procedures. Whenever possible, Contractor shall wind down pending cases within three months of contract expiration or termination by completing or, with PDSC's agreement, reassigning the cases.

9.2.1 Negotiations

Except when PDSC terminates the contract for cause under Section 3.5 and unless otherwise agreed, the parties shall, whenever possible, agree on wind-down procedures before the contract expires or terminates. If the parties cannot agree on wind-down procedures, PDSC alone shall decide what state funds, if any, will finance wind-down procedures based on what PDSC reasonably believes is necessary to ensure that the clients' right to adequate assistance of counsel and that Contractor's legal obligations are met.

9.2.2 Reduction in Contractor's Caseload

Key: Public Defender

Consortium or Law Firm

If Contractor's caseload or contract amount is reduced significantly resulting in layoffs, whether as a result of contract modification or contract renewal, PDSC and Contractor may negotiate wind-down procedures.

10 APPOINTMENT TYPE DEFINITIONS

() denotes the applicable appointment code.

10.1 Criminal Cases

10.1.1 Appointments After Diversion or Conditional Discharge Agreement (SCDV)

For all criminal cases, Contractor shall report separately on cases where Contractor is first appointed:

- (a) after the defendant enters into a diversion or conditional discharge agreement or any other type of deferred or delayed adjudication agreement, and
- (b) when the court orders the defendant to show cause why the agreement should not be terminated.

Contractor shall report these cases as SCDV rather than as the original case type.

10.1.2 Capital Murder Case (CMUR)

A capital murder case is any appointment to represent a person charged with aggravated murder as defined by ORS 163.095 except as provided under paragraph 10.1.3., below.

10.1.3 Noncapital Murder Case (MURD)

A noncapital murder case is any appointment to represent a person charged with:

- (a) murder as defined by ORS 163.115; and
- (b) aggravated murder where the person is a juvenile under 15 years of age who is waived to circuit court on the charge (a convicted juvenile cannot be sentenced to death or life without parole under ORS 161.620) or aggravated murder where the person was 15, 16 or 17 years of age on the date the crime is alleged to have occurred (no death sentence may be imposed under ORS 137.707(2)).

10.1.4 Felony Case

A felony case is any appointment to represent a person charged with one or more crimes described by ORS 161.525, excluding capital murder and noncapital murder. It includes manslaughter and negligent homicide. A case is a felony case if it includes a felony charge at any time after defendant appears in circuit court, even if later reduced to a misdemeanor.

10.1.4.1 Measure 11 Felony (AM11, BM11, JM11)

Other than murder, a felony that is the subject of ORS 137.700 or ORS 137.707. AM11 is a Class A Measure 11 felony with an adult defendant; BM11 is a Class B Measure 11 felony with an adult defendant; and JM11 is a Class A or Class B Measure 11 felony where a 15-, 16- or 17-year-old is indicted as an adult in circuit court.

10.1.4.2 Class A Felony (AFEL)

A Class A felony is a crime that a statute expressly designates as a Class A felony, other than an AM11 case.

10.1.4.3 Class B Felony (BFEL)

A Class B felony is a crime that a statute expressly designates as a Class B felony, other than a BM11 case.

10.1.4.4 Class C Felony (CFEL)

A Class C felony is a crime that a statute expressly designates as a Class C felony, other than a DUII felony (DFEL), or domestic violence Class C felony (DVIO).

10.1.4.5 DUII Felony (DFEL)

A DUII felony is a DUII case in which an element of the crime charged is that the defendant has at least three prior DUII convictions within the past ten years (ORS 813.010(5)).

10.1.4.6 Domestic Violence Class C Felony (DVIO)

An Assault IV case which is elevated to a Class C felony under ORS 163.160(3).

10.1.4.7 Unclassified Felony (UFEL)

A felony crime that the statute(s) do not expressly designate as a Class A, B, or C Felony.

10.1.5 DUII (DUIS)

A DUII case is any appointment to represent a person charged with driving under the influence of intoxicants, other than DUII felony (DFEL).

10.1.6 Misdemeanor Case (MISS)

A misdemeanor case is any appointment to represent a person charged with one or more crimes described by ORS 161.545 or by local ordinance as a misdemeanor, excluding DUII, misdemeanor contempt and the misdemeanor traffic cases defined below.

10.1.7 Misdemeanor Traffic Case

A misdemeanor traffic case is any appointment to represent a person on a misdemeanor traffic charge for which a convicted defendant may be incarcerated as an original sentence under the Oregon Vehicle Code, other than a traffic offense charged as a felony or DUII. For statistical purposes, report cases in the following categories:

- (a) Misdemeanor Driving While Suspended (DWSS).
- (b) Other Traffic Misdemeanor (OTMS).

10.1.8 Extradition Case (EXTR)

An extradition case is any appointment to represent a person in a proceeding under the Uniform Criminal Extradition Act, ORS 133.743 - 133.857. It includes representation on a writ of habeas corpus filed in a pending extradition proceeding.

10.2 Probation Violations

10.2.1 Probation Violation

A probation violation is any appointment or reappointment to represent a person in a proceeding concerning an order of probation, including but not limited to the revoking thereof, arising out of a criminal or civil contempt conviction(s) and sentencing(s), under Section 1.5.5. For reporting purposes, Contractor shall report each type of probation violation case by the following subcategories:

10.2.1.1 Felony Probation Violation (FPV)

A felony probation violation case is any appointment to represent a person in a probation proceeding arising out of a felony conviction.

10.2.1.2 Misdemeanor Probation Violation (MPV)

A misdemeanor probation violation case is any appointment to represent a person in a probation proceeding arising out of a contempt case, or a misdemeanor conviction, except DUII.

10.2.1.3 DUII Probation Violation (DPV)

A DUII probation violation is any appointment to represent a person in a DUII probation proceeding arising out of a DUII conviction.

10.3 Contempt Cases

10.3.1 Contempt Case

A contempt case is any appointment to represent a person charged with contempt of court. For statistical purposes, report cases in the following three categories:

10.3.1.1 Family Abuse Prevention Act (FAPA)

Contempt for violating a Family Abuse Prevention Act (ORS 107.700 - 107.735) restraining order.

10.3.1.2 Support (SUPP)

Contempt for failure to comply with an order or judgment in domestic relations or juvenile court proceeding for the payment of suit money, attorney's fees, spousal support, child support, maintenance, nurture, or education.

10.3.1.3 Contempt (CONT)

Misdemeanor contempt or any other contempt that is not a FAPA or SUPP contempt.

10.4 Civil Commitment Cases

10.4.1 Civil Commitment Case (MHMI)

A civil commitment case is any appointment to represent a person in a proceeding brought under ORS Chapter 426 or 427.

10.5 Juvenile Cases

10.5.1 Juvenile Case

A juvenile case is any appointment or a reappointment to represent a person(s) in a proceeding brought under ORS Chapter 419B or 419C. For statistical purposes, report juvenile cases in the following categories:

10.5.1.1 Juvenile Felony (JUDF)

If committed by an adult, alleged act would constitute a felony.

10.5.1.2 Juvenile Misdemeanor (JUDM)

If committed by an adult, alleged act would constitute a misdemeanor.

10.5.1.3 Juvenile Other (JUDO)

- (a) if committed by an adult, alleged act would constitute a violation or infraction;
- (b) alleged act is a status offense;
- (c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);
- (d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340);
- (e) appointments under ORS 420A.203 (Eligibility for second look; report to sentencing court; hearing; disposition);
- (f) appointments under ORS 181.823(12) (Relief from reporting requirement; juvenile offenders); and
- (g) appointment to a juvenile case for which no other juvenile case type applies.

