

# Public Defense Services Commission Judiciary Committee Presentation January 29, 2019

## Agenda

- Agency Structure & Responsibilities
- Historical Overview
- The Sixth Amendment Center's Findings and Recommendations Regarding Public Defense in Oregon

# The Right to Counsel

- The Sixth Amendment to the US Constitution: “In all criminal prosecutions, the accused shall enjoy the right . . . To have the Assistance of Counsel for his defence.”
- Article I, Section 11: “ In all criminal prosecutions, the accused shall have the right to . . . be heard by himself and counsel.”

# Public Defense Services Commission

- Semi-Independent agency within the Judicial Branch of Government
- Chapter 151 of Oregon Revised Statutes (2001)
- Office of Public Defense Services
  - Executive Director
  - Business Services Division
  - Appellate Division
- Responsible for providing counsel in Oregon's Circuit Courts, Court of Appeals, and Supreme Court

# Statutory Obligation

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

# Public Defense Service Commission

**Chief Justice Martha Walters**  
**Ex-Officio Permanent Member**

**Per Ramfjord, Chair**  
**Partner, Stoel Rives LLC**

**Hon. Elizabeth Welch, Vice Chair**  
**Senior Judge**

**Thomas M. Christ**  
**Partner, Sussman Shank LLP**

**Michael De Muniz**  
**De Muniz Law**

**Steffan Alexander**  
**Shareholder, Markowitz Herbold PC**

**Amy Baggio**  
**Attorney at Law, Baggio Law**

**Vacancy**

# Appellate Division

- OPDS Appellate Division
  - Institutional counterpart to DOJ Appellate
  - Represents individuals in a high-volume practice before the Oregon appellate courts and is asked to appear as *amicus* in cases of systemic importance
  - Works with the appellate courts, DOJ, and the legislature to identify and implement system efficiencies
  - Attorneys evaluate over 3600 case referrals per biennium

# Business Services Division

- Provides counsel for 100% of trial level representation
  - 99% of trial representation is achieved through 115 two-year contracts
    - Non-profit public defenders
    - Law Firms
    - Consortia
  - 1% of cases are covered by attorneys who are on panels and receive an hourly rate of \$46/hour
- Reviews requests for case-related expenses
- Processed 85,000 financial transactions
- Works with LFO to plan and monitor agency's budget

# Public Defense Models Utilized

- \* State FTE
- \* Privatized FTE
- \* Contracts with flat fee case rates
- \* Hourly billing
- \* Hourly billing pursuant to a contract
- \* Output contracts



# Public Defense Case Types

- Criminal proceedings
- Probation violation and extradition proceedings
- Contempt proceedings
  - nonpayment of court-ordered child support
  - violations of Oregon's Family Abuse Prevention Act
- Post-conviction relief and Habeas Corpus proceedings
- Juvenile delinquency proceedings
- Juvenile dependency and Termination of Parental Rights
- Civil commitment proceedings and Psychiatric Security Review Board proceedings
- Appeals of types listed above and of parole board orders

# Case Types Not Funded by PDSC

- Municipal court proceedings
- Violations
- DMV hearings
- Parole hearings
- Landlord-tenant matters
- Small claims
- Relief from sex offender registration (with limited exception for youth offenders)
- Applying for, or challenges to, restraining orders
- Probate guardianships
- Representation in divorce proceedings