10.5.1.4 Probation Violation or Motion to Modify (JPV)

Proceeding based on allegation(s) that the child has violated the terms of probation or a proceeding based on a motion to modify a disposition.

10.5.1.5 Juvenile Dependency Case

A juvenile dependency case is any appointment to represent a person based on a new petition alleging that a child is within the jurisdiction of the juvenile court under ORS 419B.100(1)(a) - (h).

- (a) Parent (JDEP): Appointment to represent parent(s) or guardian(s).
- (b) Child (JDEC): Appointment to represent child(ren).

10.5.1.6 Postdispositional Proceeding

A postdispositional proceeding is any appointment in a juvenile court proceeding to represent a person at a court hearing or CRB review hearing held after the original disposition required under ORS 419B.325 or ORS 419C.440. It does not include probation violation proceedings or family unity meetings. Probation violation proceedings are a separate category under delinquency.

- (a) Parent (JPDP): Appointment to represent parent(s) or guardian(s).
- (b) Child (JPDC): Appointment to represent child(ren).

10.5.1.7 Termination of Parental Rights Case

A termination of parental rights case is any appointment to represent the parent or child in a proceeding under ORS 419B.498 - 419B.530 or in a contested adoption matter under ORS 109.330 and *Zockert v. Fanning*, 310 Or 514 (1990) or in a contested permanent guardianship proceeding under ORS 419B.365. Guardianship proceedings under ORS Chapter 125 are excluded.

- (a) Parent (JUTP): Appointment to represent parent(s) or guardian(s), including contested adoption proceedings.
- (b) Child (JUTC): Appointment to represent child(ren), including contested adoption proceedings.

10.6 Other Civil Cases

10.6.1 Habeas Corpus Case (CVHC)

A habeas corpus case is any appointment to represent a person in a proceeding for a writ of habeas corpus under ORS 34.355, excluding:

- (a) habeas corpus petitions filed in a pending extradition proceeding; and
- (b) habeas corpus petitions filed for a client whom Contractor represents on a related matter (not a separate appointment under the contract).

10.6.2 Post-Conviction Relief Case (CVPC)

A post-conviction relief case is any appointment to represent a person under ORS 138.510 - 138.686.

10.6.3 Psychiatric Security Review Board Case (PSRB)

A Psychiatric Security Review Board case is any appointment by the PSRB to represent a person under ORS 161.346(11).

10.7 Other Cases (OTHR)

An Other case is: a complex case from which Contractor withdraws; an appointment under ORS 136.611 (Material Witness Order); an appointment under ORS 137.771(2) (Sexually Violent Dangerous Offenders); an appointment under ORS 138.694 (DNA testing); a criminal forfeiture credit; or an appointment to a case for which no other case type applies.

SPECIFIC TERMS

1 PARTIES TO CONTRACT

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and _____ ("Contractor").

2 TERM OF CONTRACT

The contract term shall be from January 1, 2018 through December 31, 2019.

3 NOTICE

Each party shall provide to the other all notices regarding this contract:

- (a) in writing, and
- (b) delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:

mail@opds.state.or.us

Contractor:

(Contract Administrator email address)

4 TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$_____ during the term of this contract. PDSC shall pay the total workload value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

5 CASE TYPES

Contractor shall provide legal representation in the Circuit Court of _____ County for the types of cases included in the Caseload and Case Value Matrix.

6 WORKLOAD

6.1 Estimated Number of Cases

Contractor's workload is estimated to be ____ cases for the contract term.

6.2 Caps, Limitations, or Parameters on Number of Certain Cases

[Describe here as needed.]

7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

[Add additional agreements as needed.]

8 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONTAINED IN THE SUMMER 2017 REQUEST FOR PROPOSALS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

NANCY COZINE, EXECUTIVE DIRECTOR **DATE**
PUBLIC DEFENSE SERVICES COMMISSION

CONTRACTOR **DATE**

TITLE OR REPRESENTATIVE CAPACITY

CONTRACT BETWEEN PDSC AND CONTRACTOR PAYMENT SCHEDULE

End of Month (Unless noted)	Monthly Payment
January 2018	
February 2018	
March 2018	
April 2018	
May 2018	
June 2018	
July 2018	
August 2018	
September 2018	
October 2018	
November 2018	
December 2016	
<i>First-Year Subtotal</i>	\$0
January 2019	
February 2019	
March 2019	
April 2019	
May 2019	
June 2019	
July 2019	
August 2019	
September 2019	
October 2019	
November 2019	
December 2019	
<i>Second-Year Subtotal</i>	\$0
<i>Total Payments</i>	\$0

CONTRACT BETWEEN PDSC AND CONTRACTOR CASELOAD AND CASE VALUE MATRIX

Case Types 1/1/18 - 12/31/18	Quota (Number of Cases)	Value	Total Value
MURD	0	\$0	\$0
JLAW	0	\$0	\$0
AM11/BM11/JM11	0	\$0	\$0
AFEL	0	\$0	\$0
BFEL	0	\$0	\$0
CFEL/DFEL/DVIO/UFEL/FAPA/SUPP	0	\$0	\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/EXTR/MHMI/OTHR	0	\$0	\$0
DPV/FPV/MPV/JPV	0	\$0	\$0
CVHC	0	\$0	\$0
CVPC	0	\$0	\$0
JDEC/JDEP	0	\$0	\$0
JPDC/JPDP	0	\$0	\$0
JUDF	0	\$0	\$0
JUDM/JUDO	0	\$0	\$0
JUTC/JUTP	0	\$0	\$0
DRG	0	\$0	\$0
	0	\$0	\$0
	0	\$0	\$0
Total	0		\$0
Case Types 1/1/19 - 12/31/19	Quota (Number of Cases)	Value	Total Value
MURD	0	\$0	\$0
JLAW	0	\$0	\$0
AM11/BM11/JM11	0	\$0	\$0
AFEL	0	\$0	\$0
BFEL	0	\$0	\$0
CFEL/DFEL/DVIO/UFEL/FAPA/SUPP	0	\$0	\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/EXTR/MHMI/OTHR	0	\$0	\$0
DPV/FPV/MPV/JPV	0	\$0	\$0
CVHC	0	\$0	\$0
CVPC	0	\$0	\$0
JDEC/JDEP	0	\$0	\$0
JPDC/JPDP	0	\$0	\$0
JUDF	0	\$0	\$0
JUDM/JUDO	0	\$0	\$0
JUTC/JUTP	0	\$0	\$0
DRG	0	\$0	\$0
	0	\$0	\$0
	0	\$0	\$0
Total	0		\$0
Contract total	0		\$0

**Addendum to January 1, 2018 to December 31, 2019
Public Defense Legal Services Contract (“Contract”)
Between the Public Defense Services Commission (“PDSC”) and XXXXX
 (“Contractor”)**

PDSC and Contractor agree that all terms and provisions stated in the Contract and all previous addenda to the Contract remain in effect except as specifically agreed and set forth below.

1. PARTIES TO CONTRACT

- a. Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and XXXXX ("Contractor").

2. TERM OF CONTRACT

- a. The contract term shall be from January 1, 2018 through December 31, 2019.

3. SCOPE OF CONTRACT

- a. The contract applies only to juvenile cases.