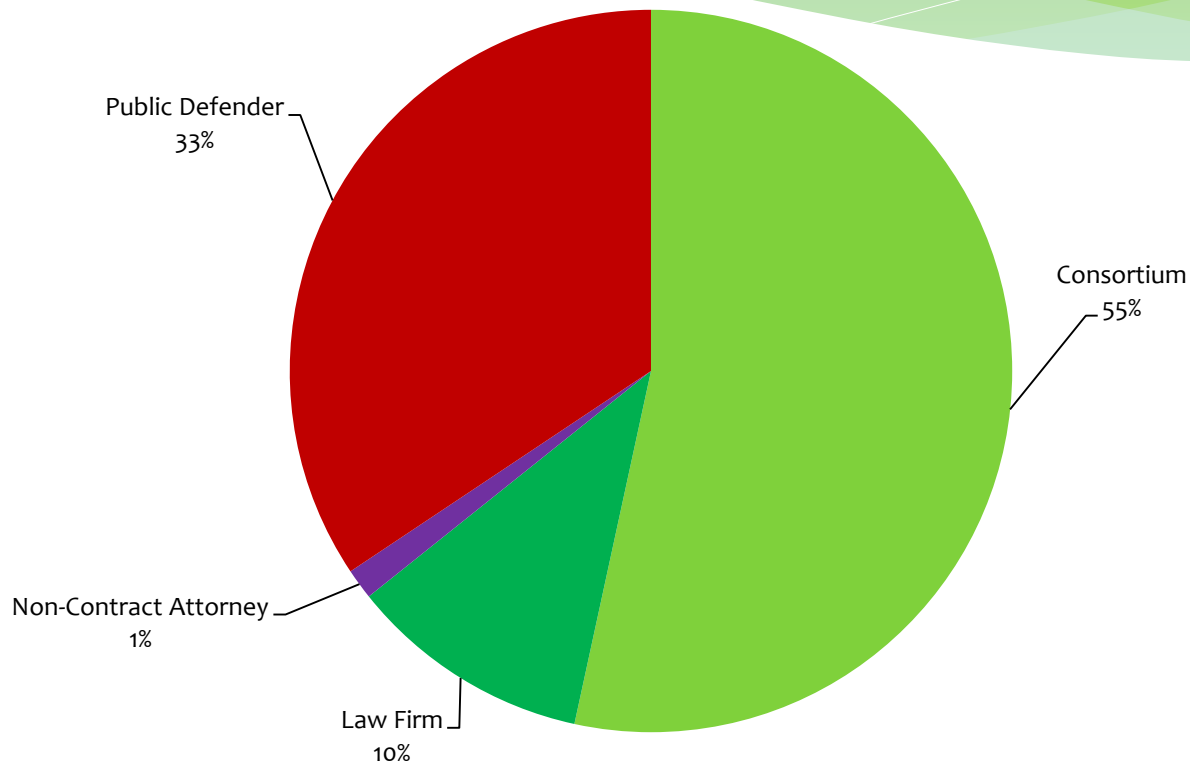
# Financial Eligibility Criteria

- Eligibility is determined by the court
- Federal food stamp guidelines (130% of the federal poverty level) serve as the primary determinant of eligibility for state-paid counsel
- If an applicant's income exceeds food stamp guidelines, the court may appoint counsel in limited circumstances