4. NOTICE

- a. Each party shall provide to the other all notices regarding this contract:
 - i. in writing, and
 - ii. delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:
 1. PDSC: Public Defense Services Commission
mail@opds.state.or.us
 2. Contractor: XXXXXX

5. GENERAL TERMS

- a. CLIENT: a “client” is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.
- b. JUVENILE CASE (“case”): A juvenile case is any appointment or reappointment to represent a person(s) in a proceeding brought under ORS 419B or 419C or as required in a contested adoption proceeding consistent with *Zockert v. Fanning*. A juvenile case begins on the date of appointment (or reappointment) of counsel and continues until appointment of counsel is terminated or relieved by the court. A juvenile case does not include a Ballot Measure 11 case.

6. OBLIGATIONS OF CONTRACTOR

- a. Provide comprehensive representation at all stages of a juvenile case. Comprehensive representation includes, but is not limited to:
 - i. Attending all meetings where DHS and/or other state actors or parties are present and discussing matters relevant to the case.
 - ii. Meeting with client to review available discovery before all court hearings, including shelter hearings where practicable.
 - iii. Advocating for client at all court hearings, including shelter hearings.
 - iv. Meeting and communicating regularly with clients including:
 1. Before court hearings and CRB reviews.
 2. In response to contact by the client.
 3. When a significant change of circumstances must be discussed with the client.
 4. Whenever notified that the child's placement has changed.
 5. When a lawyer is apprised of emergencies or significant events impacting the child.
 - v. Utilize independent investigators and social workers, as appropriate, to provide comprehensive representation.
 - vi. Observe Oregon State Bar Performance Standards: Specific Standards for Representation in Juvenile Dependency Cases. (See http://www.osbar.org/surveys_research/performancestandard/index.htm).
 - vii. Conduct a thorough, continuing, and independent review and investigation of the case consistent with Performance Standard 3.7.
- b. Advocate for systemic changes where necessary to improve outcomes for parents and children.
- c. Change business processes as necessary to provide high quality parent/child representation including, but not limited to:
 - i. Develop a method to maintain regular client contact with the client throughout the case.
 - ii. Have staff available to respond to immediate client questions when the attorney is in court.
 - iii. Conduct an initial interview of the client, when possible, within 72 hours of appointment.
 - iv. Have staff available to adequately support attorney functions.
- d. Engage in regular and consistent client communication as specified in the Oregon State Bar Performance Standards. It is generally recommended that attorneys spend approximately 1/3 of their time meeting with clients, 1/3 on case preparation, and 1/3 on court appearances and case related meetings.
- e. Use a case management system or other data collection method that will provide data reports demonstrating time spent on client communication, case preparation, court appearances, case-related meetings, case-related outcomes, and use of social workers and investigators.
- f. Comply with reasonable requests for data from PDSC.
- g. Attend quarterly meetings to review data and ensure sufficient support to achieve program expectations.
- h. Develop and implement a plan to increase or decrease case count so that full time representation is limited to no more than 80 juvenile cases per attorney. Provide plan details and timelines to PDSC.

- i. Contract administrator should carry a reduced caseload to allow for adequate administration time. The amount to which caseload is reduced shall be agreed upon by administrator and PDSC.
- j. Contractor shall notify PDSC of any change in Contractor's organization that might affect the number of individuals providing services under the contract prior to such change.

7. OBLIGATIONS OF PDSC

- a. Provide independent case managers to assist attorneys in juvenile cases by evaluating services, identifying additional appropriate services in the community, connecting clients with appropriate services when necessary, and interceding when conflict occurs between clients and providers.
- b. Organize quarterly meetings to review data and ensure sufficient support to achieve programs expectations.
- c. Provide opportunities for continuing legal education.
- d. Facilitate stakeholder discussion to support PCRCP county system improvement efforts.

8. MUTUAL OBLIGATIONS

- a. Parties agree to work together, in good faith, to successfully implement pilot program.
- b. Parties agree to work toward accomplishing shared goals:
 - i. Provide competent, effective, and quality legal representation throughout the life of the case.
 - ii. Reduce the number of cases in which the time to establish jurisdiction is greater than 60 days in the county.
 - iii. Reduce the number of children in foster care in the county.
 - iv. Reduce the time to achieve permanency in the county.
 - v. Increase the frequency of attorney representation of parents and children at shelter hearings in the county.
 - vi. Increase the number of children who are reunified with their parent(s) in the county.

9. WORKLOAD

- a. In order to comply with performance standards, generally an attorney should limit full time representation to no more than 80 open juvenile cases. PDSC recognizes that the target goal of 80 open cases may fluctuate as cases are received, assigned and closed. An insignificant, short-term, temporary variance from the target goal of 80 cases is permitted.
- b. If case count consistently falls below or above 15% of estimated caseload for 6 consecutive months, parties shall negotiate compensation as appropriate.
- c. A contract administrator may request a good cause variance from the caseload limit; PDSC may approve or deny such request.
- d. Case count adjustments:
 - i. Termination of parental rights (TPR), delinquency with M11 potential or potential for extreme collateral consequences, or contested adoption case equals 2 juvenile cases due to complexity.
 - ii. On a juvenile case with more than one child reflected on the petition,

- each additional child equals .5/juvenile case due to additional workload of additional children.
- iii. Youth client who is subject of delinquency petition and also dependency petition equals 2 juvenile cases.
- iv. The maximum case count for a dependency, delinquency or TPR case is 3.
- e. Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

10. TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE

- a. For representation provided pursuant to this contract addendum, PDSC shall pay Contractor a total of XXXXXXX during the term of this contract addendum. PDSC shall pay the total workload value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

11. CONFLICTS

- a. The terms of this Agreement shall control over any conflicting terms in any referenced contract, agreement or document.

12. MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONTAINED IN THE 2017 REQUEST FOR PROPOSALS AND 2018-2019 PUBLIC DEFENSE LEGAL SERVICES CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGESTHAT IT HAS READ THIS ADDENDUM, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Nancy Cozine, Executive Director
Office of Public Defense Services
Public Defense Services Commission

Date

 XXXXX

Date

Title or Representative Capacity

CONTRACT BETWEEN PDSC AND XXXXX AMENDED MATRIX

CONTRACT BETWEEN PDSC AND XXXXX AMENDED PAYMENT SCHEDULE

CONTRACT BETWEEN PDSC AND XXXXXX CONTRACT ATTORNEYS AND STAFF

SPECIFIC TERMS

1 PARTIES TO CONTRACT

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and XXXX ("Contractor").

2 TERM OF CONTRACT

The contract term shall be from January 1, 2018 through December 31, 2019.

3 NOTICE

Each party shall provide to the other all notices regarding this contract:

- (a) in writing, and
- (b) delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:
Public Defense Services Commission
mail@opds.state.or.us

Contractor:
XXXX
email address

4 TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$XXXX during the term of this contract. PDSC shall pay the total workload value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

5 CASE TYPES

Contractor shall provide legal representation in the Oregon state courts for the types of cases listed below:

- (a) capital murder cases;
- (b) or other cases, at the request of PDSC.

6 WORKLOAD

6.1 Estimated Number of Hours

Contractor's workload is estimated to be XXXX hours for the contract term. Up to 90 hours may be administrative hours and contract administration unrelated to a particular case.

6.2 Caps, Limitations, or Parameters on Number of Certain Cases

Subject to PDSC's prior approval on each case, Contractor may substitute hours spent on other cases in any county.

7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

7.1 Reimbursement for Routine Expenses

The following supplements and amends Section 6.3 of the General Terms of the Contract.