# Provider Types

## Trial-Level Non-Death Penalty Public Defense Caseload

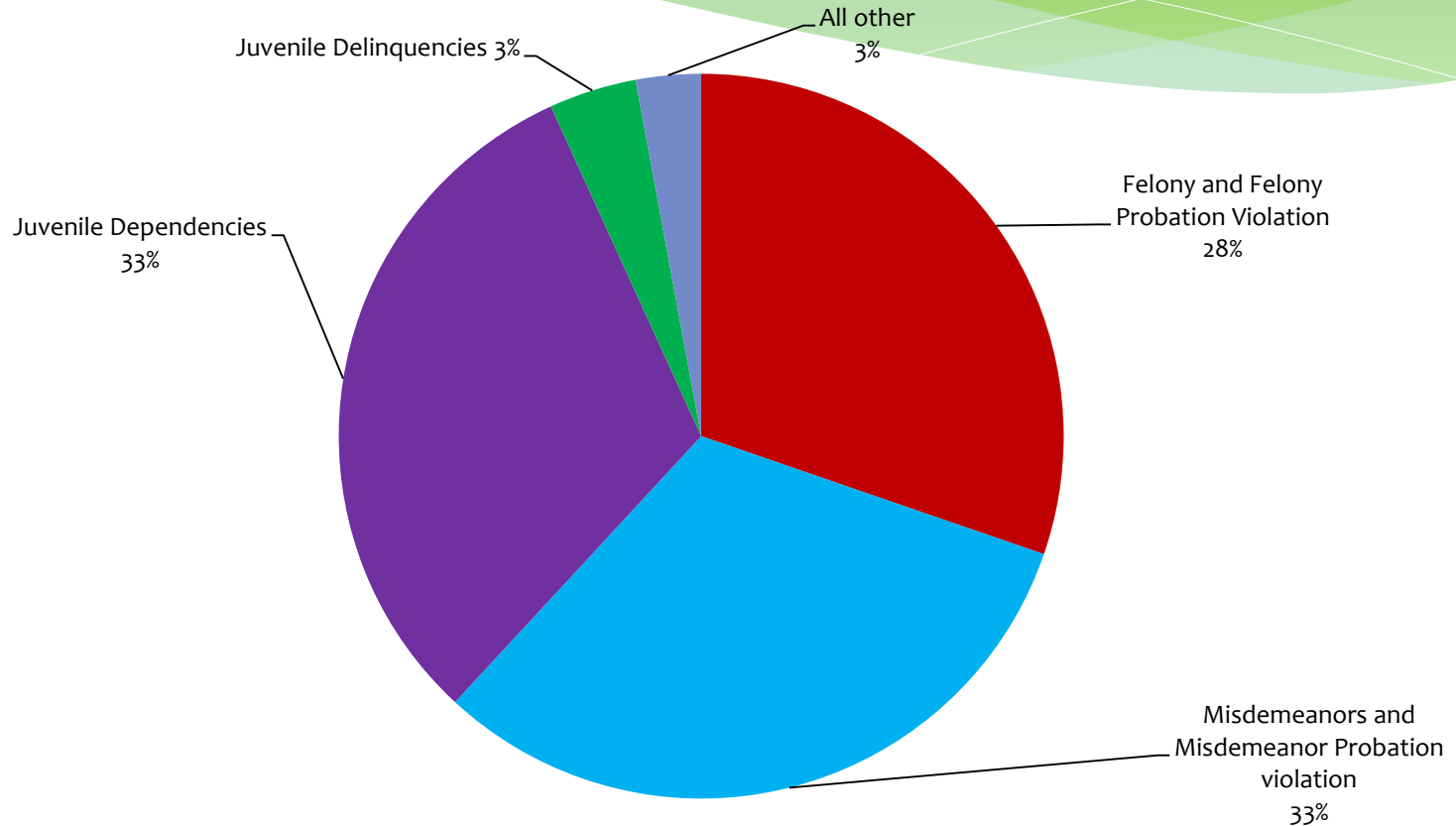
Breakdown by Provider Type



# Public Defense Caseload Breakdown by Case Type

## Trial-Level Non-Death Penalty Public Defense Caseload

Breakdown by Case Type



# Case Rates for Trial Level Contractors

Case Type	Rate
Misdemeanor	\$345 to \$399
Class C Felony	\$567 to \$626
Class B Felony	\$914 to \$1,035
Class A Felony	\$1,090 to \$1,217
Measure 11 Offense	\$1,789 to \$2,258
Murder (non-capital)	\$17,780 to \$21,964
Juvenile Petition	\$779 to \$847
Juvenile Review Hearing	\$323 to \$351

# Quality Assurance and Oversight

- Attorney Qualification Standards
- Peer and Service Delivery Reviews
- Respond to Complaints
- Annual Survey
- Legislative Approved Studies:
  - 6AC Assessment
  - ABA Caseload Study

# Challenges

- Ability to attract and retain talented lawyers and employees at the trial level
  - Low compensation; high student loan debt
  - High turnover
  - Ineligibility for loan repayment/forgiveness options
- Lack of Training and Mentorship
- Excessive Caseloads
- Increasing Case Complexity
- Limited Ability for Oversight and Quality Assurance



# Recent Workload Standard Studies

State	Misdemeanor Maximum
Missouri	212
Louisiana	261
Rhode Island	164
Texas	216

- Oregon providers report assignment of well over 400 misdemeanor cases per year, often to attorneys who only recently passed the bar exam.

# Capital Defense

- Attorneys must meet PDSC capital defense standards before eligible
- Caseload limitations
- Timekeeping requirements
- Team Approach
- Capital defense attorneys under contract:
  - 29 attorney contracts
  - 21 mitigator contracts

# Parent Child Representation Program

Presently employed in Yamhill, Linn, Columbia, Coos, and Lincoln counties to provide quality representation in juvenile dependency cases.

- Workload contract for legal services + caseload limits
  - Adequate compensation for in and out-of-court time allows for quality legal representation in dependency cases. (ABA Center on Children and the Law Parent Attorney Compensation Survey, 2015)
- Stabilize attorney pool, caseloads, and compensation
  - Attorneys report increased focus on quality representation including time with clients and ability to advocate for clients both in and out of court.

# Parent Child Representation Program

- Case managers
  - Multidisciplinary representation yields the best results for children and families.
- Accountability
  - Time recording logs
  - Attorney oversight
  - Performance and training requirements
- Data-Informed
  - Children served by Washington's Parent Representation Program return home one month faster and reach other permanency outcomes one year sooner. (WA Partners for Our Children, 2011)

# Public Defense 1955-1983

## A County Funded System

- 1955 – Oregon Legislature authorizes appointment of counsel when criminal defendant was “without funds and unable to retain his own counsel.” Or. Rev. Stat. § 135.320 (1955)
  - Case rate of 5\$/misdemeanor to \$150 for murder
- 1965 – State Public Defender office provides appellate representation
- 1969 – 6<sup>th</sup> Amendment applies to misdemeanors as well as felonies
  - Stevenson v. Holzman, 458 P.2d 414, (Or 1969)

# Public Defense 1983 – 2001

## State Court Administrator

- 1983 – Responsibility for public defense transferred from counties to the state trial court administrator
- 1985 -- State Indigent Defense Board created to administer public defense services
- 1987 – Responsibility for case-related expenses transferred back to the state trial court administrator
- 1994 – Oregon State Bar Task Force issues report on public defense in Oregon
  - Alarmed by flat case rates, and the requirement that public defense attorneys simply accept more cases in order to receive more pay
  - Recommended a state FTE model

# Public Defense 2001-Present

## Public Defense Services Commission

- 2001 – Oregon creates the Public Defense Services Commission effective 2003
- 2003 – Budget Reduction Advisory Committee
- 2008 – Economic recession impacts offices
- 2017 – The PDSC directs OPDS to research and propose alternatives to the current model

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