7.2 Authorized Expenditures

Contractor agrees to request reimbursement under this agreement for:

- (a) those types of expenses defined and enumerated herein;
- (b) such expenses that are “necessary,” as defined below;
- (c) such expenses that are “reasonable,” as defined below;
- (d) such expenses that directly relate to cases assigned to contract attorneys under this and any prior contracts with PDSC; and
- (e) such expenses that are incurred by an assistant or investigator, who is salaried under this Contract.

7.3 Reconsideration of Disallowed Expenses

Contractor may request reconsideration and provide additional documentation of these expenses to PDSC according to the procedure described in the Public Defense Payment Policy and Procedures.

7.4 Definitions

7.4.1 Routine Expenses

Case-related expenses that are reasonable and necessary to provide an adequate defense that are defined as expenses under ORS 135.055 AND which are not related to office overhead, salaries, benefits, out-of-state travel, airfare, personal services (such as psychologists and expert witnesses). Routine expenses, for the purpose of reimbursement, primarily include in-state travel expenses, audio and video tapes, records and copy services from outside sources.

7.4.2 Necessary Expenses

Case-related expenses such that there would be a significant risk of error in the proceedings if the services were not provided or the expenses were not incurred.

7.4.3 Reasonable Amount

In instances where the payment policy establishes maximum allowable costs and unless otherwise specifically agreed herein, the presumed "reasonable amount" of an expense is the policy guideline rate. In other instances, a "reasonable amount" is presumed to be the market value of the service or expense or the amount necessary for the provider of the service or expense to recover only its actual cost of providing the service or item. For services or items where there is no opportunity for competitive services or production of items (where the provider is a captive entity) (for example, cost of medical records), Contractor should notify PDSC of any costs that exceed what Contractor believes is reasonable.

7.4.4 Contractor

The attorney, attorney's legal assistant, attorney's staff investigator or mitigation specialist who is paid a salary under the Contract.

7.4.5 Home County

For the purposes of travel expense reimbursement, XXXX County shall be considered Contractor's home county.

7.5 Types of Expenses Subject to Reimbursement Under this Agreement

7.5.1 Travel-Related Expenses

Travel-related expenses are limited to mileage reimbursement, parking fees, meals and lodging incurred outside Contractor's home county.

7.5.1.1 Mileage and Parking

The amount reimbursed for mileage and parking shall be the rate set by the payment policy.

7.5.1.2 In-State Lodging

Reimbursement for lodging is limited to actual costs incurred when Contractor is outside the home county and cannot reasonably avoid incurring this expense and the expense is necessary. Contractor shall seek commercial or government rates. The maximum allowable amount for lodging is the current rate for reimbursement according to the payment policy. Amounts exceeding the lodging expense maximums will be disallowed unless the higher rate has been preauthorized by PDSC.

7.5.1.3 Meals

Meal allowance amounts are those set forth in the payment policy. Receipts need not be submitted when requesting a meal allowance.

7.5.1.3.1 Meals in Conjunction with Overnight Travel

Contractor is entitled to claim a meal allowance for meal expenses incurred in conjunction with overnight travel.

7.5.1.3.2 Meal for Day Trips

If Contractor does not incur lodging costs but, due to departure or return times, could justify a lodging expense, Contractor is entitled to claim a meal allowance based upon the following travel times.

- (a) Breakfast allowance - Leave before 6:00 a.m. or return after 9:00 a.m.
- (b) Lunch allowance - Leave before 11:00 a.m. or return after 2:00 p.m.
- (c) Dinner allowance - Leave before 5:00 p.m. or return after 8:00 p.m.

7.5.2 Routine Expenses Not Related to Travel

Contractor may seek reimbursement for routine expenses according to Section 3.5 of the Public Defense Payment Policy and Procedures.

7.6 Types of Expenses Excluded From Payment Under this Agreement Unless Preauthorized

Expenses not specifically described in the contract that require preauthorization as non-routine expenses or that are presumed to be covered under the base contract as overhead expenses.

- (a) Airfare and vehicle maintenance.
- (b) Non-direct travel expenses, such as dry cleaning or laundry services.
- (c) Direct client expenses, such as haircuts, clothing or glasses.
- (d) Transcripts.
- (e) Expenses required to secure the attendance of an out-of-state witness.
- (f) Computer software programs.

7.7 Amendment to Model Contract Term 7.5.2

Section 7.5.2 of the General Terms does not apply to this contract.

7.8 Amendment to Model Contract Term 7.6.1

Replace "Case Inventory" with "Time".

8 MERGER CLAUSE

This writing together with the general terms contained in the 2017 request for proposals constitutes the entire agreement between the parties. There are no other oral or written understandings, agreements or representations regarding this agreement. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. If made, such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Nancy Cozine, Executive Director
Public Defense Services Commission

Date

XXX

Date

Title or Representative Capacity

CONTRACT BETWEEN PDSC AND XXXX

PAYMENT SCHEDULE

CONTRACT BETWEEN PDSC AND XXXX
CASELOAD AND CASE VALUE MATRIX

1/1/18 - 12/31/18	Hourly Rate	Number of Hours	Total Value
	\$100	XX	\$0
First-Year Total		XX	\$0
1/1/19 - 12/31/19	Hourly Rate	Number of Hours	Total Value
	\$100	XX	\$0
Second-Year Total		XX	\$0
Contract total		XX	\$0

Public Defense Services Commission
 Schedule of Compensation
 For Purposes of Recoupment Pursuant to ORS 151.505(2)

Case Type	Typical Contract Rate	Average Expenses (rounded)	Total Cost
Murder	\$18,437	\$23,287	\$41,724
Measure 11 felony	\$1,908	\$2,797	\$4,705
Non-M11 A felony	\$1,146	\$593	\$1,739
Non-M11 B felony	\$955	\$320	\$1,275
C felony	\$604	\$157	\$761
Misdemeanor, contempt, extradition	\$368	\$61	\$429
FAPA/Support	\$604	\$32	\$636
Probation violation	\$230	\$7	\$237
Habeas corpus	\$2,415	\$573	\$2,988
Post-conviction relief	\$2,726	\$2,447	\$5,173
Civil commitment	\$368	\$58	\$426
Juvenile felony	\$853	\$676	\$1,529
Juvenile misdemeanor	\$360	\$131	\$491
Juvenile probation violation	\$230	\$23	\$253
Juvenile dependency	\$830	\$151	\$981
Termination of parental rights	\$2,711	\$413	\$3,124

Effective January 1, 2016

Appendix B
Contractor List

Criminal Contractors	County
Eagle Cap Defenders	Baker
Benton County Legal Defense Corporation	Benton
Juvenile Advocates of Clackamas	Clackamas
Independent Defenders Inc.	Clackamas
Clackamas Indigent Defense Corporation	Clackamas
Murk, Mary Ann	Clatsop
Clatsop County Defenders Association	Clatsop
Justice Alliance of Columbia County	Columbia
Columbia County Indigent Defense Corporation	Columbia
Coos County Indigent Defense Consortium	Coos
Southwestern Oregon Public Defender Service	Coos
Twenty-Second Circuit Defenders_CRO	Crook
Curry County Consortium	Curry
Crabtree & Rahmsdorff Defense Services, Inc_DES	Deschutes
Bend Attorney Group	Deschutes
Kollie Law Group, PC	Deschutes
Roseburg Defense Consortium	Douglas
Umpqua Valley Public Defender	Douglas
Arneson and Stewart, P.C.	Douglas
Metropolitan Public Defender Services, Inc._Capital	Douglas
Richard Cremer, P.C.	DP
Robert Raschio	Grant/Harney
John B. Lamborn	Grant/Harney
Jackson Juvenile Consortium	Jackson
Los Abogados	Jackson
Rogue Valley Defenders, Inc.	Jackson
Southern Oregon Public Defender_JAC	Jackson
Morris, Starns, & Sullivan, PC	JD7
7th District Consortium	JD7
Twenty-Second Circuit Defenders_JEF	Jefferson
Madras Consortium	Jefferson
Southern Oregon Public Defender_JOS	Josephine
Josephine County Defense Lawyers	Josephine
Klamath Defender Services, Inc.	Klamath/Lake
Lane Juvenile Lawyers Association	Lane
Public Defender Services of Lane County	Lane
Lane County Defense Consortium	Lane
Oregon Coast Defenders	Lincoln
Linn Defenders Inc.	Linn
Doug Rock	Malheur
David R. Carlson	Malheur
Stunz Fonda Kiyuna & Horton, LLP	Malheur
Stoddard & Denison	Malheur
The Juvenile Advocacy Consortium	Marion
Public Defender of Marion County, Inc.	Marion
Marion County Assoc. of Defenders, Ltd.	Marion
Troy & Rosenberg	Multnomah
Metropolitan Public Defender Services, Inc._MCR	Multnomah
Multnomah Defenders, Inc.	Multnomah
Youth, Rights & Justice	Multnomah
Sage Legal Center	Multnomah
Portland Juvenile Defenders, Inc.	Multnomah
Portland Defense Consortium	Multnomah
Vidrio Park & Jarvis, LLC	Polk
Polk County Conflict Consortium	Polk
OPC Inc	Statewide
O-Connor & Weber	Statewide
Harris Matarazzo	Statewide
Oregon Justice Resource Center	Statewide
Tillamook County Defense Consortium	Tillamook
Blue Mountain Defenders	Umatilla/Morrow
Intermountain Public Defenders, Inc.	Umatilla/Morrow
Grande Ronde Defenders	Union/Wallowa
Metropolitan Public Defender Services, Inc._WSH	Washington
Oregon Defense Attorney Consortium, Inc.	Washington
Ridehalgh & Associates, LLC	Washington
Karpstein & Verhulst	Washington
Hillsboro Law Group, P.C.	Washington
Yamhill Justice Alliance Center - PCRCP	Yamhill
Yamhill Justice Alliance Center	Yamhill

PCRCP Contractors	County
Columbia County Defense Consortium - PCRCP	Columbia
Justice Alliance of Columbia County - PCRCP	Columbia
Southwestern Oregon Public Defender Service PCRCP	Coos
Coos County Indigent Defense Consortium - PCRCP	Coos
Lincoln Juvenile Defenders LLC - PCRCP	Lincoln
Linn County Juvenile Defense Corporation - PCRCP	Linn

Death Penalty Contractors
Andy Simrin, PC
Benjamin Kim
Bert Dupre, Attorney at Law, LLC
Christopher Edward Burris
Christopher M. Clayhold
Daniel J. Casey
Deborah Burdzik
Dianna J. Gentry, LLC
Elizabeth JC Baker
Geoffrey J. Gokey
Gordon Mallon
Jeffrey Ellis
Katherine O. Berger
Kathleen M. Correll
Laura Graser
Laurie Bender
Lynne Morgan
Mark Sabitt
Michael B. Charlton
Patrick John Sweeney
Richard L. Wolf, P.C.
Russell S. Barnett, III, PC
Sara D. Snyder
Steve M. Lindsey
Steven H. Gorham
Steven L. Krasik
W. Keith Goody
Wm. David Falls

Appendix C
FTE & Hourly Modeling

Hourly Model

Predicted 2019	Total FTE at NAC Standards				Total FTE at 10% Above NAC Standards				Total FTE at 20% Above NAC Standards				Total FTE at 30 % Above NAC Standards			
	Biennial Trial Level Contract Attorney Hours	Biennial Trial Level Contract Supervisory Attorney Hours	Biennial Contract Total Hours Needed	Biennial Contract Cost	Biennial Trial Level Contract Attorney Hours	Biennial Trial Level Contract Supervisory Attorney Hours	Biennial Contract Total Hours Needed	Biennial Contract Cost	Biennial Trial Level Contract Attorney Hours	Biennial Trial Level Contract Supervisory Attorney Hours	Biennial Contract Total Hours Needed	Biennial Contract Cost	Biennial Trial Level Contract Attorney Hours	Biennial Trial Level Contract Supervisory Attorney Hours	Biennial Contract Total Hours Needed	Biennial Contract Cost
Baker	10,433	1,043	11,476	\$ 1,559,704	9,785	979	10,764	\$ 1,462,925	9,246	925	10,171	\$ 1,382,277	8,790	879	9,668	\$ 1,314,036
Benton	30,722	3,072	33,794	\$ 4,592,909	28,561	2,856	31,417	\$ 4,269,802	26,760	2,676	29,435	\$ 4,000,545	25,236	2,524	27,759	\$ 3,772,713
Clackamas	142,549	14,255	156,803	\$ 21,311,016	133,661	13,366	147,027	\$ 19,982,306	126,255	12,625	138,880	\$ 18,875,048	119,988	11,999	131,986	\$ 17,938,137
Clatsop	34,257	3,426	37,683	\$ 5,121,422	32,216	3,222	35,438	\$ 4,816,319	30,516	3,052	33,567	\$ 4,562,067	29,076	2,908	31,984	\$ 4,346,931
Columbia	39,739	3,974	43,712	\$ 5,940,921	38,024	3,802	41,827	\$ 5,684,615	36,596	3,660	40,255	\$ 5,471,027	35,387	3,539	38,925	\$ 5,290,299
Coos	54,512	5,451	59,963	\$ 8,149,514	51,258	5,126	56,384	\$ 7,663,071	48,547	4,855	53,401	\$ 7,257,702	46,252	4,625	50,877	\$ 6,914,697
Crook	32,681	3,268	35,949	\$ 4,885,780	30,875	3,087	33,962	\$ 4,615,799	29,370	2,937	32,307	\$ 4,390,815	28,097	2,810	30,906	\$ 4,200,444
Curry	13,483	1,348	14,832	\$ 2,015,738	12,709	1,271	13,980	\$ 1,900,009	12,064	1,206	13,270	\$ 1,803,568	11,518	1,152	12,670	\$ 1,721,964
Deschutes	112,709	11,271	123,980	\$ 16,849,966	104,796	10,480	115,276	\$ 15,667,002	98,202	9,820	108,022	\$ 14,681,199	92,622	9,262	101,885	\$ 13,847,058
Douglas	90,809	9,081	99,890	\$ 13,575,916	86,091	8,609	94,700	\$ 12,870,645	82,160	8,216	90,376	\$ 12,282,920	78,834	7,883	86,717	\$ 11,785,614
Gilliam	942	94	1,036	\$ 140,829	856	86	942	\$ 128,026	785	79	864	\$ 117,358	725	72	797	\$ 108,330
Grant	3,139	314	3,452	\$ 469,221	2,853	285	3,139	\$ 426,564	2,616	262	2,877	\$ 391,017	2,414	241	2,656	\$ 360,939
Harney	6,732	673	7,405	\$ 1,006,434	6,411	641	7,052	\$ 958,485	6,144	614	6,758	\$ 918,528	5,918	592	6,510	\$ 884,718
Hood River	29,115	2,912	32,027	\$ 4,352,693	27,689	2,769	30,458	\$ 4,139,492	26,501	2,650	29,151	\$ 3,961,825	25,495	2,549	28,044	\$ 3,811,491
Jackson	201,220	20,122	221,342	\$ 30,082,420	188,305	18,830	207,135	\$ 28,151,530	177,542	17,754	195,296	\$ 26,542,454	168,434	16,843	185,278	\$ 25,180,929
Jefferson	15,767	1,577	17,344	\$ 2,357,226	14,334	1,433	15,767	\$ 2,142,933	13,140	1,314	14,453	\$ 1,964,355	12,129	1,213	13,342	\$ 1,813,251
Josephine	84,725	8,472	93,197	\$ 12,666,358	79,228	7,923	87,151	\$ 11,844,640	74,648	7,465	82,113	\$ 11,159,876	70,772	7,077	77,850	\$ 10,580,460
Klamath	85,546	8,555	94,100	\$ 12,789,067	81,113	8,111	89,225	\$ 12,126,461	77,420	7,742	85,162	\$ 11,574,290	74,295	7,429	81,724	\$ 11,107,068
Lake	5,702	570	6,272	\$ 852,419	5,183	518	5,702	\$ 774,926	4,752	475	5,227	\$ 710,349	4,386	439	4,825	\$ 655,707
Lane	267,245	26,724	293,969	\$ 39,953,098	258,224	25,822	284,046	\$ 38,604,434	250,706	25,071	275,777	\$ 37,480,547	244,345	24,434	268,779	\$ 36,529,566
Lincoln	44,746	4,475	49,221	\$ 6,689,557	41,987	4,199	46,186	\$ 6,277,124	39,689	3,969	43,657	\$ 5,933,431	37,743	3,774	41,518	\$ 5,642,613
Linn	88,565	8,856	97,421	\$ 13,240,438	83,132	8,313	91,445	\$ 12,428,180	78,604	7,860	86,464	\$ 11,751,298	74,773	7,477	82,250	\$ 11,178,552
Malheur	42,117	4,212	46,329	\$ 6,296,492	39,705	3,971	43,676	\$ 5,935,938	37,696	3,770	41,465	\$ 5,635,477	35,995	3,599	39,594	\$ 5,381,241
Marion	238,849	23,885	262,733	\$ 35,707,866	224,505	22,451	246,956	\$ 33,563,538	212,553	21,255	233,808	\$ 31,776,599	202,439	20,244	222,682	\$ 30,264,573
Morrow	4,094	409	4,503	\$ 612,113	3,722	372	4,094	\$ 556,466	3,412	341	3,753	\$ 510,094	3,150	315	3,464	\$ 470,856
Multnomah	419,276	41,928	461,203	\$ 62,681,732	393,541	39,354	432,895	\$ 58,834,312	372,095	37,209	409,304	\$ 55,628,128	353,948	35,395	389,343	\$ 52,915,203
Polk	43,967	4,397	48,364	\$ 6,573,126	41,217	4,122	45,339	\$ 6,161,982	38,926	3,893	42,818	\$ 5,819,362	36,986	3,699	40,685	\$ 5,529,453
Sherman	828	83	911	\$ 123,786	753	75	828	\$ 112,533	690	69	759	\$ 103,155	637	64	701	\$ 95,220
Tillamook	19,265	1,927	21,192	\$ 2,880,177	17,720	1,772	19,492	\$ 2,649,167	16,433	1,643	18,076	\$ 2,456,659	15,343	1,534	16,877	\$ 2,293,767
Umatilla	62,380	6,238	68,618	\$ 9,325,840	58,153	5,815	63,968	\$ 8,693,806	54,630	5,463	60,092	\$ 8,167,110	51,648	5,165	56,813	\$ 7,721,445
Union	21,370	2,137	23,507	\$ 3,194,755	19,901	1,990	21,892	\$ 2,975,267	18,678	1,868	20,546	\$ 2,792,361	17,643	1,764	19,407	\$ 2,637,594
Wallowa	1,140	114	1,254	\$ 170,430	1,036	104	1,140	\$ 154,936	950	95	1,045	\$ 142,025	877	88	965	\$ 131,100
Wasco	16,874	1,687	18,562	\$ 2,522,723	15,340	1,534	16,874	\$ 2,293,384	14,062	1,406	15,468	\$ 2,102,269	12,980	1,298	14,278	\$ 1,940,556
Washington	261,882	26,188	288,070	\$ 39,151,359	242,689	24,269	266,958	\$ 36,282,019	226,695	22,670	249,365	\$ 33,890,903	213,162	21,316	234,478	\$ 31,867,650
Wheeler	396	40	436	\$ 59,202	360	36	396	\$ 53,820	330	33	363	\$ 49,335	305	30	335	\$ 45,540
Yamhill	52,224	5,222	57,446	\$ 7,807,488	48,622	4,862	53,484	\$ 7,268,962	45,620	4,562	50,182	\$ 6,820,190	43,080	4,308	47,388	\$ 6,440,460
Statewide Total	2,579,998	258,000	2,837,998	\$ 385,709,731	2,424,558	242,456	2,667,014	\$ 362,471,421	2,295,025	229,502	2,524,527	\$ 343,106,163	2,185,419	218,542	2,403,961	\$ 326,720,175
Current Contract Appropriation				\$ 203,818,633				\$ 203,818,633				\$ 203,818,633				\$ 203,818,633
Additional General Fund Needed				\$ 181,891,098				\$ 158,652,788				\$ 139,287,530				\$ 122,901,542

FTE Model

Predicted 2019	Total FTE at NAC Standards				Total FTE at 10% Above NAC Standards				Total FTE at 20% Above NAC Standards				Total FTE at 30 % Above NAC Standards			
	Trial Level Contract Attorney FTE	Trial Level Contract Supervisory Attorney FTE	Total Contract FTE Needed	Biennial Contract Cost	Trial Level Contract Attorney FTE	Trial Level Contract Supervisory Attorney FTE	Total Contract FTE Needed	Biennial Contract Cost	Trial Level Contract Attorney FTE	Trial Level Contract Supervisory Attorney FTE	Total Contract FTE Needed	Biennial Contract Cost	Trial Level Contract Attorney FTE	Trial Level Contract Supervisory Attorney FTE	Total Contract FTE Needed	Biennial Contract Cost
Baker	2.90	0.29	3.19	\$ 1,600,855	2.72	0.27	2.99	\$ 1,501,524	2.57	0.26	2.83	\$ 1,418,747	2.44	0.24	2.69	\$ 1,348,706
Benton	8.53	0.85	9.39	\$ 4,714,090	7.93	0.79	8.73	\$ 4,382,457	7.43	0.74	8.18	\$ 4,106,097	7.01	0.70	7.71	\$ 3,872,253
Clackamas	39.60	3.96	43.56	\$ 21,873,291	37.13	3.71	40.84	\$ 20,509,524	35.07	3.51	38.58	\$ 19,373,052	33.33	3.33	36.66	\$ 18,411,421
Clatsop	9.52	0.95	10.47	\$ 5,256,546	8.95	0.89	9.84	\$ 4,943,394	8.48	0.85	9.32	\$ 4,682,434	8.08	0.81	8.88	\$ 4,461,621
Columbia	11.04	1.10	12.14	\$ 6,097,667	10.56	1.06	11.62	\$ 5,834,599	10.17	1.02	11.18	\$ 5,615,376	9.83	0.98	10.81	\$ 5,429,880
Coos	15.14	1.51	16.66	\$ 8,364,533	14.24	1.42	15.66	\$ 7,865,255	13.49	1.35	14.83	\$ 7,449,191	12.85	1.28	14.13	\$ 7,097,136
Crook	9.08	0.91	9.99	\$ 5,014,687	8.58	0.86	9.43	\$ 4,737,583	8.16	0.82	8.97	\$ 4,506,663	7.80	0.78	8.59	\$ 4,311,270
Curry	3.75	0.37	4.12	\$ 2,068,922	3.53	0.35	3.88	\$ 1,950,139	3.35	0.34	3.69	\$ 1,851,154	3.20	0.32	3.52	\$ 1,767,397
Deschutes	31.31	3.13	34.44	\$ 17,294,539	29.11	2.91	32.02	\$ 16,080,364	27.28	2.73	30.01	\$ 15,068,551	25.73	2.57	28.30	\$ 14,212,402
Douglas	25.22	2.52	27.75	\$ 13,934,106	23.91	2.39	26.31	\$ 13,210,228	22.82	2.28	25.10	\$ 12,606,996	21.90	2.19	24.09	\$ 12,096,569
Gilliam	0.26	0.03	0.29	\$ 144,545	0.24	0.02	0.26	\$ 131,404	0.22	0.02	0.24	\$ 120,454	0.20	0.02	0.22	\$ 111,188
Grant	0.87	0.09	0.96	\$ 481,601	0.79	0.08	0.87	\$ 437,819	0.73	0.07	0.80	\$ 401,334	0.67	0.07	0.74	\$ 370,462
Harney	1.87	0.19	2.06	\$ 1,032,988	1.78	0.18	1.96	\$ 983,774	1.71	0.17	1.88	\$ 942,763	1.64	0.16	1.81	\$ 908,061
Hood River	8.09	0.81	8.90	\$ 4,467,535	7.69	0.77	8.46	\$ 4,248,709	7.36	0.74	8.10	\$ 4,066,355	7.08	0.71	7.79	\$ 3,912,054
Jackson	55.89	5.59	61.48	\$ 30,876,122	52.31	5.23	57.54	\$ 28,894,286	49.32	4.93	54.25	\$ 27,242,757	46.79	4.68	51.47	\$ 25,845,309
Jefferson	4.38	0.44	4.82	\$ 2,419,420	3.98	0.40	4.38	\$ 2,199,473	3.65	0.36	4.01	\$ 2,016,183	3.37	0.34	3.71	\$ 1,861,092
Josephine	23.53	2.35	25.89	\$ 13,000,550	22.01	2.20	24.21	\$ 12,157,152	20.74	2.07	22.81	\$ 11,454,321	19.66	1.97	21.62	\$ 10,859,617
Klamath	23.76	2.38	26.14	\$ 13,126,497	22.53	2.25	24.78	\$ 12,446,409	21.51	2.15	23.66	\$ 11,879,669	20.64	2.06	22.70	\$ 11,400,120
Lake	1.58	0.16	1.74	\$ 874,910	1.44	0.14	1.58	\$ 795,372	1.32	0.13	1.45	\$ 729,091	1.22	0.12	1.34	\$ 673,007
Lane	74.23	7.42	81.66	\$ 41,007,230	71.73	7.17	78.90	\$ 39,622,982	69.64	6.96	76.60	\$ 38,469,443	67.87	6.79	74.66	\$ 37,493,371
Lincoln	12.43	1.24	13.67	\$ 6,866,056	11.66	1.17	12.83	\$ 6,442,742	11.02	1.10	12.13	\$ 6,089,980	10.48	1.05	11.53	\$ 5,791,489
Linn	24.60	2.46	27.06	\$ 13,589,777	23.09	2.31	25.40	\$ 12,756,088	21.83	2.18	24.02	\$ 12,061,347	20.77	2.08	22.85	\$ 11,473,490
Malheur	11.70	1.17	12.87	\$ 6,462,620	11.03	1.10	12.13	\$ 6,092,554	10.47	1.05	11.52	\$ 5,784,165	10.00	1.00	11.00	\$ 5,523,221
Marion	66.35	6.63	72.98	\$ 36,649,991	62.36	6.24	68.60	\$ 34,449,087	59.04	5.90	64.95	\$ 32,615,000	56.23	5.62	61.86	\$ 31,063,081
Morrow	1.14	0.11	1.25	\$ 628,263	1.03	0.10	1.14	\$ 571,148	0.95	0.09	1.04	\$ 523,552	0.87	0.09	0.96	\$ 483,279
Multnomah	116.47	11.65	128.11	\$ 64,335,542	109.32	10.93	120.25	\$ 60,386,610	103.36	10.34	113.70	\$ 57,095,834	98.32	9.83	108.15	\$ 54,311,331
Polk	12.21	1.22	13.43	\$ 6,746,553	11.45	1.14	12.59	\$ 6,324,562	10.81	1.08	11.89	\$ 5,972,902	10.27	1.03	11.30	\$ 5,675,343
Sherman	0.23	0.02	0.25	\$ 127,052	0.21	0.02	0.23	\$ 115,502	0.19	0.02	0.21	\$ 105,877	0.18	0.02	0.19	\$ 97,732
Tillamook	5.35	0.54	5.89	\$ 2,956,169	4.92	0.49	5.41	\$ 2,719,063	4.56	0.46	5.02	\$ 2,521,476	4.26	0.43	4.69	\$ 2,354,286
Umatilla	17.33	1.73	19.06	\$ 9,571,895	16.15	1.62	17.77	\$ 8,923,185	15.17	1.52	16.69	\$ 8,382,593	14.35	1.43	15.78	\$ 7,925,169
Union	5.94	0.59	6.53	\$ 3,279,046	5.53	0.55	6.08	\$ 3,053,768	5.19	0.52	5.71	\$ 2,866,035	4.90	0.49	5.39	\$ 2,707,185
Wallowa	0.32	0.03	0.35	\$ 174,927	0.29	0.03	0.32	\$ 159,024	0.26	0.03	0.29	\$ 145,772	0.24	0.02	0.27	\$ 134,559
Wasco	4.69	0.47	5.16	\$ 2,589,283	4.26	0.43	4.69	\$ 2,353,894	3.91	0.39	4.30	\$ 2,157,736	3.61	0.36	3.97	\$ 1,991,756
Washington	72.75	7.27	80.02	\$ 40,184,338	67.41	6.74	74.16	\$ 37,239,293	62.97	6.30	69.27	\$ 34,785,088	59.21	5.92	65.13	\$ 32,708,454
Wheeler	0.11	0.01	0.12	\$ 60,764	0.10	0.01	0.11	\$ 55,240	0.09	0.01	0.10	\$ 50,637	0.08	0.01	0.09	\$ 46,742
Yamhill	14.51	1.45	15.96	\$ 8,013,483	13.51	1.35	14.86	\$ 7,460,748	12.67	1.27	13.94	\$ 7,000,136	11.97	1.20	13.16	\$ 6,610,387
Statewide Totals	716.67	71.67	788.33	\$ 395,886,390	673.49	67.35	740.84	\$ 372,034,955	637.51	63.75	701.26	\$ 352,158,759	607.06	60.71	667.77	\$ 335,340,440
Current Contract Appropriation				\$ 203,818,633				\$ 203,818,633				\$ 203,818,633				\$ 203,818,633
Additional General Fund Needed				\$ 192,067,757				\$ 168,216,322				\$ 148,340,126				\$ 131,521,807

Appendix D
OPDS Plan for Use of SPA Funds
Memo to Leadership



Oregon

Public Defense Services Commission

Office of Public Defense Services

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Salem, Oregon 97301-4030
Telephone: (503) 378-3349
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www.oregon.gov/opds

Date: November 6, 2019

To: Sen. Peter Courtney, President of the Senate
Rep. Tina Kotek, Speaker of the House
Rep. Jennifer Williamson, Chair of House Committee on the Judiciary
Sen. Floyd Prozanski, Chair of the Senate Committee on the Judiciary

From: Lane Borg, Executive Director, Office of Public Defense Services

Subject: Special Purpose Appropriation Request, HB 5050(2019)

This memorandum is to provide an overview of the Office of Public Defense Services' current vision of how to most effectively spend the \$20 million of funds approved in HB 5050 (the "SPA") to address issues raised by the Sixth Amendment Center (6AC) report concerning Oregon's Public Defense service delivery plan.

We believe that the most effective way to spend the money in the SPA would be to 1) issue contracts that move away from the current case rate credit model; and 2) develop and implement measures to better monitor and manage caseloads and quality of service. Those areas are addressed separately, below:

1. Issuance of Contracts Using a Non-Case-Rate Model

The 6AC report criticized the current case rate credit contracting system used by OPDS, noting that it resulted in a potential conflict for contractors, as they were paid the same whether they pled the case at first appearance or spent a week in trial. This system, when coupled with low case credit rates (\$400 for a misdemeanor or \$1800 for a Measure 11 case), also encourages providers to take excessive caseloads or a mix of public defense and private cases that significantly undermines the quality of services being provided.

The PDSC, in response to the 6AC report, has already directed the agency to cease the practice of using a case rate credit-based system. Consistent with that directive, we have already started the process of transitioning the contract system away from the case rate credit system. In its place, our current plan is to move to a mix of private FTE contracts (which is what is done with the juvenile dependency program known as Parent Child Representation Program (PCRPP)) and hourly contracts (which are currently used for some specialized services such as death penalty representation). Both of those systems address the basic concerns raised by the current case-rate

model. Based on our existing experience budgeting under each of those contract models, we are in the process of developing budgets for new contracts under those models that would be issued on July 1, 2020.

Both models will require planning in order to implement.

The FTE model needs a definition of what constitutes a case so that we can build caseloads. We need to determine what services are covered by contract and what reports will be expected. Under current funding we can change the manner of contracting and begin the process of setting and enforcing caseload standards. We will likely not be able to afford full capacity at the NAC or ABA caseload standards as are currently used in Washington State, but we should get to within a 10-20% of those standards. Once we have the basic structure of FTE contracts in place, we can then strategically apply increased investments in adding capacity to get to the caseload standards we adopt. Ideally those standards would be informed by the Oregon-specific American Bar Association caseload study currently underway.

In the hourly model, we need to determine what categories of time we need to capture, and we need to find the correct balance between gathering information that is useful for the state but still manageable for the provider. In the hourly model we will not have to define what a case is as the providers would service clients and keep time for any qualifying matter the client has. The challenge would be to timely process billings while still conducting reasonable review and auditing of bills.

We anticipate that we will need both models so that providers can opt for the model that best fits the needs of their jurisdiction and office. While each model will look different, both models require monitoring and oversight for contract compliance.

2. Measures to Better Monitor and Manage Caseloads and Quality of Service

The 6AC Report also found that OPDS does not have sufficient staff to conduct the type of oversight necessary to monitor caseloads or to ensure proper quality of service. Various members of the Legislature have also expressed dismay over this issue in the past as they have been left without adequate assurance that the funds budgeted for public defense are being properly spent. Our first goal would be to address that issue by adding accounting and general counsel staff to monitor caseloads, conduct court observations, and engage in direct review of providers for quality assurance and oversight. The goal of that oversight would be to assist public defense providers in their professional development and service delivery and also to report back to the agency. Further, we plan to invest in key research positions, so that we can not only better understand how the data informs us about our performance, but more importantly, so that we can measure the effectiveness of any new programs to guide further reforms and investments. Further

details regarding those investments, which are expected to cost approximately \$4 million, are outlined below. We believe those investments will help us on oversight and accountability for the entire agency budget of approximately \$350 million

Breakdown of the \$20 Million

OPDS agency infrastructure needs include added oversight and compliance capabilities in general counsel, research functions, contract support, legislative and communications support, audit functions, accounting permanency, and administrative support: 23 FTE ~\$4 million.

The remaining \$16 million would be used to stabilize and enhance capacity in the rest of the trial level public defense system. By moving towards a model that includes both FTE public defense attorneys and attorneys compensated on an hourly basis, the agency will gather critical information about attorney workloads. This will allow OPDS to use the \$16 million to strategically invest in jurisdictions where the attorney workforce needs to be increased. It will also allow OPDS to reduce caseloads and increase compensation in a measured way.

Appendix E
OPDS Infrastructure Outline

Positions	Position Count	Number of Months 2019-21	Base Step	Salary	Variable OPE	Fixed OPE	2019-21 Position Costs
Accounting Technician 2	1	12					\$ -
Accounting Technician 2	1	12					\$ -
Business Analyst 1	1	12	3813	45756	14010.49	20700	\$ 80,466
Chief Operating Officer	1	12	10228	122736	37581.76	20700	\$ 181,018
Deputy General Counsel	1	12	10228	122736	37581.76	20700	\$ 181,018
Deputy General Counsel	1	12	10228	122736	37581.76	20700	\$ 181,018
Deputy General Counsel	1	12	10228	122736	37581.76	20700	\$ 181,018
Fiscal Analyst 3	1	12	6850	82200	25169.64	20700	\$ 128,070
Human Resources Analyst 2	1	12	5636	67632	20708.92	20700	\$ 109,041
Human Resources Analyst 2	1	12	5636	67632	20708.92	20700	\$ 109,041
Internal Auditor	1	12	6850	82200	25169.64	20700	\$ 128,070
Manager 1	1	12	6275	75300	23056.86	20700	\$ 119,057
Manager 4	1	12	8409	100908	30898.03	20700	\$ 152,506
Office Specialist 2	1	12	3296	39552	12110.82	20700	\$ 72,363
OPA2	1	12	5368	64416	19724.18	20700	\$ 104,840
OPA4	1	12	6524	78288	23971.79	20700	\$ 122,960
Office Specialist 2	1	12	3296	39552	12110.82	20700	\$ 72,363
Program Analyst 1	1	12	5113	61356	18787.21	20700	\$ 100,843
Program Analyst 1	1	12	5113	61356	18787.21	20700	\$ 100,843
Program Analyst 4	1	12	6524	78288	23971.79	20700	\$ 122,960
Program Analyst 4	1	12	6524	78288	23971.79	20700	\$ 122,960
Research Analyst 4	1	12	6850	82200	25169.64	20700	\$ 128,070
Research Analyst 3	1	12	6165	73980	22652.68	20700	\$ 117,333
							\$ 2,615,855

Total Position Count **23**

SS							\$ 57,500
Bar/CLE/Etc							\$ 10,000
Standard Set Up							\$ 340,000
Rent							\$ 102,000
IT Support							\$ 25,000
20% Error Factor							\$ 618,571

Total Costs **\$ 3,768,927**